

AWARENESS-RAISING OF JUDICIAL AUTHORITIES CONCERNING TRAFFICKING IN HUMAN BEINGS

COUNTRY REPORT

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INTRODUCTION

In 1993, the Belgian Parliament decided to set up a Committee of Inquiry in view of developing a structural policy to prosecute, punish and suppress trafficking in human beings. This initiative followed numerous reports and complaints on the gravity of the phenomenon. Notably, the actions of non-governmental actors and investigative journalists brought the issue to public attention. This was soon followed by the personal initiative of King Baudouin I in 1992 to visit a shelter and support centre in Antwerp, Payoke, where he talked to victims of trafficking in human beings in person. This initiative generated the political will to take effective action. At that time, trafficking was for the most part still understood as trafficking in women for sexual exploitation in prostitution. Soon however, reality would teach that there is a wide range of types of exploitation in many different economic sectors to which men, women and children are subjected.

During a year and a half, the Parliamentary Committee of Inquiry heard a wide range of actors in the field who are trying to help and protect trafficked victims, studied the phenomenon and elaborated a number of recommendations. The Committee also drafted a new legislation as it became clear that existing legal instruments were insufficient to address the specific crime of trafficking in human beings¹.

Not only was the clear signal given that Belgium meant fighting trafficking in human beings seriously but it became one of the very first countries in Europe to develop a specific legislation. Later on, there would inevitably follow some adaptations to this Law in order to meet an evolving reality with regard to both the phenomenon and the level of its practical application.

This report will first look at the current legal provisions for the fight against trafficking in human beings. At the moment of writing this report, new legislation is being drafted and discussed in the Belgian Parliament. The new legislation is needed for Belgium in order to comply with a number of instruments in international and European Law. This country report will be based on the legislation effectively in force but will discuss the new draft legislation in a separate paragraph.

In a second part the prosecution of trafficking cases will be discussed. Here the focus will be on the elements needed to bring a case successfully to the court. In the third and final part of the report, the procedure as regards the victims of trafficking will be analysed. It is important here to underline that all three parts discuss aspects of the same integrated multi-disciplinary approach.

¹ Parl. Stukken, Senaat, 1994-1995, nr. 1142-3

1. APPLICABLE NATIONAL LEGISLATION

1.1 Current National Legislation relevant to Trafficking in Human Beings

1.1.1 The Law of 13th of April 1995 Containing Provisions to Combat Trafficking in Human Beings and Child Pornography.

At present the *Law of 13th of April 1995 containing Provisions to Combat Trafficking in Human Beings and Child Pornography* regulates trafficking and smuggling in human beings. It added a provision in the *Law of 15th of December 1980 concerning Access to the Territory, Stay, Residence and the Removal of Foreigners* as well as a number of instruments in the Criminal Code.

The key element of this Law is that trafficking in human beings is considered as a distinct offence, in spite of the fact that there is no legal definition of trafficking as such. The Law of the 13th of April 1995 merely describes it by reference. In its first article, the Law amends the article 77bis of the *Law of 15th December 1980 concerning Access to the Territory, Stay, Residence and the Removal of Foreigners*.

The new article 77bis states that “*whomever shall, by whatever means, directly or through an intermediary, assist an alien in entering or residing in the Kingdom and, in doing so, shall (1) subject the alien, directly or indirectly, to fraudulent practices, violence, threats or any form of coercion; (2) or take advantage of the particularly vulnerable position in which the alien is placed as a result of illegal or insecure administrative status, pregnancy, illness, infirmity or a physical or mental disability; shall be punished by 1 to 5 years imprisonment and a fine of 500-25,000 Francs².*”

The insertion of Article 77bis into the Law of 15th December 1980 indicates clearly that the purpose of this new Law was to strengthen the mechanism to fight human smuggling on the one hand, but on the other hand it describes trafficking in human beings as a distinct form of criminality. That is to say that human trafficking is considered primarily as human smuggling *plus* the stipulated abuse. Practically, this implies that if any element within the broad scope of possible abuses of the alien or her/his situation is present, we are no longer talking of smuggling but of trafficking.

Therefore, the distinction between the two, in spite of the fact that both are addressed in the same legal text on migration, is that smuggling is a crime against the state whereas trafficking is a crime against a person or persons. This also explains why, in both cases, we can properly speak of victims even though the status of the victim is considered quite differently.

² 1 € is equal to approximately 40 Belgian Francs.

For this reason, the trafficking Law also amended the Criminal Code with provisions regarding the crime of trafficking. Article 77bis does not address exploitation as such. This aspect is dealt with through the modifications that the new Law inserted into the Criminal Code.

A new article 380bis of the Criminal Code³ consists of several components. In its first three points, a series of trafficking related offences, applying to trafficking in adults only, are grouped together. The scope of these offences addresses a variety of means of abuse or exploitation regardless of any apparent, implied or express consent of the victim. These means include the threat or use of force, any other forms of coercion, abduction, fraud, deception, abuse of vulnerability, etc. The provision further sets out a series of criminal acts (recruitment, harbouring or receipt of a person, without, however, explicitly mentioning transfer or transportation) that all have an element of exploitation in common. The use of violence constitutes an aggravating circumstance but as such is not considered as a constituent element of the offences. This effectively widens the scope of the provision so that it also encompasses situations such as procurement of accommodation for the purpose of prostitution or the running of a brothel. It should be noted here that, although prostitution in Belgium is not criminalised as such, the exploitation of prostitution or the sexual immorality of anyone, in whatever way, is punishable, as is stipulated in the fourth point of the article 380bis.

A new Article 379 in the Criminal Code focuses on the sexual exploitation of minors. It carries severe penalties. If the minor is under 10 years old, the offender faces a penalty of up to 20 years of imprisonment. If the minor is under 16 years old, the prison sentence can run up to 15 years. This new article concerns everyone who “*incites, favours or provokes*” the “*sexual immorality, corruption or the prostitution of a minor of either sex, in order to gratify the passions of another.*” The Law of the 13th of April 1995 further creates a new and distinct offence for child pornography – a new article 383bis in the Criminal Code – and applies without prejudice to the implementation of the provisions on trafficking.

Another important aspect of the new Law of April 1995 is its Chapter III on Extra-territoriality. Consequently, in the introductory part of the Code of Criminal Procedure, a new article 10ter enables Belgian Courts to prosecute Belgian citizens as well as foreigners for crimes of trafficking (among others) committed abroad on a minor under the age of 16 years.

By virtue of the Law of April 1995, victims of trafficking may be granted a temporary residence permit for three months on the condition that they agree to cooperate with the relevant authorities, and accept assistance offered by specialised and recognised centres for victims of trafficking. The Prosecutor’s office can then decide to allow the victim to stay in the Kingdom for another six months, a period which is renewable until the completion of the judicial proceedings. The residence procedure itself will be further elaborated in part three of this report.

1.1.2 Further Belgian Legislation relevant to Trafficking in Human Beings.

Measures to Combat Serious and Organized Crime

One of the most important problems in the fight against human trafficking is securing the cooperation of the victims. Without their declarations or testimonies, there is most often little that can be done to prosecute the traffickers or even to gain insight in the concrete operations of

³ Articles 379 and 380 of the Criminal Code concern corruption of youth and criminal acts concerning prostitution.

the phenomenon. Victims are not inclined to testify out of fear from the traffickers or from law enforcement personnel whom they often have learnt to distrust. The *Law of 8th April 2002 concerning the Anonymity of Witnesses*⁴ makes it possible under certain conditions to testify either under partial or complete anonymity.

The law is only applicable to people who are called in as witnesses in the judicial investigation or by the judge presiding over adjudication. It can, in other words, not be used by the Police Services or the Public Prosecutor. This limitation is significant since the majority of interrogations are done by the police.

Partial anonymity includes the omission of certain data that would indicate the identity of the witness or of others who professionally cooperate in the investigation. The Investigating Judge will decide whether partial anonymity is to be granted. Partial anonymity is primarily intended for incidental witnesses who nevertheless may fear reprisals or intimidation.

Full anonymity⁵ means that, apart from withholding identifying information, the witness cannot be called into court unless s/he expressly agrees to do so. Full anonymity is only granted if the witness can be said to be threatened, if it concerns one of a limited number of crimes⁶, if partial anonymity would not suffice or, finally, if the investigation necessitates it. Regarding trafficking cases, it means that full anonymity will only be granted if the facts under consideration concern article 77bis (and where the crime has a 'habitual' character or is committed in an organized context) or where the facts are violations of either article 379 or 380 of the Criminal Code. The witness' testimonies under full anonymity can only be entered as evidence for the specific crime for which the anonymity was granted. Finally, the law stipulates that no conviction can be secured based solely or for the majority on fully anonymous testimonies.

Apart from the law concerning the anonymity of witnesses, the protection of threatened witnesses was regulated by another new piece of legislation. The *Law of 7th July 2002 concerning the Regulation for the protection of threatened witnesses and other provisions* serves to provide adequate protection to people who are prepared to offer useful information but who would not if their protection was not secured. They would need the protection for either themselves or for their family.⁷ This protection can be granted regardless of the possible anonymity of the witness. The request for protection and financial assistance would be made by the Prosecutor's office and by the investigating judge.

