



# French Jurisprudence on Illegal Immigrant Smuggling

ANALYSIS



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## 1. Purpose and methodology

This legal analysis provides an overview of relevant French jurisprudence on illegal immigrant smuggling. The analysis highlights the main *modus operandi* used by criminals, the relevant applicable legislation and the main challenges related to its application.

This product is based on the examination of a representative sample of 25 court cases amongst those made available by the French Desk at Eurojust and others collected through legal research.

These cases relate mostly to the issuance of official documents by illegal or fraudulent means, including but not limited to, forgery of IDs, marriage of convenience or fraudulent child recognition in view to facilitate the entry, residence and transit of immigrants. *Annex 2* provides a synopsis of the examined jurisprudence.

It is important to note that this work is part of a **broader project** conducted under the auspices of the Thematic Group on Illegal Immigrant Smuggling at Eurojust and is intended to analyse the key obstacles and solutions in investigations and prosecutions stemming from the case-law of other Member States most engaged in administering justice in relation to illegal immigrant smuggling. In this respect, the analysis of relevant Italian and Spanish jurisprudence on this same subject has already been carried out.

The final aim and envisaged product of this project is to reach – on the basis of an integrated analysis of all the domestic legal and judicial approaches assessed - a **holistic overview of the key challenges and best practices in prosecuting this crime across the EU**.

The analysis is essentially based on contributions from the French desk at Eurojust which communicated a series of emblematic cases. Open source information was also used. As no centralised database was consulted, the research has a strong empirical character when it comes to the analysis of the jurisprudence proper.

## 2. Background

With around 2.5 million non-EU foreigners<sup>1</sup>, France has always been a country of immigration.

For a long time France has been mainly a destination country for migrants. Family reunion, humanitarian grounds and studies have long served as the main channel for legal immigration in the recent decades.

In a situation of political instability, exacerbated by a severe economic crisis and at times open conflicts in most of the countries of origin, illegal immigration in France has seen a sharp increase. Since 1999 improvised camps in Calais and other cities are illustrative of the fact that France has also become a transit country<sup>2</sup>.

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<sup>1</sup> [http://www.insee.fr/fr/mobile/etudes/document.asp?reg\\_id=0&ref\\_id=T15F037](http://www.insee.fr/fr/mobile/etudes/document.asp?reg_id=0&ref_id=T15F037)

<sup>2</sup> Irregular migrants are for a significant part heading towards the UK, Germany and Scandinavian countries.

The historical and linguistic links in particular with North African countries facilitate irregular immigration. In this context, the large communities of third country nationals already present in France also play an important role of interface with incoming migrants. A number of cases of contentious immigration are related to family situation, as exemplified by one case before the ECHR in 2011<sup>3</sup> related to the provision of assistance to an over-stayer by a close family member.

France has for a long time been confronted with irregular migration, many being over-stayers, as also indicated by numerous cases of “*sans papiers*” reported by the media.

As a result, illegal immigration has been subject of intense political debates. This has translated into an active involvement of the civil society and a constant coverage by the media. The matter has in the recent decades been increasingly politicised. Legislation is abundant and always gave raise to intense debates, as indicated by the recent adoption in March 2016 of the law on the rights to foreigners in France<sup>4</sup>.

Yet another example of irregular migration-related issue is the formation of illegal camps. One of the most emblematic was the one located in Calais, within close range of the border with the UK. In September 2016, the French Interior Minister announced that the informal “Jungle” camp will be gradually dismantled and new accommodations will be created in France to host the irregular migrants currently staying there. The “Jungle” until it was effectively dismantled at the end of 2016 hosted nearly 7,000 irregular migrants, number that sharply increased in the recent months. This raises a number of practical and legal issues France has to deal with, notably the way humanitarian assistance is handled by French authorities.

With intense pressures at the borders and a fertile soil for facilitation of irregular migration, conditions are met to make illegal immigration a lucrative business for Organised Criminal Groups, OCGs. As indicated by the constant increase of prosecution statistics<sup>5</sup> of smuggling-related offences over the past six years, the judicial system attempts to catch up; thriving to balance fundamental rights and the application of the law in a context of economic crisis.

### 3. Modus operandi

Two types of *modus operandi* stem from the jurisprudence analysed.

The first one is the smuggling of immigrants towards countries of final destination, predominantly the UK and Scandinavian countries, by facilitating their entry and transit through France and their subsequent transfer. In this case scenario, the OCG acts as a facilitator and the branch operating in France is a segment of a bigger Group. While this feature is not prominent in

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<sup>3</sup> See ECtHR judgment: *Mallah v/France* dated 10 November 2011 (no 29681/08) where a national of Morocco, married to a French national, was sheltered by his father in law while overstaying in France. The latter was prosecuted for facilitating the stay of his son in law. While the Court decided that Art. 8 was not breached, some scholars focussed at the time on the dissenting opinion of one of the judges who thought otherwise.

<sup>4</sup> “*Loi relative au droit des étrangers en France*”, Law no 2016-274 dated 7 March 2016.

<sup>5</sup> From 1 149 cases of prosecution in 2009 to 1 834 in 2014. Source: European Parliament ref PE 536.490 “*Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants*”, 2016, page 88.

the cases analysed, a number of occurrences were reported in 2016 near the Italian border and concern illegal immigrant transiting through France.

The second one, which is far more represented in the jurisprudence analysed, aims at obtaining French ID documents, through fraudulent means, such as marriages of convenience<sup>6</sup> or child recognition. The case law illustrates that the purpose of obtaining such documents is to either be able to reside in another Member State or to regularise the situation in France. This trend is on the raise as the number of OCGs fraudulently using ID jumped from 48 % in 2013 to 78 % in 2014<sup>7</sup>.

More specifically, marriages of convenience emerge as a privileged *modus operandi* for legalising the stay of irregular migrants already present in France (over-stayers). The jurisprudence indicates cases where marriages of convenience are used to facilitate residence in the preferred country of destination which is not necessarily France. The OCG organises the sham marriages by providing various services such as the provision of fraudulently obtained administrative documents (e.g. marriage certificates, residence certificate) or facilitating travel arrangements for migrants to reach the location of the marriage. They also can get support from legal professionals, corrupt officials at the registry office or in foreign administrations. These enablers may help with speeding up the registration processes or fraudulently obtain genuine documents to be counterfeited by the OCG.

## 4. Highlights of the case law

### 4.1. Common features

Suspects are generally charged with fraudulently obtaining official documents from administrative authorities, attempting to fraudulently obtaining official documents from administrative authorities and knowingly possessing falsified documents.

These crimes are mainly prescribed in the penal code. The latter is read in the context of facilitating the illegal entry, transit and or residence of non EU citizens, in contravention to EU and domestic law and as regulated by the Code of Entry and Stay of Aliens and Right of Asylum.

While determining the facts, the analysis of the jurisprudence revealed that investigations relied, *inter alia*, on statements of witnesses, surveillance and telephone interceptions.

Courts have used as aggravating circumstances the fact that the vast majority of the accused were operating in the context of an OCG. As a result, penalties of imprisonment and fines, alone or in

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<sup>6</sup> A marriage of convenience, or “sham marriage”, is defined as a marriage contracted for the sole purpose of enabling the person concerned to enter or reside in an EU Member State. The main parties involved are usually 1) a third country national (non-EU); 2) a European Economic Area (EEA) national; and, 3) an organiser which often belongs to a criminal group. Through marriage, the third country national obtains a residence permit, can apply for citizenship in the destination country and may request family reunification.

<sup>7</sup> Such trends are reflected by the yearly reports to the Parliament published in 2014 and 2015. In 2014, a total of 226 OCGs were dismantled, an increase by 13 as compared to 2013. Investigations concern 1 834 individuals who were apprehended amongst whom 683 were summoned before a judge. 110 OCGs facilitated the illegal entry and/or residence, 02 were in organising sham marriages, 12 were specialised in fraudulent child recognition and 102 were involved in forged/fraudulently obtained ID documents.

combination, were imposed with a quasi-systematic entry ban ranging from a couple of month to an indefinite period.

The fabrication of identification documents or the provision of stolen ID documents to immigrants is a means apparently commonly used and facilitated by the fact the immigrants may already know the language. The fabricated or stolen documents are either passports, ID cards or other official documents, such as fraudulently established housing certificates or certificates of nationality in order to obtain an authentic ID documents. As a result, in two cases, the civil registry offices of French municipalities triggered the investigations.

Child recognitions and marriages of convenience were also used as means of fraudulently obtaining French ID documents or certificates of nationality.

A significant number of cases analysed refer to relatively small scale criminal activities. Some refer to individuals who facilitated the residence of irregular migrants by renting an apartment (case # 18), by transporting them (case #20) or by providing shelter (cases #19 and 25). Each of the cases involved only one perpetrator operating outside an OCG. A number of cases revolved around the fact that French nationals provided **spontaneous assistance** to illegal immigrants. In that context, the sentences are usually relatively low and amount in general to a fine and/ or imprisonment with suspended sentence.

The nexus between irregular smuggling, Trafficking in Human Beings and forced labour was illustrated in two cases (cases #16 and 17). The two cases were of relatively small scale as they concerned respectively 2 and 12 individuals. In both cases the conditions in which the migrants were working, were poor.

