



The fight against trafficking and smuggling in human beings

Policy and approach

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1. INTRODUCTION

The fight against trafficking in human beings has been for several years now a priority for the Belgian government.

The discussion in the nineties on the approach of trafficking in human beings gave rise to the Law of 13 April 1995 containing Provisions to Combat Trafficking in Human Beings and Child Pornography (hereafter “the Law of 13 April 1995”). The aforementioned law also provided a legal ground for the prosecution of “smuggling in human beings”.

In 2005 a clear distinction was made between “trafficking in human beings”, on the one hand, and “smuggling in human beings”, on the other hand.

In 1999 the first directive concerning the investigation and prosecution of trafficking in human beings and child pornography was introduced, focusing on a multi-disciplinary approach of the issue. The directive is systematically updated in order to meet newly emerging needs. The most recent update has been made in 2007.

The Integral Security Framework Policy Document of 30 and 31 March 2004 listed the fight against trafficking and smuggling in human beings as a priority issue. In the National Security Plan 2008-2011, trafficking in human beings – including both economic and sexual exploitation – as well as smuggling in human beings figures in the top 10 of security issues which must be dealt with.

As both trafficking and smuggling in human beings are transnational crimes, the international community has been paying more attention to these phenomena since 2000. Belgium therefore puts its initiatives in line with the European and the international approach.

2. National legislation

The aforementioned Law of 13 April 1995 has been replaced by the Law of 10 August 2005, which amends a number of provisions in order to strengthen the fight against trafficking and smuggling in human beings and against slumlord practices (the Law of 10 August 2005).

This Law was designed to transpose the Additional Protocols concerning Trafficking and Smuggling in Human Beings to the United Nations Convention against Transnational Organized Crime as well as the European Union Framework Decisions concerning trafficking in human beings and facilitation of unauthorised entry, transit and residence.

The Law makes a clear distinction between “trafficking in human beings”, on the one hand, and “smuggling in human beings”, on the other hand.

The extraterritorial competence has been extended by the amendment of Article 10ter of the introductory part of the Code of Criminal Procedure. In future, anyone, either a Belgian national or a foreigner involved in trafficking and smuggling in human beings under aggravating circumstances, can be prosecuted in Belgium, in virtue of Article 10ter.

2.1. Trafficking in human beings

Article 433quinquies of the Criminal Code (C.C.) defines **trafficking in human beings** as follows:

'Any form of recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, in order to

1° enable the offences as mentioned in the articles 379, 380, §1 and §4 and in article 383bis, §1 (sexual exploitation) to be committed against that person;

2° enable the offence as mentioned in article 433ter to be committed against that person;

3° employ or enable that person to be employed in circumstances contrary to human dignity;

4° remove or enable the removal of organs or tissues on that person in violation of the Law of 13 June 1986 concerning the removal and transplant of organs;

5° or, to force that person to commit a crime or an offence against his will.

Except for the case as mentioned under point 5, it is irrelevant whether the person referred to in paragraph 1, gave his/her consent to the intended or actual exploitation."

Trafficking in human beings encompasses various types of exploitation such as sexual and economic exploitation and the illegal removal of organs and tissues as well as making a person commit a crime by force.

Anyone can be a victim of trafficking in human beings: foreigners as well as non-foreigners. Trafficking in human beings therefore is being dealt with in a new article of the Criminal Code.

Any evidence of exploitation will provide sufficient grounds for qualifying a situation as trafficking in human beings. Whether the victim has consented to the exploitation is irrelevant, except for point 5 - make a person commit a crime or an offence by force -, in which case, the evidence that force has been used must be produced.

The period of limitation relating to sexual offences only runs from the day on which the victim has reached the age of 18, which is a noticeable improvement regarding the victim status.

2.2. Smuggling in human beings

Article 77bis of the Law of 15 December 1980 concerning Access to the Territory, Stay, Residence and the Removal of Foreigners (the “Law of 15 December 1980”) defines **smuggling in human beings** as

“Help, by whatever means, either directly or through an intermediary, a citizen who is not a national of a Member State of the European Union or of a State party to an international Convention concerning the crossing of external borders which is binding on Belgium to enter or transit the territory of that State or to reside in it, in breach of the legislation of the said State, for direct or indirect financial gain”.

Unlike facilitation of illegal immigration, the aim of making profit – financial gain - is the main characteristic of the smuggling in human beings offence. This characteristic distinguishes smuggling in human beings from facilitation of illegal immigration.

Actions to facilitate illegal immigration are punishable on the basis of **article 77** of the Law of 15 December 1980, except if these actions are *mainly motivated by humanitarian considerations*.

2.3. Sanctions and aggravating circumstances regarding trafficking and smuggling in human beings

Trafficking and smuggling in human beings are punishable with a prison sentence of 1 to 5 years and a fine of 500 to 50,000 Euro¹. The high fines are proportional to the huge profits traffickers and smugglers in human beings make.

The Law of 10 August 2005 distinguishes three levels of aggravating circumstances regarding trafficking and smuggling in human beings.

The first level of aggravating circumstances sets a prison sentence of 5 to 10 years and a fine of 750 to 75.000 Euro² in case:

- the offender abused either his/her authority over the victim or the authority or the power inherent to his/her function;
- the offender – civil servant - acted in the exercise of his functions.

