

# COUNTRY FACTSHEET\* – Smuggling of migrants



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## LEGAL AND JUDICIAL INFORMATION ON MIGRANT SMUGGLING

### BELGIUM

Last update 16/02/2024

#### GENERAL INFORMATION ON MIGRATION



##### MAIN FIGURES AND TRENDS

[No information provided for this section]



##### MIGRATORY ROUTES

[No information provided for this section]



## INSTITUTIONAL ORGANISATION

The **INTER-DEPARTMENTAL CO-ORDINATION UNIT FOR ACTION AGAINST TRAFFICKING IN AND SMUGGLING OF HUMAN BEINGS (CIC)** was set up to co-ordinate Belgian policy.<sup>1</sup>

The Minister of Justice is in charge of the CIC, and the Federal Migration Centre, Myria (Independent National Rapporteur), serves as its secretariat.

The CIC meets at least twice a year.

The CIC brings together all political and operational federal partners contributing to the fight against smuggling and trafficking in human beings<sup>2</sup> and is responsible for devising a Belgian policy on these issues.

It co-ordinates the departments involved and encourages the exchange of information. It also engages in a critical assessment of the results in this area. Based among other things on these assessments, it makes policy proposals and recommendations.

The following are some of the operational bodies involved in the fight against smuggling in human beings:

### DJSOC, Federal Police

The Serious and Organised Crime Directorate (DJSOC) or more specifically, the smuggling and human trafficking programme of the Federal Police does not just deal with the analysis and exchange of information, international or otherwise, but also provides field support for police officers. This can range from assistance on the ground to identifying and proposing good practices, drawing up opinions, establishing links between various Belgian and international surveys, facilitating contacts with bodies abroad and providing specialised support.

Specialist surveys are carried out by local units (in principle, one per judicial district, although in Brussels, there is one directorate in Brussels City and another in Hal-Vilvorde and in Hainaut, one for Charleroi and another for Mons-Tournai).

As to local police, some local research services (SLRs) have good skills and experience and an in-depth understanding of the specific features of the area and its geography.

### Board of Principal Crown Prosecutors

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<sup>1</sup> Royal Decree of 16 May 2004 on smuggling and trafficking in human beings

<sup>2</sup> Article 5 of the Royal Decree of 16 May 2004 on smuggling and trafficking in human beings

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The Minister of Justice draws up criminal policy directives including those relating to investigation and prosecution, having asked the opinion of the Board of Principal Crown Prosecutors (made up of the five principal crown prosecutors at the appeal courts).

The Board of Principal Crown Prosecutors acts under the authority of the Minister of Justice and takes decisions to ensure that criminal policy is devised and co-ordinated as consistently as possible and that the prosecutor's office functions properly.

Each principal prosecutor is assigned a number of subject areas. The Liège principal prosecutor is responsible for activities relating to smuggling and human trafficking. The principal prosecutor is supported by an expert network on smuggling and human trafficking and the day-to-day management and co-ordination of the activities of this network is carried out by a co-ordinating team.

This team is responsible for drawing up answers on the application of the law in response to questions from prosecutors on individual cases and for the development of the Board's criminal policy.

## Federal Prosecution Service

The Federal Prosecution Service covers the entire Belgian territory. It was set up to be able to deal more effectively with offences which go beyond the jurisdiction of local prosecutor's offices such as smuggling/trafficking in human beings, terrorism, organised crime and money laundering. The Federal Prosecution Service is also responsible in the event of serious infringements of international humanitarian law and for prosecuting Belgian military personnel who commit offences on foreign soil in times of peace.

It is made up of federal prosecutors managed by a principal federal prosecutor and is based in Brussels.

Within the Federal Prosecution Service, a contact prosecutor is appointed to deal with migrant smuggling issues. This prosecutor is also the SPOC (single point of contact) for international requests.



## LEGISLATIVE FRAMEWORK

Article 77 bis of the Law of 15 December 1980 on entry, residence, settlement and removal of foreign nationals defines the criminal offence of smuggling of human beings.

**SMUGGLING OF HUMAN BEINGS** consists of assistance provided for profit to persons illegally crossing borders or residing in a country.