Finally, the pronouncement of guilt in a few situations of assistance to illegally staying aliens seems to have evolved. Cases # 22 and 23 are emblematic of a certain conception of the matter. Case #22 for instance refers to facts which took place in 1996, when the first instance judgement found that the accused, after his marriage with an alien he had assisted in illegally staying in France, is rightfully prosecuted, but without declaring him guilty. However by virtue of the application of Art. 132-59 of the penal code (absolute discharge based on the cessation of the harm done to the society) the accused was not sentenced due to the regularisation of the situation of his partner. The second instance decision overturned the decision and pronounced the accused guilty, without however pronouncing any sanction and without even registering the case in the accused's criminal record. While both judgments came to the same conclusion, the second one emphasised the guilt of the accused. Case #24, the court was harsher as it condemned the husband to 6 months imprisonment but with a suspended sentence, though.

#### 4.2. Other features

The **international character** of the illegal activities mentioned in some of the court decisions is noteworthy. For example, the delivery of French ID documents (through marriage of convenience) was not intended for someone to reside in France but in one case was meant to help obtain a Spanish resident permit. Similarly, one case referred to marriages of convenience organised between nationals from Cameroon and French spouses. The marriages were taking place in Denmark to the benefit of Cameroon nationals who, for some of them, were residing in Germany.

In some of the cases, it is important to underline that the courts established that **the OCGs were extremely well organised** with a clear division of tasks, a hierarchical structure and strong organisational abilities in order to arrange shelter and transportation. One decision mentioned the “professionalism” of the members of the OCGs.

French jurisprudence is illustrative of the nexus **between illegal immigration and the migration routes**. For example, reports indicate that migrants are now bypassing the (closed since 2015) shore borders with Italy and instead using the mountain roads to reach France. As a result, tribunals in Nice, an area bordering Italy, convicted “ *passeurs* ” to imprisonment sentences ranging from 18 months to 3 years in 12 cases between May and July 2016. Penalties are reported to be higher than the ones pronounced in 2015.<sup>8</sup>

Some of the cases analysed (case #13 and 14) refer to the alleged existence of a **notorious marital relationship** between a French national and an irregular migrant to invoke immunity from prosecution. The jurisprudence seems abundant on that topic and the court, notably in case #14, looked specifically in the necessity to ensure that the said relationship be accompanied by “a unequivocal minimum level of reciprocal love, which should be public and lasting”.

## 5. Applicable Legal Framework

### 5.1. General legal framework

#### 5.1.1. Procedural law

The penal code provides in Art. 113-2 that French penal law applies to **any crime which constitutive facts occurred on French territory**, while Art. 113-6 provides that the French penal law is applicable to French nationals who committed a crime, including outside French borders. As to a “*délit*”<sup>9</sup>, it must also be prescribed in the third country where it was committed for French law to apply.

Art. 113-7 further reads that French law applies **to any crime or any “*délit*” punishable of an imprisonment sentence**, irrelevant of whether the latter was committed outside French territory, by a French national or a foreigner, as long as the victim is a French national.

The Code of Entry and Stay of Aliens and Right of Asylum, which regulates smuggling specifically (see below) also applies to irregular entry or residence in **any country that is part of the Schengen Area**.

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<sup>8</sup> Source: Press conference by the Prosecutor in Nice on 5 September 2016, reported in the local press. <http://www.lorientlejour.com/article/1005596/de-plus-en-plus-de-migrants-tentent-de-passer-par-les-montagnes-pres-de-nice.html>

<sup>9</sup> Under Art. 11-1 of the penal code, offences are classified according to their seriousness as crimes, *délits* and *contravention*. The type of offence determines what kind of penalty can be imposed. A *délit* is punishable by a prison sentence of up to ten years and by a fine of at least 3750 euros. The statute of limitation is 3 years. A crime carries a longer prison sentence (from 15 years to life) and has a statute of limitation of 5 years while a *contravention* is punishable by a fine only.

Finally, the penal code provides in Art. 131-10 **complementary sanctions** aimed at restricting, forfeiting or terminating a right. In this context, Art. 131-30 of the penal code regulates specifically **entry bans**. Such sanction is extensively used in the analysed case law. In 2010, the French Ministry of Interior reported 3.750 entry bans were pronounced in complement to 13.456 criminal convictions.

The entry ban can be pronounced if an accused was convicted for a crime or a 'délit' which entails deportation. Limitations exist and are regulated in Art. 131-30-1 and 131-30-2. Such limitations concern, for example, migrants married to a French national or having custody of an underage child, yet under certain conditions. The entry ban has been subject to numerous comments. It has been criticised by a number of NGOs and political leaders saying that it amounts as a double punishment for the same offence. It is often referred to as "double peine". For the sake of completeness, entry bans can also be pronounced by the administrative judge. In this case however they are disconnected from criminal prosecutions. Such cases are not the subject of this analysis.

### 5.1.2. Substantive law

As opposed to some Member States, such as Hungary, the Netherlands and Spain which regulate smuggling in their criminal codes, France (like countries such as Italy, Greece, Germany and the UK) regulates the matter in the framework of **immigration law**<sup>10</sup>, i.e. the Code of Entry and Stay of Aliens and Right of Asylum<sup>11</sup>.

French law **punishes facilitation of entry, transit and residence of illegal immigrants with fines and imprisonment** alone or in combination.

According to French law, **the purpose of obtaining a financial or other material benefit** is not a constitutive element of the facilitation of illegal entry, movement or residence of aliens but rather an aggravating circumstance, as per Art. 622-1 of the Code of Entry and Stay of Aliens and Right of Asylum. In this context, French law punishes the renting of accommodation to migrants in an irregular situation, unless conditions related to humanitarian assistance are met, see *infra under this section*.

Art. L 622-5 of the Code of Entry and Stay of Aliens and Right of Asylum, determines **higher penalties in case the criminal activities are conducted in the context of an OCG**. This article also prescribes four other situations when the penalties can be increased from originally 5 years imprisonment and 30.000 Euros fine to 10 years of imprisonment and 750.000 Euros fine.

The Code of Entry and Stay of Aliens and Right of Asylum, and specifically Art. L 622-1, L 622-3, L 622-5, L 622-5, L 622-6 and L 622-7, govern the definitions of the crime and the sanctions **related to individuals who directly or indirectly facilitate or attempt to facilitate the illegal entry, transit or residence of aliens**.

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<sup>10</sup> Investigations are usually entrusted to dedicated structures. One is the French Office for the Suppression of Unauthorised Immigration and the Employment of Foreigners without Residence Permits (OCRIEST) while the other is the French Unit for the Operational Coordination of Measures to Combat Trafficking and Exploitation of Migrants (UCOLTEM) within the Central Directorate of the French Border Police.

<sup>11</sup> The Code of Entry and Stay of Aliens and of the Right of Asylum (CESEDA) was created by the law 2003-1119 which amended Ordinance No 45-2658 and Ordinance No 2004-1248 of 25 November, creating the Code of Entry and Stay of Aliens and of the Right of Asylum.



This said, Art. L 622-4 of the Code of Entry and Stay of Aliens and Right of Asylum **exempts from punishment** at least some form of assistance to irregular migrants based **on humanitarian grounds**. This provision already existed but was amended last by the law *no 2012-1560* dated 31 December 2012.

More specifically, Art. L 622-4 provides for three situations when assistance to an alien in the context of stay shall not be subject to criminal proceedings. It applies when assistance is provided by 1. descendants or relatives in the ascending line of the alien, their spouse, the brother and sisters of the alien or their spouse; 2. the spouse of the alien, the person known to be in a marital situation with him/her, or descendants or relatives in ascending line, brothers and sisters of the spouse of the alien or of the person known to be living in a marital situation with him/her; and 3. any legal or natural person, where the alleged act has been performed without any direct or indirect payment and has consisted of the provision of legal advice, food, housing services or medical care aimed at ensuring dignified and decent living conditions for the alien or any other assistance aiming at preserving his/her dignity and natural integrity. The exceptions set out in points 1 and 2 do not apply if the alien has received assistance for irregular residence, lives in a situation of polygamy or where this alien is the spouse of a person living in a situation of polygamy residing in France with the first spouse.

The relaxation of the legislation in this respect echoes a report of 2011<sup>12</sup> (published prior to the change of legislation) from the National Advisory Committee on Human Rights, CNCDH,<sup>13</sup> which outlined a number of police and criminal proceedings against people who provided selfless assistance to irregular immigrants to enter or stay in France. The exemption from prosecution on humanitarian grounds was explicitly invoked by the defence and acknowledged by the court in the Case #12 involving a UK national who tried to smuggle a four-year-old Afghan child into the UK.

Art. L 623-1 of the Code of Entry and Stay of Aliens and Right of Asylum governs the penalties related to the **organisation of marriage of convenience and child recognition**. The minimal sanctions are of 5 years imprisonment and 15.000 Euros fine and can go up to 10 years imprisonment and 750.000 Euros fine, if committed in the context of an OCG.

Art. 441-1 defines **forged document**. The article is followed by a series of specific provisions and the sanctions attached to the situations they refer to. Sanctions provided are of 3 year imprisonment and 45.000 Euros fine. This is notably the case for **the supply of fraudulently obtained official administrative documents conferring rights or an identity**. This situation is governed by Art. 441-5 of the penal code. The latter prescribes that the sanction can be of 5 years imprisonment and 75.000 Euros fine. Specific provisions regulate in more details the cases when the documents are, for example, produced by an official bearing a public authority (Art. 441-2), being in possession of such documents (Art. 441-3) or when an authentic document is falsified and used as such (Art. 441-7). Penalties vary accordingly and can be of a maximum of 10 years imprisonment and of a 150.000 Euros fine.

