

## Jugement Or1770

### Facts

At least between 2007 and 2011, the defendants integrated an organised criminal group dedicated to facilitating the illegal entry, transit and stay of Tunisian nationals in the European Union (E.U.). It engaged in and developed a consolidated practice of sham marriages, whereby Tunisian nationals would marry EU citizens so as to obtain an 'E.U. residence permit' in Spain, which would allow them to reside in any E.U. country, including France. The organised criminal group procured the necessary false documents to initiate and follow-up with the administrative procedure. Each irregular migrant would be charged 6 000 Euro. A total profit of approximately 330 000 Euro was ascertained for the period 2007-2011. The organised criminal group counted with several associates with specific roles, e.g. (i) *passeurs*, (ii) intermediaries, whose task was to receive the Tunisian irregular migrants in France and install/accommodate them in Toulouse (France), accompany them to Spain, procure them 'wives'. The organised criminal group managed to recruit individuals, especially in the area of Toulouse, by taking advantage of their high vulnerability. The majority were women that had irregularly stayed in France and had gone to Spain to undergo a sham marriage so as to obtain Spanish valid residence documentation. The *modus operandi* of the organised criminal group presented the following main features: (i) the French 'wife' registered in the Office of Foreigners in Spain, (ii) the 'husband', at a second stage, addressed Spanish authorities and,

on the basis of a false marriage certificate, requested the issuing of an administrative document allowing him to regularly reside in Spain. Thirty-five (35) French individuals 'lent' their name to facilitate the operations of the organised criminal group in the fashion explained.

The defendants were accused of migrant smuggling and participation in an organised criminal group.

### Elements of success

- International police cooperation
- International judicial cooperation
- Electronic surveillance

### Challenges

- Assistance and support to irregular migrants
- Vulnerability of accomplices
- Consolidated structure of the organised criminal group

### Background

The defendants were intermediaries of the organised criminal group based – and operating mostly in – France. The individuals involved in the criminal plan held family links or originated from the same Tunisian region as the defendants. Defendant 1 was absent from trial but legally represented. He obtained a Spanish residence permit illegally. Defendant 2 held a Spanish residence permit, which did not entitle him to work in France (a condition he did not abide by). Defendant 3 was absent from trial

but legally represented. He entered France irregularly and was supported by a member of the organised criminal group. He illegally obtained Spanish residence permit.

## Key issues

- ❖ Organised Crime
- ❖ International cooperation

## Investigation

In ascertaining the facts, authorities relied *inter alia* on testimonial evidence, searches and seizures, electronic surveillance (notably, the mobile phones of the defendants). Searches to the properties rented by the leaders of the organised criminal group in Spain permitted to seize several false documents, official stamps from both Spanish and French civil/administrative authorities, and identity documents.

Investigations were initiated following the sharing of information - by a Liaison Officer deployed in France - addressed to POCRIEST (Office on the Fight against Irregular Migration), in February 2010. Public servants at the Migrants Office of Gérone (Spain) had intercepted ten applications for 'EU residence permit', which were accompanied by marriage certificates apparently issued by the Municipality of Lamastre, in Ardèche (France). The respective dossiers included copies of ten identity cards (nine men and one woman) and copies of ten Tunisian passports (nine men and one woman). The applications had been submitted in Spain in March 2009. Following this information, POCRIEST liaised with the Municipality of Lamastre. The latter informed that no such marriages had been registered in

the municipality, thus confirming the fraudulent nature of the marriage certificates. Spanish authorities informed French authorities of the existence of eight other suspicious applications (submitted in the period 2009-2010) They referred to Tunisian men who had 'married' French women.

To a lesser or larger extent, the defendants admitted involvement with the activities of the organised criminal group.

International police cooperation led *inter alia* to joint police operations to search the residence of the leaders of the organised criminal group, who resided in Barcelona, Spain. International judicial cooperation was triggered, including via letters rogatory for the surveillance of telecommunications between/of defendants.

Spanish authorities opened parallel investigations regarding the members of the organised criminal group (notably, the leaders) who resided in the country. Judicial proceedings also ensued.

## Reasoning

By taking on the role of intermediaries in the execution of the criminal plan, the defendants participated in the crime of migrant smuggling.

Receiving irregular migrants in France, providing or arranging accommodation thereto, transporting them to Spain, accompanying them in their "*demarches*" in Spain, recruiting willing 'wives', constitute crucial contributions to the success of the criminal venture.

The existence of an organised criminal group dedicated to the smuggling of migrant is supported *inter alia* by the establishment of a robust network of associates, with specific and complementary tasks, from *passeurs* and intermediaries to the main organisers.

With the reform of 31 December 2012, the Legislator established a true 'humanitarian immunity', which exempts from criminal prosecution those that - without perceiving any financial or other material benefit and acting upon feelings of solidarity and humanity - provide assistance to migrants irregularly staying in the country (Article L 622-4 Code of Entry and Stay of Foreigners and Right of Asylum - *CESEDA*). Only individuals who gathered a material benefit from facilitating illegal stay in the country were – and may be - subject to criminal trial for migrant smuggling in its modality of facilitation of illegal stay. The defendants did perceive such benefit for their participation in the criminal enterprise.

Obtaining false administrative documents establishing a right, quality or authorisation is conduct that may amount to material acts of migrant smuggling.

## **Verdict/Decision**

The defendants were convicted of migrant smuggling and participation in an organised criminal group.

## **Opinion**

This case unveils the benefits of effective international police and judicial cooperation. It was the initial proactive

approach of Spanish law enforcement that alerted French authorities and led to the opening of investigations. Conversely, judicial cooperation between both countries' authorities permitted the gathering of important evidence and the advancement of criminal proceedings. By opening parallel investigations, Spain made sure that the members of the organised criminal group under its jurisdiction would not escape the scrutiny of law.