Anyone who is not a national of a member state of the European Union or a State Party to an international convention on the crossing of its external borders by which Belgium is bound may be the victim of smuggling of human beings.

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Conversely, a Belgian or a national of an EU member state may never be a victim of smuggling of human beings (on Belgian or EU territory).

Profit making – pecuniary advantage – is an essential component of the offence of smuggling of human beings.

This is the distinction between smuggling of human beings and **ASSISTANCE WITH ILLEGAL IMMIGRATION**.

Such assistance is punished under Article 77 of the law on foreign nationals except if it is provided for mainly humanitarian reasons.

Hence, there are three major and separate types of criminal offence in Belgian legislation:

- trafficking in human beings;
- smuggling of human beings;
- assistance with the entry into and/or residence on Belgian territory of a person who is not a national of a member state of the European Union or a State Party to an international convention on the crossing of its external borders. In the last event, a humanitarian clause is included in the legislation.

The law punishes the smuggling of human beings with a one-to-five-year prison sentence and a fine of €500 to €50,000.

Fines are multiplied by the number of victims. The high fines imposed are proportionate to the considerable earnings of perpetrators of trafficking or smuggling in human beings.

The law provides for three levels of aggravating circumstances:

The first provides for a 5-to-10-year sentence and a fine of €750 to €75,000 if:

- the perpetrator has abused his or her authority over the victim or the authority or facilities conferred by his or her position;
- the perpetrator is a civil servant and was acting in the performance of his or her duties.

The second level raises the penalty to 10 to 15 years' imprisonment and a fine of €1,000 to €100,000 if:

- the offence was committed against a minor;
- the offence was committed by taking advantage of a person's vulnerability owing to their illegal or insecure administrative situation, precarious social circumstances, age, pregnancy, illness, disability or mental or physical impairment, such that the person had no real and acceptable choice but to submit to this exploitation;
- the offence was committed by making direct or indirect use of fraudulent practices, violence, threats or any form of coercion whatsoever, or with recourse to abduction, abuse of authority or deception;
- the offence was committed by offering or accepting payments or advantages of any kind in order to obtain the consent of a person in a position of authority over the victim;
- the victim's life was endangered deliberately or through gross negligence;

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- the offence has caused an apparently incurable illness, incapacity to work lasting for more than four months, complete loss of an organ or of use of an organ, or severe mutilation;
- the activity in question is a habitual activity;
- the offence constitutes an act of participation in the principal or subsidiary activity of an association, whether or not the offender directs operations.

The third level increases the penalty to 15 to 20 years' imprisonment and a fine of €1,000 to €150,000 if:

- the offence unintentionally resulted in the victim's death;
- the perpetrator(s) was(were) part of a criminal organisation.



## JUDICIAL FRAMEWORK

For the sake of the consistency of the legislative system set up by Articles 77 and 77bis of the law on foreign nationals cited above it was decided that a single circular of the Board of Principal Crown Prosecutors should be issued (COL 13/08) incorporating all the directives that apply in the area of smuggling of human beings and assistance with entry, residence and transit of foreign nationals in an illegal situation.

In the circular, guidelines were given to prosecutors on the application of Article 77 of the law on foreign nationals, paragraph 2 of which contains a clause absolving persons of liability where they provide assistance for mainly humanitarian reasons. The importance of this provision is highlighted by the experience in the main areas where migrants in an illegal situation gather together and are assisted by groupings of citizens who wish to help them.

It gives prosecutors pointers, enabling them to identify the existence of mainly humanitarian reasons absolving persons assisting persons residing illegally in Belgium of all criminal liability.

It also seeks to provide clear guidance on the investigation and prosecution of smuggling of human beings, taking account of the changes in the phenomenon, and to provide investigating services with the tools for them to identify perpetrators and victims.

Already since 2011 (through COL 4/2011), specialised prosecutors have been appointed to deal with the issue in each Crown prosecutor's office and in each Crown Counsel attached to the industrial tribunals and to manage the prosecution of human smuggling offences. These prosecutors are also members of the expert network on smuggling and trafficking in human beings of the Board of Principal Crown Prosecutors and are required to co-ordinate action taken in their judicial districts. In its appendices, the circular contains practical tools for investigators and prosecutors such as indicators, a policing scheme and a glossary.