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<sup>12</sup> See CNCDH, *Note sur les cas d'application du délit d'aide à l'entrée, à la circulation et au séjour irréguliers*, 11 January 2011, pp. 1-18 (<http://veillejuridiquedelafapil.20minutes-blogs.fr/media/00/02/542816678.pdf>).

<sup>13</sup> Commission Nationale Consultative des Droits de l'Homme.

Finally, French law provides for a series of specific additional sanctions such as being placed under judicial supervision, judicial winding-up order, temporary or permanent disqualification from the practice of commercial activities, and exclusion from entitlements of public benefits.

Over 2013, 2014 and 2015, the repressive arsenal translated into punishments of fines, imprisonment. A detailed overview is provided in the tables below.

The tables confirm to a large extent the findings stemming from the jurisprudence.

Indeed, the number of fixed imprisonment corresponds roughly to one third of the pronounced sentences. This could be indicative that a good part of the cases adjudicated in the last three years are to a large extent connected to small scale offenders who benefit from either mitigating circumstances such as the absence of criminal records.

The ratio (about 1.5 to 9) of sentences between crimes committed in the context of an OCG and the general figure would tend to indicate that OCG forms a relatively small part of the cases adjudicated or that the latter could not be proved.

This may be corroborated by the fact that few, if any, of the cases refer to international cooperation at judicial level in the analysed jurisprudence.

*See table on next page.*

**Summary of sentencing pronounced on the ground of facilitation of illegal entry and stay.**

Main sentences pronounced, calculated on convictions for single offences											
Year	Convictions Main offence	Convictions Single offence	Imprisonment	Including fixed (wholly or in part)	Including fully suspended sentences	Number of fixed prison sentences (months)	Total number of sentences pronounced	Average number of all fixed fines served	Substitution measures	Penalty exemptions	Educational measures and sanctions
2013	909	541	448	226	222	12	123	1 660 €	10	6	2
2014	959	642	571	275	296	11	130	1 696 €	12	7	0
2015*	1 026	763	705	371	334	11	121	2 348 €	9	4	1

\*2015 : provisional data. Source : National registry of criminal record (*Casier judiciaire national*), French Ministry of Justice.

**This table is based on the previous one and includes the sentencing pronounced in the context of an OCG.**

Main sentences pronounced, calculated on convictions for single offences											
Year	Convictions Main offence	Convictions Single offence	Imprisonment	Including fixed (wholly or in part)	Including fully suspended sentences	Number of fixed prison sentences (months)	Total number of sentences pronounced	Average number of all fixed fines served	Substitution measures	Penalty exemptions	Educational measures and sanctions
2013	173	78	77	63	14	22,8	10	6 500 €	0	0	0
2014	116	65	65	56	9	19,5	7	6 143 €	0	0	0
2015*	170	72	72	59	13	22,4	16	8 125 €	0	0	0

\*2015 : provisional data. Source : National registry of criminal records (*Casier judiciaire national*), French Ministry of Justice.

## 5.2. Procedural challenges

Expectedly, most of the cases analysed have a transnational character. The judgement rendered by the court of Appeal of Rennes (case #10) is topical in this respect. In this particular case, the accused facilitated the recruitment of spouses and organised marriages of convenience. On at least one occurrence, the French she-spouse was paid and transported to Denmark for the wedding and was subsequently transported to Germany where she was required to undertake administrative procedures to the benefit of her third country national husband. Similarly, case #11 (first instance) /#7 (appeal) refers to an OCG which was using fraudulently obtained French marriage certificates to obtain resident permits in Spain to the benefit of Tunisian nationals.

In this context, **the issue of international cooperation arises**. Limited references could be found in the sample of cases. Germany (case # 9) and Spain (case #11/7) provided information via EUROPOL which resulted in triggering the investigation in France and/or providing information to that effect.

On a related note, in the case of the court of Appeal of Rennes (case # 10), the court overturned the decision of first instance related to one of the accused highlighting *inter alia* that in the case of facilitation of marriages of convenience, some occurrences failed to have the sole aim to either obtain the French citizenship or a resident permit on French territory and **thus were not being constitutive of a crime according to French law**. The court further explains that, although French law is applicable in that the spouses were recruited in France, the marriages at stake aimed at facilitating the regularisation of Cameroonian nationals in Germany rather than obtaining a residence permit in France or the French nationality. No referral to German courts could be found in the case proper.

Investigations unveiled that in the vast majority of the cases location and traffic data played a critical role. In this context the decision of the CJEU dated 8 April 2014 to invalidate Directive 2006/24/EC **on the retention of data** generated or processed in connection with the provision of publically available communication of public communication networks and amending Directive 2002/58/EC, may have a significant impact in the context of international cooperation. The judgement of the CJEU dated 21 December 2016<sup>14</sup> on a related topic in cases C-203/15 and C-698/15 may also have an impact on national retention regimes and consequently on judicial cooperation.

A report from the CNCDH produced in 2011<sup>15</sup> outlines, *inter alia*, that a number of police and criminal proceedings were launched against **individuals who have provided selfless assistance to irregular immigrants** to enter or stay in France. The Report found that “*some conduct, which may be covered by the ‘humanitarian exemption’, is being criminalised, as courts are reluctant to apply the exemption*”. The CNCDH concluded that, “*owing to the vagueness and ambiguity of the current law, ‘mere acts of solidarity’ are still being punished, or at least trigger the opening of investigations by the police and the initiation of public prosecutions*”. Case #23 is illustrative of the ambiguous role of some members of specialised NGOs. While the first instance court acquitted a member of an NGO based on the lack of benefit received in exchange and on the

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<sup>14</sup>

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=186492&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=511366>

<sup>15</sup> See *ibid*.

rationale that she acted on humanitarian grounds, the Court of Appeal found otherwise arguing that the NGO member in question was instrumental in organising the sham marriage and the (proved to be) fake child recognition, and sentenced her to 2 months suspended sentence of imprisonment.

A Study<sup>16</sup>, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, and quoting the report from the CNCDH, highlights that in a number of cases 'assistance on humanitarian grounds' was used to dismiss the proceedings brought against notably charity workers at an early stage of the procedure. The Report used the example of an NGO volunteer, who was arrested by the border police near Calais while she was driving injured undocumented migrants to the hospital in her car. She was wearing a jacket with the logo of her organisation. She was then released and not charged with any offence.

Finally, the CNCDH quoted by the Study of the European Parliament<sup>17</sup> conducted an analysis of court decisions involving humanitarian assistance. Of the eighteen facilitation cases, eight involved people who were **co-habiting or about to be married**, or at least maintaining a stable emotional relationship. In one of these cases, C was charged with providing material assistance to two individuals (T and M) who were residing in France irregularly. T had applied for political asylum and was granted refugee status. The Court of Boulogne-sur-Mer held that the defendant was openly co-habiting with T, and ruled a 'partial release' in favour of C. The prosecution appealed the decision. The Court of Appeal revoked the decision declaring C guilty of the crime of facilitation of residence, because it concluded that they were not openly cohabitating. Yet, it exempted her from sanction.<sup>18</sup>

Other illustrations of this feature of French jurisprudence is the case reported by the CNCDH involving a suspect who provided shelter to an unaccompanied minor or the case where the suspect drove an illegally staying alien to a supermarket. In both instances the humanitarian clause was not applied by the courts.<sup>19</sup>

These cases are illustrative of the balance sought by the courts to, on one hand, **ensure the repression of the offence and, on the other hand, find a sentencing commensurate to the specific context** in which the offence was committed.

While the EU Parliament, in the above mentioned study acknowledges that the cases reported are prior to the reform of 2012 which relaxed the wording of the humanitarian immunity, it nonetheless notes that they are "*useful for understanding [...] the **problems arising from the interpretation of the exemption based on humanitarian motives***".

Similar cases were analysed in the course of this study. They are illustrated in case #13 and 14 as they refer to the alleged existence of a notorious marital relationship between a French national and an irregular migrants to invoke the application of Art. 622-4 2 para of the Code of Code of Entry and Stay of Aliens and Right of Asylum and, thus, claim immunity from prosecution. In the

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<sup>16</sup> "Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants", Ref 536-490, 2016, page 88.

<sup>17</sup> See *ibid*, on page 89.

<sup>18</sup> Douai Appeal Court, 14 November 2006.

<sup>19</sup> See "*Note sur les cas d'application du délit d'aide à l'entrée, à la circulation et au séjour irréguliers*", CNCDH, 6 janvier 2011, page 6

two instances, the courts looked at the actual translation in reality of the marital relationship. Case #14, in this respect, highlighted specifically the necessity to ensure that the said relationship be accompanied by “a unequivocal minimum level of reciprocal love, be publically known and lasting”.

## 6. Recent legislative developments

One trend relates to **the easing of some aspects of the legislation**.

This is mainly the case in relation to the **facilitation of residence on humanitarian ground**. The Code of Entry and Stay of Aliens and Right of Asylum was amended to provide immunity from prosecution on humanitarian grounds.