The second level of aggravating circumstances sets a prison sentence of 10 to 15 years and a fine of 1.000 to 100.000 Euro³ in case:

- the victim of the offence is a minor of age;
- the offender either abused the particularly vulnerable position of a person or used violence, deceit, threats or any form of coercion;
- the offence endangered the lives or the health of the people involved;
- the offender(s) was (were) a gang member(s) or a recidivist(s).

The third level of aggravating circumstances sets a prison sentence of 15 to 20 years and a fine of 1.000 to 150.000 Euro⁴ in case:

- the offence unintentionally caused the death of the victim;
- the offender(s) was (were) a member(s) of a criminal organisation.

1 The fines are multiplied by 5.5 (the so-called "surtax")

2 Art. 433sexies of the C.C. and art. 77ter of the Law of 15 December 1980

3 Art. 433septies of the C.C. and art. 77quater of the Law of 15 December 1980

4 Art. 433octies of the C.C. and art. 77quinquies of the Law of 15 December 1980

2.4. Trafficking and smuggling in children

The Law does not provide an exact definition of “trafficking in children” or “smuggling in children”. The minority of the victim of trafficking or smuggling in human beings however constitutes an aggravating circumstance and therefore appeals for a harsher sentence. A minor of age is every person under the age of 18⁵.

The legislator also punishes offences such as sexual abuse, corruption or prostitution of minors⁶ as well as child pornography⁷ in situations other than sexual exploitation against the background of trafficking in human beings (433quinquies, 1° C.C.).

⁵ Art. 1, Convention on the Rights of the Child

⁶ Article 379 and 380, §1 and 3 C.C.

⁷ Article 383bis C.C.

3. Integral and integrated approach to trafficking and smuggling in human beings

3.1. Introduction

Right from the beginning, Belgium decided to opt for a pragmatic though integral and integrated approach of trafficking in human beings. The various initiatives focus on the prevention of trafficking in human beings, the assistance to the victims as well as on the investigation into and the prosecution of trafficking in human beings – *integral approach*. The co-operation and synergy between the services, institutions and organisations actively involved in the fight against trafficking in human beings, illustrate the *integrated approach*.

The various departments and ministries of a.o. Justice, Interior, Employment and Labour, Social Affairs and Foreign Affairs take complementary initiatives.

This integrated approach is also visible in the field, given the close co-operation and interaction between the specialized Prosecutors for trafficking in human beings, the police services and the reception centres for victims of trafficking.

3.2. Integral approach

3.2.1. Prevention

- Prevention of trafficking and smuggling in human beings concretely means the conduct of awareness- raising and information campaigns of, among others, the Federal Public Service (FPS)⁸ Development Cooperation or the Immigration Office (Office des Etrangers) in the countries of origin of (potential) victims of trafficking in human beings.

These campaigns are aimed at making people in these countries aware of the risks they can be exposed to when travelling unadvisedly to the EU, e.g. following a promise they have been made or in their search for a job. Concerning the smuggling in human beings, these campaigns also provide information on the risks it entails.

- Awareness-raising and information campaigns can also be conducted through a theme-related partnership. In 2004 and 2007, an interdisciplinary working group “child sex tourism” including among others Child Focus, the FPS Defence, ECPAT, the Belgian Railways and the police, launched an information campaign “Stop child prostitution”, along with a website.⁹ This initiative provided travellers with information on the child prostitution issue and advised them how to react.
- This methodology has also been followed for starting up an information campaign on the rights of the domestic staff of diplomats and international organisations in 2005. It was addressed to people seeking to work as domestic staff as well as to their future employers.¹⁰
- In 2001, another working group including the Secrétariat Permanent de Prévention (Permanent Secretariat for Prevention), a transporters’ association and the police set up an information campaign on smuggling in human beings for lorry drivers. Leaflets were distributed with practical information and tips in order to reduce the number of illegal immigrants hiding themselves into lorries on motorway rest areas.
- Certain campaigns also appeal to the citizens. Specialized centres for victims of trafficking and smuggling in human beings and/or the Centre for Equal Opportunities and Opposition to Racism – if necessary, in co-operation with other associations – therefore put confronting messages in papers and magazines or set up poster campaigns. To mark the European Anti-Trafficking Day (18 October 2009), the Centre for Equal Opportunities and Opposition to Racism along with the three specialized centres for victims of trafficking in human beings – Pag-Asa, Payoke and Sûrya – and the Samilia Foundation launched an awareness-raising campaign “Some people are very attached to their work. Human Trafficking. Don’t ignore it”. The awareness campaign also included a film¹¹ (“10 minutes”) as well as posters and post cards and it has been relayed by certain websites, as well.
- The Belgian diplomatic and consular missions are also provided with information on the methods used by the perpetrators of trafficking and smuggling in human beings. The FPS Foreign Affairs and Development Cooperation provides its staff with training sessions in order to enable them to find out if visa applications e.g. are related to trafficking or smuggling in human beings.