## INTERNATIONAL CO-OPERATION

Federal Prosecution Service

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The contact prosecutor at the Federal Prosecution Service is a member of the Focus Group on Migrant Smuggling founded by Eurojust. The aim of this Focus Group is to optimise international co-operation in the field of migrant smuggling through:

- an understanding of judicial systems in various countries; and
- the pooling of best practices for complex investigations.

The contact prosecutor also takes part in the Council of Europe Network of Prosecutors on Migrant Smuggling.

Being present in international networks helps strengthen support for international work by fellow prosecutors in local prosecution offices.

One of the tasks of the Federal Prosecution Service is to support and facilitate international co-operation through European Investigation Orders or Joint Investigation Teams (JITs), in partnership with Eurojust's Belgian office, or alone.

## Directorate General of the Criminal Investigations Police – DJSOC – CENTREX TEH

The Directorate General's international co-operation tasks focus on two main areas:

- co-ordinating exchanges of police information with EU member states and with strategic and operational partners which are not members of the European Union. In so doing, its main discussion partners are EUROPOL, FRONTEX, EUROJUST and, for information flows outside Europe, INTERPOL;
- national and international co-ordination of investigations to create favourable conditions for co-ordinated international approach to investigations. For this purpose, it is developing a network of European and non-European partners with a view to facilitating interaction with the Belgian investigators working in Belgium's 14 judicial districts. Its goal is to manage the flow of information on criminal activity and develop an international approach to investigations and hence to be able to target criminal organisations in all the countries in which they are based.



## RELEVANT CASES

An analysis of the case law on smuggling of human beings is carried out every year by Myria, the independent national rapporteur, as part of its annual evaluation report: see the [reports on the Myria website](#).

It also publishes [summaries of court decisions](#) on its site.

There have been a very large number of court decisions on migrant smuggling and Myria has chosen to focus on three, the first of which is highly symbolic.

### ❖ **The Vietnamese smuggling network or Essex case:**

For a detailed analysis, see [Myria's 2022 annual report](#), pp.90-93 and 25-42,

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And the 2023 annual report (not yet published).

Here are the main points (taken from the report):

This case was initiated after the tragedy of 22 and 23 October 2019 in Essex, in the United Kingdom, which cost the lives of 39 Vietnamese smuggling victims, including several minors, who suffocated in a refrigerated container. In this extensive case file containing more than 25,000 pages, the Belgian part of the smuggling network was examined from an international perspective. This led to a conviction for human smuggling and criminal organisation.

The Belgian part of the Essex case is based on the two safehouses that housed many of the victims of the ill-fated illegal transport. These safehouses were managed by the Vietnamese criminal organisation responsible for the Essex tragedy.

It costs an average of EUR 13,000 to be smuggled from Vietnam to Europe, while from Europe to the United Kingdom it costs an average of EUR 12,000 to be regularly smuggled in a refrigerated truck. According to the victims' statements, the price could even be as high as EUR 40,000. The majority of the smuggling victims had to make an advance payment before their departure. When they arrived at the safehouse in the destination country, i.e. Germany and/or the United Kingdom, the money for the smuggling had to be paid so that the smuggled victims could be released.

The Essex tragedy led to an international investigation in the United Kingdom, France, Ireland, Germany and the Netherlands, as well as to the dismantling of a criminal organisation involved in smuggling Vietnamese migrants via various supply routes. There were several safehouses along the way, in particular in Germany, France and Belgium.

The investigation by the federal public prosecutor's office was launched immediately after the British authorities informed the Belgian authorities of the Essex tragedy on 23 October 2019, as the refrigerated container involved had been transported to the United Kingdom by ship via the port of Zeebrugge. An investigating judge was immediately appointed so that all necessary investigative actions could be carried out.

The police and the judiciary used social media as an essential investigative tool.

An agreement to set up a joint investigation team (JIT)<sup>150</sup> was concluded between Belgium, France, Ireland and the United Kingdom under the coordination of Eurojust and Europol. The main task of the JIT was to investigate the discovery of the bodies of the 39 victims of human smuggling, the journey of the deceased to the United Kingdom and previous incidents of human smuggling. The JIT agreement also emphasised the importance of the financial investigation: "The parties will initiate and complete the financial investigations necessary to achieve the objectives of the JIT".