The Code was last amended by the law dated 31 December 2012 (Ref. n° 2012-1560) which: extends the immunity to: (i) descendants or relatives in the ascending line of the alien, their spouse, the brother and sisters of the alien or their spouse, including when the spouses are separated, or live separately *de facto* or by law, (ii) to the spouse of the alien proper, including when the spouses are separated, or live separately *de facto* or by law, (iii) the descendants or relatives in the ascending line of the alien, their spouse, the brother and sisters of the alien or their spouse and (iv) any legal or natural person, where the alleged act has been performed without any direct or indirect payment and consisted of the provision of legal advice, food, housing services or medical care aimed at ensuring dignified and decent living conditions for the alien or any other assistance aiming at preserving his/her dignity and natural integrity. In this respect, the previous conditions related to the necessity for the action to be linked to an actual and imminent danger threatening the alien and the necessary proportionality between the action and the danger were repealed. These changes are now reflected in Art. L 622-4 of the Code of Entry and Stay of Aliens and Right of Asylum.

Along the same line, the legislation was relaxed **in relation to entry bans**. Entry bans of definite or limited duration are usually associated with a criminal conviction. A first relaxation occurred in October 1981 and another one in November 2003. Both expanded the category of foreigners who cannot be subject of entry bans and as a consequence his expulsion. This is for example the case for foreigners who have lived more than 20 years in France or who have been married to a French national for more than three years.

Second, the legislation has adjusted **to create new forms of crimes**. Such is highlighted by the judgement of the Court of Appeal of Rennes (case #10) where the court based its decision on the law dated 26 November 2003 (Ref. n° 2003-119) which criminalises the fact to marry or to facilitate the marriage with the sole aim to obtain or facilitate the issuance of French nationality.<sup>20</sup> This change is reflected in Art. L-623-1 of the Code of Code of Entry and Stay of Aliens and Right of Asylum. Similarly the recently adopted law on the rights of foreigners (Law no 2016-274 dated 7 March 2016) provides for a 5-year imprisonment and a 75.000 Euros fine for the use of an ID or

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<sup>20</sup> While the majority of the member States sanction those organising marriages of convenience can take place under the offence of migrant smuggling, or other related offences, in FR, BE and PT legislation explicitly criminalises marriages of convenience as a separate offence. Source: ad hoc consultation of member States in the framework of the [Expert Group on the right to free movement of persons, FREEMO](#).

of a travel document belonging to a third person. The recurrent use of such document is considered as an aggravating circumstance (Art. 441-8 of the penal code). So will be punished the rightful owner of these documents. The same law also criminalises the breach of entry ban and other coercive measures of three year imprisonment as reflected in the new version of Art. L. 624-1-1 of the Code of Entry and Stay of Aliens and Right of Asylum.

Finally, recently adopted legislation **tends to increase the penalties already existing**. This is notably the case for air and maritime carriers if they fail to properly check travel documents of third country nationals. The maximum penalty was increased from 5.000 to 10.000 Euros, as reflected in Art. L. 625-1 of the Code of Entry and Stay of Aliens and Right of Asylum.<sup>21</sup>

## 7. Lessons learned

One case refers to the fact that an accused participated in at least nine similar operations aimed at fraudulently obtaining French identity cards for foreigners. He chose the most appropriate municipalities to carry out the plan. This example reveals the necessity to raise awareness of personnel working in the administration in particular the civil registry offices. As a matter of fact the jurisprudence highlighted that on three occasions at least (Cases #3, 4 and 23) the investigations were triggered by employees of the civil registry offices. A **multidisciplinary approach** might therefore be beneficial to counter that specific aspect of smuggling, along with the fact that smuggling is often closely linked to other types of criminality, such as child recognition or fraudulent production of administrative documents.

Personnel working in administrative services may be exposed to the risk of corruption, as illustrated by Case #15. The case was indicative of the necessity to take appropriate measures to raise awareness of personnel dealing with the processing of requests related to civil registry and deter them from engaging into corrupt behaviours.

More generally, as indicated in Annex 1, some geographical areas are more at risk. The jurisdiction of Boulogne sur Mer, Paris and Dunkerque are the most exposed to this crime type.

As mentioned by the Minister of Justice in 2014<sup>22</sup>, recent years have seen OCGs evolving into ever more complex structures. This trend calls for **further cooperation at both national and international level**. In the communication of the Minister, the latter specifically refers to the benefit of using JITs financed by Eurojust.

Perceived risk of criminalisation by civil society organisations or individuals assisting or working with irregular migrants gave raise to numerous cases and debates in the doctrine and within the Parliament. The constant relaxation of the provisions governing assistance on humanitarian grounds is illustrative of this trend. In France, the application of the humanitarian clause has generated a marginal number of cases and the relaxation of the legislation in 2012 has not contributed to any increase of such cases.

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<sup>21</sup> Law 2016/274 dated 7 March 2016, Art. 52

<sup>22</sup> Official Bulletin of the Ministry of Justice n°2015-12, dated 31 December 2015 – JUSD1528583C, page 3.

Annex 1: Geographical distribution of sanctions pronounced on the count of facilitation of entry and stay (Punishments pronounced by the *Tribunaux de Grande Instance*)

Tribunal (Tribunal de Grande Instance)	2013		2014		2015*	
	Punishments pronounced on the count of facilitation to illegal entry and stay	<i>Including in an OCG framework</i>	Punishments pronounced on the count of facilitation to illegal entry and stay	<i>Including in an OCG framework</i>	Punishments pronounced on the count of facilitation to illegal entry and stay	<i>Including in an OCG framework</i>
<b>Total</b>	<b>909</b>	<b>173</b>	<b>959</b>	<b>116</b>	<b>1026</b>	<b>170</b>
Boulogne/M	167	25	231	30	313	14
Mamoudzou	119		98		22	
Paris	87	67	16	5	64	48
Dunkerque	27	5	25		66	15
Bobigny	41	12	35	9	36	6
Cayenne	47	1	28	2	30	1
Albertville	18		45	7	35	5
Nice	5		23		56	10
Marseille	19	3	35		17	
CA Mamoudzou	2		30		19	
Lille	15	1	15	10	17	7
Strasbourg	16		16		11	
Fort-de-France	5		22		15	
CA Douai	12	4	6	2	22	3
Perpignan	20	1	12		6	
Bonneville	7		14		15	
Lyon	9	4	16		9	
Caen	8	8	9	1	13	
Meaux	5		18	6	7	
Court of Appeal of Paris	11	5	9	4	9	5
Rennes	5		7		17	17
Cherbourg	4		11	3	13	
Pointe-à-Pitre	14		7	2	7	4
CA Fort-de-France	14		3		9	1
Créteil	4		9	4	11	8
Basse-Terre	13	9	6	2	2	
Nanterre	4		15	7	2	
Senlis	14		3		3	
CA Chambéry	7		7		5	2
Nîmes	12		4		3	
Versailles	4		5	2	9	3
Saint-Omer	9	2	4		4	
Gap	9		1		6	
Nantes	4		1		10	
Orléans	11		3		1	
CA Caen	9	9	4	1		
Dieppe	4		6		3	1



Bordeaux	7	4	3	1	2	
CA Aix	2		4		6	
Melun	5				7	3
Nancy	2		1	1	9	9
Saint-Denis	4		7		1	
Avignon	1		5		5	
Montpellier	7	3	1		3	
CA Basse-Terre	5	3	4	2	1	
CA Lyon	4		4		2	
Toulouse	1		6	5	3	
Beauvais	1		3		4	
CA Rouen					8	3
Dijon	1		6		1	
Le Havre	4	3	3		1	
Mulhouse	1		4		3	2
Saverne			8			
Valence			5		3	
CA Orléans	7					
Laval	6		1			
Pontoise	3		4			
Toulon	2		5	2		
Besançon	2		2		2	
Béziers	2		2		2	
Bourg-en-B	1		4		1	
Chartres	4				2	
Draguignan			4		2	
Grenoble	2	1	1		3	2
Saint-Etienne	5				1	
Tarascon	1		2		3	
Bayonne	2		2		1	
CA Colmar	1		4			
CA Rennes	2		2	1	1	
Grasse			2		3	
Laon					5	
Lons-le-S			2		3	
Lorient	3		2			
Rouen			3		2	
Thonon-les-B	3				2	
Béthune	3		1			
CA Bordeaux	3		1	1		
CA Nancy	1	1	1		2	
CA Toulouse			4	3		
CA Versailles	3		1			
Digne-les B			1		3	
Foix	1	1	2		1	
Le Mans			3		1	
Pau	1		3			
Saint-Quentin					4	



Sarreguemines	2		1		1	
Amiens			2		1	
Auxerre					3	
Bastia	1		1		1	
Brest	2	1			1	
CA Bastia			2	2	1	1
La Rochelle					3	
Sens			2		1	
Soissons	2				1	
Tarbes			3			
Valenciennes	2		1			
Angoulême					2	
Avesnes/H	1		1			
Blois	2					
Bourgoin-J					2	
CA Amiens	1		1			
CA Bourges			1		1	
CA Montpellier			2			
Carpentras			2			
Chambéry			1		1	
Charleville-M			1		1	
Evry			1		1	
Le Puy					2	
Lisieux	2					
Macon					2	
Narbonne			1		1	
Quimper	2					
Roanne	1		1			
Saint-Malo	1		1			
Ajaccio					1	
Angers			1			
Annecy					1	
Argentan	1					
Belfort			1			
Bergerac	1					
CA Angers	1					
CA Besançon					1	
CA Grenoble			1			
CA Limoges			1			
CA Metz			1			
CA Nîmes					1	
CA Reims	1					
Castres			1			
Evreux			1			
Fontainebleau					1	
Limoges					1	
Metz					1	
Montbéliard					1	



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Nevers	1					
Nouméa			1			
Saint-Brieuc					1	
Saintes	1					
Saint-Nazaire			1			
Saint-Pierre			1			
Tours			1			
Vannes					1	
Vesoul			1	1		

\*2015 : Provisional data

Source : Casier judiciaire national, French Ministry of Justice.



