

6. Belgium¹

I Legislation

1. Criminal laws

In Belgium the law against trafficking uses a much broader definition of trafficking in persons than any other countries reviewed in this report. The law on the Suppression of Trafficking of Human Beings and Child Pornography (Law of 13 April 1995, hereafter April 1995 law against trafficking) amended the Criminal Code and the Immigration Law regarding access to the country, stay, residence and removal of foreigners (Law of 15 December 1980, hereafter Immigration Law). Section 1 §1 of the Law of 13 April 1995 defines trafficking in human beings as crimes related to article 77*bis* of the Immigration Law and articles 379² and 380*bis* of the Criminal Code.

Article 77 of the Immigration Law criminalises smuggling in persons, and article 77*bis* penalises involvement in the entry into Belgium of a foreigner if violence, intimidation, coercion or deception were used,³ or abusing the vulnerability of a foreigner in terms of his or her illegal status, precarious situation, pregnancy, disease or disability.⁴ The penalty for such a crime is one to five years' imprisonment and a fine.⁵ A recent amendment has extended these penalties to those who abuse, directly or indirectly, the particular vulnerability of a foreigner and those who sell, rent or enable premises to be used with the aim of making an extortionate profit.⁶ If it constitutes a regular activity, the fine is higher.⁷ If the activity is carried out by an organised association (consisting of two or more persons), increased penalties of 10 to 15 years and a fine apply.⁸

With regard to trafficking for sexual exploitation, the Law of 13 April 1995 replaced the existing article 380*bis* of the Criminal Code with a provision punishing any act of enticement into prostitution (whether or not the prostitute gives his/her consent),⁹ by one to five years' imprisonment and a fine. As in other countries, there are increased penalties for 'aggravated circumstances', i.e. where deception, violence, threats or any constraint is used or there is abuse of a foreigner's vulnerability (as defined under article 77*bis*), with the penalty increased to 10 to 15 years' imprisonment and a fine.¹⁰ The penalty increases to 15 to 20 years' imprisonment and fine if an

organised association was involved.¹¹

Trafficking under Belgian law is consequently understood to involve either commercial sexual exploitation or smuggling with the use of threats, violence, or abuse of the vulnerable or precarious position of a foreigner (which is used to prosecute exploitation in cases not involving prostitution also). In practice, 'abuse of vulnerability or precarious position' is interpreted very widely so that the foreigner's illegal immigration status is proof enough of abuse of vulnerability.¹² So in effect, article 77*bis* is also used to prosecute smuggling in persons, cases involving employment of illegal workers, renting rooms to foreigners for an extortionate profit as well as cases involving more severe exploitation that constitutes 'trafficking' under the Trafficking Protocol. The reason for this is that penalties under the generic smuggling provision (article 77) are extremely light.¹³ Both trafficking and smuggling are therefore prosecuted under article 77*bis*, the two crimes are conflated under Belgian law. On the issue of trafficking for prostitution, Belgium's laws also include other prostitution and brothel-keeping offences, which are used to prosecute those who traffic into prostitution.¹⁴

A Royal Decree of 16 June 1995 established a mechanism to ensure enforcement of the April 1995 law against trafficking, assigning core responsibility to a government agency, the Centre for Equal Opportunities and Combating Racism. The Centre is also intended to act as a co-ordinating body for the various relevant governmental ministries, prosecutors, police and immigration dealing with trafficking. It sets performance standards for the three NGOs referred to as specialised centres assisting trafficked persons - Payoke, Pag-Asa and Surya based in Antwerp, Brussels and Liege respectively. For more effective co-ordination, a sub-commission of the Belgian Senate on Trafficking in Human Beings and Prostitution recommended the appointment of a special national co-ordinator on trafficking to improve the efficiency of the different federal services concerned, and to serve as an intermediary between the regions, the communities and the Centre for Equal Opportunities and Combating Racism.¹⁵

2. Other laws and policies affecting trafficked persons

a) Circular regarding the issuing of residence documents and work permits to migrant victims of trafficking in human beings (7 July 1994, hereafter July 1994 Circular)

i) Reflection delay and temporary residence

Under the July 1994 Circular,¹⁶ in Belgium, as in the Netherlands, trafficked persons or persons suspected to have been trafficked can stay in the country under certain conditions. It should be underlined that due to the legal definition of trafficking in Belgium, this Circular applies to trafficked persons in the broadest sense, i.e. trafficked and smuggled persons. While the cases referred to in this Chapter all relate to 'trafficking' as defined under the Trafficking Protocol, the lack of distinction is relevant when considering statistics relating to the number of permits issued to 'trafficked persons'.

