

Human Rights Without Frontiers Int'l

Asbl - National Registration Number: 473809960

Associated member of the International Helsinki Federation for Human Rights

Avenue Winston Churchill 11/33, 1180 Brussels , Belgium

Phone: + 32 2 3456145 - Fax: + 32 2 3437491

Belgium

Annual Report on Human Rights (2008)

Chapter III: Trafficking in Human Beings

11 February 2008

Editor-in-chief: Willy Fautré

Website: <http://www.hrwf.net>

Email: info@hrwf.net

BELGIUM

Trafficking in Human Beings

1. Legal framework

1.1. The Law of 10 August 2005

The law of 10 August 2005 combating human trafficking for the first time introduced a definition of the term 'human trafficking' in Belgian law.^{[1][1]} According to the new law, the crime of human trafficking entails two elements: The first element is a type of action involving movement of a person, namely the recruitment, transportation, transfer or accommodation of a person or the exchange or transferral of control over this person. The second element is the aim of this action, namely to (i) use this person for prostitution or for other acts of sexual exploitation, including child pornography but not adult pornography, (ii) to exploit him/her as a beggar, (iii) to employ this person in circumstances that contravene human dignity, (iv) to harvest this person's internal organs, or (v) to have this person commit a crime against his/her will.

This definition of the crime of human trafficking differs from the one provided by the 2005 Council of Europe (CoE) Convention on Action against Trafficking in Human Beings,^{[2][2]} which has been signed but not ratified by Belgium by the end of 2007. The Belgian definition adds objective (ii) and (v) to the CoE definition and lacks what is generally considered to be a constitutive element of the crime of human trafficking, namely the use of certain means to commit the crime, such as the threat or use of force, coercion, the abuse of power or the abuse of the vulnerability of the trafficked person.^{[3][3]} The Belgian law has thus shifted the focus away from the abuse of the victim, targeting his/her exploitation instead.^{[4][4]}

The 2005 law contains a number of articles that can rightly be criticised. Firstly, probably the most regrettable deficit of the law is the above-mentioned absence of the prerequisite of coercion or the use of force as one of the constitutive elements of the crime of human trafficking. Secondly, the law criminalises human trafficking for purposes of sexual exploitation but the *travaux préparatoires* fail to include adult pornography as one of those

purposes, in contravention of European standards.^{[5][5]} Thirdly, concerning economic exploitation, the term ‘human dignity’ is not further explained, which might lead to confusion. However, the *travaux préparatoires* provide some insight into the matter, indicating that the absence of a wage or a disproportionately low wage for the delivered work constitutes economic exploitation in violation of human dignity.^{[6][6]} The problem with this approach is that it, in combination with the absence of a prerequisite of coercion or use of force, could lead to a redefinition of human trafficking as a mere infraction on social legislation, e.g. in cases where an illegal alien voluntarily accepts a wage lower than what is European average.

In this matter, a 2007 decision by the Court of Appeal of Antwerp concerning human trafficking stated in a case of Romanian citizens employed illegally in Belgium that working for a lower wage than what is foreseen by law, and for more hours a week than what is legally allowed, was in itself insufficient to consider this employment to be in violation of human dignity, *inter alia* on the grounds that the Romanians involved did not oppose their working conditions, wage or the accommodation provided by their employer.^{[7][7]} As a result, according to the court, it could not be proven that the accused had exploited the factual situation of the Romanian citizens as they were able to enjoy higher standards of employment in Belgium compared to conditions in their home country. The accused were consequently deemed innocent of the crime of human trafficking.

Finally, the issue of beggary merits some remarks: The exploitation of a person for beggary is essentially a particular form of economic exploitation and therefore redundant in the law. Moreover, concerns have been raised that the explicit inclusion of exploitation for beggary as a type of human trafficking has been led by the ulterior motive of combating public inconvenience caused by seeing beggars in the streets.^{[8][8]}

1.2. The law of 15 September 2006

The Law of 15 September 2006 Amending the Law of 15 December 1980 Concerning the Access to the Territory, the Stay, the Settlement and the Removal of Foreigners includes a number of articles that are intended to increase protection to victims of human trafficking by granting them, under set conditions, the right to stay on the Belgian territory.^{[9][9]} This law, which entered into force on 1 June 2007, offers victims of human trafficking the opportunity to obtain residence permits in exchange for assistance in criminal proceedings against the perpetrators of the crime. Should the proceedings eventually lead to a conviction, or if the

crime was committed under aggravating circumstances of threat or use of force, coercion, deception or the abuse of the victim's vulnerability,^[10] the crime victim will eventually obtain a permanent residence permit in Belgium .

