

Chapter 2

Example of a case in the road transport sector

Introduction

In this human trafficking case, Polish workers were exploited for labour in the context of posting carousels in the road transport sector, resulting in the involuntary manslaughter of two of them. The proceedings were particularly lengthy: the case was opened in 2012 and Ghent Court of Appeal did not hand down its final decision until 20 January 2022¹⁸⁰. While the coronavirus pandemic is partly responsible for the length of time that elapsed between the two dates, the defence exhausted all possible legal procedures. The appeal to the Court of Cassation was rejected in January 2023.

Six defendants, including the main Belgian defendant, his road transport company and related companies, were charged with various offences. Most of them were convicted of human trafficking, as well as breaches of social legislation, slumlordism, involuntary fire and involuntary manslaughter.

1. Network structure

The road transport company consisted of a network of several companies in Belgium and Poland, which had in fact been set up solely to carry out activities in and out of Belgium, and thus fraudulently escape the application of Belgian law. The main Belgian defendant was responsible for the day-to-day management and ran the company's operations from its headquarters in West Flanders.

The Polish workers were employed in various jobs as drivers, mechanics and pallet repairers. The only reason they were recruited was to make them work under more favourable pay and working conditions, without the employer having to comply with Belgian social security legislation and the associated contribution obligations. Many of the workers had not been the subject of a DIMONA declaration and/or were unable to provide posting documents.

The Polish and Belgian companies' central administrations and head offices were managed from Belgium. In Poland, there was just a letterbox, and no activity was carried out at that address. These elements were evidence of a carousel of postings deliberately set up under the guise of simultaneous employment in Belgium and Poland. It turned out that the same workers had been employed by successive Polish companies in Belgium. This employment always took place at the same location in West Flanders, with invariably the same employer, namely the sixth defendant. The people involved had never worked in Poland, only in Belgium. In the end, the system was such that the Polish workers themselves no longer knew which company they were working for. In reality, the so-called Polish subcontractor was simply a conduit for cheap labour to be employed in and out of Belgium. As a result, these employees were placed under the direct authority of the Belgian client.

¹⁸⁰ Ghent, 20 January 2022, 3rd ch. and West Flanders Crim. Court, Bruges division, 27 November 2020, ch. B17. See Myria, *Annual Report 2022, Trafficking and smuggling of human beings, Bound by debt*, pp. 82-83 and Myria's website (Case law).

2. Start of the investigation

a. | Start of the investigation

On 1 April 2012, the local fire brigade was called to a fire in a warehouse in West Flanders. It should be noted that the owner of the warehouse, the first defendant in this case, had not called the police directly. He had first called a friend who was a fireman to ask him what to do. The experts quickly established that there was no suspicion of malicious intent. The investigation was launched on the basis of these facts.

To the local authority's knowledge, the warehouse was used solely as a workshop. However, the investigation revealed that it did not just serve as a hangar for lorry tarpaulins and a cheese factory, but also as a place of accommodation for 16 people. The people housed in the hangar worked for the Polish road transport company.

Eight workers (drivers, mechanics, pallet repairers) and one visitor were on the ground floor at the time of the fire. Two Polish workers died, two were seriously injured, two were slightly injured and the others escaped unhurt. The exact cause of the fire could not be determined. It may have been caused by a fault in the electrical wiring, a lit cigarette or a badly as a place of heating appliance.

The offence of slumlordism was also established. The road transport company had taken advantage of the vulnerable situation of the Polish workers by making the hangar available for them to sleep in, thereby making an abnormal profit. The local authority had not issued a permit for the conversion of the workshop into accommodation.

Approximately three years later, a vehicle travelling on the A3 towards Brussels was intercepted by the police. The vehicle had attracted attention because of its two-part structure and the colours of the Belgian company. The investigation revealed that the individual had been in the vehicle for seven weeks and was being paid EUR 48 a day. Although the events in this social dumping case took place in Verviers, a link could be established with the road transport company based on internet searches. These facts confirmed the suspicions that the company was concealing an underlying carousel of fraudulent postings.

b. | Prior to the events

Before the investigation began, there were already suspicions of a fraudulent network and precarious working conditions. This is clear from the administrative measures taken before the hangar fire. In fact, at the beginning of 2012, the municipal secretary had instructed an official in charge of housing to conduct a quality survey following a suspicion that the building was being over-occupied by foreign workers. The officials present had not obtained permission from the occupants to enter the building and had no legal basis to carry out a search, which prevented them from completing their inspection. The road transport company was therefore able to continue its activities without any administrative measures being imposed.

The road transport company could not plead an error as it had actively taken steps to obtain information before the events occurred. In 2005, the company had asked a consultancy firm about the possibility of working with foreign subcontractors and arrangements for free accommodation and wages for Polish workers. As a result, the consultancy firm's legal expert was called as a witness later in the investigation.

In addition, an audit was carried out by another consultancy firm in 2008, which highlighted serious problems. The report described them as follows:

"Serious anomalies: no systematic and regular checks are planned or carried out on drivers (vehicle condition, completeness of equipment, availability of personal and on-board documents)". The audit called for corrective measures. In response, the company introduced a checklist to be completed by the drivers and checked annually for each lorry. This checklist had four sections: maintenance, safety, documents and maps. The documentation aspect was checked by a quality assurance manager during random checks. Since these checks began in mid-November, some 40 tractor units out of a total of 104 had already been inspected. Both Belgian and Polish lorries were involved. These facts have allowed Myria to establish that it is indeed possible to develop certain control systems within the framework of self-regulation, so that the principal can no longer deny a posteriori their knowledge of abuses.

c. | Criminal investigation

An examining magistrate was appointed shortly after the fire. The investigation was based on internet searches, a neighbourhood enquiry, a letter rogatory, searches and various hearings. First of all, internet searches were carried out to establish the links between the various fraudulent businesses.