Two types of protection are available: general and special protective measures. The first type involves shielding of identifying information, and certain techno-preventive measures, such as provision of a secure phone number, licence plate, etc. Special protective measures include the relocation abroad for a period of more than 45 days and/or the change of the identity. Considering the economic social and psychological costs of these special protective measures, appropriate assistance is foreseen. The Law further calls into the existence of a Witness Protection Commission presided by the Federal Prosecutor. This Commission has to decide whether or not an objective danger to the witness exists, taking into account the principles of proportionality (the importance of the case versus the danger to the witness) and subsidiarity (the

⁴ Published B.S., 31 May 2002

⁵ Code of Criminal Procedure, article 86bis ff.

⁶ Serious or organised crime and serious violations of humanitarian right.

⁷ Explanatory Memorandum, Parl. Stukken, Kamer, 2001-2002, 1483/001, p.6 ff

investigation needs to warrant it and other means of ascertaining the truth must prove insufficient).

The key difference between the law on anonymity and the one on witness protection is that the first uses a subjective criterion, whereas the latter requires an objective criterion.

In the same framework of the fight against serious and organized crime, an additional law aims to protect witnesses against intimidation, threats or violence. The *Law of 2nd August 2002 concerning the Recording of Statements by Means of Audio-Visual Media*⁸ complements the two laws mentioned above. It creates the possibility to conduct interviews and hearings at distance by audio-visual means and allows them to be recorded. This instrument not only serves witness protection as such but also makes it possible to hear witnesses, experts or suspects who are abroad. The use of closed circuit television, however, is restricted to threatened witnesses.

Considering a number of legal provisions such as confiscation or seizure of proceeds, the Law on special investigation techniques or on money-laundering will be discussed in the second part of his report.

Some Further Relevant Measures

Exploitation in a wide range of economic sectors, primarily those heavily dependant on low-skilled labour as well as social fraud, remain a worrying reality in Belgium. In order to fight illegal work and social fraud more effectively, the Belgian Parliament passed the *Law of 3rd May 2003 concerning the Establishment of the Federal Council for the Fight against Illegal Labour and Social Fraud, the Federal Coordination Committee and the Judicial District Units*.⁹ The need for a permanent structure to coordinate the actions of social and labour inspection services was hereby addressed. The Judicial District Units will be presided by the Labour Auditor and be composed of the services which have an interest in the fight against illegal labour and social fraud.

The *Law of 2nd January 2001 concerning Diverse Budgetary Measures* had already expanded the scope of article 77bis of the *Law of 15th December 1980 concerning Access to the Territory, Stay, Residence and the Removal of Foreigners*. It had inserted a paragraph 1bis to allow for the prosecution of slum landlords, in particular persons who let or sell rooms or spaces to foreigners at inordinate prices, or spaces unfit for living purposes knowing the foreigners may have an illegal status and cannot assert their rights. The paragraph was further amended on the 2nd of August 2002¹⁰ to create the possibility to also prosecute people who sell or let entire buildings. The possibility was also created for the Public Prosecutor or the Investigating Judge to confiscate the property concerned. In that case, it can either be sealed or be made available to the public welfare services for renovations and temporary rental, upon written agreement of the owner or tenant. Victims of slum lords are further given the possibility, by the decision of the Minister of the Interior, to be sheltered or housed.

⁸ Published B.S. 12 September 2002

⁹ Published B.S. 10th June 2003. The term "Judicial District" is here the translation of "arrondissement."

¹⁰ Published B.S. 29th August 2002, Programmawet article 190

The *Law of 15th of February 1993 concerning the Establishment of the Centre for Equal Opportunities and Opposition to Racism* deserves to be mentioned because this Centre is hereby tasked with the coordination of the activities of the three regional, recognised and specialised centres that are allowed to work for and with victims of trafficking in Belgium. Further recent legal measures concerning the protection and assistance to victims of trafficking in human beings will be discussed in part three of this report.

1.2 The new Belgian Legislation¹¹

*Draft Legislation for the Modification of Several Stipulations in View of the Strengthening of the Fight Against Trafficking and Smuggling in Human Beings*¹² currently being discussed by the Belgian Parliament requires some attention here. It aims to introduce necessary modifications to the Belgian legal instruments pertaining to international obligations but equally to address some issues regarding the evolving reality of the trafficking phenomenon.

Some aspects of the *Law of 13th of April 1995 containing Provisions to Combat Trafficking in Human Beings and Child Pornography* will be modified in view of making its implementation more optimal. This also implies a number of changes in the *Law of 15th of February 1993 concerning the Establishment of the Centre for Equal Opportunities and Opposition to Racism*. Both the Criminal Code and the *Law of 15th December 1980 concerning Access to the Territory, Stay, Residence and the Removal of Foreigners* need to be modified in order to take into account the scope of the penalisation provided for by the European and international instruments.

The penalisation for trafficking in human beings should no longer be limited to foreign nationals only as in the current article 77bis. Therefore this penalisation will be taken up in the Criminal Code under article 433quinquies. At the same time, the article 77bis of the *Law of 15th December 1980* will be modified in order to refer specifically and exclusively to smuggling in human beings.

Trafficking and smuggling in human beings need to be more clearly differentiated since the United Nations has adopted two separate instruments. At European level, this distinction is also made in the *Framework Decision concerning the Fight against Trafficking in Human Beings* and the *Directive and the Framework Decision on Help with Illegal Migration*. In the *Framework Decision on Trafficking*, the European Union has decided that not only transnational trafficking in human beings should be criminalised, but also all national trafficking. Therefore, it is essential to move article 77bis as regards trafficking in human beings to the Criminal Code under article 433quinquies in order to distinguish clearly between trafficking and smuggling, as in the international instruments.

Apart from the extension of the application to all persons regardless their nationality, and the subsequent insertion in the Criminal Code, the penalisation for trafficking has also been

¹¹ At the time of publication of this report the new Law has been passed and published . It was passed on the 10th of August 2005 and published B.S. 02-09-2005. The final text has remained very close to the draft discussed in this paragraph. One of the consequences of the new legislation which deserves mention here is that the *Law of the 13th of April 1995 containing Provisions to Combat Trafficking in Human Beings and Child Pornography* will henceforth be titled *Law of the 13th of April 1995 concerning provisions in the fight against trafficking in human beings and human smuggling*. **For the present report this renamed title will not yet be used.**

¹² Kamer, 3rd Session of the 51st Legislature, DOC51, 1560/001ff

significantly modified. In the draft, it now explicitly concerns both sexual and economic exploitation, again in view of making the law coherent with international instruments. Here also, as in the European Framework Decision on Trafficking, it is mentioned that the consent of the person of the victim is of no concern whatsoever.

Moreover, the draft Law contains a number of aggravating circumstances as required by the European and international instruments. European law specifically imposes aggravating circumstances for trafficking offences, such as the endangering of the victim's life, involvement in a criminal organization, the vulnerability of the victim, the use of extreme violence or the fact of having inflicted severe damage to the victim. The aggravating circumstances as concerns smuggling in human beings are the endangering of the life of the victim and the involvement in a criminal organization.

Other aggravating circumstances are taken over from the current article *77bis* and from the articles 380 and 381 of the Penal Code concerning the exploitation of prostitution. These include the use of fraudulent means or deception, violence, threats or any other forms of coercion, as well as the repeated occurrence of the offence or organized aspect of the crime. The aggravating circumstance concerning the position of a public officer, a public servant, the bearer or agent of public authority is taken over from the article *417ter* of the Criminal Code concerning torture. The purpose of this is to give a clear signal about the unacceptability of such behaviour in view of the trust of the victims and more in general the trust of society as a whole in public authorities.

It should be pointed out that the use of fraudulent means or deception, threats, violence or force and the abuse of the vulnerability of the victim are no longer constituent parts of the crime of trafficking but aggravating circumstances. Following the European instruments, the *modus operandi* of the incrimination is not to be taken into account when the victims are minors.

The sanctions must be adapted to the severity of the crime of trafficking in human beings and help with illegal migration especially if these crimes were committed for material gain. Therefore Belgium needs to meet the penal thresholds that are imposed by the relevant Framework Decisions of the European Council. The criminal offences, or attempts thereto, of trafficking and smuggling, need to be punished more severely so that it allows for extradition (or handing over) in the framework of the European arrest warrant. Moreover, some aggravating circumstances should be punishable with eight years of imprisonment. According to the UN instruments trafficking and smuggling of human beings should be punishable with a prison sentence of at least four years. Considering the dramatic consequences both of these crimes, and for the sake of coherence, the aggravating circumstances and penalties defined in the draft law for trafficking are also defined for smuggling.

Accordingly, the draft legislation proposes to formulate the crimes of trafficking and of smuggling in the following way: the crimes as such (article *433quinquies* of the Criminal Code and article *77bis* of the Law of 1980) are punishable with prison sentences of one to five years and a fine of 500 to 50.000 Euro, which matches the prison sentence provided by the current article *77bis* and article 380 of the Criminal Code. In view of a stronger approach and considering the proceeds of this type of criminality, the maximum amount of the fines in these articles is however doubled. The minimum amount has nevertheless remained identical to allow the judge sufficient freedom to pronounce the sentence.

In addition, three levels of aggravating circumstances are distinguished. The first level (article 433*sexies* and article 77*ter*) concerns aggravating circumstances related to the capacity of the offender (for instance exercising authority over the victim). The second level (article 433*septies* and article 77*quater*) relates to the aggravating circumstances as regards the minority of the victim, the means (use of violence, abuse of vulnerability, etc.), the consequences of the crime (serious mutilation, endangering the life of the victim, etc.) or the circumstances of the criminal act (habit, organized character, etc.).