The reasoning behind granting victims of human trafficking residence permits under these conditions is based on the fact that they have taken serious risks in filing a complaint against the perpetrators and therefore risk reprisals in their home country.^[11] However, regrettably, and contrary to recommendations of victims agencies, an objective victim status has not been introduced, which means that all victims of human trafficking, including minors, are required to cooperate with the judicial authorities if they are to obtain a (permanent) residence permit.^[12]

Moreover, requiring victims of human trafficking to cooperate with the authorities before granting them permission to stay on the Belgian territory is not in line with a human rights based approach to fight human trafficking. From a human rights perspective it would be more logical to automatically offer protection status to all victims of human trafficking simply because they are victims and not merely in order to persuade them into assisting with the development of a criminal case against the perpetrators.

Fortunately, and contrary to what could be assumed from the foregoing, victims in cases of human trafficking that do not lead to a conviction or in which the mentioned aggravating circumstances do not apply, are not being entirely left in the cold. Within the unofficial so-called STOP-procedure, which is separate from the official procedure, adult victims of human trafficking can still benefit from the advantage of regularisation also in cases that do not lead to the identification or conviction of the perpetrators. The condition for regularisation is that the criminal proceedings have lasted for minimum two years.^[13] This unofficial procedure that is not included in the 2005 law should be given an explicit legal basis in order to increase the security and protection of victims of human trafficking that could possibly benefit from the said procedure.

trafficking in Belgium

2. Data on human

On a scale ranging from very low to very high, Belgium was listed as a country with a high incidence of reporting as a transit country, and a very high incidence of reporting as a destination country for human trafficking in the 2006 United Nations Office on Drugs and Crime report, indicating the global patterns on trafficking in human beings.[\[14\]](#)[\[14\]](#) People are trafficked to Belgium primarily from countries such as Nigeria , Brazil , Albania , Bulgaria , Romania and China . Most people only passing through Belgium are usually on their way to the United Kingdom .[\[15\]](#)[\[15\]](#)

Research indicates that people are primarily trafficked to Belgium for purposes of forced labour and commercial sexual exploitation, with the latter being more prevalent than the former.[\[16\]](#)[\[16\]](#) However, there are indications that human trafficking for purposes of economic exploitation is starkly on the rise, at least in the Flemish Region.[\[17\]](#)[\[17\]](#) The stark rise in 2006 of this particular type of human trafficking was almost solely due to the significant increase in the number of Brazilian men being exploited in construction business.

Belgium is generally regarded to be fully complying with the core international standards directed at eliminating human trafficking, since it follows a two-pronged approach; maintaining an aggressive law enforcement stance on the one hand, and financing NGOs to provide victims assistance on the other. However, as noted above, the Belgian legal system is criticised for connecting the granting of permanent residence status to victims of human trafficking to the outcome of the criminal prosecution instead of allowing all victims to remain on its territory. Nonetheless, in practice there have been no reported cases of victims of human trafficking being forced to return to their country of origin after a failure to convict traffickers.[\[18\]](#)[\[18\]](#)

In 2006, Belgian authorities investigated 451 cases of human trafficking, leading to convictions in fourteen separate cases; nine on sexual exploitation and five on economical exploitation.[\[19\]](#)[\[19\]](#) Sentenced traffickers generally received one to ten years' imprisonment.[\[20\]](#)[\[20\]](#)

The Belgian federal government finances one NGO that specialises in the support of victims of human trafficking in each region: *Payoke* for the Flemish Region, *Pag-Asa* for the Brussels Region and *Sürya* for the Walloon Region. These NGOs offer assistance to victims in the form of residential or ambulant shelter and guidance; psychosocial and medical aid; and legal and administrative support.[\[21\]](#)[\[21\]](#) In 2006, the three NGOs provided some form of assistance to a total of 445 victims of human trafficking.[\[22\]](#)[\[22\]](#)

[1][1] Law of 10 August 2005 amending several articles in order to strengthen the fight against human trafficking, smuggling of human beings and the practice of 'huisjesmelkerij', *Belgisch Staatsblad*, 2 September 2005 .

[2][2] Council of Europe Convention on Action against Trafficking in Human Beings, 16 May 2005 .