The Circular enables a reflection delay, an expulsion order suspended for 45 days that gives legal title to be in the country. This is available to persons who have severed all links with the environment into which they were trafficked, and who are being supported by one of the three specialised centres. The specialised centre interviews the trafficked person and then if its staff suspect the individual may have been trafficked (or exploited), the NGO applies to the Immigration Office and provides full details of the person's story and confirms that they are assisting the person. Within 24 hours the Immigration Office is supposed to issue the order to leave the territory (reflection delay). The reflection delay does not confer the right to employment. Within this period, the person has to decide whether he or she will file a complaint against the trafficker. As the document is an order to leave, those who refrain from filing a complaint must leave the country within 45 days. In special circumstances, such as for medical reasons or the need to inform relatives for reasons of safety or with a view to voluntary repatriation, the duration of the permit can be extended.

When a trafficked person files a declaration with the police or Prosecutor's Office, they are issued with a three-month residency document called a 'declaration of arrival' by the Immigration Office. One month before the expiry of the 'declaration of arrival', the Immigration Office contacts the Prosecutor's Office for more information on the complaint. When the Prosecutor's Office informs the Immigration Office that the complaint concerns 'trafficking' or that the person is considered to be a trafficked person, the Immigration Office may approve a second permit of stay, a BIVR¹⁷ temporary permit. In general, the BIVR is valid for six months, and is extended as necessary at six-month intervals until the end of the criminal proceedings against the trafficker. Persons issued with the 'declaration of arrival' permit or the BIVR 'temporary stay' permit can be employed, on the condition that the

employer has obtained an authorisation of employment from the Regional Authorities. It is significant that there is a special investigative department of the Immigration Office, the *Bureau Opsporingen*, which deals with all the issues regarding the granting of permits to trafficked persons.

ii) Permanent residence

Trafficked persons can request permanent residency at the end of the criminal proceedings against a trafficker. In considering such requests, the Immigration Office will look at how significant their information in the complaint was, in terms of the criminal procedure against the trafficker (based on information from the Prosecutor's Office) and also consider the degree to which the trafficked person has adapted into Belgian society.

II General analysis and implementation in cases

1. Investigation and prosecution of traffickers

No accurate information is available on the number of prosecutions under the current anti-trafficking law. A survey of the numbers of court judgments and arrests of traffickers was carried out by the Ministry of Justice based on information from Prosecutor's Offices for the period from 1 January 1998 to 30 June 1999.¹⁸ The study found a total of 116 criminal cases were tried over this 18-month period, using both article *77bis* and article *380bis*. However, the survey noted various methodological problems, indicating this information is far from complete and accurate.¹⁹

Currently those responsible for trafficking people into prostitution can be, and often are, charged under both article *77bis* and article *380bis*. This is confusing when article *380bis* (3) and article *77bis* are worded almost identically, so it is essentially charging the trafficker twice for the same offence. It has also been used as an argument for the defence in order to get one of the charges struck off. Despite the identical wording of these two provisions there is a contradiction in the extremely disparate penalties they prescribe: 10 to 15 years under article *380bis*(3) and one to five years under article *77bis*. This discrepancy again underlines that it would be better to have one all-encompassing article of the Penal Code to cover trafficking for all purposes, and that would equalise the penalties regardless of whether the trafficking is for sexual or other forms of exploitation.

Evidence presented to the courts to prove that offences have been committed under article 77*bis* or article 380*bis* include; statements made by trafficked persons; other witnesses and/or the defendant; confessions; forged or false documents that have been seized or confiscated; information obtained from surveillance such as phone taps and of financial transactions. In general, statements made by trafficked persons are important for a successful prosecution as long as they are confirmed by other evidence. Sentencing by courts in trafficking cases is considered too low to have a deterrent effect on traffickers. Sentences never exceed eight years and vary, on average, between two and three years. Again, this is due to the conflation of trafficking and migrant smuggling.