8 The « Federal Public Service » is the official denomination of the Ministry

9 www.stopchildprostitution.be

10 <http://www.kbs-frb.be/otheractivity.aspx?id=193924&LangType=2067>

11 <http://www.cntr.be/index.php?action=onderdeel&onderdeel=154&titel=Film+%2210+minutes%22++18+oktober+2008>

3.2.2. Investigation and prosecution

The Ministerial Directive – Col 01/2007¹² - concerning Investigative and Prosecutorial Procedure on Trafficking in Human Beings outlines the criminal prosecution policy regarding trafficking in human beings. It is the second update of the previous Directive of 1999, the so-called Col 12/99. The Directive is aimed at combating all forms of trafficking in human beings (see point 2.1). Its implementation shall be reviewed each year.

The Directive standardises the direction of the investigation services and the prosecution of trafficking in human beings in the field, but it also takes into consideration specific local circumstances. Specialized reference magistrates for trafficking in human beings therefore are deployed on places of key importance to the prosecution of trafficking in human beings.

The Directive sets out the investigation and prosecution priorities in the fight against trafficking in human beings. Absolute priority is given to the following criteria: the young age of the victims, the extent of the infringement of human dignity and the degree of violence used or threatened. Of second priority are those situations in which a certain number of elements either point to the existence of a criminal organisation or to the repeated occurrence of the offence, or reveal the major social impact of the offence.

Furthermore, the directive provides a coordination structure for the reference magistrates at various levels: the Public Prosecutor General, the First Instance Prosecutor, the Labour Attorney General and the Labour Attorney. In each judicial district, all the control, inspection and police services involved in the fight against trafficking in human beings meet periodically¹³ under the chairmanship of the reference magistrate. During these meetings, the participants discuss the information available on pending investigations and evaluate the controls carried out in high-risk sectors or places for trafficking in human beings. Forthcoming actions are being prepared here, as well. These regular meetings facilitate the exchange of information and the mutual co-operation. The reference magistrate may invite partners or experts who can make a useful contribution to the investigation and the prosecution of trafficking in human beings.

Besides, the directive also pays particular attention to the collection of information at both local and national level in order to map the various forms of trafficking in human beings, its extent, including the high-risk sectors and places. The data concerning persons arrested

12 Entered into force on 1 February 2007.

combined with the data concerning the managers and owners of high-risk places, will steer new actions or more thorough investigations.

In case of more thorough investigations, the directive recommends to make the best possible use of financial investigations and specific investigation methods.

Eventually, the directive stipulates that each action must duly respect the victims' rights. These persons must first, and above all, been seen as victims of trafficking in human beings, even if they have broken a Belgian law (e.g. illegal residence situation, infringement of the social security legislation,...).

As the investigation into smuggling in human beings requires the participation of and coordination with other key partners, an interdepartmental working group is drawing up a directive concerning smuggling in human beings. Its further development will be based upon existing coordination and consultation structures concerning trafficking in human beings.

3.2.3. Assistance to and protection of victims

3.2.3.1. A referral scheme

As early as in 1993, a specific scheme for providing aid and assistance to victims of trafficking in human beings was introduced in Belgium. The integral scheme was embedded in a ministerial circular of 1994 and in two ministerial directives of respectively 1997 and 2003. It then was a set of all sorts of provisions concerning a.o. the issue of temporary (in some cases, permanent) residence papers.

The legal basis of the scheme has been provided by the Law of 15 September 2006 amending the Aliens Law of 15 December 1980 (art. 61/2 to 61/15). It is the result of the implementation of a number of European directives into Belgian law, among which the Directive of 29 April 2004 concerning the issue of temporary residence permits to victims of trafficking in human beings, who cooperate with the competent authorities.

At the end of 2008, the integral victim protection scheme was integrated into a new ministerial circular of 26 September 2008 concerning the introduction of a multi-disciplinary cooperation as regards the victims of trafficking in human beings and/or of certain more serious kinds of smuggling in human beings.¹⁴

¹³ In principle, at least every three months

¹⁴ Moniteur Belge (Belgian Official Gazette) of 31 October 2009

The main goal of the aforementioned circular is defining the procedures for the identification, referral, reception and assistance of potential victims of trafficking in human beings and/or of certain more serious kinds of smuggling in human beings. The circular also stipulates the conditions which must be met in view of obtaining the victim status.

In order to efficiently organize the actions, a multi-disciplinary cooperation between the services involved, has been set up. The cooperation involves police and inspection services, the Immigration Service (Office des Etrangers), the recognised and specialized reception centres for victims of trafficking in human beings and the reference magistrates for trafficking in human beings on the level of the public prosecutor and on the level of the auditor.

In view of achieving the abovementioned goals, each of the aforementioned services involved is instructed on its role in the various stages of the process and the frontline actors are made aware of the actions they are expected to take.

The current system is designed to meet two different requirements: on the one hand, offer the victims a series of aid and assistance measures; on the other hand, combat persons and networks involved in trafficking in human beings. In order to achieve the latter, it is essential for the victim to cooperate.

It must be emphasized that the victim protection scheme covers all forms of exploitation of trafficking in human beings as described before (see point 2.1).

The victim protection scheme can also apply to victims of certain serious kinds of smuggling in human beings as mentioned in article 77quater, 1 to 5, of the Law of 15 December 1980, in the following cases: the offence has been committed against an unaccompanied minor, the offence has been committed by abusing the particularly vulnerable situation of the victim, the offence has been committed by using either directly or indirectly deceit-violence-threats or any kind of coercion; the offence has endangered the life of the victim either intentionally or as a consequence of gross negligence; the offence has caused an incurable disease, either a permanent physical or psychological incapacity, or the total loss of an organ or of the use of an organ; the offence has caused serious mutilation.