[3][3] Threat or use of force, coercion, abuse of power and abuse of the vulnerability of the victim do constitute aggravating circumstances under the new law.

[4][4] Council of Europe, "Action against trafficking in human beings: prevention, protection and prosecution", Proceedings of the regional seminar in Oslo on 1- 2 November 2006 , p. 37, at http://www.coe.int/t/DG2/TRAFFICKING/campaign/Source/eg-thb-sem4-2006_Proceedings.pdf (accessed 18 October 2007).

[5][5] Institute for International Research on Criminal Policy, "Mensenhandel in België. Status questionis, evaluatie en toekomstopties", December 2006, p. 16, at <http://www.kbs-frb.be/files/db/NL/PUB%5F1637%5FMensenhandel.pdf> (accessed 18 October 2007).

[6][6] Ibid., p. 17-18.

[7][7] Court of Appeal of Antwerp , 23 May 2007 .

[8][8] Ibid., p. 21.

[9][9] Articles 64-68 of the Law of 15 September 2006 Amending the Law of 15 December 1980 Concerning the Access to the Territory, the Stay, the Settlement and the Removal of Foreigners, *Belgisch Staatsblad*, 6 October 2006 .

[10][10] This is the only case in which the prerequisites set for the existence of the crime of human trafficking by the Council of Europe, but abandoned by the Belgian legislator, still play a role.

[11][11] Council of Europe, "Action against trafficking in human beings: prevention, protection and prosecution", Proceedings of the regional seminar in Oslo on 1- 2 November 2006 , p. 42, at http://www.coe.int/t/DG2/TRAFFICKING/campaign/Source/eg-thb-sem4-2006_Proceedings.pdf (accessed 18 October 2007). The same protection system applies to victims of the crime of smuggling of human beings, albeit only in specific cases.

[12][12] Institute for International Research on Criminal Policy, "Mensenhandel in België. Status questionis, evaluatie en toekomstopties", December 2006, p. 44, at <http://www.kbs-frb.be/files/db/NL/PUB%5F1637%5FMensenhandel.pdf> (accessed 18 October 2007).

[13][13] Ibid.

[14][14] United Nations Office on Drugs and Crime, "Trafficking in Persons: Global Patterns", April 2006, p. 19-20, at http://www.unodc.org/pdf/traffickinginpersons_report_2006ver2.pdf (accessed 19 October 2007).

[15][15] United States State Department, "Trafficking in Persons Report", June 2007, p. 63, <http://www.state.gov/documents/organization/82902.pdf> (accessed 19 October 2007); Pag Asa, "Jaarverslag 2006" , p. 17, at http://www.pagasa.be/uploads/documenten/JAARVERSLAG_LR.pdf (accessed 19 October 2007).

[16][16] United States State Department, "Trafficking in Persons Report", June 2007, p. 63, <http://www.state.gov/documents/organization/82902.pdf> (accessed 19 October 2007).

[17][17] Pag Asa, “Jaarverslag 2006” , p. 15, at http://www.pagasa.be/uploads/documenten/JAARVERSLAG_LR.pdf (accessed 19 October 2007).

[18][18] United States State Department, *Trafficking in Persons Report*, June 2007, p. 63, at <http://www.state.gov/documents/organization/82902.pdf> (accessed 19 October 2007).

[19][19] Ibid.; Pag Asa, “Jaarverslag 2006” , p. 22, at http://www.pagasa.be/uploads/documenten/JAARVERSLAG_LR.pdf (accessed 19 October 2007).

[20][20] United States State Department, *Trafficking in Persons Report*, June 2007, p. 63, at <http://www.state.gov/documents/organization/82902.pdf> (accessed 19 October 2007). For the most recent court cases leading to a conviction, see Court of First Instance Dendermonde, 17 October 2006 ; Court of First Instance of Antwerp, 13 November 2006 ; Court of First Instance of Brussels, 28 November 2006 ; Court of First Instance of Brussels, 17 January 2007 . An overview of and links to these cases can be found at http://www.diversiteit.be/CNTR/NL/human_trafficking/jurisdiction/recente/.

[21][21] Centre for Equal Opportunities and Opposition to Racism, “Opvangcentra voor slachtoffers”, at http://www.diversiteit.be/CNTR/NL/human_trafficking/centres+victims/ (accessed 19 October 2007).

[22][22] United States State Department, *Trafficking in Persons Report*, June 2007, p. 63, at <http://www.state.gov/documents/organization/82902.pdf> (accessed 19 October 2007).