

Summary

Residency regulations for victims of human trafficking and misuse

An explorative study in the United Kingdom, Italy and Belgium

Introduction and research questions

Due to international and national legislation, many European countries offer a temporary residence permit to victims of human trafficking who are not EU-nationals and who are staying irregularly. In the Netherlands, where this right to temporary residence is known as the B9-regulation, concerns have emerged that some foreigners falsely claim the victim status, and the Dutch government has therefore developed various policy measures to prevent and combat misuse of the B9-regulation.

This report contains the findings of an explorative study into the residency regulations for victims of human trafficking in the United Kingdom, Belgium and Italy, and the scope and nature of possible misuse thereof, as well as into how these countries try to tackle and prevent the potential problem. The (positive and counter-productive) effects of these measures are also studied. The findings are based on a literature study of various sources and interviews with a selection of key players in the protection of victims of human trafficking in each country.

Results and conclusions

Residency regulations and provisions for victims of trafficking

In line with international human rights treaties, the United Kingdom, Belgium and Italy have all put in place a residency regulation for foreign victims of human trafficking, which includes the right to support and assistance. All three countries provide for a recovery and reflection period to allow the potential victim to recover and to escape the influence of traffickers, and/or to take an informed decision on whether or not to cooperate with investigations and criminal proceedings against the offenders. This period, which is provided for by law (Belgium), policy (United Kingdom) or in practice (Italy), covers 45 working days in Belgium and the United Kingdom, extendable on a case-to-case basis in the United Kingdom only, and three months in Italy. In Italy, where no official reflection period exists, support organisations allow potential victims to enrol in a short-term social programme of three to maximum six months, to enable them to recover and to contemplate further steps.

In Belgium, the right to temporary protection and residency exists for victims of trafficking and/or aggravated cases of smuggling and depends on the victim's cooperation with law enforcement or judicial authorities. The residence permit is valid for six months and can be renewed in light of pending criminal proceedings. The public prosecutor is authorised to issue, renew and withdraw the permit, in consultation with the police, immigration service and accredited specialised centres for victims of human trafficking. Victims may be granted long-term residency in case

the offender is convicted for human trafficking/aggravated cases of smuggling, or for a crime related to the trafficking, provided that the Public Prosecutor has established one of the two offences in his/her indictments. Conversely, victims lose residency rights if the prosecutor decides to drop the case. Victims are obliged to accept guidance by one of the three specialised centres during the full length of the judicial procedure, and to break off contact with suspected offenders. Particular for Belgium is that possible victims who file a complaint or make a statement first receive a registration certification, which is valid for three to six months and protects them from expulsion, before being granted the temporary residence permit. During this period they receive support and protection, while the prosecutor investigates whether they fulfil the conditions attached to the residence permit. No appeal possibilities exist against a negative decision. Between April 2009 and October 2011, Belgium issued 73 temporary residence permits to victims of human trafficking and of certain more serious kinds of smuggling.

In the United Kingdom, the temporary residence permit likewise depends on the victim's willingness to cooperate with police and prosecutors. The police applies to the immigration office (UKBA) for this renewable permit of twelve months. The UKBA has the discretionary right to issue a Leave to Remain if the victim's stay in the United Kingdom is deemed necessary for this purpose of criminal investigations/proceedings, or under special circumstances. Individuals cannot appeal against a rejection of their application for a residence permit of one year. Cooperation in successful criminal proceedings does not automatically give victims the right to apply for a long-term residence permit. In 2011, 73 victims of trafficking received a temporary residence permit, of which 25 on grounds of personal circumstances.

In Italy, victims are not obliged to cooperate with law enforcement or judicial authorities in order to be eligible for temporary residence and protection. Article 18 of the Immigration Law allows a special six-month residence permit on humanitarian or compassionate grounds for foreigners in a situation of abuse or severe exploitation, if they are considered to be in danger as a result of a) pursuing criminal action against the traffickers or b) their attempts to escape from the criminal exploitation. The permit can be obtained either by reporting the trafficker and agreeing to cooperate (the judicial path), or through a statement on behalf of the victim by the accredited ngo or the social services of a local authority, where victims must participate in an assistance and social integration programme of six to maximum eighteen months (the social path). The police commissioner, who is authorised to issue the permit, is obliged to request the advice of the public prosecutor under the judicial path only. The residence permit is renewable for one year and can be converted into a residence permit for education or work. In 2011, Italy issued 675 residence permits on humanitarian or compassionate grounds to victims of human trafficking and other crimes, the large majority of which were issued under the judicial path.