The status of victim of trafficking in human beings can be granted either to third-country nationals or to nationals of the Member States of the European Union. The status of victim of smuggling in human beings under aggravating circumstances can exclusively be granted to third-country nationals.

A number of additional provisions concern specific categories of victims such as private domestic staff of members of diplomatic missions and foreign unaccompanied minors.

2.3.2.3. The three conditions which must be met simultaneously in order to be granted the victim status

In order to be granted the status of victim of trafficking in human beings, the victims must meet simultaneously the following three conditions:

1. Sever all relations with the presumed perpetrators;
2. Accept assistance offered by a specialized and recognised reception centre for victims of trafficking in human beings;
3. Cooperate with the judicial authorities by making a statement or by filing a complaint against the perpetrators. The making of statements, in this case, must be construed in a broad sense, such as e.g. the victim providing information.

If the presumed victim is a foreign unaccompanied minor, the three aforementioned conditions must be looked at with due flexibility, taking into account the higher interest of the child and its particular vulnerability.

3.2.3.3. Identification, information and referral of the victims

In most cases, victims of trafficking in human beings are identified by police and inspection services. As frontline services, the latter play a key role in the correct implementation of the procedure.

They use indicators of trafficking and smuggling in human beings. The indicators of trafficking in human beings are embedded in the above directive Col 01/07. They allow to ascertain whether a certain case is related to trafficking in human beings or not.

In addition, these services are regularly granted training sessions in the combat against these phenomena.

The said services must inform the victims on the existence of the victim protection scheme, e.g. by means of a multilingual information leaflet¹⁵. Each presumed victim must be referred into one of the three recognised and specialized reception centres for victims of trafficking in human beings.

These three recognised and specialized reception centres provide accommodation, assistance, psychological and medical assistance as well as legal assistance (see point 3.3.2.9). These centres are exclusively competent for applying for residence permits or the renewal thereof with the Immigration Service (Office des Etrangers).

When the police or inspection service identifies a person as a victim of trafficking in human beings, it simultaneously takes the following steps:

- inform the magistrate to the public prosecutor's office;
- contact one of the specialized reception centres;
- inform the Immigration Service (Office des Etrangers).

3.2.3.4. Procedure

1. Beginning of the procedure – two phases

- 1st phase (reflection period): issue of an order to leave the territory within a 45-day period.

This phase is aimed at allowing victims to come to rest and to regain serenity. During the said period, the victim can decide if he/she wishes to file a complaint or make a statement or if he/she prefers returning to his/her country of origin. During this period, the victim is entitled to social protection.

If the victim does not hold a residence permit, he/she, on request of the specialized reception centre, can be delivered an order to leave the territory within 45 days by the Immigration Service. If the victim immediately lodges a complaint or makes a statement, this phase is redundant. During this first phase, the presumed victim cannot be expelled.

- 2nd phase: issue of the 3-month registration certificate

As soon as the victim has filed a complaint or made a statement, he/she is entitled to a three-month certificate of registration. This document is once renewable for three months.

In this phase, the victim is persuaded, in his own interest, into making an effort to prove his/her identity either by producing a national passport, a valid travel document or a national identity card.

The victim is entitled to social benefits and is authorised to work as soon as he/she is in possession of a work permit C.

2. Grant of the provisional victim status – issue of a proof of registration in the alien's register, valid for six months – renewable

The magistrate to the Public Prosecutor's Office is competent for granting the provisional victim status, taking into account the advices from the other partners involved. Before granting this status, the magistrate to the Public Prosecutor's Office must confirm that:

- the investigation or the legal action is still pending;
- the person involved in this phase is still to be considered as a victim of trafficking in human beings or as a victim of certain more serious kinds of smuggling in human beings;
- the person involved is willing to cooperate within the framework of a legal action;
- the person involved has severed all relations with the presumed perpetrators;
- the person involved is not considered as a possible threat to public order or national security.

In this phase, the victim is then provided with a proof of registration in the alien's register. This proof is renewable under the same conditions as long as the legal action is pending.

The victim is entitled to social benefits and is authorised to work as soon as he/she is in possession of a work permit C.

3. Conclusion of the procedure – 3 possibilities

- a) Issue of a permanent residence permit

The competent minister or his deputy may grant a permanent residence permit to the victim through the issue of a proof of registration in the alien's register (permanent residence) when

- the complaint or the statements have resulted in a legal conviction : the perpetrators thus have been convicted (in the first instance) for trafficking in human beings;
- in his prosecution, the magistrate to the Public Prosecutor's Office has withheld the charge for trafficking or smuggling in human beings under aggravating circumstances.

b) Return

In some cases, the victim prefers returning to his/her country of origin. The return will then be organised through the International Organisation for Migration (IOM) or through a non-governmental organisation.

c) Ending of the procedure

The magistrate to the Public Prosecutor's office can decide autonomously and at any time that the person concerned is no longer to be considered as a victim of trafficking in human beings. He therefore consults police and/or inspection services, the specialized reception centre for victims of trafficking in human beings as well as the Immigration Service (Office des Etrangers).