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In addition, European Investigation Orders (EIO) were issued for Germany and the Netherlands, among other countries, on the basis of observations, phone taps and smuggler identifications.

In a judgment of 19 January 2022, the Bruges Criminal Court sentenced most of the 23 defendants prosecuted as perpetrators or co-perpetrators of, among other things, human smuggling with aggravating circumstances, including the fact that the offence resulted in the death of the victims without intent to kill. The defendants were also prosecuted for being leaders, or for having participated in the decision-making, or for having participated in the preparation or implementation of activities of a criminal organisation. In addition, several of them were prosecuted for fraudulent use of identity documents, for using false names and for illegal residence in Belgium.

The investigation relied on a variety of techniques, including camera footage from ports and ships, as well as from service stations along the route, analysis of GPS tracking of lorries, ANPR (automatic number plate recognition) for the lorries and taxis, neighbourhood inquiries, especially among port companies and safehouses, information from customs, tractor cargo searches, base station checks, retroactive phone number searches, emergency switchboard and phone operator searches, and IMEI (International Mobile Equipment Identity) searches. There were hearings, re-hearings and confrontations with the defendants, a hearing of a victim with a tour to identify addresses. There was a bank investigation and an examination of social media, including Facebook.

Several (i.e. ten) defendants and the public prosecutor's office appealed against the judgment of 19 January 2022. The appeal proceedings related to 16 defendants in total, namely the main defendants and the facilitators such as the owners of safehouses and the taxi drivers who transported the victims to the coastal areas of Belgium and France.

The **Ghent Court of Appeal** re-examined the case in two judgments of **23 February 2023**.

It upheld some convictions and acquittals and acquitted a taxi driver found guilty in the first instance. In the appeal court's view, this taxi driver realised, after three journeys, that something was wrong, so he immediately stopped working with the perpetrators.

## **Albanian human smuggling network with an undercover agent:**

See [Myria's annual report for 2021](#), p. 83 and the Court decision published on the Myria website: [Ghent Criminal Court, 6 January 2021 | Myria](#).

Ghent Criminal Court ruled on a case of human smuggling with aggravating circumstances in which the twelve defendants were all Albanian nationals. The offences ruled on by the court took place between 1 August 2018 and 25 September 2019

Police information revealed that a hotel in Ghent was being used as a transit point/safe house for Albanians wishing to be smuggled into the United Kingdom. With the approval of the competent judge, undercover agents were used to further identify the possible



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criminal organisation(s). The undercover officer made contact with the fourth defendant, whose phone was tapped. Following the phone tap, a European investigation order and the defendants' hearings, 12 people were identified for trial in this case.

The defendants were charged with participation in the decision-making of a criminal organisation and/ or being leaders in a criminal organisation, as well as smuggling and attempted smuggling of human beings with aggravating circumstances. The court considered it proven that the defendants were part of two criminal organisations, with various links between them. The leaders were either in the United Kingdom and in Belgium, or even temporarily in Albania. From there they controlled a network that smuggled people across the border into the United Kingdom. The people were usually placed alone or in pairs in the cabins of lorries or in private cars, but the possibility of organising transport by boat and/or yacht was also mentioned. A sum of EUR 15,000 per person was charged for the entire illegal transportation from Albania to the United Kingdom.

The court convicted the defendants for the offence of smuggling human beings with aggravating circumstances. Since the aggravating circumstance of endangering the life of a victim intentionally or by gross negligence could only be determined on the basis of an objective fact and it wasn't possible to prove to whom this specific transportation could be attributed, this aggravating circumstance was not accepted.

The court also convicted the defendants who thought they were cooperating in exchange for their own transportation to the United Kingdom.

The defendants were convicted of smuggling human beings with aggravating circumstances and attempted smuggling of human beings and sentenced to prison terms ranging from 40 months to eight years, fines ranging from EUR 40,000 to EUR 1,632,000, part of which were suspended, and a special confiscation of financial benefits ranging from EUR 625 to EUR 194,000.