Indications of misuse

In none of the three countries, misuse of the residency regulation for victims of trafficking is considered a structural or salient issue. The scale and nature of potential misuse remains unclear due to a lack of data. There are indications that some foreigners fabricate a story of trafficking in order to benefit from the regulation and provisions, but estimates are low: from one to a few cases per year (Belgium and Italy) to a few dozen cases per year (United Kingdom). In general, respondents believe that existing measures to prevent misuse are effective, so that potentially false claims are filtered out before the actual permit is issued. None of the three

countries have registered the number of withdrawn permits on grounds of false statements and declarations. Indicators of suspected misuse, which are similar in all three countries, are:

- The narrative of the alleged victim contains inconsistencies or contradictions with the testimonies of others.
- The narrative of the alleged victim is illogical, unlikely, or simply false (e.g. based on the findings of police investigations).
- The alleged victim cannot recount any (concrete) basic information or facts that can be verified (names, addresses, times, etc.).
- The alleged victim stays irregularly and has filed, in vain, several previous applications for residence and/or only tells the story upon impending expulsion from the territory.
- The narrative of the alleged victim is a stereotypical story that resembles that of other potential victims.

In addition, some respondents in Belgium and Italy view a premature withdrawal from the compulsory assistance programmes as an indication. In the United Kingdom, the authenticity of the claim may be doubted if the alleged victim has previously made declarations against the suspected offender at different police stations.

Known incidents of misuse do not always concern aliens who obtain a residence permit and/or benefit from the related provisions; traffickers also misuse the system. In all three countries indications exist that some victims are coerced by their trafficker to tell a story in order to obtain a permit that enables the trafficker to exploit them (United Kingdom), or to infiltrate the shelter and intimidate or recruit residing victims there (Belgium and Italy).

In practice, proving misuse is challenging, also because some of the indications of potential misuse do not rule out that the foreigner nevertheless is a victim of human trafficking. A victim's narrative may be incomplete, illogical or inconsistent for various reasons, which do not necessarily discredit the victim status. It may be the case that an alien or his/her guide believes, that he or she is a victim of trafficking who is rightfully eligible for residency rights and support, but that he or she misinterprets or simply applies different interpretations of existing legislation and definitions. This would amount to an error, but not to misuse.

National means of preventing and punishing misuse

None of the three countries have developed specific measures to tackle potential misuse of the residency regulation for victims of trafficking, but there are means intrinsic to the residency regulations which prevent misuse. In addition, general legislation provides for sanctions against carrying false documents or giving false statements to a public authority.

I Evaluation moments as filters for potential misuse

All three countries have a system of checks in place, which is seen as an effective filter for improper appeals to the victim status. Aliens who apply for the residence permit must undergo screenings at different stages of the procedure to prove that they (continue to) meet the requirements stipulated by law to have the right to residence, protection and support for victims of trafficking. According to the respondents, this enables the competent authorities to reject and filter out fraudulent applications before granting the actual permit. Once the permit has been issued, it can be revoked if there are strong indications of misuse, or a renewal may be denied.

In the United Kingdom, a two-stage victim-identification process is performed before considering the application for a residence permit. Once a potential victim's case has been formally referred by so-called 'First Responders', trained specialists at designated 'Competent Authorities' decide whether someone can be considered a victim of trafficking and eligible for support and protection. This authority is the UKBA in case of victims who have made an asylum or immigration application, or the United Kingdom Human Trafficking Centre for victims from EU-countries and the United Kingdom. First a Reasonable Grounds test is applied to determine whether someone is a potential victim and eligible for the reflection and recovery period and related provisions. This may then be followed by a decision on Conclusive Grounds. For this decision, potential victims may be interviewed during the reflection period to conclusively determine whether they are a victim of trafficking. Sufficiently strong indications of misuse result in a negative decision.

In Belgium as well, an extra screening of the trafficking claim is performed prior to the assessment of the residency application. Once a potential victim has agreed to cooperate, he or she receives the three-month registration certification. The prosecutor can extend this document with three more months to investigate the credibility, legitimacy and reliability of the trafficking claim of the alleged victim. The prosecutor can end the procedure in case of indications of misuse and/or if the conditions for residence are not met.

In Italy, the police commissioner verifies the authenticity of the trafficking claim once he receives an application for residency through either the ngo/local authority (social path) or the public prosecutor (judicial path). This means that, before the case is processed, these two agents have already checked the trafficking claim. Based on their application and/or the advice of and investigations by the criminal police department, the police commissioner can reject the application in case of indications of misuse.

II Role of law enforcement and judicial authorities in detecting potential misuse.