A Ministerial Directive known as the COL12/99²⁰ was issued in 1999 in order to combat trafficking in human beings more effectively. The Directive focuses on gathering data on the phenomenon of trafficking, exchange of information between federal and local police and Prosecutors' Offices and organisation of investigations and prosecutions. However, the COL12/99 Directive uses a different definition of trafficking from that used in the April 1995 Law.²¹ The COL12/99 definition refers only to trafficking and not to migrant smuggling and is more in line with the Protocol definition, covering forms of forced labour in addition to prostitution. This new definition has led to confusion and discrepancies amongst law enforcement agencies. The directive highlights the importance of a multi-disciplinary approach to counter trafficking and refers to COL6/99, a Ministerial Directive regarding the collaboration, co-ordination and the division of tasks between the local and federal police. Aphrodite's case illustrates the successful implementation of this Directive, ensuring that different law enforcement offices exchange information regularly.

Aphrodite

*Aphrodite was trafficked from Albania via Italy to Belgium and forced into prostitution by her trafficker/ 'boyfriend', 'C'. Aphrodite reported 'C' to federal police in Antwerp and identified a house where several other Albanian traffickers were living, including trafficker 'B'. Independently of this, an investigation in Brussels had already been initiated against trafficker 'B'. Though the prosecution against 'C' was ultimately not successful, Aphrodite's statement was used in the successful prosecution of 'B' who was convicted under article 380*bis*.*

This is despite the fact that the investigation against 'B' was in a different region from where she reported 'C', and illustrates good co-operation between the police in different regions.

The COL12/99 Directive also improves prosecution of trafficking by stipulating the appointment of and tasks for 'reference magistrates' i.e. magistrates specialised in dealing with trafficking. For example, reference magistrates working for the Prosecutor's Office at the Court of First Instance are to serve as a focal point for the law enforcement agencies, authorities, specialised agencies and social service providers involved, and are to follow up trafficking investigations. This seems to have worked well in practice, ensuring relevant expertise is shared in complex or difficult cases. The COL12/99 Directive has been updated and evaluated regularly. However, examining magistrates and prosecutors underline that the release of offenders on bail, some of whom escape the country and avoid trial, needs tackling.²²

2. Procedures affecting trafficked persons and measures of protection

a) Residency rights

i) The procedure in practice

The process of granting residency documents in Belgium is swift and efficient, and not impeded by the same problems noted in Italy and the Netherlands. This is due to close collaboration, trust, exchange of information and open communication between the NGO specialised centres (who apply for the permit) and the *Bureau Opsporingen* (that grants the permits). In addition, despite the fact that the Immigration Office is often criticised for its hard-line approach towards migrants, the *Bureau Opsporingen* displays a sympathetic and humane approach when problems occur. Regular meetings are held with the specialised centres to discuss complex or problematic cases. Usually permits are issued within the same day or, at most, 24 hours.

Some procedures regarding the issuing of residency documents differ from the steps outlined in the 7 July 1994 Circular. An additional circular²³ states that law enforcement officials should inform possible victims of trafficking of their right to a reflection delay. In practice, this does not happen, the reflection delay permit is rarely issued and most trafficked persons now file a

complaint immediately after being interviewed by police and thus receive the 'declaration of arrival'. This is reflected in Payoke's case registration figures, which show in 2001 only 3.5 per cent of trafficked persons were issued with the reflection delay permit. In the past, as many as 60 per cent of trafficked persons Payoke dealt with were issued with the reflection delay. This change has occurred because most trafficked persons are referred to Payoke at the moment by law enforcement bodies. Law enforcement officials rarely follow the 1997 guidelines and do not inform trafficked persons of their right to the reflection delay. Instead, they encourage trafficked persons to make a statement immediately. A prosecutor stated that trafficked persons who do not regard themselves to be victims are usually not identified by law enforcement as such.²⁴ Trafficked persons unwilling to press charges face immediate deportation. In the cases where trafficked persons' first point of contact is not law enforcement they are likely to be offered and acquire a reflection delay.

Aphrodite

Before escaping her situation, Aphrodite was admitted to hospital due to a pre-existing medical condition. Her trafficker, 'C', visited her in hospital and threatened that if she did not return to work for him, he would hurt her brother in Albania. Aphrodite informed hospital staff of her predicament and they referred her to Payoke. It took Aphrodite some time to make the decision to file a complaint against 'C', because she feared for her family's safety in Albania. She was issued with the reflection delay permit and this was extended twice before she finally decided to press charges against 'C'.

Another difference in the practical implementation of the residency procedure concerns the transition from the three-month 'declaration of arrival' document to the BIVR temporary permit. Trafficked persons usually only obtain the BIVR document once the criminal case has been filed at court by the Prosecutor's Office. Thus for the entire period of investigation, the three-month 'declaration of arrival' is extended rather than granting a six-month BIVR temporary permit.