Only the third defendant appealed. His conviction was upheld by Ghent Court of Appeal in a judgment of 26 October 2021. However, the court reduced his sentence.

## ❖ **Smuggling in small craft and sailboats: many decisions have been made on this subject**

See, in particular: Bruges Criminal Court, 6 May 2020: [Bruges Criminal Court, 6 May 2020 | Myria](#), and [Myria's annual report for 2021](#), p. 86.

In this case, four Albanian and Italian defendants were tried for human smuggling with the aggravating circumstances of abuse of the vulnerable situation of a person, endangering the life of the victim and one offence of participation in the activity of a criminal organisation.

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The case came to light when the maritime police in Ostend received a report from the coastguard on 14 June 2019 about a sailboat with engine problems. The captain who had initially reported this to the coastguard had noticed that none of the crew were familiar with maritime customs or rules and none of them seemed to have a command of the English language. There turned out to be nine people on board, none of whom appeared to be the skipper: all the passengers were Albanian nationals and stated that their intention was to sail from Antwerp to Lyon. After questioning one of the suspects, it emerged that the sailboat was in fact on its way to the United Kingdom. The Bruges public prosecutor's office then ordered arrests to be made, the Immigration Office to be contacted, and an official report to be drawn up for smuggling, so that the investigation could be started the same day.

The sailboat was very poorly equipped (no navigation equipment, or food and drink, no legally required items, GPS, lifeboat, etc.). It was also clearly overloaded, as it was only equipped for four people. The maritime police considered that the crossing wasn't safe and that life-threatening events could occur.

Through interviews with the vendor of the sailboat, photos taken by him and interviews with the director of the small port of Lillo and the marina master of Blankenberge, the first and second defendants were identified as human smugglers. In their statements, they denied being present at the purchase of the boat or having any knowledge of sailing, but the abovementioned evidence suggests otherwise. In a subsequent hearing, the second defendant admitted that he and the first defendant had smuggled people on the orders of others in order to be able to cross free of charge himself.

One smuggling victim stated that he was met at Brussels North by facilitators whose aim was to bring Albanians to the United Kingdom. In the case of another victim, there was a chance meeting in a café in Brussels and they were picked up by a car afterwards. The agreement was that they would pay between EUR 10,000 and EUR 12,000 or pounds sterling on arrival in the United Kingdom, some of it in several instalments thanks to their work. According to the investigators, the smuggling victims were not very cooperative with the investigation. For instance, one of them stated that he could not say who was operating the engine-powered sailboat, that he was "not free to say anything". He believed that "they" (the smugglers) had not let the group go to sea without "someone" experienced.

Pictures of very large sums of money were found on the main defendant's smartphone. In addition, photos of three gold bars were also found, which led investigators to suspect him of having invested in gold. Thanks to a European arrest warrant, the third and fourth defendants were extradited from Italy. They claimed that they were not guilty of smuggling. They were friends and the third defendant had accompanied the fourth defendant to buy a boat for a friend.

The court found the four defendants guilty of smuggling human beings. This was established through the statements of various persons, the photographs provided, the video of the rescue operation, the phone investigation, etc.

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The first defendant had no criminal record in Belgium, but he had already been definitively sentenced in Italy to six years and two months in prison, among other things, so that he was considered a repeat offender. He had put himself and the victims in a life-threatening situation and the court considered that it had been proven that he was more at the executive level of the association. He was sentenced to six years in prison and a fine of EUR 8,000 multiplied by the number of victims involved, i.e. seven.

The second defendant was sentenced to five years in prison and a fine of EUR 8,000 multiplied by the number of victims, as his role was considered somewhat less important than that of the first defendant.

The third and fourth defendants contested the aggravating circumstance of danger to life. The court considered that this was entirely justified, because the sailboat did not have many structural defects. Danger of death was only conferred by the concrete circumstances that arose on the day of the smuggling, in which they were not involved. The third defendant was sentenced to one year in prison, conditionally suspended for five years, and a fine of EUR 8,000. The fourth defendant was sentenced to two years in prison, conditionally suspended for five years, and a fine of EUR 8,000.

The criminal court's decision was final.