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Reference	Case Description	The Court decision/Highlights of the case
<p><b>Case #1</b>  <b>Court of Paris (Tribunal Correctionnel) - Decision dated 12 March 2013</b></p>	<p>The five suspects of this OCG case were charged with facilitation of entry and stay of immigrants, mostly of Kurdish and Iraqi origin, in Paris and Calais in 2010. The immigrants transited via Turkey, Greece, Italy and France. They transited in Northern FR in improvised camps before being routed for the majority of them towards the UK or Scandinavian countries.</p> <p>The investigation demonstrated that the accused facilitated the entry and the stay of immigrants by collecting them upon their arrival, usually from Italy, providing shelter, buying tickets for onwards continuation of their journeys and for transferring money (generally via Western Union). They also facilitated their boarding on trucks, usually going to the UK.</p>	<p><b>Specificity of the case:</b>            OCG of a relatively large scale dismantled.</p> <p><b>Legal grounds:</b>            The counts relates to the facilitation of stay (Art. 622-1, -3, -5, -6 and -7 of Code of Entry and Stay of Aliens and Right of Asylum), with an OC characterisation (Art. 450-1, -3 and -5 of the Criminal Code).</p> <p><b>Investigative means used:</b>            Telephone interception, monitoring of financial flows, physical surveillance.</p> <p><b>Practical issues:</b>            Part of the facts were time barred.</p> <p><b>Outcome:</b>            The accused were all convicted and were sentenced to imprisonment from 3 to 4 years and an entry ban ranging from permanent to 5 years. The main facilitator was sentenced to 4 years while the person in charge of the financial aspects was sentenced to 3 years. The confiscation of the seized items was ordered against at least one of the accused.</p>
<p><b>Case #2</b>  <b>Court of Paris (Tribunal Correctionnel) - Decision dated 12 November 2014</b></p>	<p>Fabrication by an OCG of ID documents in view of facilitating the entry and stay of immigrants mostly from Mauritania, Niger and Congo. They transited through Morocco to France from 2008 to 2010. Investigations are based in great part on telecommunication intercepts.</p> <p>ID pictures, copies of passports and air tickets reservations were found and confiscated.</p>	<p><b>Specificity of the case:</b>  <u>Issuance/production of falsified documents</u>, including forged stamps from Moroccan authorities, look-like passports, notably from The Netherlands and Belgium. The case also refers to immigrant smuggling, notably through Greece. The court highlights that the case relates to crimes which have taken place <u>for a long period of time and involved a number of individuals, operating from different places, and primarily communicated through the internet.</u></p> <p><b>Legal grounds:</b>            The counts relates to the facilitation of stay Art. 622-1, -3, -5, -6 and -7 of Code of Entry and Stay of Aliens and Right of Asylum and fabrication and usage of false documents, with an OCG characterisation (Art. 450-1, -3 and -</p>



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		<p>5 of the Criminal Code).</p> <p><b>Investigative means used:</b> Telephone interception, physical surveillance, computer tapping.</p> <p><b>Outcome:</b> The main instigator was sentenced to 30 months imprisonment while the second accused was sentenced to 6 month imprisonment based on his limited involvement in the case (mainly related to fabricated or stolen documents). The confiscation of the seized items was ordered against at least one of the accused.</p>
<p><b>Case #3</b> <b>Court of Paris</b> <b>(Tribunal</b> <b>Correctionnel) -</b> <b>Decision dated 14</b> <b>January 2015</b></p>	<p>An OCG specialised in fraudulent child recognitions was operating in at least 10 different locations in FR. The operations carried out required a specialised contribution from different individuals who acted in a coordinated and concerted manner, aware of each other's role. The OCG was recruiting males of French nationality for a sum ranging from 800 to 1.200 Euros per child recognition.</p> <p>Child recognitions were associated to the production of official documents, including, but not limited to, housing certificates to get official administrative documents, such as IDs and French certificates of nationality.</p> <p>The case was triggered by the civil registry office of the municipality of Paris.</p>	<p><b>Specificity of the case:</b> The case also refers to the issuance of fictitious housing certificates in the context of providing supporting documents to illegal immigrants. The case involves 9 suspects.</p> <p><b>Legal grounds:</b> The counts relates to the facilitation of stay (Art. 622-1, -3, -5, -6 and -7 of the Code of Entry and Stay of Aliens and Right of Asylum) with an OCG characterisation (Art. 450-1, -3 and -5 of the Criminal Code).</p> <p><b>Investigative means used:</b> Telephone interception, surveillance, exchange of information with civil registry offices.</p> <p><b>Outcome:</b> Imprisonment sentences were pronounced for all, 8 accused were also fined. Imprisonment ranged from 3 months to 3 years and the fine ranged from 2000 to 8000 Euros. The confiscation of the seized items was ordered against at least one of the accused.</p>
<p><b>Case #4</b> <b>Court of Appeal of</b> <b>Nancy - Ruling</b> <b>dated 25 June</b> <b>2015 (ref.</b></p>	<p>An OCG facilitated the stay of immigrants by arranging the logistics for the delivery of IDs. The latter were obtained by means of fake or fraudulently obtained documents, such as illegal French certificates of nationality or fraudulently</p>	<p><b>Specificity of the case:</b> <u>Attempt to get an official ID, based on presentation of falsified or fraudulently obtained documents</u> (false certificates of nationality, fraudulently obtained birth certificate, certificate from an insurance established for a fictitious address and a declaration of loss of ID). The</p>



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<p><b>15/445)</b></p>	<p>established housing certificates.</p> <p>The OCG was facilitating contact between the immigrants and forgers. The OCG was involved in counselling and physically escorting immigrants to municipality services in charge of issuing IDs, and by choosing “the most appropriate” municipalities to carry out the plan.</p> <p>Official blank certificates from a number of municipalities were discovered along with blank invoices from a prominent utility company and blank sheets of paper with the ink-stamp of the municipality.</p> <p>The case was triggered by the civil registry office of the municipality of Lunéville, France.</p>	<p>decision highlights that the 2 accused were working together and with other experts in forgery on an <i>ad hoc</i> basis. The OCG was activated occasionally and with a different composition according to the nature and origin of demand/requests.</p> <p><b>Legal grounds:</b> The counts relates to the facilitation of stay (Art. 622 -3, -5, -6 and -7 of Code of Entry and Stay of Aliens and Right of Asylum) and of Art. 441-1 and 6 of the criminal code related to falsified documents, with an OCG characterisation (Art. 450-1, -3 and -5 and violation of Art. 132-71 of the Criminal Code).</p> <p><b>Investigative means used:</b> Telephone interceptions.</p> <p><b>Outcome:</b> Despite the collaboration with the authorities and the good behaviour of the accused while in detention, the court noted <i>inter alia</i> the gravity and the recurrence of the facts. As a result, the first instance judgement (sentencing the instigator to 4 years imprisonment and 2 years the second accused) was confirmed together with the permanent entry ban. The confiscation of the seized items was ordered.</p>
<p><b>Case #5 Court of Appeal of Paris – Decision dated 5 April 2012 (ref. 11/05649)</b></p>	<p>The case relates to an international smuggling network. The OCG was smuggling migrants towards the UK, Scandinavian countries and Canada through Turkey, Greece, the Czech Republic, Germany, Italy and France.</p> <p>Forged or stolen authentic ID documents were provided to immigrants. The documents originated mostly from Cyprus, Malta or Romania and were provided by an individual located in Greece.</p> <p>Immigrants were collected in Paris by the OCG</p>	<p><b>Specificity of the case:</b> The case relates to the <u>usage and production of forged or authentic documents</u> originated from CY, MT or RO. Reference is also made of passports from BG and PL.</p> <p><b>Legal grounds:</b> The counts relates to the facilitation of stay (Art. 622 -3, -5, -6 and -7 of the Code of Entry and Stay of Aliens and Right of Asylum) and violation of Art. 441-1, -10 and -11 of the criminal code related to falsified documents with an OC characterisation (Art. 450-1, -3 and -5 of the Criminal Code).</p> <p><b>Investigative means used:</b> Telephone interception and physical surveillance.</p> <p><b>Outcome of the Decision:</b> The case concerned originally 5 accused in the first instance. Two accused</p>