Princess

Princess was trafficked from Nigeria to Belgium and forced into prostitution. She escaped with the help of a client who took her to Payoke. After using some of the time of the reflection delay, she filed a complaint against the trafficker and was granted a 'declaration of

arrival'. This was extended until the Court sitting in chambers referred her case to the correctional district court. At this point, she was granted a BIVR permit for six months.

Renewing the 'declaration of arrival' is difficult because it leaves the trafficked person in a state of uncertainty, with no prospect of long-term residency, and this causes them additional stress. It is time-consuming for trafficked persons and the specialised centres that need to support the reapplication procedure every three months. This is especially difficult if the trafficked person has found employment and needs to update the permit every three months.

To overcome this problem, there is a new guideline in place in practice (though it has not yet been formally adopted), entitled Proposed Amendments to the 13 January 1997 Circular.²⁵ The proposed amendments suggest a refined procedure whereby, one month before the expiry of the 'declaration of arrival', the Immigration Office requests the necessary information from the Prosecutor's Office to confirm the status of the complaint. Even if the Prosecutor's Office still has not replied by the end of the second 'declaration of arrival' period, the Immigration Office can proceed to issue the six-month BIVR temporary residence document. This practice is followed when the specialised centre has ascertained in a particular case that it would be difficult for the trafficked person to remain on the 'declaration of arrival' permit. This is most evident in cases, for example, where the trafficked person has found employment, or the specialised centre regards them to be integrating well. This is due to the various practical difficulties regarding lengthy bureaucratic procedures for work permits which are tied to the length of the permit of stay (see below). The Proposed Amendments to the Circular²⁶ procedure overcome many of the difficulties experienced in the Netherlands, regarding poor co-operation between immigration, prosecutors, lawyers and NGOs assisting trafficked persons.

ii) Numbers of permits issued

According to the Immigration Office, 623 foreigners have received residency documents between 1994 and January 2000.²⁷ The statistics do not differentiate between the types of residency document issued. Immigration states that until the end of 2001, over 1101 foreigners have been granted some form of residency document.²⁸ These figures must be regarded as an

absolute minimum, since the Immigration Office have no electronic database or centralised collection of this information. During 1999, the *Bureau Opsporingen* issued 106 people with some form of residency document related to trafficking. Out of these cases, 64 trafficked persons had been exploited in prostitution, 28 in other forms of labour, three were smuggled migrants, three were exploited in sport, three were trafficked as domestic workers for diplomats and five were in unspecified sectors.

According to the Immigration Office, in 2000 they followed up 143 new cases, whereas figures reported by the three specialised centres recorded 230 new cases.²⁹ On the basis of the cases recorded by the specialised centres, 57 per cent concerned exploitation in prostitution, five per cent in sports, seven per cent in the catering industry, 10 per cent in other forms of work and 11 per cent concerned smuggling. According to the Payoke's 2001 figures, out of 199 victims assisted in 2001,³⁰ 115 concerned exploitation in prostitution, 15 in sports, eight in catering, 31 in other forms of work, 26 smuggling, one a fake marriage and three in unspecified sectors. The figures clearly show that trafficking for purposes other than prostitution is a major problem. Belgium is the only country in this report that clearly indicates such a range of cases, mainly because other countries either do not record the information or are not concerned with protecting those who are not trafficked into the sex industry. This is a real problem for countries such as the Netherlands which do not recognise or assist persons trafficked for purposes other than prostitution, especially considering that trafficking for other forms of labour exploitation is increasing.

iii) Limitations

The procedure for acquiring residency status beyond the reflection period is limited to those victims who are willing to co-operate with law enforcement and who file complaints against traffickers. It does not protect those who are too afraid or too traumatised to press charges, or who do not possess sufficient information about their trafficker. If the trafficked person refrains from filing a complaint or withdraws his or her complaint or if the investigation is suspended for technical reasons or other priorities, he or she is issued an order to leave the country. This is unless they fall within the provision allowing them to apply for permanent residency under the STOP procedure (see below, iv) Permanent residency). The Immigration Office routinely takes into account information from the Prosecutor's Office in its decision to issue or renew a residency document. In one way this prevents

abuse of the procedure; however, the fact remains that the period of stay and the assistance related to it are dependent on the result of criminal investigations.