The aggravating circumstance of the minority of the victim is moved from article 433*sexies* to article 433*septies* and from article 77*ter* to article 77*quater* following the advice of the Supreme Administrative Court which judged that the minority is a more severe aggravating circumstance than the vulnerability of the victim (without abuse). Just as with the exploitation of begging, the term abuse in the aggravating circumstance of a vulnerable person is taken up in order to define its content more precisely. The aggravating circumstance of the minority of the victim will therefore be, just as with sexual exploitation and the exploitation of begging, at the same level as the use of threats or the abuse of the vulnerability of the victim.

The third and last level (article 433*octies* and article 77*quinquies*) concerns the criminal organization and not the involuntary death of the victim. The imprisonment foreseen is deliberately high and matches the punishment provided in article 381 of the Criminal Code at present.

Finally, some changes have been made to the *Law of 13th of April 1995 containing Provisions to Combat Trafficking in Human Beings and Child Pornography* and in the *Law of 15th of February 1993 pertaining to the Foundation of a Centre for Equal Opportunities and Opposition to Racism* in order to guarantee better protection for victims of trafficking and smuggling. Since trafficking and smuggling in human beings are to be punished on the basis of different provisions, it becomes important to explicitly determine that the Centre for Equal Opportunities and Opposition to Racism as well as the recognised specialised centres can lawfully act in terms of human smuggling.

1.3 International Instruments

As mentioned at the beginning of this report, the Parliament is currently debating on a new draft legislation concerning trafficking and smuggling in human beings. Belgium needs to modify its legislation in order to make it consistent with International and European Law.

On the one hand, adaptations are required with respect to the protocols annexed to the United Nations Convention against Transnational Organized Crime, namely *the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, and *the Protocol against the Smuggling of Migrants by Land, Air and Sea*, signed in Palermo on the 15th of December 2000.

On the other hand, amendments to the Belgian Law concern the Framework Decision of 19th July 2002 of the European Council of Ministers *on Combating Trafficking in Human Beings* (which was to be implemented in national legislation by the 1st of August 2004), the Directive of the 28th of November 2002 *on Describing Help with Illegal Entrance, Passage and Illegal Residence*, as

well as the Directive to Strengthen the Penal Framework to Combat Help with Illegal Entrance, Passage and Illegal Stay (to be implemented by 5th of December 2004).

1.3.1 The United Nation Convention and its Protocols.

Belgium ratified the UN Convention and its Protocols on the 26th of June 2004. The Convention requires of signatory States to take legal and other measures to allow for the fight against money laundering and corruption as well as to create possibilities for the confiscation of proceeds of crime. Furthermore measures need to be taken to adequately protect witnesses against possible reprisals or intimidation and offer assistance and protection to victims.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children is not the first United Nations instrument to combat trafficking in human beings. The agreement of the United Nations of 21st of March 1950 to fight trafficking in persons and the exploitation of someone else's prostitution already addressed the same issue, be it in a less expansive context. According to the Protocol, the States need to criminalise trafficking as well as take preventive measures such as strengthening border controls and ensuring better protection of travel and identity documents with a view to tracking criminal networks and protecting the victims. The protection of victims should include the possibility to stay in the country and guarantee a legal procedure, taking their needs fully into account.

Concerning the *Protocol against the Smuggling of Migrants by Land, Air and Sea*, here too the purpose is to take the necessary steps to prosecute smugglers, including those who have facilitated the smuggling through providing fake or forged documents. Moreover, States are required to provide aggravating circumstances for these crimes when the safety or the life of the migrants are potentially or effectively at risk, or when the migrants are treated inhumanely or being humiliated. The expressed intention of the Protocol is to combat organized criminal groups that facilitate clandestine migration with the intention to secure material gains. Article 5 of the Protocol explicitly underlines that migrants may not be the object of prosecution when they are victims of smuggling.

1.3.2 The European Level

At European level, the Framework Decision on Combating Trafficking in Human Beings came in to force on the 1st of August 2002.¹³ It defines, amongst others, the acts comprising the crime of trafficking in human beings as well as which measures Member States are to take to criminalise them. Any form of *recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person 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 or other forms of sexual exploitation, including in pornography* is to be made punishable when *use is made of coercion, force or threat, including abduction, or use is made of deceit or fraud, or there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or payments or benefits are given or received to achieve the consent of a person having control over another person.* It is further specified that the consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant. Member States are required to provide effective, appropriate and deterrent criminal sanctions.

¹³ Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings. Official Journal L 203 , 01/08/2002 P. 0001 - 0004

The notion of “*facilitation of unauthorized entry, transit and residence*”¹⁴ is to be found in both the Directive¹⁵ and the Framework Decision¹⁶. What is stressed here is that help with illegal migration can serve the purpose of supplying networks of exploitation. Therefore EU Member States are required to take all necessary measures to punish people who deliberately set out to help a non-EU citizen to enter or transit the territory, as well as those who help non-EU citizens to reside in EU Member States in ways that do not correspond to national legislation and for reasons of material gain.

In reality, the distinction between the status of a victim of trafficking and a victim of smuggling is not always self-evident. Often victims of smuggling are exploited during the process of smuggling but they are equally likely to end up being exploited in the country of destination. The latter situation would constitute trafficking in human beings. In this sense, the Framework Decision on Combating Trafficking in Human Beings explicitly states that the possible consent of the victims is deemed irrelevant.

This complexity of the overlap as well as the important distinction between trafficking and smuggling of human beings is also reflected in the *Council Directive 2004/81/EC of 24 April 2004 on the Residence Permit Issued to Third Country Nationals Who Are Victims of Trafficking in Human Beings or Who have been Subject of an Action to Facilitate Illegal Immigration, who Cooperate with the Competent Authorities*¹⁷. In its preambles, it clarifies that the Directive is primarily aimed at victims of trafficking but that, at the discretion of the Member State, it can be extended to victims of smuggling as well.

Finally, the Brussels Declaration, the result of the *EU/IOM Conference on Preventing and Combating Trafficking in Human Beings: Global Challenge for the 21st Century of September 2002*¹⁸, should be mentioned. The Brussels Declaration has served as the main reference text for the policy development for the European Union and addresses the full scope of policy needs on the issue. Belgium has been one of the most active contributing partners in the conference, as the official patronage of King Albert II testifies.

¹⁴ In this report this description is translated by ‘smuggling’ in most places for brevity’s sake.

¹⁵ Council Directive 2002/90/EG of November 28 2002 Defining the Facilitation of Unauthorized Entry, Transit and Residence. Published O.J., L.328 of 5 December 2002

¹⁶ Council Framework Decision of 28 November 2002 on the Strengthening of the Penal Framework to Prevent the Facilitation of Unauthorized Entry, Transit and Residence. Published O.J., L. 328 of 5 December 2002.

¹⁷ Published O.J.,L.261/19 of 6 August 2004.

¹⁸ See: <http://www.belgium.iom.int/STOPConference/>

2. THE PROSECUTION OF TRAFFICKING CASES – THE CURRENT STATE OF AWARENESS OF THE PROSECUTION OF TRAFFICKING CASES

2.1 Facts and figures

Historically, the trafficking phenomenon in Belgium was primarily noticed in the context of the prostitution scene. Especially after 1989 and the fall of the iron curtain, more and more young women from Eastern Europe were found to work in prostitution, competing with the local sex-workers. Moreover, one quickly discovered that these women were not working voluntarily. Incidentally, it should be noted that some of the first to start sounding the alarm were clients.

The Belgian approach in the mid-1990s and the Law of the 13th of April 1995 were to some extent developed against the background of trafficking for sexual exploitation, specifically of women and children. Today however, it is obvious that we are dealing with a wide range of forms of exploitation.

The initial legal approach that was developed in Belgium was primarily based on migration legislation. To put it rather simply, trafficking implied smuggling *plus* exploitation. In other words, Belgium has so far been working with a very broad ‘definition’ of trafficking. The approach was not limited to sexual exploitation but immediately addressed all forms of potential exploitation. For example, trafficking of young and mostly African football players got a lot of press, even if, in comparison to other types of exploitation, it has not made an excessive number of victims.

As to the exact extent of trafficking in Belgium, the statistical information is of quite recent date. As concerns the prosecution, the first data relate to the first evaluation of October 2001 of the Circular on Investigative Policy (COL 2/2000). According to the figures given by the Minister of Justice, 1.076 cases were registered by the different Prosecutor’s offices between September 1999 and August 2000. About 40 per cent of these never made it to the court, either because of insufficient evidence or unknown offenders and other critical reasons. It should be pointed out that at this time there was not yet a set of uniform instructions as set out in the above mentioned Circular.

The 1st of January 2004, a specific Circular from the College of the Prosecutors General came into force which allowed for a more refined deliverance of data in view of an evaluation of the new Circular of the 1st of May 2004 (COL 10/2004). It effectively replaced the previous Circular. The figures for 2002 show that 136 condemnations for trafficking in human beings were pronounced, concerning 130 persons. All of them primarily received a prison sentence of 30, 5 months on average. Moreover, 110 additional fines were pronounced adding up to the sum

of 9.150 Euro and 59 privations of civil right were pronounced. In addition, there were 31 confiscations (whereas only 5 for 2001). In 2003, the local judicial services of the Federal Police have undertaken 332 investigations. At the central level 31 operational criminal analyses were executed¹⁹.