During the procedure, the Immigration Service (Office des Etrangers) can withdraw the residence permit in the following cases:

If the person concerned holds a registration certificate, his residence permit can be withdrawn in case:

- it has been established that the holder has voluntarily renewed contacts with the presumed perpetrators;
- the victim ceases to cooperate with the magistrate to the Public Prosecutor's Office;
- the victim is considered as a possible threat to public order or national security;

If the person concerned holds a proof of registration in the alien's register, the residence permit can also be withdrawn in case:

- the judicial authorities have made the decision to stop the proceedings;
- the victim's cooperation is fraudulent or his/her complaint is fraudulent or wrongful. In that case, the Immigration Service (Office des Etrangers) will consult the reference magistrate trafficking in human beings and inform the specialized reception centre.

3.2.3.5. Two specific categories of victims of trafficking in human beings

1. Unaccompanied foreign minors

To unaccompanied foreign minors who are a victim of trafficking in human beings, apply specific and appropriate provisions, which duly take into account their particular situation and vulnerability (among others, concerning identification and care, confirmation of their identity and guardianship).

According to the provisions, the foreign unaccompanied minor will be immediately issued with a registration certificate during the reflection period. Furthermore, the competent authorities must consider the best interests of the child as long as the procedure runs. These authorities take the necessary actions in order to establish the identity and the nationality of the minor and to find his/her family. The minor will also be placed under guardianship.

Accommodation is offered by a specific reception centre for foreign unaccompanied minors. This centre will provide administrative and legal assistance, in cooperation with one of the three specialized reception centres.

2. Domestic staff of diplomats

In order to work in Belgium as a member of domestic staff of diplomats, the foreigner must hold a special identity card which he personally must collect with the Protocol and Security Department of the FPS Foreign Affairs. His/her request for a special identity card as well as for its yearly renewal will be followed by a meeting with a competent official of the aforementioned department. During this meeting, the employee will be provided with information and advice in case problems would arise during his/her employment.

If a member of domestic staff of diplomats wishes to be eligible for the “trafficking of human beings” procedure, a criminal investigation should be conducted under the Belgian legal system. However, taking into account the absolute diplomatic immunity, such investigation is impossible.

This circular delivers a certain number of specific measures, though.

To enable a member of the domestic staff to apply for the status of victim of trafficking in human beings, the magistrate to the public prosecutor’s office can advise positively on the

reality of the situation of exploitation and trafficking in human beings. In such case, the magistrate to the public prosecutor's office confronts the statements of the (presumed) victim with other specific elements of the case beyond checking whether the labour agreement has been complied with.

Furthermore, the circular stipulates that the victim only is entitled to the victim status as far as he/she accepts being assisted by a reception centre, has severed all relations with the presumed perpetrator(s) and cooperates with the magistrate to the public prosecutor's office. The victim then must renounce his status as a member of domestic staff and return the special identity card. Afterwards, an application for a registration certificate can be filed.

3.2.3.6. Assessment

Within 24 months following the publication in the Moniteur Belge, this multi-disciplinary circular will be the subject of an assessment by the Interdepartmental Coordination Unit combating smuggling and trafficking in human beings (no later than 31 October 2010).

3.3. Integrated approach

3.3.1. Coordination of the policy on trafficking and smuggling in human beings

In order to coordinate the various initiatives taken within the framework of the fight against trafficking and smuggling in human beings, an **Interdepartmental Coordination Unit for the Fight against Trafficking and Smuggling in human beings** has been set up. This Unit exists since 1995 but it has been given a new boost by the Royal Decree of 16 May 2004 concerning the fight against trafficking and smuggling in human beings¹⁶.

The chairmanship of the Interdepartmental Coordination Unit is held by the Minister of Justice. The Interdepartmental Coordination Unit for the Fight against Trafficking and Smuggling in human beings is made up of all the federal, operational as well as political, actors actively involved in the fight against the aforementioned phenomena.

Along with this coordination task, the Interdepartmental Coordination Unit for the Fight against Trafficking and Smuggling in human beings must also submit the results of the fight against trafficking and smuggling in human beings to a critical assessment.

As the Interdepartmental Coordination Unit for the Fight against Trafficking and Smuggling in human beings only meets two or three times a year, a “Bureau” made up of the major departments involved in the fight against trafficking and smuggling in human beings, has been set up. The Bureau meets on a monthly basis. It is responsible for the daily functioning of the Interdepartmental Coordination Unit for the Fight against Trafficking and Smuggling in human beings and prepares or carries out its decisions, recommendations and initiatives.

One of the major achievements of the Coordination Unit is the National Action Plan for the fight against trafficking in human beings, which was adopted by the Federal Council of Ministers on 11 January 2008.

The members of the Bureau are representatives of the Criminal Policy Department (chairmanship), the Centre for Equal Opportunities and Opposition to Racism (secretariat), the Immigration Service (Office des Etrangers), the Central Unit Human Trafficking of the

¹⁶ Moniteur Belge (Belgian Official Gazette) of 28 May 2004

Federal Police, the State Security, the Social Inspection Department of the FPS Social Security, the directorate-general Monitoring of Social Legislation Department of the FPS Employment, Labour and Social Dialogue and of the FPS Foreign Affairs.