At the start of the investigation, a neighbourhood enquiry was carried out, which provided a wealth of information about living conditions inside the warehouse. For the local residents, the presence of several people of foreign origin - probably Poles - in the hangar had attracted attention. Several Polish-registered cars were parked in front of the building. Mornings, afternoons and evenings were the busiest times, confirming the working hours of the Polish workers. The number of people passing through had been much higher in the past six months than previously. The building's doors were open at all times and the lights were always on. It is worth noting that local residents stressed that the Poles never caused a nuisance.

Several databases were consulted. The mailboxes of all the computers belonging to the road transport company were analysed. Most of the workers indicated that their contacts with the company were by phone, e-mail or post. Work contract renewals or adjustments were made by post or even by fax to the road transport company's office. A check of the computer files showed that the day-to-day management, running and operations of the companies were carried out by the Belgian principal defendant and managed from the head office in West Flanders.

The investigating judge, the federal judicial police (FJP) and the various inspection services consulted each other on the next steps in the investigation and agreed on the allocation of roles. It was therefore an integrated approach involving the various bodies. Searches were also carried out as part of the investigation. Payslips for all staff working for the road transport company were seized, as well as Polish vehicle registration certificates.

At the same time, the Belgian inspection services and police requested several investigative measures from the Polish authorities by way of a letter rogatory in 2012. Several searches were carried out and the Polish workers were interviewed. "It's a dog's life. I can not afford to spend a night in a hotel or eat in a restaurant. I have to provide for my family", explained a Polish driver employed by the road transport company. The hearings of the Polish workers confirmed the precariousness of their living conditions.

d. | Financial investigation

The road transport company sought to maximise its profits by hiring Polish workers at minimum rates. The financial investigation revealed that the company had managed to evade Belgian legislation on wages, working conditions and social security, thereby gaining an advantage over its competitors.

The Social Legislation Inspectorate (SLI) played an important role in this investigation. The SLI presented a detailed investigation report, especially concerning the defendants' material benefits with regard to all the workers. Only two employment contracts for lorry drivers were found. However, the FJP had repeatedly requested the employment contracts of all the workers. These contracts mentioned the Polish minimum monthly wage with a possible additional bonus, which depended, among other things, on the quality of their work. As one Polish driver put it, "Nobody knows how this bonus is calculated". The drivers were not paid for the overtime they worked. They were always paid the minimum wage, with no compensation for delays. In 2006, these Polish drivers were paid an average of €1.44 gross per hour. They also received a daily allowance of EUR 46 paid onto another account.

The Polish workers were subject to a work arrangement under which they worked an average of four weeks, followed by two weeks' rest in Poland. The investigation revealed that this regulation was not respected and that not all workers were paid during their rest weeks in Poland.

As part of the financial investigation, the annual balance sheets of the various companies involved were also requested and examined.

In the end, EUR 924,000 were confiscated on appeal.

3. Analysis of the victims

The labour prosecutor's office considered the five Polish workers in the warehouse to be victims of human trafficking owing to the precarious conditions that led to the fire. Several other Polish workers employed by the company also suffered damage.

The five victims of trafficking were housed in undignified conditions in the hangar. Everybody could come and go as they pleased. The doors were always open. The lights remained on at all times. The sanitary facilities were particularly rudimentary. There was only one sanitary block that included one shower, one toilet, one washbasin and two washing machines for 16 people. The hangar's infrastructure was not fire-resistant. When the fire broke out, the Poles had no way out. They were sleeping in a three-bed room with no direct access to the outside. Given the lack of checks by the fire brigade and the lack of permits from the authorities to convert the hangar into accommodation, it seemed almost inevitable that there would be casualties within the road transport company.

Several Polish workers were paid particularly low wages. A mechanic, for example, stated that he earned EUR 465 per month. The authorities revealed that one of the drivers earned an average of EUR 363.17 gross per month. Some Polish workers also stated that they were paid in cash. These low wages were supposed to be compensated by room and board. As mentioned above, accommodation conditions were unfit and substandard. There were also issues concerning food. Despite the company saying it provided sufficient food for its workers, the investigation revealed that the workers brought their own food from Poland and that local residents sometimes provided them with food.

In addition, Polish workers had to return to Poland if they needed medical treatment: "I'm planning to leave for Poland tomorrow. I urgently need treatment for my burns. I'm getting treatment in Poland because I'm insured there, otherwise I have to pay for everything myself here". These were the words of one of the Polish victims, who was burnt in the hangar fire and for whom the main defendant was responsible as his employer.

Lastly, the workers housed in the hangar had to provide their own heating. They said they had gone out and bought their own electric heaters to keep the hangar warm in winter.

The social and living conditions of the workers were appalling. They had to work particularly long days (more than 65 hours a week, six days a week) without compensation and for a miserable wage.

In the end, three protagonists filed a civil suit during the trial: the mother of one of the mechanics who died, Myria and an intermunicipal gas and electricity company.