The trafficking reality in Belgium remains complex. There is trafficking for sexual exploitation which takes place mainly in bars. However, there is a growing awareness that prostitution via massage parlours and escort services continues to offer possibilities for traffickers. More worrisome is even the real possibility that sexual exploitation is moving into private apartments which, for obvious reasons, is far more difficult to observe.

Increased attention is being paid to economic exploitation. If a person is working illegally in the country but maintains freedom of movement, works on a voluntary basis and does not have to hand over all the earnings to someone else, the person is, generally speaking, not considered to be economically exploited. However, if the person is systematically controlled and forced to work under very poor conditions for excessively long hours, one can speak about trafficking. A distinction is therefore to be made between economic exploitation of victims of trafficking or smuggling on the one hand, and social fraud through the use of illegal labour on the other hand.

2.2 Modus Operandi

2.2.1 Economic Exploitation

Even if it is clear that most recognised victims are victims of sexual exploitation, as can be seen in the most recent figures of Payoke, the recognised centre for the Flemish region (Smuggling: 27; economic exploitation: 26; sexual exploitation: 105; other: 67)²⁰, it should be highlighted that many types of exploitation are frequently encountered. In fact, according to the numbers from the most recent yearly report²¹ of the Social Inspection services, a breakdown of sectors in which illegal migrants were put to work, 14 sectors (including one labelled 'others') are listed and reveal that only 7,5% of these illegal migrants worked in the prostitution sector (whereas the biggest sector mentioned in the report was Chinese restaurants with over 22%). The variation in numbers has obviously to do with the fact that on the one hand, social inspection services are not systematically involved in all investigations; and on the other hand, not all victims are yet automatically referred to the specialised centres when they are considered as victims of smuggling rather than trafficking. The Law of 3rd May 2003, establishing coordinating structures for combating illegal labour and social fraud, promises improvements and, from several interviews²² conducted for this report, these improvements can at present already be felt in field.

It can be said that the awareness, although not equally in all places, is quite strong that the different types of exploitation include, next to prostitution, the restaurant business (especially Chinese and exotic), night shops, public markets, agriculture, horticulture, construction, meat processing plants and others. Some forms of economic exploitation are based on a sense of pity that can be generated such as with South- and Central American street-vendors or people set out to beg in the street. The latter group includes handicapped people from countries with poor or inadequate health and social security systems. Victims are brought to Belgium on a tourist visa

¹⁹ Information provided by the Central Unit Human Trafficking of the Federal Police

²⁰ Payoke, Year Report 2004, to be published.

²¹ FOD Social Security, Social Inspection, 2003.

²² For the interview see annex.

and forced to earn through begging the manifold of what their room and board cost to those who exploit them.

Another aspect which accounts for the variety in existing figures is that for instance around coastal cities such as Ostend, both Police and Judicial services have had to work in the past years almost exclusively on the problem of smuggling in persons to the United Kingdom. They do face the hard and unfortunate choices of setting priorities. That being said and although Belgium has always paid a lot of attention to victims of trafficking, the problematic of victims of smuggling is gradually receiving more attention.

Regarding economic exploitation, Belgium is a country of both destination and transit. The transit is mainly towards the United Kingdom, which can be partly explained in that the UK hosts a considerable number of legal and illegal immigrants from across the world. People will choose to migrate – be smuggled - more likely to a country where there already exists a working population from their country or region of origin. Crossing the Channel may require many attempts and in the meantime victims of smuggling become vulnerable to further economic exploitation, also by Belgian employers. This phenomenon is typically related to low-skilled work.

A number of related phenomena need to be considered here as well. Many will apply for asylum, which implies a rather lengthy procedure during which migrants risk to be further exploited. Another situation often encountered is fake marriages. Recently, Belgium has worked more directly on this phenomenon and on the 25th of March 2005, the Government agreed to criminalise fake or forced marriages²³. Attempts to abuse the possibilities for family reunification are also noted as well as the relatively easy procedures to obtain the Belgian nationality. These possibilities to bypass the limited possibilities of immigration may relate to both economic and sexual exploitation of persons or to other forms of criminality. A proper assessment of the phenomenon would also need a realistic insight into the real conditions and possibilities in the countries of origin.

2.2.2 Sexual Exploitation

Belgium is primarily a country of destination for victims in sexual exploitation. These victims however also circulate between cities within Belgium or in the neighbouring countries. One example refers to the second half of 2004, when a lot of victims of sexual exploitation came from Hungary. Hungary had a strong control over prostitution until recently. With the accession to the European Union, young women decide more easily to work in countries such as Belgium where the earnings are more attractive. This example further indicates that we are facing less directly forced prostitution but increasing exploitation of prostitution.

Victims who are exploited in prostitution nowadays are less and less violently forced. This is the case mainly for trafficked persons from Eastern European countries and further east. Often, these victims know that they will be involved in sex work. What they do not know is that they will see little of the money they will earn as well as the conditions under which they will be working. The fact that the women have more or less “chosen” to do this work makes them less likely to talk, or even properly understand that they are being criminally exploited.

²³ Decision of Council of Ministers Belgium 25th March 2005.

A lot of people are recruited through advertisements for jobs, travel or studying abroad. The most difficult form of recruitment is the level at which supposed friends convince potential victims or start supposedly loving relationships. The overall trend at present also indicates that less recourse is taken to direct violence and more towards manipulation and intimidation. Threats towards the family at home are typical. Nevertheless, physical threats and beatings or rape remain important control mechanisms. It is not uncommon for victims, especially in sexual exploitation, to be forced to become drug addicts in order to increase their dependency on the traffickers.

2.2.3 Two Main Groups of Victims

As regards trafficking in human beings, there are overall two main distinct groups of victims: a first group comes from Africa, mainly Nigeria. For the Nigerian victims, the form of manipulation often involves the use of voodoo, or other animistic rituals binding people to certain obligations which still prove to be very effective in manipulating and coercing victims into compliance. The main operators include the so-called 'Madams' who are quite often themselves former victims. Trafficked victims from Africa mostly end up in sexual exploitation. The second group of trafficked victims is formed by people from Eastern Europe, increasingly from Ukraine and Russia. The Eastern European victims end up in both sexual and economic exploitation.

2.2.4 The Criminal Organisations Involved

When criminal organisations are involved, there is a wide consensus today that these organisations are not large and well-structured, trans-national organisations²⁴. Most of the time, the traffickers work in small groups that are networked and are, to some extent, specialised. Some groups are in charge of the recruitment, other groups take care of the transportation and others again exercise control over the victims where they are exploited, including circulating them across countries within the European Union. Increasingly, the intermediary step of transportation is delegated to small operators running the equivalent of a taxi-service, or even more often regular international bus-services are used. The fact that the larger well-structured, transnational criminal organisations are usually not detected should obviously not mean that they are not active in this business; it simply means that they are not really encountered in investigations. It may be too early to tell but the Enlargement of the European Union towards the East seems to have consolidated existing trends. Probably the new Member States now are becoming more important destination countries themselves.

Most groups organising the trafficking process to Belgium are from Eastern European countries, and increasingly from Ukraine and Russia. The tendency is that Albanians are less and less directly involved but they still do a lot of the pimping. The criminal groups often work through small 'firms' with usually false statutes.

2.3 Organisational Conditions

The complexity of the trafficking phenomenon implicates the involvement of different actors and levels in the counter-trafficking efforts. In Belgium since the early 1990s, the aim was to have a

²⁴ See interviews. Also Inforevue, quarterly magazine of the Belgian Federal Police, September 2004. "Mensenhandel", especially the statements by Wim Bontick, of the Central Unit Human Trafficking of the Federal Police.

multi-disciplinary, multi-faceted and integrated approach. No single service can develop the necessary expertise. Prevention, prosecution and protection measures need to be developed simultaneously. At the same time, the respect for the rule of law needs to be balanced with respect for human dignity, human rights and the interests of the community. Not even the best co-coordinated efforts of Justice and Police departments could hope to cover the whole range of the trafficking phenomenon, not only because both suffer limitations in terms of available personnel and resources, but also because their specific obligations and priorities are not primarily suited to address preventive actions or care and assistance to victims. The prosecution of traffickers is heavily reliant on the cooperation of victims. In this sense, the prosecution is a partner next to others in the fight against trafficking in human beings.

2.3.1 Coordination

The complexity of the trafficking phenomenon also includes the fact that it is an ever evolving reality which demands an efficient coordination and support of the policies. The Parliamentary Investigative Committee on Trafficking had stressed the importance of permanent coordination and follow-up on the phenomenon. The Committee in fact suggested setting up a specific instance that would be in charge of the coordination. The government subsequently took up this suggestion by issuing a Royal Decree which gives this task to the Centre for Equal Opportunities and Opposition to Racism.²⁵

This same Royal Decree of 16th June 1995 provided for the establishment of a permanent co-coordinating structure, the ‘Interdepartmental coordination unit to combat the trafficking in human beings’, with the expressed task to guarantee that the social and repressive aspects would both be accommodated. The presidency of this co-coordinating unit was entrusted to the Federal Public Service (FPS) of Justice.

The coordinating unit is composed of representatives of all Ministers and Federal Public Services involved in combating trafficking in human beings, both on the humanitarian and on the repressive aspects. The task of the co-coordinating unit is to make it possible for all partners to exchange information and thereby to coordinate actions in the field as well as developing an efficient policy. Furthermore, the unit functions as a platform for critical evaluation of results and the evolutions in the field so that recommendations can be formulated towards further policy developments.