In all three countries, respondents point to the key role of the police and the public prosecutor's office in detecting and countering potential misuse. During criminal investigations, law enforcement and judicial authorities check facts in the victim's declaration. By communicating indications of misuse to the competent authorities, potentially fraudulent applications can be filtered out before the permit is granted. Even in Italy, where the residence permit is not necessarily dependent on the victim's cooperation with the authorities, the police have a fundamental responsibility in detecting potential misuse. The police commissioner, who assesses the application for the temporary residence permit, usually instructs the criminal police to verify the information from the declaration provided by the ngo or local authority on the victim's behalf. Moreover, even when the potential victim pursues the social path, the public prosecutor can still request his or her testimony for the purpose of criminal proceedings and will communicate suspected misuse to the police commissioner. The investigations of the trafficking claim by the law enforcement and judicial authorities are considered crucial to preventing any misuse of the residency regulation.

III Role of ngo's and support centres in detecting potential misuse

In Belgium and in Italy, accredited ngo's (and in Italy local authorities as well) play a key role in verifying the trafficking claim. Even though their actions may differ in purpose and approach from those carried out by the competent authorities, they too aim to offer support, assistance and safe housing only to real victims. Before admitting an individual to their assistance programmes, ngo's will assess the trafficking claim during an intake with the potential victim. If there are sufficient grounds to

doubt whether the individual is a potential victim of trafficking, they can refuse to accept him or her into the programme, usually in consultation with the competent authorities. The individual consequently loses rights to residency, as the law requires that they participate in and complete a social assistance programme (Italy) or accept guidance by the specialised centres (Belgium). Even after the permit has been issued, accredited ngo's play a key role in detecting and communicating indications of possible misuse to competent authorities. Respondents argue that the condition of compulsory guidance also prevents misuse by deterring potentially fraudulent individuals from claiming rights in the first place or, once in the programme, by discouraging them from continuing.

IV Training and guidelines

Training all actors involved in the identification of potential victims is considered a key starting point to tackle both human trafficking and possible misuse of the residency regulation. The failure to identify victims may not only lead to their deportation to countries of origin and a continuation of the trafficking situation, but may also mean that victims are not differentiated from individuals who falsely claim the victim status in order to access services and obtain a residence permit. Guidelines and appropriate indicators can help differentiate real victims from imposters.

V Information-sharing and cooperation

Cooperation between the actors and institutions involved is considered vital to prevent and counter potential misuse of the residency regulation. If all available information about the potential victim is shared, possible indications of suspected misuse can be added to complete the evidence that the competent authorities need in order to act. In Belgium, a regulated inter-institutional information sharing system is in place involving the law enforcement and judicial authorities, specialised centres for victims of trafficking, the social inspectorate, and the immigration office. In the United Kingdom and Italy, formal and informal cooperation agreements exist at a local level, and in the United Kingdom the National Referral Mechanism enables a variety of agencies to share information about potential trafficking victims at a national level.

VI Sanctions

Finally, fines can be imposed for any misuse of the residency regulation, even though this is not a specific criminal offence in either of the three countries. In all three countries, civil and criminal sanctions exist for the submission of forged/counterfeit documents, for giving false information/declaration, or for presenting a false identity before a public authority. Fines can be imposed alongside a prison sentence, the length of which varies from six months (United Kingdom) to ten years (Belgium). Moreover, the applicant faces refusal of a residence permit or, if already granted, the termination and withdrawal of the permit.

(In) Effectiveness of the measures against possible misuse

Although the effectiveness of the measures against abuse has not been studied in any of the three countries, respondents in all countries have the impression that their system is sufficiently effective in preventing and countering potential misuse of the residency regulation for victims of trafficking. According to public authority representatives, the measures described above ensure that false or improper claims of the victim status are filtered out before an actual permit is issued, and fake victims will be detected even after a permit has been issued. According to actors work-

ing with potential victims of trafficking, misuse is unlikely due to the thresholds and screening moments built into the procedures and to the conditions tied to the residence permit. Both categories of respondents point to the unique role of law enforcement and judicial authorities as well as of ngo's in the procedure, involving the assessment and evaluation of the victim claim at various moments, in addition to and in consultation with competent authorities. However, the detection of improper claims requires close cooperation between the different agencies involved. This cooperation exists and is institutionalised at all levels in Belgium, but not in the United Kingdom or in Italy.

Respondents also mentioned possible drawbacks to the measures against misuse. One of these is that real victims may be filtered out and treated like offenders. Furthermore, the different evaluation moments may scare off victims who may subsequently not come forward. Some victims and some actors working with victims are reluctant to refer cases because of the high thresholds imposed by the residence regulations and the associated risk of deportation. Pointing at the risk of further traumatisation, respondents in the United Kingdom criticised the fact that authorities here use the reflection period, which is meant for recovery, for interviewing victims and further investigating their credibility. Finally, the obligation in Belgium and Italy to accept guidance may put off some victims of trafficking.