In addition the 'declaration of arrival' does not enable freedom of movement outside Belgium within the European Union. Trafficked persons with a 'declaration of arrival' may leave the country but in practice will not be permitted to re-enter Belgium unless they can prove exceptional circumstances. Under the 'declaration of arrival', immigration deems that the trafficked person should be at all times at the disposition of the law enforcement bodies. In contrast, trafficked persons issued with a BIVR do have freedom of movement within the European Union.

To obtain any residency documents trafficked persons must drop all links with the environment in which they were exploited. In many cases, trafficked persons may return to their trafficker and then leave again. It takes some time to fully break the ties because they are suffering trauma and feel an emotional pull to return to a familiar environment. It is unrealistic to expect all trafficked persons to immediately adjust to a new environment. The requirement to leave the realm of exploitation is extremely restrictive in this regard. It was drafted with prostitution in mind to prevent victims who were exploited in prostitution from returning to the sex industry and from again being vulnerable to exploitation. An exception has been made, in regard to other forms of labour exploitation, for example where trafficked persons exploited in catering can now return to that industry and be legally employed. This concession does not apply to prostitution, and displays the attitude in Belgium that prostitution is inherently exploitative.

Finally, trafficked persons are not only obliged to collaborate with police authorities, they also have to be assisted by one of the three specialised centres. If trafficked persons do not conform to the conditions of the assistance programmes offered by the specialised centres, their residency permit can be revoked.

iv) Permanent residency

Under the 7 July 1994 Circular and further clarified in the Proposed Amendments to the Circular that is being implemented, permanent residency is granted to trafficked persons if it is deemed that the complaint has been significant for the investigation and prosecution of a trafficker. If the

complaint leads to a conviction of the trafficker, then permanent residency is generally always granted. Trafficked persons are not granted permanent residency until the criminal case has been completed. If the criminal case against the trafficker is suspended and the trafficked person has been residing in Belgium (under the framework of the residency procedure for trafficked persons) for two years or more, they can apply for permanent residency under humanitarian grounds. This is the so-called STOP procedure agreed between the specialised centres, the Centre for Equal Opportunities and Combating Racism, and the *Bureau Opsporingen*. It is not in the 1994 Circular and there are no written guidelines for its enforcement.

In all applications for permanent residency, the specialised centre and local authority (of the community where the victim is living) must submit a detailed report regarding the socio-economic situation of the victim to the Immigration Office. The Minister of the Interior makes a decision to grant permanent residency to the victim based on these reports as well as an internal report and advice of the Immigration Office. The judicial outcome of the criminal case against the trafficker is the prime factor in issuing permanent residency, unless it is under the STOP procedure, in which case it is the level of integration that is taken into account. There is no accurate data available on how many trafficked persons have been granted permanent residence status. In 2001, 15 of the 199 people assisted by Payoke were granted permanent residency.³¹

b) Protection from reprisals and police protection

The COL12/99 directive stipulates that all efforts should be taken during criminal investigations to avoid trafficked persons from being vulnerable to threats or reprisals from trafficking gangs. Under the 'declaration of arrival' and the BIVR, trafficked persons who have children under the age of 18 can bring them to Belgium at their own cost. This is difficult in practice, especially for trafficked persons from West Africa due to the costs involved. If severe reprisals occur, trafficked persons can be relocated within Belgium, but dealing with reprisals in countries of origin is more difficult, and is still not sufficiently addressed.

Aphrodite

Aphrodite was threatened soon after filing the complaint against 'C'. While she was safe in the shelter, her family in Albania was threatened and as a result was forced to move city. Aphrodite returned home after

several years for a visit and a safety plan was organised through the IOM to ensure her security during her stay in Albania. Despite this, she was still approached by police officers acting on behalf of 'C's gang, trying to trick money out of her.

c) In-court evidentiary protection

Princess

Princess's declaration was key evidence in the case against her trafficker, but she was not required to testify in court. Although the defence tried to summon her to court as a witness, the judge rejected the request on the grounds that Princess had suffered enough already and should not be forced to face her exploiters again.

Criminal proceedings in Belgium depend mainly on a written procedure, with evidence taken as statements. In this regard victim witnesses are rarely obliged to appear in court to testify against their traffickers. Exceptionally, victims may be summoned to court as witnesses if the judge considers their presence is needed. The criminal case is essentially developed during the preliminary investigations and it is not necessary to rebuild the case again at court.³² In the past five years, Payoke has handled only two cases where victims were required to testify in court in Belgium. This is out of a total of more than 500 cases, in which they have assisted in the same period.