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	<p>and were sent to Calais and Dunkerque for those going to the UK. Others departed to Spain, and onwards to Canada or Sweden.</p> <p>The Court highlighted the complexity of the activities of the OCG and the number of countries involved in the smuggling activities of the Group. Depending on the final destination, the investigation showed that the fees asked by the smugglers ranged from 1.500 to 7.500 Euros.</p>	<p>appealed the part of the verdict related to the entry ban pronounced against them. The first accused, who was originally sentenced to 30 months of imprisonment, was eventually sentenced to two years, with one year suspended sentence, as the court acknowledged the normalization of the situation of the accused (he was granted the status of refugee). The sentencing judgment of 4 years for the second accused was confirmed, notably due to his active role in providing forged or stolen documents.</p>
<p><b>Case #6</b>  <b>Court of Paris</b>  <b>(Tribunal Correctionnel) –</b>  <b>Decision dated 24</b>  <b>April 2013</b></p>	<p>An OCG specialised in providing authentic IDs belonging to Vietnamese nationals to immigrants originating from Vietnam. Schengen visas were provided based on fraudulent letters of invite from companies located in Romania, the Czech Republic and Hungary. Illegal immigrants transited by plane mainly through the Czech Republic.</p> <p>The OCG was organising the shelter and the transportation of the migrants.</p> <p>The court highlighted the hierarchical nature of the OCG and the professionalism of some of its members.</p> <p>French investigations were triggered by the communication of information by the German police authorities. The Decision highlighted that while in transit, some of the migrants had their mobile phones and their passports confiscated by the OCG.</p>	<p><b>Specificity of the case:</b>  <u>Illegal immigrant smuggling of Vietnamese nationals</u> to the UK, through Romania, the Czech Republic, Hungary, Germany, Belgium and France. The case involved 12 individuals, all save one, were Vietnamese nationals. For most of them pre custody measures were taken, 5 were found to be recidivists and had previously been sentenced from 6 to 15 months imprisonment.</p> <p><b>Legal grounds:</b>  The counts relates to the facilitation of (Art. 622 -3, -5, -6 and -7 of the Code of Entry and Stay of Aliens and Right of Asylum) with an OCG characterisation (Art. 450-1, -3 and -5 of the Criminal Code).</p> <p><b>Investigative means used:</b>  Telephone interception (one individual had up to 20 telephone numbers), physical surveillance.</p> <p><b>Outcome of the Decision:</b>  All accused were sentenced from 2 months suspended sentence to 6 years. 5 accused were banned from entering French territory, most of them permanently.</p>



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<p><b>Case #7</b>  <b>Appeal Court of Bordeaux</b> -  <b>Decision dated 16 October 2014 (ref. 14/24)</b></p> <p><b>Cross reference:</b>  <b>See Case #11 - Appeal of the 1<sup>st</sup> instance verdict</b></p>	<p>Two appeals were filed and the first instance decision was confirmed. <u>The court of Appeal increased the duration of the entry bans in both cases from 5 to 10 years.</u> In the first instance judgement it was demonstrated that the OCG was at the heart of the organisation of <u>marriage of convenience</u> concerning French female nationals being married to Tunisians. The aim was for most of the beneficiaries to get resident permits in Spain. To that effect, the French she-spouse would register in Spain on the foreigners' registry. The "husbands" would then turn to the Spanish authorities to get a residence permit.</p> <p>The Court highlights the extremely well organised <i>modus operandi</i> of the OCG.</p>	<p><b>Specificity of the case:</b>  The case refers to the organisation by the two accused of <u>marriages of convenience</u> in order to get residence permits in Spain, in the context of a Tunisian OCG. <u>The accused's primary role was to look for "she-spouses" of French nationality and to accompany Tunisian immigrants to Spain where they intended to stay by getting resident permits.</u></p> <p><b>Legal grounds:</b>  The counts relates to the facilitation of stay (Art. 622 -3, -5, -6 and -7 of the Code of Entry and Stay of Aliens and Right of Asylum) and 441-6, -10 and -11 of the penal code (referring to usage of false administrative documents), with an OCG characterisation (Art. 450-1, -3 and -5 of the Criminal Code).</p> <p><b>Outcome of the Decision:</b>  The first instance decision sentenced the two accused to respectively 2 years suspended sentence and 5-year-entry ban and 24 months including 16 on suspended sentence and a 5-year-entry ban. Both accused appealed the part of the judgement related to the entry ban. The Court confirmed the first instance judgment and increased to 10 years the entry ban of one of the accused. The confiscation of the seized items was ordered against at least one of the accused.</p>
<p><b>Case #8</b>  <b>Court of Paris - Decision dated 18 January 2013</b></p>	<p>The case was triggered by Spanish authorities and allowed to dismantle an OCG operating in Paris and in surrounding towns and specialised in the production of forged administrative documents (the latter being mainly but not exclusively, passports, birth certificates, driving licences of various nationalities, predominantly UK). Some individuals were charged and accused of producing fictitious housing certificates, and transferring money abroad to pay forgers. The case involved 9 accused.</p>	<p><b>Specificity of the case:</b>  <u>OCG accused of producing and using forged documents</u>  The judgement refers to the fact that Spanish authorities failed to inform the French authorities of a parallel investigation conducted in Spain. <u>The court highlights that this negatively impacted the French investigation as it prevented the case to cover the involvement of the main leaders.</u></p> <p><b>Legal grounds:</b>  The counts relates to the facilitation of stay (Art. 622 -1 and following of the Code of Entry and Stay of Aliens and Right of Asylum) and 441-1 and following of the penal code (referring to usage of false or fraudulently obtained documents), with an OC characterisation (Art. 450-1, -3 and -5 of the Criminal Code).</p>





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		<p><b>Investigative means used:</b> Mainly telephone interception.</p> <p><b>Outcome of the Decision:</b> All accused were convicted. The prison sentences ranged from 1 year suspended sentence to 5 years and fines were imposed on 5 out of 9 accused and ranged from 10 000 to 30 000 Euros. The confiscation of the seized items was ordered against at least one of the accused.</p>
<p><b>Case #9</b> <b>Court of Paris (Tribunal Correctionnel) - Decision dated 05 March 2015 (ref. 12/02734)</b></p>	<p>Members of an OCG in Vietnam were “recruiting” candidates for immigration. Once identified, the candidates were provided, mainly through the Czech Embassy in Vietnam, tourist visas. They were flown to Europe through Belgium, Germany, Poland, the Czech Republic, Norway, Slovenia, the Russian Federation and The Netherlands. Once their final destination was reached, passports were sent back to Vietnam to certify the return of the immigrants and then sent to the UK to be fraudulently used. Immigrants in the case were mostly transiting through France towards the UK, as the final destination. The case focussed on the transit of the immigrants in France. The accused were tried for their role as facilitators.</p>	<p><b>Specificity of the case:</b> <u>Facilitation of entry and facilitation of stay</u> of Vietnamese and Chinese nationals. <u>The case involved 5 accused and was originally triggered by EUROPOL, based on information provided by Germany involving a Vietnamese national in a Drug trafficking case.</u></p> <p><b>Legal grounds:</b> The counts relates to the facilitation of stay and entry (Art. 622 -1 and following of the Code of Entry and Stay of Aliens and Right of Asylum) with an OC characterisation (Art. 450-1, -3 and -5 of the Criminal Code).</p> <p><b>Investigative means used:</b> Mainly telephone interception and physical surveillance.</p> <p><b>Outcome of the Decision:</b> All 4 accused present were found guilty and the last one was issued an arrest warrant. The sentencing ranged from 8 years to 18 months, with 12 months suspended sentence. Fines were imposed on 3 of the accused and ranged from 20 000 to 80 000 Euros. Three of the accused were also sentenced to a permanent entry ban.</p>
<p><b>Case #10</b> <b>Court of Appeals of Rennes - Decision dated 27 October 2014</b></p>	<p>The accused appealed against his conviction for arranging, through an OCG, marriages with the sole purpose of obtaining or procuring a residence permit or French nationality.</p> <p>In the first instance, the accused were part of an OCG specialised in arranging marriages of convenience between French female nationals</p>	<p><b>Specificity of the case:</b> <u>Marriages of convenience</u> were organised by the accused, between French female nationals and nationals from Cameroon in Denmark. The investigations indicated that Danish legislation requires the future brides to be present the day before the wedding. Investigations also indicated that a German company based in DK was organising at least some of the marriages.</p>



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	<p>and nationals from Cameroon. The case refers to approximately 30 marriages. The marriages were held in Denmark to the benefit of irregular migrants. Some of them were residing in Germany.</p> <p>The accused facilitated the recruitment of spouses and organised the logistical aspects of the marriages. In at least one case, the she-spouse, of French nationality, was paid and transported to Denmark and also to Germany. The latter trip was due to the fact that she was required to register in a temporary employment office and undertake administrative procedures.</p> <p>On the appeal proper, the accused challenged the entry ban on procedural and legal grounds. As a result, the entire first instance judgment was overturned.</p>	<p><b>Legal grounds:</b> The counts relates to the facilitation of stay and entry (Art. 623 -1 to -3 and following of the Code of Entry and Stay of Aliens and Right of Asylum) with an OC characterisation (Art. 450-1, -3 and -5 of the Criminal Code).</p> <p><b>Investigative means used:</b> Mainly telephone interceptions.</p> <p><b>Outcome of the case:</b> The decision of first instance was overturned (and the release of the defendant ordered) on procedural and substantive flaws: the court notes that out of 10 marriage facilitated by the accused, 8 of them were not criminalised at the time of their commission, while the remaining two did not have the sole aim at obtaining the French nationality nor a resident permit on French territory and thus did not constitute a crime. The court further explains that, although French law is applicable in that the spouses were recruited in France, the marriages were aimed at <u>regularising the stay of immigrants in Germany</u>. NB: No referral to German courts is mentioned in the case.</p>
<p><b>Case #11</b> <b>Court of Bordeaux</b> <b>- Decision dated 5 November 2013</b></p> <p><b>Cross reference – see case #7, Appeal case</b></p>	<p>The OCG members were specialised in arranging marriages of convenience. The 25 “spouses” were predominantly of French nationality and came mostly from Toulouse. The court also notes that some are psychologically and/or intellectually vulnerable. The aim was to allow the beneficiaries to breach Spanish immigration law by getting Spanish resident permits.</p> <p>The court highlights the well organised functioning of the OCG, stressing the division of tasks amongst members.</p>	<p><b>Specificity of the case:</b> Organisation of <u>marriages of convenience</u> and production of false administrative documents to the benefit of Tunisian nationals. The case as a <u>transnational character</u>, as the aim of the network was to provide the irregularly staying migrants in France with Spanish resident permits.</p> <p><b>Legal grounds:</b> The counts relates to the facilitation of stay and entry (Art. 622 -1 and following of the Code of Entry and Stay of Aliens and Right of Asylum) with an OCG characterisation (Art. 132-71 of the Criminal Code and 450-3 and -5). The use and fabrication of documents is sanctioned by Art. 441-1 and following of the Criminal Code.</p> <p><b>Investigative means used:</b> Telephone interceptions are mentioned.</p>