The co-coordinating unit met for the first time in 1995. In 1996, there were two plenary meetings and the last meeting was on 20th December 1999. Due to a lack of an internal structure and the high number of participants, the co-coordinating unit proved to be a less efficient instrument. Faced with this reality, the Prime Minister decided in December 2000 to set up a Task Force on ‘Trafficking in human beings’. The Task Force’s composition was similar to the co-coordinating unit and took over the same tasks but it was supposed to meet every two weeks. Its work resulted in a draft Royal Decree²⁶ concerning the fight against trafficking and smuggling in human beings.

²⁵ Based on yearly report THB of the CGKR, 2004

²⁶ KB 16th May 2004 concerning the trafficking and smuggling of human beings

This Royal Decree consists mainly of three elements: firstly, there is a clear need to develop an information network that would centralise available information but should allow this information to be further analysed and made accessible to various actors. This should become the Information and Analysis Centre on Human Smuggling and Trafficking. Secondly, the existing interdepartmental coordination need to be made more dynamic. It will be tasked with both executive and policy development responsibilities. Thirdly, the maintenance and possible strengthening of the role of the Centre for Equal Opportunities and Opposition to Racism in the framework of the existing legislation is further perceived as necessary but not as a policy actor as such. It is rather to remain a participating critical observer.

2.3.2 Police and Judicial Services

In 2001, Belgium unified its different police services into one two-layered structure. The Federal Police offers training, logistics and specialised support to the Local Police. The federal level is organised both centrally as well as at resort level. At the central level, it contains an Administrative Directory, a Criminal Investigations Directory and an Operational Support Directory.

At resort level, each of the 27 resorts covers at least one Local Police zone, but often four to six zones (there are 196 police zones in total) and has a representation of both Administrative and Criminal Investigations Directories. In addition, each resort has an Information Point of Exchange which prevents duplication of efforts and offers support. It is supervised by a magistrate.

Considering counter-trafficking activities, this means that, apart from the Central Unit on Human Trafficking located in Brussels, each resort has its own specialised counter-trafficking unit. In addition, all the bigger cities (and some localities with for instance a prostitution scene) have a specialised team at the level of the Local Police as well. This would typically be part of the vice/prostitution team. In each of the 196 local police zones at least one Police Officer is working on trafficking in human beings. This can be, depending on the zone, a full- or part-time position. In more important cities, such as Antwerp, the anti-trafficking team consists of around 20 full-time equivalences.

At the central federal level, the information is centralised. It is also the Central Unit on Human Trafficking of the Federal Police which develops partnerships with other agencies and organisations, and develops the police plan on this issue for the government.

The counterparts of the Central Unit on Human Trafficking of the Federal Police are the four specialised Federal Prosecutors at the department of the Ministry of Justice. In every judicial district, a Reference Magistrate or specialised Prosecutor for trafficking in human beings guides the activities of the police officers. These specialised Prosecutors coordinate the police and judicial investigations as well as the flow of relevant information. Whether a case is local, national or international, the Prosecutor can ask the Federal Prosecutor's assistance. The federal magistrates themselves may also contact their local colleagues in order to coordinate activities.

2.3.3 The Federal Security Plan

At the beginning of this legislature in 2003, the government wrote a strategy document on security problems and priorities. This Federal Security Plan sets out the priorities for the five-year period of the legislature. Subsequently, each department had to develop a policy and action

plan to meet the overall goals in view of these priorities. One of these priorities was the fight against trafficking in human beings. As discussed above, already since 1995, the principle of an integrated and multi-agency approach to trafficking was central to the different activities of all the Federal Public Services involved.

An action plan for the police services was developed, which was binding both at the Federal and the Local Police levels. This plan covers a period of two years after which it is evaluated and adjusted based on strategic analyses. At resort level, yearly action plans are developed which are validated by the Prosecutor.

In order to coordinate the various action plans of the different departments, a task force at the FPS Justice makes their own periodical evaluation. Each department makes an inventory of fixed goals and planned activities in a worksheet and, in regular meetings the FPS Justice monitors the progress.

The Ministerial Guideline on Trafficking in Human Beings 2/2002 describes the interpretation of the notion of trafficking in human beings, sets priorities and describes the precise application of the guidelines in terms of coordinating principles towards both prosecution and investigation.

The specialised Prosecutors fulfil an important role on two levels. On the one hand, the Prosecutor-General monitors the investigations on trafficking in human beings which hold a special interest, and coordinates with the specialised Reference Magistrates on resort level. Here the prosecution policy is evaluated as to its effectiveness and this evaluation is reported to the committee of the Prosecutor-General. On the other hand, at the level of the judicial district level, the Reference Magistrate invites representatives of the specialised units of the Federal and Local Police Services as well as other agencies with a specific task in the field, such as Social and Labour Inspection Services. During these meetings, they decide which sectors are to be controlled or investigated in terms of the risk of trafficking in human beings. Subsequently, multi-agency teams are established to implement the action plan. Police services will focus on organised crime links to trafficking in human beings as well as financial and fiscal investigations in trafficking cases. When different Local Police Services and the specialised units of the Federal Police are involved in a particular case, the Reference Magistrate will decide according to the ministerial guideline which service will handle the case.

2.3.4 Indicators of Trafficking in Human Beings

To avoid victims would be branded as criminals, - since they will often be in a situation of illegal migration - the Guideline 2/2002 further sets out the proper procedure, focusing on the victim and human dignity. It should be stressed that even for experienced police officers and other partners who take part in controls in the field, it may not always be clear whether an intercepted person is a victim or not. Moreover, a lot of potential victims would not be very cooperative or forthcoming with information. In these cases, the persons doing the controls will have to rely on their training and experience. They can however always fall back on a listing of 'indicators of trafficking in human beings' enclosed to the guidelines.

This non-restrictive list is not limited to any particular manifestation of trafficking in human beings. They address a very wide range of possible indications as to a possible situation of trafficking. These indicators can be combined but one of them is in principle enough to start a deep investigation according to the Ministerial Guidelines.

2.4 Conditions for a Successful Prosecution

2.4.1 Investigations

In Belgium, police activities are increasingly intelligence led. Apart from the bi-monthly meetings on resort level, information is systematically transferred to the Information Point of Exchange and centralised at the Central Unit Human Trafficking of the Federal Police. The information is secured and its sources protected through evaluation by the police officers themselves. If needed, a handling code restricting dissemination and use can be added, as well. This combined intelligence allows for planning of the multi-agency systematic controls for all sectors at risk.

Next to this aspect of the intelligence-led approach, a lot will still depend on local capacities. Not only systematic control of sectors at risk is needed but the results of these controls will depend on insight and familiarity with the particularity of each sector. For some sectors this is less evident than for others, if only because exploitation thrives more in less transparent sectors. The main sectors at risk are mainly agri- and horticulture, Chinese and exotic restaurants, prostitution, public markets, construction, night shops, hotels, fabric processing plants, inland shipping, meat processing, cleaning industry and private employment such as domestic work. Apart from these sectors, local and specialised Federal Police officers also patrol places at risk and proactively develop contacts in neighbourhoods. In a speech to the Ghent Police Corps in May 2004, the Prime Minister congratulated the city for the way in which police officers had managed to build mutual trust in the prostitution district so that people working in the area themselves provide information and insight into the scene.

If a potential victim is identified by the Police Services, they will provide this person with information on the protection and assistance to victims. For that purpose, a pamphlet was developed in several languages. The reference magistrate will also immediately be informed. Once a trafficking investigation has been started, the investigative teams use checklists to obtain evidence and information. The checklists provided by the Interpol manual on "*Sexual exploitation of women and children*" offers a rather complete view on hidden organisations, main offenders, methods of recruitment, use of coercion and force, the itinerary, etc., especially when it concerns commercial sexual exploitation. This information is compared and double-checked with the elements gathered in the intake form and the victim file build at the specialised centres.

The police reports are then transferred to the Information Point of Exchange at resort level. This service receives data from both ongoing and closed cases as well as intelligence from other police services and other agencies. Since the same suspects can be the subject of investigations of another nature, an overview of all important criminal investigations is generated at the meetings at resort level under the presidency of the Reference Magistrate. This way, possibly overlapping investigations and conflicting actions can be avoided. If needed, the Reference Magistrate together with the Resort Director of the Judicial Services of the Federal Police may decide to reallocate personnel and investigations.

The scope of an investigation will to a great extent depend on the approach of the local Prosecutor's office as well as on the good-will of the Prosecutor. In general, clear agreements are made and if need be formalised in protocols.²⁷ Complex or larger international cases will be handled by the Federal Prosecutor's office.

2.4.2 Prerequisites for Success

Both for investigation and prosecution, the victim's declarations or witness testimonies are by far the most important element in building a case. However, declarations or testimonies are never sufficient. There is always an increasing critical need for hard material evidence. This material evidence is nevertheless more easily recovered if the victim is able to give an insight into how the traffickers operate. Important is that it is not enough to be able to prove that a crime has been committed. One also needs to be able to assign responsibility for the criminal act or acts.

Material evidence is usually hard to obtained because, in general, traffickers are intelligent enough not to have much possibly incriminating money or papers with them, or would try not to be conspicuous in the way they live. They tend to pretend a sober life-style and rent the premises where they live. This also does, in general, not allow for much confiscation of proceeds of criminal activities. The experience of both magistrates and police officers is that it is usually quite easy to confiscate cars or smaller amounts of money and goods. In terms of real estate, there are real possibilities in cases of slum lords²⁸.