Recently a new law on the anonymity of the witness has been adopted by the National Assembly.³³ The law makes a distinction between partial and full anonymity. In case of partial anonymity, the examining magistrate or judge can decide to leave out certain identifying characteristics of the witness such as age, name, address, and profession; however, the witness must appear before the court to be examined by the defence. In exceptional circumstances, the examining magistrate may grant full anonymity when partial anonymity does not seem to be sufficient. In trafficking cases the examining magistrate can only grant full anonymity in cases of trafficking involving two or more persons (a criminal organisation) or when undertaken on a regular basis. The new law on anonymity will only be of limited use to trafficked persons, since traffickers often know anyway from the nature of the complaint exactly who is testifying against them.

d) Right to information on court proceedings

Trafficked persons who join themselves to criminal proceedings as injured parties are provided with a protected legal status enabling them to access information on the court proceedings.³⁴ The law stipulates quite clearly that injured parties are to be informed of the course of the criminal proceedings. In practice, trafficked persons who do join civil claims are well informed about the status of their cases.

In accordance with the new section 28*quater*, para.1 of the Code of Criminal Procedure, the injured parties should be kept informed of the dismissal of the prosecution (should that be the case) and the reasons why. However, in practice, if a case is dismissed, the reasons given are of a very general nature. It is enough for the prosecutor to state that the crime did not establish a priority for the prosecution, that the offenders were unknown³⁵ or that elements entailed in the complaint do not establish that a crime of trafficking has occurred.

3. Support and assistance to trafficked persons**a) Right to lawyer/legal advocate in criminal proceedings**

As a civil law country trafficked persons who join themselves as injured parties to the criminal proceedings are permitted lawyers. The specialised centres generally arrange for free legal assistance to be provided to trafficked persons. The lawyer has access to the prosecutor's file of the case, but does not have full rights to be present at police interviews of the victim or at the hearing before the examining magistrate without the authorisation of the police or magistrate.

b) Right to recovery 'assistance measures'

Once a trafficked person obtains any of the residency documents (including the reflection delay) they are entitled to all basic services such as housing (shelter or house), education, financial assistance and medical care. However, the right to seek employment is not granted during the reflection delay period. There is a lack of adequate and sufficient housing for trafficked persons, the shelters of the three specialised centres are often full, and suffer from case overload. This is also cited as a reason why law enforcement officials fail to inform many people who may have been trafficked about the reflection delay, since the services of specialised centres are already over stretched.

The right to seek employment is conferred with the 'declaration of arrival' or BIVR permit. However, employers are required to undertake a complicated process of authorisation if they wish to employ a trafficked person. This process takes one month or more and the work permit is only valid for the duration of the residence document.³⁶ When it expires, the whole process of application must be done again, consequently few employers are eager to employ trafficked persons. The work permit is issued for work with a specific employer. In reality, therefore, the state has made it difficult for trafficked persons to get employment and in addition they have little access to the labour market due to lack of fluency in French or Flemish and specialised skills. In 2001, only 31 temporary authorisations to employ trafficked persons were granted to Belgian-based employers in the Flemish region, despite the fact that Payoke (which operates in this region) assisted close to 500 trafficked persons.³⁷ The Government evidently needs to create more special employment projects for trafficked persons, such as those in Italy, to counter this problem. On 19 July 2002, the Federal Council of Ministers approved the proposed reform measures of the Federal Minister of Employment on the employment of foreigners. These reforms aim to simplify the issuing of working permits and to improve the access of foreigners legally residing in Belgium to the labour market. Under this new regulation trafficked persons with a 'declaration of arrival' or a BIVR permit can be employed with a working permit C. This work permit is valid for a one-year term and can be extended. It is not restricted to a specific employer and the victim has to apply for the working permit instead of the employer.

Princess

Princess' lawyer successfully joined a claim for compensation to the criminal action against the trafficker and the trafficker was ordered to pay Princess €12,500. He was sentenced to six years' imprisonment and a fine of €5,000. Criminal assets seized during the investigation were used to pay Princess all of the compensation.