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	<p>The case was triggered by Spanish authorities.</p> <p><u>The Decision also notes the impact of the law dated 31 December 2012</u> which 1. expands the cases where immunity is provided to those who assist their relatives in the context of facilitation of stay and 2. also provides for immunity from prosecution to those who did not financially directly or indirectly benefit from their action, provided that the latter fulfils certain conditions (such as securing the dignity or the physical integrity of the migrants or providing legal counselling).</p>	<p><b>Outcome of the Decision:</b> All three accused found guilty. From 3 months suspended sentence up to 2 years. Two were sentenced to a 5-year entry ban.</p> <p>Following the filing of two appeals, the first instance decision was confirmed. The court of Appeal increased the duration of the entry bans in both cases from 5 to 10 years – See case #7. The confiscation of the seized items was ordered against at least one of the accused.</p>
<p><b>Case #12</b> <b>Court of</b> <b>Boulogne-sur-Mer</b> <b>(Tribunal</b> <b>Correctionnel) -</b> <b>dated 14 January</b> <b>2016</b></p>	<p>A four-year-old Afghan child is transported by a British national, the accused, from Calais, France, to the UK. The child was living with her father in the improvised camp in particularly bad conditions. The accused was charged for smuggling the child in a compartment of relatively small size hidden in the truck.</p> <p>The court was satisfied that the accused's intention to help the child was genuine and would thus fall under the provision providing immunity from prosecution in the context of facilitating smuggling of migrants.</p>	<p><b>Specificity of the case:</b> The case refers to the impunity from prosecution in the case of providing humanitarian aid in the context of the facilitation of the entry and movement of immigrants.</p> <p><b>Legal grounds:</b> The counts relates to the facilitation of stay and entry (Art. 622 -1 and following of the Code of Entry and Stay of Aliens and Right of Asylum). <i>Ex officio</i>, the Court raised the issue of the fact that while transporting the migrant, the accused endangered her life (Art. 223-1 of the penal code and thus breached Art. R412-2 and R412-3 of traffic regulation).</p> <p><b>Outcome of the Decision:</b> The court found that the accused's behaviour was covered by the provision providing immunity (Art. 622-4 of the Code of Entry and Stay of Aliens and Right of Asylum), but sentenced him to pay a fine of 1000 euros suspended sentence for endangering the life of the migrant.</p>



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<p>Case #13 Appeal Court of Douai – dated 14 November 2006 (ref. 06/01132)</p>	<p>The accused recurrently, and with four other accused, transported two irregular migrants from Northern cities of France and is charged with providing shelter, subsistence means and facilitating their movement for a period of about one year. The accused was declared guilty but with no sanction pronounced against him.</p>	<p><b>Specificity of the case:</b> The case illustrates the facilitation at relatively small case of the stay of irregular migrants and the (non) applicability of an impunity clause based on the relationship between the accused and the migrant.</p> <p><b>Legal grounds:</b> The counts relates to the facilitation of stay and entry (Art. 622 -1 and following of the Code of Entry and Stay of Aliens and Right of Asylum). Art. 622-4 Para 2 of the Code of Entry and Stay of Aliens and Right of Asylum which relates to the immunity from prosecution in case of a publically known relationship between the accused and the migrant.</p> <p><b>Investigative means used:</b> No specific information</p> <p><b>Outcome:</b> While the first instance acquitted partially the accused based on the fact that he was in a relationship with one of the migrants, the prosecutor appealed the decision. The court of appeal found that the marital relationship was not demonstrated in that case and stroke down the first instance judgement. The accused was pronounced guilty but the court did not pronounce any sanction.</p>
<p>Case # 14 Appeal Court of Nimes – dated 23 August 2005 (ref. 05/00769)</p>	<p>The accused provided subsistence means and shelter to one irregular migrant. The accused claimed impunity from prosecution due to his relationship. The Court of appeal found that the accused failed to demonstrate that the relationship was public, reciprocal and lasting.</p>	<p><b>Specificity of the case:</b> The case illustrates the facilitation at relatively small case of the stay of irregular migrants and the (non) applicability of an impunity clause based on the relationship between the accused and the migrant.</p> <p><b>Legal grounds:</b> The counts relates to the facilitation of stay and entry (Art. 622 -1 and following of the Code of Entry and Stay of Aliens and Right of Asylum). Art. 22 III-2 of Ordinance dated 2 November 1945 (now reflected in Art. 622-4 Para 2 of the Code of Entry and Stay of Aliens and Right of Asylum which relates to the immunity from prosecution in case of a publically known relationship between the accused and the migrant).</p> <p><b>Investigative means used:</b> No specific information</p>



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		<p><b>Outcome:</b> While the first instance court acquitted the accused, the court of appeal stressed that the relationship failed to be reciprocal, notoriously known and lasting. As a result, the court sentenced the accused to 1000 Euros fine when declaring him guilty.</p>
<p>Case # 15 Judicial High Court (Cour de Cassation) – dated 25 May 2016 (ref. 15- 84310)</p>	<p>The accused was working for the public office in charge of foreigners in a <i>'prefecture'</i>. He was charged with passive corruption.</p> <p>In the course of his duties, the accused was proved to have facilitated the issuance of administrative documents to irregular migrants by passing on incomplete or flawed applications to decision makers.</p> <p>While the court found a procedural flaw in the second instance decision, it stroke down part of the judgement related to the sanction, but yet confirmed the statement of guilt.</p>	<p><b>Specificity of the case:</b> The case is illustrative of the facilitation by corrupt administrative staff operating in sensitive positions for the issuance of favourable administrative decisions to foreigners. The accused was sentenced by the second instance court to 18 months of imprisonment, with 12 months' suspended sentence and 25 000 Euros fine.</p> <p><b>Legal grounds:</b> The counts relates to the facilitation of stay and entry (Art. 622 -1 and following of the Code of Entry and Stay of Aliens and Right of Asylum), violation of Art. 432-11 and 17 of the penal code relating to the facilitation by an employee representing the State authority to engage into facilitation of delivery of a undue favourable administrative decision.</p> <p><b>Investigative means used:</b> Bank statements indicating significant sums being transferred on the accused's bank account.</p> <p><b>Outcome:</b> The key motivation is that the counts on which the accused was charged (passive corruption and facilitation of entry and stay of irregular migrants) are not incompatible in the same prosecution and can be applicable concurrently as long as they sanction different interests and are based on distinct constitutive elements. The second instance decision is partially stroke down due to procedural flaws in relation to the sanction but does not confirm the declaration of guilt of the accused.</p>



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<p>Case #16 Judicial high Court (Cour de Cassation) – dated 21 June 2016 (ref. 15/80270)</p>	<p>Two nationals from Senegal were forced to work for a petty amount of money as housekeepers of a fellow Senegalese couple in France. One was a close relative of the couple and was provided with a fake passport and saw her ID confiscated by the accused. The appellants claim for compensation and argue that the Appeal Court by sentencing the accused on the grounds of <i>inter alia</i> facilitation of stay and entry of irregular migrants and illegal work, as opposed to THB, failed to apply the law properly.</p> <p>In this case, both criminal and civil proceedings run concurrently. The request for compensation in the civil part of the proceedings is however bound to be based on the criminal qualification of the facts which triggered the damage sustained and as given by the judges in the criminal proceedings. The claim was therefore rejected.</p>	<p><b>Specificity of the case:</b> The case is <b>indirectly</b> illustrative of the nexus between Trafficking in Human Beings and smuggling of irregular migrants, although in that particular case, the qualification of THB is rejected due to procedural reasons. In fact, the first instance court decided to use another qualification to sentence the accused and the parallel proceedings in reparation of damage are bound to be based on the qualification made by the judge in the criminal proceedings.</p> <p><b>Legal grounds:</b> The claimants based their action on the violation of the ECHR, the Forced Labour Convention and other international instruments, Art. 225-4-1, 225-13 and 225-14 related to THB. The court of first instance however chose to base its sentencing judgement on the violation of the Code of Entry and Stay of Aliens and Right of Asylum, illegal work (<i>execution d'un travail dissimulé</i>) and employment of foreigners without work permit.</p> <p><b>Investigative means used:</b> No specific information</p> <p><b>Outcome:</b> The Court observed that while the requalification <i>ex officio</i> of the criminal acts is possible in a criminal proceeding, in that case, the request in compensation of damage – civil proceedings – can only be based on the qualification originally made in the criminal proceedings and cannot be changed for the purpose of changing the qualification of the criminal facts which originally triggered the prosecution. As a result, THB cannot be accepted as the qualification of the breach which triggered the damage personally and directly impacting on the appellants.</p>
<p>Case #17 Judicial High Court (Cour de Cassation) – dated 30 March 2016 (ref. 14-88519)</p>	<p>Twelve Romanian nationals were found to be illegally employed by a French national. The accused claims that the workers were sent by a Romanian company. The first and second instance Court found otherwise and demonstrated that the accused was the sole</p>	<p><b>Specificity of the case:</b> The case illustrates the nexus between the exploitation of migrants and smuggling.</p> <p><b>Legal grounds:</b> Breach of labor law, breach of Art. 622-1 of the Code of Entry and Stay of Aliens and Right of Asylum. Application of Art. 112-1 of the penal Code</p>