Investigative methods used in trafficking cases include a number of special techniques for which a new legal arrangement was made early 2003²⁹. These special techniques are all requested through a designated police officer at resort level and the request originates at the Prosecutor's office. In trafficking cases, the special techniques of pseudo-purchase, pseudo-services or infiltration by police officers are generally not used. Investigations in trafficking cases include mostly standard observation and collecting information on telecommunications. Increasingly, successful use is also made of telephone-taps.

2.4.3 Services Involved

There is a range of national services involved in gathering information during an investigation. As mentioned-above, the Social and Labour Inspection Services play an increasingly important role at the level of controls in the field as well as at the level of exchange of information. Another key actor is the Immigration Service under the FPS Interior. This service has its own database on asylum requests and residence permits as well as visas, which contains fingerprints and photographs in addition to a range of identifying data. The Internal Revenue Service can offer valuable information as to the status of persons under investigation. Banks are often very cooperative in assisting. The Vehicle Registration Service is often called as well as providers of telecommunication services. Finally, Customs Services are also able to provide valuable information.

Some local services at the level of the community can be involved. The local Registry of Properties, the local Registry of People, the Business Registry, and local Housing Inspection

²⁷ See interviews in annex.

²⁸ See interviews in annex.

²⁹ Published B.S. 12th May 2003, p. 25351. *Law of 6th January 2003 concerning Special Investigative Methods and Some Other Investigative Methods.*

Services can all be asked for information. For all of these national and local sources, the information is in general readily available in the framework of both police investigations as in the course of judicial inquiries.

Information gathering in other countries is limited by certain necessary formalities. The collected information can only be used if it went through proper channels, which in most cases means Europol or Interpol. In the practical development of a police investigation, it is often possible to have access on an informal basis to the relevant data but at some point this information will need to be formally requested. A formal request may take considerable time and the provided information can only be used for the purpose for which it was requested, and only once.

2.4.4 Confiscation of Proceeds

The *Law of 19th December 2002 on the Extension of Possibilities for Seizure and Confiscation in Criminal Cases*³⁰ introduced in both the Criminal Code and the Code of Criminal Procedures three important new possibilities.

First, “Preservative confiscation in equivalent”³¹ creates the right for the Prosecutor’s office and the investigating Judge to confiscate the property of the suspect or accused even if a direct link between the property and the crimes under consideration is not demonstrated. Considering the lucrative nature of trafficking in human beings and the fact that the amounts are not easily traceable or identifiable, it is now sufficient to have serious indications that the suspect would have materially gained from the crime committed. This measure also makes it possible to freeze bank accounts even if these hold no money connected to the crime. This was not possible in the past, which held the obvious risk that at the time of conviction there would no longer be any money that could be confiscated.³²

Secondly, in the Criminal Code,³³ confiscation of material gains proper to certain categories of crime is organised with the express aim to get the criminal organisation where it would feel it most. Because of the international character of organised crime, however, it is often very difficult to prove the criminal provenance of these material gains. The crime categories include a first one referring to trafficking in human beings, as far as it is not an occasional act and as far as it is committed in the context of an organisation. It is nevertheless not important here to prove that the organisation itself is of a criminal nature. Another crime category concerns different types of involvement in a criminal organisation, as well as certain violations such as corruption of youth and prostitution. This Law further introduces a “form of distribution of the burden of proof” which essentially means that the Public Prosecutor will need to convince the presiding Judge that certain assets of a suspect are the result of criminal activities. If the Judge is convinced of this, it is up to the suspect to prove the legitimacy of the provenance of the assets.

³⁰ Published B.S., 14th february 2003, p.7547.

³¹ New article 35^{ter} in the Code of Criminal Procedure. The title translated is “Bewarend beslag bij equivalent”.

³² It should be noted here that the Supreme Administrative Court of Belgium had recommended to limit this possibility to certain categories of serious crime, but this advice was not withheld.

³³ New article 43^{quater} of the Criminal Code.

A third new possibility created by this Law is that the criminal procedures can be split up to allow for a specific investigation on properties and assets. This type of investigation tends to take considerable time and risks delaying procedures. From now on, the judge can adjudicate separately as to the guilt of the suspect and the pronouncement of confiscation and penalty.

The 26th of March 2003 saw the establishment of the Central Organ for Seizure and Confiscation which functions as an expert centre tasked to give advice on the rules to be followed and to give recommendations towards policy not only as regards seizure and confiscation but also the management of confiscated properties.

Overall at present there are little or no obstacles to confiscation of any moveable property such as cars, mobile phones, cash, jewellery, etc. For confiscation of real estate in Belgium, there are few obstacles, although, as said above, traffickers tend not to have much property in their name. In any case, all more or less serious trafficking investigations do include a thorough financial investigation both as regards the flows of money and the assets of suspects.

3. THE ROLE OF THE VICTIM

3.1 The legal framework for the protection of victims

The cooperation of the victims remains by far the most important aspect in investigating, prosecuting and adjudicating infringements related to trafficking in human beings. At the same time, the recognition of trafficked persons as victim obliges the State to protect and assist them. In 1993 already, Belgium developed a specific system of assistance and support to victims. The approach was from the start both multi-disciplinary and integrated. It consists in a combination of measures, including a short-term residence permit, temporary work permits, reception and assistance by specialised and recognised centres through which a wide range of specialised care is offered.

The support system is regulated through a Ministerial Circular of 1994 and two Ministerial Directives of 1997 and 2003. The two Directives offer concrete guidelines for all the services involved. Local and Federal Police and judicial services (the Prosecutor's offices, including the Federal Prosecutor's office) as well as Social Inspection, the Labour Inspection, the three specialised centres and the Immigration Service at the FPS Interior are instructed to cooperate in a dynamic and coordinated fashion.

This multidisciplinary and multifaceted approach takes into account that trafficking is not limited to sexual exploitation. All forms of exploitation are targeted. All victims are provided with protection and assistance under certain minimal conditions. Firstly, the victim needs to stop all contacts with the environment of exploitation. Secondly, s/he must accept being assisted by one of the three specialised centres and, finally, the victim must make a statement or lodge a complaint against the persons or the trafficking network that have exploited him or her.

The issuing of residence permits and work permits to foreign victims of trafficking in human beings follows a phased pattern that runs parallel to the judicial proceedings. The request for these permits is made directly by the specialised centres to the Immigration Service of the FPS Interior.

3.2 The procedure in practice

3.2.1 Referral

Most often, a victim of trafficking is discovered during field actions led by police or during inspections by Social Services or Labour Inspection Services. These are the actors who represent the first line of intervention and form the most crucial step in the application and success of the assistance and protection of victims. Therefore, all these services receive regular training on the trafficking phenomenon in general, and in recognising potential victims in particular. As mentioned above, a recent *Directive of the FPS Justice concerning Investigative and Prosecutorial Procedures on Trafficking in Human Beings* includes an annex that sets out the

indicators that allow for a reasonable assumption of trafficking in human beings. These indicators concern both the presumed traffickers and the presumed victims.

Every time the Police Services or Inspection Services find a possible or presumed victim of trafficking, they are instructed to provide him/her with an information leaflet about the specialised reception centres. These leaflets are available in several languages. Other services such as the Immigration Service, the General Commissioners Office for Refugees and Stateless Persons, are instructed to do so as well.

When the Police Services or the Inspection Services deal with a potential victim of trafficking in human beings, they take the necessary measures to transfer the victim to the specialised centre and inform the Immigration Service of their initiative when it concerns a foreigner who is in either a precarious or illegal situation.

Belgium works with three recognised centres for victims of trafficking: Payoke for the Flemish region, Sürya for the Walloon region and Pag-Asa for the Brussels region. The recognition implies not only the exclusive right to assist victims throughout the procedure but also the right to start civil procedures against traffickers either in the name of the victim or in the name of the centre.

If the Police or Inspection Services are uncertain as to the status of the person as victim of trafficking, the specialised centre must seek to effectively contact the person. The contact will be arranged either by the centre itself or by the Police Service. A critical aspect here is that the potential victim agrees to talk to either the representative of the centre or the police.

In this sense the efficacy of tackling trafficking in human beings is directly linked and even dependent on the development of a strong cooperative spirit shared by all relevant authorities and actors. All relevant actors complement each other in the counter-trafficking effort.

3.2.2 The Circular concerning the issuing of residence and work permits to foreigners, victims of trafficking in human beings (7th of July 1994).

First Phase – Reflection Period

In Belgium, the victim is given a reflection period of 45 days during which s/he leaves the environment of exploitation and is assisted by one of the specialised centres in order to regain a level of serenity so that s/he can make an informed decision. The reflection period consists in the issuing of an “order to leave the territory within 45 days.” Concretely, the person cannot be expelled during this period. The decision to be made is whether or not s/he wants to file a complaint or make a statement concerning the persons who would have exploited him or her or the trafficking network and whether s/he would prefer to return to her/his country of origin. This reflection period is now referred to as the First phase.

The victim is registered at the centre on a report card and if s/he decides to cooperate a formal agreement between the centre and the victim is signed. Since recently such an agreement is mandatory. It spells out the rights and obligations of both parties during the procedures.

Second Phase – Declaration Period

If the victim decides to cooperate, that is either to bring charges before a court of law, to file an official complaint or to make a declaration with the police within 45 days, a “declaration of

arrival” is issued, which is valid for a period of three months upon request of the specialised centre. This constitutes the second phase during which the victim is under the obligation to being assisted by the specialised centre.