4. Legal redress and compensation

A trafficked person as an injured party can link a claim for damages to the criminal court action or bring a separate civil claim to the civil court. Some trafficked persons link civil claims to the criminal proceedings. In general, criminal courts convicting traffickers award compensation ranging from €650

-€17,500 to victims of trafficking, depending upon the level and type of exploitation.³⁸ Actual enforcement of compensation orders remains the main difficulty as many traffickers claim to be insolvent. Seized assets of convicted traffickers go to the Federal Treasury. There is no specific regulation regarding the use of such assets to pay compensation claims, and, while there are exceptional cases, assets usually go to the State. However, in recent judgments, some criminal courts have granted compensation to trafficked persons from seized criminal assets.

Up until now, trafficked persons do not have access to the *Speciaal Fonds voor Hulp voor Slachtoffers van Opzettelijke Gewelddaden* (Special fund for victims of violence) because of their status as undocumented migrants at the time of the damage/offence.

Under article 11 of the 16 June 1995 Royal Decree regarding the work of the Centre for Equal Opportunities and Combating Racism, and article 11§5 of the Law of 13 April 1995, Payoke, Pag-Asa and the Centre for Equal Opportunities and Combating Racism can take judicial action against traffickers by joining a claim for compensation to the criminal case against the trafficker independently of any claim lodged by the victim. In Princess' case, for example, Payoke was awarded €1,500, which was paid out of the criminal assets seized from the traffickers.

III Conclusions and recommendations

For those identified as trafficked persons who co-operate with the authorities, the Belgian system works effectively, especially the residency procedure and the provision of integrated services. These provide positive opportunities for permanent residence, employment, and help trafficked persons to recover, for example by avoiding the need to testify. However, there remain underlying issues due to the conflation of trafficking and smuggling laws, concerns to prevent illegal migration, and an emphasis on prosecution of traffickers, that have an effect on the protection of trafficked persons' human rights. Considering trafficking as the same as smuggling causes difficulties in ensuring traffickers are appropriately prosecuted and sentenced. Law enforcement bodies experience difficulties in clearly distinguishing trafficking from smuggling. Only a small number of the intercepted people who might have been trafficked are actually referred to the specialised centres, because they are unwilling to file a complaint, or due

to the specialised centres being full. Law enforcement officials prioritise those who are willing to testify, rather than those who may most need assistance. Temporary residency is contingent upon a willingness to testify and there are ineffective protection mechanisms to address increased incidences of reprisals faced by families in countries of origin. Trafficked persons who are willing to testify have access to extensive assistance measures but employment remains difficult in practice.

Recommendations to the Belgian Government

- Amend legislation in line with the Trafficking Protocol to distinguish human trafficking from migrant smuggling, and ensure trafficking for other forms of labour exploitation carries an equal penalty to trafficking for prostitution.
- Law enforcement officials must inform trafficked persons of their right to a reflection delay.
- Create a centralised system to ensure more effective recording of information on prosecutions, convictions and issuance of residency permits, and better information exchange.
- Formally adopt the Proposed Amendments to the Circular (13 January 1997),³⁹ regarding clearer procedures for residency documents.
- Ensure better collaboration between the prosecution services of the judicial districts with immigration and specialised centres.
- Provide trafficked persons with the right to appeal against decisions revoking their immigration status.
- Develop and finance special integration projects to ensure trafficked persons have improved access to employment.
- Ensure work permits are issued quickly and efficiently to trafficked persons.

Endnotes

¹ In Belgium, the non-governmental organisation Payoke in Antwerp conducted the research and prepared a report. This chapter is based on the information included in that report and consequently refers to various titles in Dutch without mentioning their French equivalent.

² Article 379 deals with prostitution of minors.

³ §1(1) Law of 13 April 1995.

⁴ §1(2).

⁵ *Ibid*

⁶ Article 77 *bis*.5

⁷ §2.

⁸ §3.

⁹ Article 380bis § 1(1).

¹⁰ Article 380bis §3.

¹¹ Article 381.

¹² Correctionele Rechtbank, Brussel, 22 Mei 2000, 51ste Kamer.

¹³ The sentence under Article 77 sentence is eight days to three months' imprisonment plus a fine.

¹⁴ Article 380bis §1(2) and (3).

¹⁵ Thijis E. en de t' Serclaes, N., *De mensenhandel en de prostitutie in België*, verslag namens de subcommissie "mensenhandel en prostitutie", Belgische Senaat, zitting 1999-2000, 12 juli 2000.

¹⁶ Circular regarding the issuance of residence documents and work permits to migrant victims of trafficking in human beings (7 July 1994).