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	<p>responsible for the work of the irregular migrants and thus was sentenced by the second instance decision dated 4 December 2014. The illegal activities took place in late 2011. Meanwhile all restrictions to the work of Romanian nationals had been lifted as of 1 January 2014.</p> <p>As a result of the application of the most favourable criminal law, the accused was partly exempted from sanction.</p>	<p>prescribing the application of the most favourable law.</p> <p><b>Investigative means used:</b> No specific information</p> <p><b>Outcome:</b> The <i>Cour de cassation</i> observed that the accused should benefit from the provision of Art. 112-1 of the Penal Code setting the principle of application of the most favourable/lenient law. This however applies only to the count related to the facilitation of the stay and the lack of work permits. Other counts (related mainly to the breach of labor law) still stands, as disconnected from the lifting of the restriction of access to the labor market.</p>
<p>Case #18 Appeal court of Toulouse – dated 09 May 2007(ref. 06/01321)</p>	<p>A landlord is charged with facilitating the stay of irregular migrants by letting the rightful tenant sub-let his apartment. He admits negligence and is acquitted by the first and the second instance after appeal was lodged by the prosecutor.</p>	<p><b>Specificity of the case:</b> The case relates to the indirect assistance to the stay of irregular migrants by allowing tenants to sub-let a flat</p> <p><b>Legal grounds:</b> Art. 622-1 of the Code of Entry and Stay of Aliens and Right of Asylum.</p> <p><b>Investigative means used:</b> No specific information</p> <p><b>Outcome:</b> The court opted to benefit of doubt acquittal.</p>
<p>Case #19 Appeal Court of Douai – dated 17 December 1997</p>	<p>The accused provided shelter to a national from Zaire upon request of a friend. Pronouncement of guilt without sanction.</p>	<p><b>Specificity of the case:</b> The case is topical of an individual case of assistance to irregular migrant.</p> <p><b>Legal grounds:</b> Breach of the rules governing the Entry and Stay of Aliens.</p> <p><b>Investigative means used:</b> No specific information</p> <p><b>Outcome:</b> The court of appeal confirmed the first instance court decision which declared the accused guilty without sanctioning her.</p>



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<p>Case #20 Judicial High Court (Cour de Cassation) – dated 21 January 2004 (ref. 03/80328)</p>	<p>A taxi driver was regularly driving irregular migrants in Northern cities to a collecting point where they were transported on lorries to the UK. The OCG could not be proven.</p>	<p><b>Specificity of the case:</b> The case is illustrative of relatively small scale assistance to irregular migrants <i>en route</i> to the UK. <b>Legal grounds:</b> Breach of the regulations governing the Entry and Stay of Aliens and Right of Asylum. <b>Investigative means used:</b> No specific information <b>Outcome:</b> The Appeal court confirmed the first instance court sanctioned the accused to 2 years imprisonment suspended sentence and banned him from working as a taxi driver for a period of 2 years as a complementary measure.</p>
<p>Case #21 Appeal Court of Nimes – dated 21 September 2004 (ref. 04/0942)</p>	<p>The landlord of real estate is accused of allowing several of his studios to be sub-let for a significant period of time to irregular migrants.</p>	<p><b>Specificity of the case:</b> This case refers to the non-proven involvement of a landlord in sub-letting several studios. No involvement in a OCG was demonstrated. Charges were dismissed by both instances. <b>Legal grounds:</b> Art. 622-1 of the Code of Entry and Stay of Aliens and Right of Asylum. <b>Investigative means used:</b> No specific information <b>Outcome:</b> The Appeal court, seized by the prosecutor, confirmed the first instance judgement which acquitted the accused and stressed the lack of proper investigation, which failed to interrogate the irregular migrants who were instead deported.</p>
<p>Case #22 Court of Appeal of Grenoble – dated 20 November 1996 (Ref 1124/96)</p>	<p>The accused assisted an illegal immigrant in 1996 and subsequently married her. While the first instance concludes to an absolute discharge (<i>dispense de peine</i>), the second instance quashed the decision, found the accused guilty but does not sanction him either.</p>	<p><b>Specificity of the case:</b> The accused assisted an alien illegally residing in France for the period between June 1995 and January 1996. He subsequently married the foreigner in February 1996 and is charged with the breach of the regulation governing the stay of aliens. <b>Legal grounds:</b></p>





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		<p>Breach of the regulations (Ordinance dated 02 November 1945) governing the stay of aliens.</p> <p><b>Investigative means used:</b>          No specific information</p> <p><b>Outcome:</b>          The first instance judgement stated that the accused, after his marriage with an alien he had assisted in illegally staying in France, is rightfully prosecuted but by virtue of the application of Art. 132-59 (absolute discharge) of the penal code is not sentenced due to the regularisation of his situation (and the cessation of the harm done to society by the marriage of the accused). The second instance decision quashed the decision and pronounced the accused guilty, without however pronouncing any sanction and without even registering the case in the accused's criminal record.</p>
<p>Case #23          Court of Appeal of Orleans – dated 27 March 2000 (no reference found)</p>	<p>The accused is an over-stayer and engaged, with the assistance of a member of an NGO, into contracting a sham marriage and recognizing a child.</p> <p>The case highlights the role of the civil registry staff who alerted the prosecutor in relation to the sham marriage. It is also interesting, as it concludes in second instance to the guilt of the member of an NGO dedicated to the assistance to foreigners.</p> <p>It also highlights the critical role of the employees of the civil registry Office and of the Mayor in detecting the fraudulent attitude of the accused.</p>	<p><b>Specificity of the case:</b>          An over-stayer is assisted by the member of a dedicated NGO. The latter is sentenced for being instrumental in organising a sham marriage and the recognition of a child, which proved fraudulent.</p> <p><b>Legal grounds:</b>          Breach of the regulation governing illegal entry of aliens (Ordinance of 2 November 1945).</p> <p><b>Investigative means used:</b>          No specific information</p> <p><b>Outcome:</b>          While the first instance court acquitted the member of the NGO based on the lack of any type of benefit and on the rationale that she acted on humanitarian grounds. On the contrary, the Court of Appeal finds that the member of the NGO was instrumental in organising the sham marriage and the (proved to be) fake child recognition, and sentenced her to 2 months imprisonment suspended sentence.</p>



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<p>Case #24 Court of Appeal of Poitiers – dated 29 February 1996 (Ref. 96/00190)</p>	<p>One of the accused is charged with assisting an illegally staying alien, before marrying her. The case refers to facts established in the period <u>between 1993 and 1995</u>.</p> <p>The case is similar to case # 22 in that the provider of assistance is declared guilty, despite his subsequent marriage.</p>	<p><b>Specificity of the case:</b> The case is illustrative of the assistance provided by the future spouse of an alien in breach of the regulation governing the stay of foreigners in France. While the court decides to declare the accused guilty, it quashed the part of the judgment of first instance in that it sentenced the other accused to an entry ban.</p> <p><b>Legal grounds:</b> Breach of the regulation governing illegal entry of aliens (Ordinance of 2 November 1945).</p> <p><b>Investigative means used:</b> No specific information</p> <p><b>Outcome:</b> While the first instance court acquitted the husband of French nationality, who provided assistance, it sentenced the illegal migrant to a 3-year entry ban, the prosecutor appealed the judgment concerning the husband requesting a suspended prison sentence and a fine of 4000 Francs and requesting the court to sentence the illegal immigrant to entry ban as a complementary sanction and invites the court to sentence her to “a short imprisonment” sentence.</p> <p>As a result, the Court of appeal found the husband guilty and sentenced him to 6 months imprisonment suspended sentence and altered the first instance judgment by converting the entry ban of three years to a 6-months imprisonment, recognising the sanction of entry ban was not suited to the specifics of the case.</p>
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<p>Case #25 Court of Perpignan – dated 22 October 2008 (Ref. 3004/2008)</p>	<p>A French national, providing assistance (shelter) for a period of at least 6 months to a foreigner illegally staying in France is sentenced to a fine of 1000 euros.</p>	<p><b>Specificity of the case:</b> The judgment is illustrative of a trend whereby assistance is provided by French nationals.</p> <p><b>Legal grounds:</b> Breach of Art. 622-1 al 1, al 2 of the Code of Entry and Stay of Aliens and Right of Asylum.</p> <p><b>Investigative means used:</b> No specific information</p> <p><b>Outcome:</b> The assistance by a French national to an illegally staying alien could not be established for the entirety of the indictment and the accused was therefore acquitted in this respect by the court. As to the assistance provided during the period of January 2008 to June 2008, which could be ascertained, the accused was sentenced to a 1000 Euro-fine, suspended sentence.</p>
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