As soon as the victim decides to cooperate an intake-interview is conducted by the centre. This interview is completed over a number of sessions. In fact, intake consists of a process of exchange of information between the client and social assistant of the centre in both directions. It has, in other words, a very different character from, for instance, a police interview. The process of intake will then form the basis for developing an individualised assistance package. The intake process allows the victim to relate his/her story which in itself can be considered part of the working-through of the trauma’s sustained. At the same time it allows the personnel at the centre to completely and correctly inform the victim of what possibilities are available.

Police and judicial investigations do not rely on any of the information from the intake-interviews since they will need their own official reports and statements.

Third Phase – Investigation Period

At the end of these three months, the Immigration Service requests the Prosecutor’s office to answer two questions: first, whether or not the complaint is still part of an ongoing judicial investigation, and second, whether or not the person is to be considered a possible victim of trafficking. If the Prosecutor’s office answers affirmatively to the two questions, the victim will be recorded in the Immigration Register and is granted a temporary residence permit for six months, which is the third phase.

If, for some reason, the Immigration Service did not receive an answer from the Prosecutor’s office, the declaration of the arrival is extended for another three months, and if even after that time no reply was received, the Immigration Service will nevertheless issue a six months residence document. During this whole period, the victim has to accept being assisted by the specialised centre. The residence document will further be extended for the duration of the judicial investigation.

It should be clarified here also that in the Belgian legal system a case is primarily based on written documents as a case has to be judged primarily on the case file. In this sense, anonymity for the victim as witness (as discussed in section 1.2.1. of Part I) refers in principle to the statement or complaint in the file. In practice, the presence of the victim in the Court will usually not be required. As attested by several interviewees, it will be very difficult to have a successful conviction in a trafficking case based on a single victim statement. If a case is built on several victims statements the amount and the verification of the information becomes a lot more significant both for the investigation and adjudication. It will allow also for better discovery of the necessary material evidence.

The Further Prospects for the Victim

The victim concerned can apply for a stay of unlimited duration if the person or persons against whom the complaint has been lodged is convened before a court. Such a permanent residence permit will however only be granted if the declaration or complaint made by the victim is considered to have played a meaningful part in the judicial investigation. The final decision on the request for a permanent resident permit will be made when the perpetrators have been convicted for trafficking offences.

As soon as a victim has a declaration of arrival (phase two) or a certificate of registration in the Immigration's Register (phase three), s/he is entitled to work officially. The three recognised and specialised centres are entitled to apply for all the documents relevant to the whole procedure. The centres will also assist with the application for a work permit an employer has to submit as well as the request to being allowed to employ someone of foreign nationality.

3.2.3 The Ministerial Directive of 13th of January 1997

Two and a half years after the Circular was published, it became apparent that it was not sufficiently known by the services who would usually be first confronted with victims: Police Services, the Prosecutor's office and Inspectors of Social Law and Social Inspection Services. This meant that only a relatively small number of potential victims were being referred to the centres. This second Ministerial Directive of 13th of January 1997 is therefore often regarded as a clarification of the Circular and explicitly points out the role of the specialised centres. The Directive was addressed to the Immigration Service, the Prosecutor's offices, Police Services, Inspection Services of Social Laws and the Social Inspection.

3.2.4 The Ministerial Directive of the 17th of April 2003 modifying the Directive of 13th of January 1997

Already in August 1999, the three centres had discussed a number of issues regarding the application of the Circular of 1997. Based on these discussions, a common memorandum was drafted containing a number of recommendations and sent to the Immigration Service. These recommendations concerned the need to speed up the transition from the second to the third phase and making the conditions for being granted a permanent residence permit more flexible. The Immigration Service then drafted a new Directive that was subsequently signed by all the relevant ministries, namely the FPS Justice, Interior, Employment, Social Affairs, Pensions and Consumer Affairs, Public Health and Environment. The recommendations of the three centres were completely taken on board in the new Directive.

3.3 The three Recognised and Specialised Centres

Three centres are given recognition as specialised centres for the reception and assistance in Belgium: Payoke for the Flemish region, Pag-Asa for the Brussels region and Sürya for the Walloon region. The centres were created in 1995, except for Payoke, which has been working for victims of trafficking since 1991. The recognition refers not simply to their funding; it also entitles them to act on behalf of the victims both in terms of requesting permits and in assisting victims throughout the procedures. In accordance with a Royal Decree concerning the financing of the reception of victims of trafficking, the residence documents entitle the holder to a social benefit that is paid out either by the specialised centre or by the Public Social Welfare Commission. Finally these centres can also start legal civil procedures against the traffickers either in the name of the victim or in their own name.

3.3.1 The main tasks of the centres

The specific mission of the centres is part of the Law of 13th of April 1995 and the Ministerial Circulars of the 7th of July 1994 (concerning de issuing of residence and work permits to foreigners, victims of trafficking in human beings), the 13th of January 1997 (concerning the

assistance to victims of trafficking who cooperate with the relevant authorities) and the Circular of the 17th of April 2003 (modifying the Circular of the 13th of January 1997).

The specialised centres offer a wide variety of services to the victims. These include reception and specialised care for victims of trafficking, psychosocial and administrative assistance, furthering the emancipation of victims in view of their re-integration into mainstream society, legal assistance as well as the permanent evaluation of the situation of victims, and formulating recommendations to the relevant authorities.

Residential care

The residential care in first instance tries to offer a sense of security. The management of the shelter and the follow-up of victims who live independently are important tasks in helping victims to become self-reliant and realistic about possibilities. This includes offering support during the process of working through the sustained traumas. Each victim or client is offered an individualised assistance package with a specific focus towards developing and strengthening social skills. Furthermore, the victims are made familiar with the norms and values prevalent in Belgian society. In general, the centres will call victims simply clients so as to deflect further stigmatisation and support them towards full self-reliance.

Legal assistance

Throughout the judicial process, the centres offer advice and assistance. The centres also assist with the contacts with police, judicial authorities and the legal profession. Finally the centre can appeal to the courts, either in its own name or in the name of the victim.

Administrative assistance

For each client, the appropriate residence documents and work permits need to be requested at the proper time. Furthermore, the centre will contact and negotiate for each victim with all the authorities on the level of social services, health services, etc. This work tends to be the most labour intensive part. On 6th of February 2003, the Law concerning the employment of foreigners was amended by Royal Decree. The system of temporary work permits to be requested by the employer as well as the employee and requiring most cumbersome administrative formalities as well as being linked to the system of temporary residence permits is now replaced by one single work permit valid for one year and renewable. It will however still automatically expire if the residence permit is not renewed.

Psychosocial assistance

In first instance, the process of working-through the sustained traumas requires a specialised approach. This more urgent need is developed alongside the drafting of a reasonably attainable project for each individual client towards the future as well as developing an optimal design for the present and future life of the person. In this context special attention is paid to social skills, culture and sports.

Information and training

The centres play an important role in raising awareness of relevant actors as well as public opinion concerning the phenomenon of trafficking in human beings. This also involves responding to questions and formulating recommendations towards relevant authorities. Important is also to provide correct information to all stakeholders involved as to the possibilities of reception, assistance and care of victims.

Ambulant assistance

The majority of the victims will not stay very long in the shelter, if at all. Living independently, the clients are nevertheless obliged by law, and in fact are in need to be assisted. This form of assistance includes support with living conditions and solving all and sundry practical problems in daily life.

3.3.2 Co-operation

The Centre for Equal Opportunities and Opposition to Racism

Following article 10 of the *Royal Decree of the 16th of June 1994*, the Centre for Equal Opportunities and Opposition to Racism has been tasked to coordinate and stimulate cooperation between the three specialised centres. In the course of 2003, two instruments were created for this purpose, a bimonthly inter-centre meeting and a juridical meeting. These consultations have led to certain important improvements.

A first initiative concerned the efficiency and coordination of analysis of the fight against trafficking. For that purpose a Central Database was set up and a web-application was developed to consult and maintain the database. The database is constructed around the management of an extensive questionnaire and the consulting, maintenance and compilation of victim files. These files can be fed and consulted by the three centres, while the maintenance lays in the hands of the Centre for Equal Opportunities and Opposition to Racism. The database itself is stored at a private specialised company.

In 2002, the different ‘assistance agreements’ between the centre and the client (victim) that were in use at the three centres were refined and coordinated. Each centre retains a level of freedom regarding what aspects they believe are more important but the general framework is now identical.

The juridical meetings deal with issues of common interest for the juridical teams in each of the centres. These issues concern the possibility of taking civil legal action, the exchange and analysis of recent case law, the coordination of juridical actions and discussing possible legal problems. As such, these consultations form an important aspect of the concrete cooperation between the centres. Also, in terms of formulating positions and recommendations towards the authorities, these are coordinated at best since it is recognised that the “humanitarian” point of view is expressed with one voice. This coordination has proven its efficiency also with regards to a better financing of the centres.

CONCLUSION

The ambition of a multi-disciplinary, multi-faceted and integrated approach of the Belgian authorities has allowed for a good level of awareness among all stakeholders. Key in the relatively early and speedy development of the Belgian policy on trafficking in human beings has been a strong political will. Moreover, the Belgian approach has served as an example throughout the European region. Over the past twenty years the issue of trafficking in human beings has inevitably had “to compete” with other pressing and important matters on the national political agenda. The next key element in the continual development of an effective approach on a complex and ever changing phenomenon is therefore the commitment of all stakeholders. Whereas each stakeholder, including the victim, experiences the reality of the fight against trafficking from his or her own perspective, the goals and ambitions are similar. As described in this report, it is not enough to have good legislation, human resources, means and motivation need to be in place. Finally, since the cooperation of victims is of critical importance, the protection of their human rights, the respect for human dignity and the eventual reintegration of victims into the main-stream society are central to upholding the rule of law and the prosecution of traffickers.