3.3.2. Key actors involved in the fight against trafficking and smuggling in human beings

3.3.2.1. Board of Prosecutors General - Network of Excellence 'Trafficking and Smuggling in human beings'

The Minister of Justice establishes the guidelines of the criminal policy, including those concerning the investigation and prosecution policies, after having consulted the Board of Prosecutors General (made up of the five Prosecutors General to the Courts of Appeal).

The Board of Prosecutors General, which falls under the Minister of Justice, makes decisions in order to achieve as much as possible a coherent implementation and coordination of the policies and an optimal functioning of the Public Prosecutor's Office.

Each Prosecutor General must deal with a number of issues, for which he has specific competences and in which he acts as a reference magistrate. The trafficking in human beings issue comes under the Prosecutor General of Liège.

Networks of excellence were set up in order to offer specialized support in a certain number of matters. Thus, the Prosecutor General of Liège is assisted in his task by a network of excellence 'Trafficking and Smuggling in human beings'.

The network of excellence is made up of the members of the Public Prosecutor's Office who are involved in the fight against trafficking in human beings, members of the Criminal Policy Department and of the Central Unit Human Trafficking of the Federal police. Depending on the issue on the agenda, external bodies can be invited to participate as well, such as: the Centre for Equal Opportunities and Opposition to Racism, the Immigration Service (Office des Etrangers), Social inspection services, academics...

A coordination team is responsible for the daily management as well as for the coordination of the activities of the network of excellence 'Trafficking and Smuggling in human beings'.

Its duty is to formulate answers as to the enforcement of the law – questions from magistrates on individual cases – and as to the development of a criminal policy – questions from the Board of Prosecutors General.

3.3.2.2. The Federal Office of the Public Prosecutor

The jurisdiction of the Federal Public Prosecutor covers the entire territory of the country. The fight against trafficking and smuggling in human beings is a security issue of prior importance and by the legislator entrusted to the Federal Office of the Public Prosecutor. It is conducted at both the national and the international level.

Organised trafficking and smuggling in human beings have been included in article 144ter of the judicial code. The Federal Office of the Public Prosecutor is competent to carry out criminal proceedings for the offences provided for in article 144ter if it is necessary for a good administration of justice. In other words, the competence of the Federal Public Prosecutor to carry out criminal proceedings is subsidiary to the competence of First Instance Public Prosecutors. Moreover, the Federal Prosecutor can only carry out criminal proceedings when there is an added value with regard to the good administration of justice.. For instance, there is an added value when the Federal Office of the Public Prosecutor has a particular expertise that is not available at the local level. In the field of trafficking in human beings, such an expertise can be found to a greater extent at the local level. Indeed, in each local offices of public prosecution, prosecutors “of reference” for trafficking and smuggling in human beings have been appointed.

For that reason the Federal Office of the Public Prosecutor not only carries out itself investigations but also attaches great importance to its legal tasks of coordination and the simplification of the international cooperation in the field of trafficking and smuggling in human beings.

At the national level, the Federal Public Prosecutor coordinates all the prosecution actions, including cases related to trafficking and smuggling in human beings. The coordination role of the Federal Public Prosecutor is aimed at streamlining the flow and exchange of information between the various Public Prosecution Offices, the investigating magistrates and the police services who are dealing with the same criminal phenomenon (in the current case, trafficking and smuggling in human beings). It also has the purpose to streamline the prosecution by indicating the public prosecution office that is best suited to carry out criminal proceedings in a specific case.

At the international level, the Federal Public Prosecutor's duty is to streamline international cooperation as trafficking in human beings generally is a transnational crime.

In Summary, the policy of the Federal Public Service is to combat organised trafficking and smuggling in human beings in complete synergy.

3.3.2.3. The Criminal Policy Department - FPS Justice

Contact : dsb@just.fgov.be

The Criminal Policy Department is an autonomous policy-making department that comes under the direct authority of the Minister of Justice. It assists the Minister of Justice as well as the Board of Prosecutors General in outlining a criminal policy, particularly regarding the phenomena of trafficking and smuggling in human beings.

The Criminal Policy Department provides information on the development of criminality and makes proposals to integrate a certain number of guidelines into the criminal policy, in order to streamline the investigation and prosecution policy and to harmonize prevention, repression and sentence enforcement policies.

Every two years, the Criminal Policy Department organizes, in consultation with the network of excellence “Trafficking and Smuggling in Human Beings”, a workshop for all the magistrates and police officers who are dealing with these phenomena. This workshop is designed to stimulate the exchange of information and experiences.

Furthermore, the Criminal Policy Department makes a yearly assessment of the directive concerning investigative and prosecutorial procedures on trafficking in human beings.

The Criminal Policy Department has also been commissioned to draw up the biennial governmental report on this issue. This report provides a general survey of all the initiatives taken by the ministerial departments and by the actors involved.

These governmental reports are available at www.dsb-spc.be/criminalite/criminalite_grave_et_organisee/traite_et_trafic_des_etres_humains, along with the National Action Plan on Trafficking in Human Beings 2008 (“La lutte contre la traite et le trafic des êtres humains en Belgique – Plan d’action¹⁷”).