¹⁷ Bewijs van Inschrijving in het Vreemdelingenregister (BIVR) (Certificate of Registration in the Immigration Register).

¹⁸ Centrum voor Gelijkheid van Kansen en Racismebesrijding, "Strijd tegen de mensenhandel," Tussen beleid en middelen: de diepe kloof? Jaarverslag 1999, Brussel, 2000, p. 115.

¹⁹ Not every judicial district replied to the questionnaire, while some offices forwarded information referring to offences such as child pornography, sexual abuse or prostitution rather than trafficking. Other offices

gave information on trafficking cases without specifying which specific type of trafficking offence had been committed. The information was primarily based on computer data from Prosecutor's Offices where trafficking was the first charge or most serious offence, thus leaving out cases in which trafficking was not the predominant offence. It was also unclear whether the numbers reported referred to the number of judgments passed, the number of cases ongoing, or the actual number of arrests of traffickers. The study did not indicate the number of criminals who were implicated in the offences.

²⁰ Adopted by the College of Prosecutors-General, 1999.

²¹ The Directive defines trafficking as the illegal subjection of a person by using violence, threats, tricks or by abuse of authority in order to exploit the prostitution of others, or by employing other forms of abuse or sexual violence, or the abuse of labour or labour conditions, which are a violation of human dignity. 'Abuse of authority' is defined as any form of pressure, exercised in such a way that the victim has no other option than to submit to him or her.

²² Payoke interview, prosecutor, Brussels, 12 May 2002 and prosecutor, Antwerp, February 2002.

²³ Modification des directives du 13 janvier 1997 à l'Office des étrangers, aux parquets, aux services de police, aux services de l'inspection des lois sociales et de l'inspection sociale relatives à l'assistance aux victimes de la traite des êtres humains. (Amendments to the Directive of 13 January 1997 to the Immigration Office, Prosecutors' Offices, police, social law inspectorates concerning assistance to victims of human trafficking.

²⁴ Payoke interview, prosecutor, Brussels, 12 May 2001.

²⁵ Modification des directives du 13 janvier 1997 à l'Office des étrangers, aux parquets, aux services de police, aux services de l'inspection des lois sociales et de l'inspection sociale relatives à l'assistance aux victimes de la traite des êtres humains.

²⁶ *Ibid.*

²⁷ Centrum voor Gelijkheid van Kansen en Racismebestrijding, "Strijd tegen de mensenhandel", *Tussen beleid en middelen: De diepe kloof?*, Jaarverslag 1999, Brussel, 2000, p. 123.

²⁸ Fax communication from Immigration Office, Brussels, 12 August 2002.

²⁹ Centrum voor Gelijkheid van Kansen en Racismebestrijding, *Beeldvorming van de mensenhandel en analyse van de rechtspraak, Jaarverslag 2000*, Brussel, 2001, p. 67. These figures vary, due to the lack of an official registration procedure in Immigration.

³⁰ Ninety-four were new cases submitted to the Immigration Office.

³¹ Payoke, Payoke Annual Report 2001, Antwerp.

³² This is different however, for cases handled before the Court of Assizes (serious offences such as murder or against the State, such as treason) where a jury decides on the guilt or innocence of the defendant and where the whole criminal investigation is presented once again before the court. In these proceedings witnesses are summoned before the court to testify.

³³ Wet van 4 april 2002 betreffende de anonimiteit van de getuigen, B.S. 31 mei 2002.

³⁴ Section 5b Preliminary Title Criminal Court Procedure.

³⁵ If the victim files a complaint against a specified person but this person cannot be caught and confronted with the complaint of the victim, the prosecutor then decides to dismiss the case temporarily. However when the perpetrator is found the case can be reopened.

³⁶ Section 3 Circular regarding the issuing of residence documents and work permits to migrant victims of trafficking (17 July 1994).

³⁷ Ministerie van de Vlaamse Gemeenschap, Administratie Werkgelegenheid, Afdeling Migratie en Arbeidsmarktbeleid, Brussel, 2000, p.91.

³⁸ Centrum voor Gelijkheid van Kansen en Racismebestrijding, De wet van 13 april 1995 houdende bepalingen tot bestrijding van de mensenhandel en van de kinderpornografie. Brussel, 2002, p.53.

³⁹ Modification des directives du 13 janvier 1997 à l'Office des étrangers, aux parquets, aux services de police, aux services de l'inspection des lois sociales et de l'inspection sociale relatives à l'assistance aux victimes de la traite des êtres humains.