ANNEX 1 - LIST OF SOURCES

Belgium

- *Law of 15th of December 1980 concerning Access to the Territory, Stay, Residence and the Removal of Foreigners*
 - BS: 31-12-1980³⁴
- *Law of 15th of February 1993 concerning the establishment of the Centre for Equal Opportunities and Opposition to Racism*
 - BS:19-02-1993
- *Law of 13th of April 1995 containing Provisions to Combat Trafficking in Human Beings and Child Pornography*
 - BS:25-04-1995
- *Royal Decree of 16th June 1995 on the Implementation of article 11, § 5, of the Law of 13th April 1995 containing Measures to Combat Trafficking in Human Beings and Child Pornography.*
 - BS: 16-06-1995
- *Law of 2nd January 2001 concerning Diverse Budgetary Measures*
 - BS: 02-01-2001
- *Law of 8th April 2002 concerning the Anonymity of Witnesses*
 - BS: 08-04-202
- *Law of 7th July 2002 concerning the Regulation for the protection of threatened witnesses and other provisions*
 - BS: 07-07-2002
- *Law of 2nd August 2002 concerning the Recording of Statements by Means of Audio-Visual Media*
 - BS:02-08-2002
- *Law of 3rd May 2003 concerning the Establishment of the Federal Council for the Fight against Illegal Labour and Social Fraud, the Federal Coordination Committee and the Judicial District Units*
 - BS:03-05-2003
- *Decision of Council of Ministers Belgium 25th March 2005: (25th of March 2005, the Government agreed on draft legislation to criminalise fake or forced marriages*
 - <http://feiten.fgov.be/repository/news//106402-2nl.pdf>
- *KB 16th May 2004 concerning the trafficking and smuggling of human beings*
 - BS: 14-07-1995

³⁴ BS: stands for “Belgisch Staatsblad” or “Moniteur Belge”, the Belgian State Courier.

- *Law of 6th January 2003 concerning Special Investigative Methods and Some Other Investigative Methods*
 - BS: 06-01-2003
- *Law of 19th December 2002 on the Extension of Possibilities for Seizure and Confiscation in Criminal Cases*
 - BS: 19-12-2002
- The Circular concerning the issuing of residence and work permits to foreigners, victims of trafficking in human beings.
 - BS: 07-07-1995
- Ministerial Circular (COL 10/2004).
 - BS: 01-05-2004
- Ministerial Circular on Investigative Policy (COL 2/2000)
- The Ministerial Directive of 13th of January 1997
 - http://www.juridat.be/cgi_loi/loi_N.pl?cn=1997011343
- The Ministerial Directive of the 17th of April 2003 (modifying the Directive of 13th of January 1997)
 - BS: 17-04-2003
- *Draft Legislation for the Modification of Several Stipulations in View of the Strengthening of the Fight against Trafficking and Smuggling in Human Beings*
 - <http://www.dekamer.be/FLWB/pdf/51/1560/51K1560001.pdf>

United Nations

- United Nations Convention against Transnational Organised Crime,
 - *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,*
 - *Protocol against the Smuggling of Migrants by Land, Air and Sea,* signed in Palermo on the 15th of December 2000.

European Union

- Framework Decision of 19th July 2002 of the European Council of Ministers *on Combating Trafficking in Human Beings*
 - *O.J. L13 of 20.01.2004. p.44*
- Directive of the 28th of November 2002 *on Describing Help with Illegal Entrance, Passage and Illegal Residence*
- *Directive to Strengthen the Penal Framework to Combat Help with Illegal Entrance, Passage and Illegal Stay*
- *Council Directive 2004/81/EC of 24 April 2004 on the Residence Permit Issued to Third Country Nationals Who Are Victims of Trafficking in Human Beings or Who have been Subject of an Action to Facilitate Illegal Immigration, who Cooperate with the Competent Authorities*

- *The Brussels Declaration: EU/IOM Conference on Preventing and Combating Trafficking in Human Beings: Global Challenge for the 21st Century*³⁵ of September 2002

Other sources

- Centrum voor Gelijkheid van Kansen en voor Racismebestrijding:
 - “De wet van 13 april 1995 houdende bepalingen tot bestrijding van de mensenhandel en de kinderpornografie; Rechtspraak.” mei 2002
 - (*“Law of 13th of April 1995 containing Provisions to Combat Trafficking in Human Beings and Child Pornography: Jurisprudence.”* May 2002.)
 - Jaarverslag 1999 “Strijd tegen mensenhandel; Tussen beleid en middelen: de diepe kloof?” juni 2000
 - (*Year report 1999: “The Fight against Trafficking in Human Beings; Between Policy and Means: the Deep Gap?”* June 2000)
 - Jaarrapport 2002 “Strijd tegen mensenhandel; Pleidooi voor een integrale benadering, analyse wetgeving en rechtspraak” december 2003
 - (*Year Report 2002: “The Fight against Trafficking in Human Beings; A Plea for an Integral Approach, Analysis of Legislation and Jurisprudence”* December 2003)
 - Jaarverslag “Strijd tegen mensenhandel; Analyse vanuit het slachtofferperspectief” december 2004
 - (*Year Report 2003: “The Fight against Trafficking in Human Beings; An Analysis from the Perspective of the Victim”* December 2004)
- Payoke vzw
 - Jaarverslag 2003 “Slachtofferhulp mensenhandel”
 - (*Year Report 2003: “Victim Assistance Trafficking in Human Beings”*)
 - Jaarverslag 2004 (in print)
 - (*Year Report 2004*)
- Bureau van de Nationaal coördinator “mensenhandel”:
 - Sociale Inspectie, FOD Sociale Zekerheid; Toezicht sociale wetten, FOD werkgelegenheid, arbeid en sociaal overleg: “Het samenwerkingsprotocol betreffende de bestrijding van de mensenhandel afgesloten tussen de Sociale Inspectie en de Inspectie van de Sociale Wetten. Persmededeling omtrent het werkingsverslag 2003”
 - (*Social Inspection, FOD Social Security; Control of Social Laws, FOD Employment, Labour and Social Consultation: “The Cooperation Protocol Concerning the Fight against Trafficking in Human Beings between Social Inspection and the Inspection of Social Laws. Press statement concerning the Work Report 2003.”*)
- Commission of the European Communities, DG Justice and Home Affairs; Hipokrates 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. (Payoke, On the Road, De Rode Draad)

³⁵ See: <http://www.belgium.iom.int/STOPConference/>

- La Libre Belgique (*newspaper*), Mardi 8 février 2005: “‘Travailleuse du sexe’ ou victims?” (“*Sex Workers or Victims?*”). (Interview with Wim Bontinck, head of Central Unit Human Trafficking, Federal Police, Belgium.)
- Inforevue (*Police quarterly*) 22, September 2004:
 - “Mensenhandel: Wanneer de menselijke waardigheid met voeten wordt getreden.” (“*Trafficking in Human Beings: When Human Dignity is torn to shreds.*”)

ANNEX 2 – LIST OF PERSONS INTERVIEWED

1. Mr. Chris Martens
Chief Inspector
Local Police Antwerp
Counter-Trafficking Unit
2. Mr. Pieter Breughe
Chief Inspector
Federal Police Kortrijk
Counter-Trafficking Unit
3. Mr. Wim Bontick
Head of Central Unit Counter-Trafficking
Federal Police
4. Ms. Eva Herreman
First Substitute Prosecutor
Liaison Magistrate Trafficking in Human Beings
Prosecutor's Office Antwerp
5. Mr. Freddy Van Damme (& Mr. Yves Segaert Van Den Bussche)
First Substitute Prosecutor
Liaison Magistrate Trafficking in Human Beings
Prosecutor's Office Bruges
6. Mevr. Myriam Van Praet
First Substitute Prosecutor
Liaison Magistrate Trafficking in Human Beings
Prosecutor's Office Ghent
7. Mevr. Christianne Wilwerth
First Substitute Prosecutor
Liaison Magistrate Trafficking in Human Beings
Prosecutor's Office Liège
8. Mr. Eric Van der Sypt
Federal Prosecutor
Counter-Trafficking
9. Mr. Alain Bloch
Vice-President of First Chamber
Court of Justice Ghent

ANNEX 3 - SUMMARY OF INVESTIGATIVE METHODS

	YES	NO
(systematic) Observation	yes	
Entering locked premises	Yes	
	This includes regular house searches with a warrant but also under BOM (special investigative techniques) so called 'look-in' operations without a warrant.	
Requesting information concerning telecommunications	yes	
	Standard in every investigation	
Recording telecommunications (phone and email)	yes	
Recording confidential communications	Yes, often	
Systematic information gathering by an investigative officer	Yes	
(Systematic) information gathering by a civilian officer		No
Pseudo-purchase and pseudo-services by a police officer	BOM: through special Federal Police unit	
Pseudo-purchase and pseudo-services by a civilian		No (illegal)
Infiltration by police officers	BOM: through special Federal Police unit	
Civilian infiltration		No (illegal)
Financial investigation	Yes	
	Standard in all bigger cases	
others	--	