3.3.2.4. The Central Unit Human Trafficking within the Federal Criminal Police - FPS Interior

The Central Unit Human Trafficking is part of the Federal Criminal Police. This unit provides support to both the local and federal police in the areas related to trafficking in human beings – including the making and dissemination of child pornography – and to smuggling in human

¹⁷ http://www.dsb-spc.be/doc/pdf/plan_action_2008_fr.pdf

beings. This support ranges from the provision of assistance in the field, the investigation into a possible connection between various cases and the development of operational partnerships with foreign police services to the centralisation of technical support on behalf of investigators involved in the fight against trafficking and smuggling in human beings. The assistance delivered by the internet investigation team “Trafficking and Smuggling in Human Beings” as well as the analysis of image storage media in case of child pornography are highly appreciated by both the police and the magistrates. Moreover, the Central Unit Human Trafficking will provide its expertise regarding specific forms of less visible and/or more hidden forms of sexual exploitation, regarding groups of smugglers of certain nationalities or regarding the criminal abuse of legitimate means of entry or stay within the smuggling in human beings framework, e.g. marriages of convenience.

As a central unit within the unified police forces, the Central Unit Human Trafficking shares its expertise in the matter of trafficking and smuggling in human beings in different ways. It thus is responsible for providing training to novice police officers as well as to investigators specialized in trafficking and smuggling in human beings. It collects and disseminates good practices, extends manuals and checklists, distributes an internal newsletter on this issue, updates the (intranet) police website with news items on the subject. The Central Unit Human Trafficking is not only the central contact point for Belgian police officers in the field, the Federal Public Prosecutor’s Office, Interpol, Europol but also for foreign specialized police services which ask Belgium for assistance in the areas of detection, investigation and collection of information concerning trafficking and smuggling in human beings. In case of supralocal and international investigations into trafficking and smuggling in human beings, the Central Unit can play a coordinating role, in agreement or in coordination with the Federal Public Prosecutor’s Office.

The Central Unit Trafficking in Human Beings is also the police contact point for non-police services, bodies and organizations having questions concerning the various forms of trafficking or smuggling in human beings or wanting to share information on these matters with the police. In order to resolve certain problems related to trafficking and smuggling in human beings, the Central Unit systematically opts for an integrated approach in partnership.

The Central Unit Human Trafficking focuses on a broader police approach of groups of perpetrators of trafficking and smuggling in human beings. It provides advice and information to (political) decision makers, consultation structures, the administrations concerned, organizations and target groups which are actively involved in the fight against trafficking

and smuggling in human beings. The Central Unit Human Trafficking represents the police in the interdepartmental, international and national platforms on Trafficking and/or Smuggling in Human Beings. It actively participates in excellence and working groups dealing with certain problems related to trafficking and smuggling in human beings.

The Central Unit also draws up quinquennial action plans concerning Trafficking and Smuggling in Human Beings for the unified police forces. These action plans include a number of concrete goals and actions in the field.

Website: www.fedpol.be

3.3.2.5. Centre for Equal Opportunities and Opposition to Racism

Contact: epost@cntr.be

In 1995, the law has entrusted the Centre for Equal Opportunities and Opposition to Racism with the task to boost the fight against trafficking in human beings, in complete independence. In 2004 its task was extended to smuggling in human beings.

In practice, this mission consists of:

- drawing up an annual independent and public assessment report on the outcomes of the fight against trafficking and smuggling in human beings, which must be submitted to the government;
- coordinating cooperation between the three specialized reception centres for victims (Pag-Asa, Sürya, Payoke);
- taking cases of trafficking and smuggling in human beings to court.

The information relating to trafficking in human beings is available on the Centre's website – www.diversiteit.be – under the link "Human Trafficking", where you can access the annual reports issued by the Centre, the aforementioned multilingual information brochure for victims of human trafficking, relevant jurisdiction as well as other documents.

3.3.2.6. The Inspection Services of the FPS Employment, Labour and Social Dialogue and the FPS Social Security

The Social Inspection Service of the FPS Social Security as well as the directorate-general Monitoring of Social Legislation of the FPS Employment, Labour and Social Dialogue actively participates in the fight against trafficking in human beings at two levels:

1. On the one hand, both services participate in the coordination meetings provided for by Col 10/07;

2. On the other hand, they carry out targeted controls, mainly in the so-called « (high)-risk » sectors (prostitution, exotic restaurants, agriculture, horticulture, clothing factories, the building sector and, more specifically, building renovation).

During these controls, the inspection services check whether social legislation is complied with, particularly by looking at the “social papers”, labour conditions, pay and employment of foreign workforce. That way, they help to detect cases of trafficking in human beings.

These controls take place within the framework of legal district units (one unit per legal district under the presidency of the Labour Attorney). The social inspection services generally are provided assistance by the (local and federal) police services.

General information on the FPS Social Security is available on the website: www.socialsecurityfgov.be. Please click under the heading “A propos du SPF”, on the section “l’inspection sociale”, in order to locate this department within the FPS. You will find here general information on the missions and the competences of the department as well as a number of contact data (addresses, phone numbers and e-mail addresses) of the directorate-general and of the regional social inspection entities. The section ‘organigramme’ provides the same information.

If you click under the heading “News& Publications” in the section “Publications”, you will find the Annual report of the FPS Social Security (Rapport annuel SPF Sécurité Sociale 2008). By clicking on ‘Rapport annuel SPF Sécurité Sociale 2008’ and, subsequently, on ‘Missions’, you can download DG Inspection sociale. This file gives a general overview of the duties the Directorate-General Social Inspection fulfils as well as the statistics concerning the controls it has carried out and the cases it has dealt with.

Information concerning the fight against illegal employment is available on the website of the FPS Employment, Labour and Social Dialogue: <http://www.employment.belgium.be/home.aspx>. By clicking on its homepage in the ‘Guide de A à Z’, on the letter L (as in ‘Lutte contre le travail illégal’), you will find out more about this issue.

3.3.2.7. The Immigration Service (Office des Etrangers) – FPS of the Interior

The Immigration Service (Office des Etrangers), a Directorate-General of the FPS of the Interior, also contributes to the fight against trafficking in human beings, against the background of the Belgian multidisciplinary approach opted for in this matter.

Three internal units of the Immigration Service_(Office des Etrangers) are directly involved in the fight against trafficking in human beings: the Unit 'Unaccompanied minors and victims of trafficking in human beings' (Mineurs –Traites des êtres humains), the Investigation Unit (Recherches) and the Judicial Unit (Judiciaire). Three other internal units are indirectly involved: the Unit 'Hearings' (Interviews) attached to the directorate 'Asylum' (Asile), the directorate 'Centres' and the Unit 'Immigration Officers' (Fonctionnaires à l'immigration).

The Unit 'Unaccompanied minors and Victims of trafficking in human beings' is responsible for the investigation and follow up of the administrative files of these two categories of people and, in this capacity, it issues residence papers as well.

The Investigation Unit is responsible for collecting and centralising all the internal information on the illegal immigration, trafficking and smuggling in human beings issue.

The Judicial Unit delivers operational and administrative support in the field to the police and control services while carrying out controls.

When either the Unit "Hearings" attached to the direction "Asylum", or the directorate 'Centres' deal with foreigners who are presumed victims of trafficking in human beings, they inform them on the existence of the status of victim of trafficking in human beings.

Immigration officers collect, within the limits of their competences, information on trafficking in human beings during their visits to the countries of origin or the countries of transit.

Website: www.dofi.fgov.be

3.3.2.8. The FPS Foreign Affairs

The department 'Trafficking in human beings' is attached to the Directorate-General Consular Affairs (DGC).

Its main role is to ensure the cooperation between the services concerned and the diplomatic missions in developing the governmental policy, and more specifically, in terms of prevention and information exchange.

The department 'Trafficking in human beings' has an active role to play in the participation of Belgium in the activities of international organisations in the area of anti-trafficking policies

Website: www.diplomatie.be

3.3.2.9 Specialized reception centres (NGO)

A. Introduction

Since 1995, three specialised centres have been given recognition as reception centres for providing shelter and assistance to victims of trafficking and smuggling in human beings. These three reception centres are: Pag-Asa (located in Brussels), Sürya (located in Liège, in the Walloon Region) and Payoke (located in Antwerp, in the Flemish Region). For that purpose, they are subsidized by both the federal authorities and the regional governments (communities and regions).

These three recognized specialised reception centres for victims of trafficking in human beings provide shelter, care, psychological and medical assistance as well as legal assistance. These centres are the only centres competent for requesting residence permits or their renewal with the Immigration Service (Office des Etrangers). They also can start legal actions on behalf of victims of trafficking and smuggling in human beings.

These centres work with pluridisciplinary teams made up of educators, social workers, criminologists...). In consultation, they draw up the assistance scheme for the victim.

This assistance scheme is threefold: it covers psychosocial and medical assistance, administrative assistance and legal assistance. The centres also have a shelter at a secret location.

For unaccompanied minor victims of trafficking in human beings, a series of special measures have been developed. They are provided care and assistance in specific centres.

The three recognized specialised reception centres provide administrative and legal assistance.

B. Residential or ambulant care and assistance

The victims often do not know another environment than the one in which the exploitation took place or in which their security was put at risk. The centres therefore offer shelter to the victims, where they can stay during a limited period of time. Afterwards, ambulant assistance is started up. If a stay in a shelter reveals unnecessary, ambulant assistance can begin immediately.

C. Psychosocial and medical assistance

Psychosocial and medical assistance is designed to help and assist the victims in order to enable them to come to terms with the way things turned out as well as with what they have been through, to gain control over their lives in the best possible way and to make realistic plans for the future. Concretely, this means e.g. helping them with the registration for language courses, for professional education or in the active search for a job.

D. Administrative assistance

This assistance mainly includes the application for papers related to the status of victim of trafficking in human beings.

E. Legal assistance

The centres have been set up for defending the rights and interests of the victims during the legal procedure against trafficking issues. They offer the services of a lawyer. Thus the centre is sufficiently well-informed to decide whether it will go to court. The reception centres can also take civil action either on their behalf or on behalf of the victim.

F. Financial assistance to victims of violent intentional crime

Pursuant to the law of 26 March 2003, victims of trafficking in human beings were given access to the “Commission pour l'aide financière aux victimes d'actes intentionnels de violence” (Financial Aid Commission for Victims of Violent Intentional Crime) An indefinite residence permit issued in the context of an investigation into trafficking in human beings makes it under certain conditions possible for the victim of trafficking in human beings to apply with the aforementioned Commission for financial assistance.

Websites and e-mails:

Pag-asa : www.pag-asa.be; info@pag-asa.be

Payoke : www.payoke.be; admin@payoke.be

Sürya : info@asblsurya.be