

**PRELIMINARY STUDY IMPROPER  
USE OF THE RESIDENCE SCHEME  
FOR VICTIMS OF HUMAN  
TRAFFICKING**

- summary -

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## SUMMARY AND CONCLUSIONS

Combating human trafficking is a key Dutch government policy priority. The Netherlands has addressed this issue, among other things, by adopting an integrated approach whereby the criminal law enforcement, the administrative and tax authorities team up to combat human trafficking preventively and repressively, while taking account of the victim's position. Foreign victims of human trafficking can make use of the Residence Scheme for Victims of Human Trafficking [*Verblijfsregeling Mensenhandel*]. The scheme, which was introduced in 1988, comprises of two components: 1) a maximum reflection period of three months in which actual or potential victims are granted the possibility of beginning to recover from their experiences and to reflect on whether they wish to report to the police or otherwise cooperate in a criminal investigation, and 2) a temporary residence permit for possible victims (or witness informants) who report to the police or cooperate in the investigation. The scheme was expanded in 2010 to enable victims who are unable to cooperate in criminal proceedings because they are being seriously threatened or are psychologically incapable of doing so, to obtain a permit as well.

The primary aim of the scheme is the investigation and prosecution of human trafficking cases by offering protection to potential victims and witness informants. Under the scheme the protection of actual and potential victims would seem to be an alternative to the primary objective of tracking down and prosecuting traffickers. Yet Article 7 of the EU directive refers to an 'integrated, holistic and human-rights based approach to the fight against trafficking in human beings'. The Directive clearly states that victim assistance should not depend on cooperation with the police and the Ministry of Justice. This applies at least for the duration of the reflection period for victims of human trafficking who do not have a valid right of residence. Based on the above we have concluded that the Residence Scheme, which forms part of a wider approach to addressing human trafficking, serves two objectives: (a) to facilitate the investigation and prosecution of offenders and (b) to protect victims.

In recent years efforts in tackling human trafficking have intensified and the number of persons registered as actual or possible victims and use of the Residence Scheme have also risen considerably; between 2007 and 2011 the number of residence permits issued under the Residence Scheme for Victims of Human Trafficking virtually tripled. In 2011 around 400 residence permits were granted and around 390 possible victims utilised the reflection period. The figures show that while use of the Residence Scheme rose, the numbers involved are not large. This means that currently an estimated 400 people at the most (this represents the total number of residence permits) may possibly be making improper use of the Residence Scheme (people falsely claiming to be victims of human trafficking). The number will, however, be lower in practice.

Nonetheless the parties directly involved in implementing the Scheme (such as the police and Public Prosecution Service) have for some time now been regularly giving signals about applications containing few or no prospects of conviction, in which improper use of the Scheme is suspected. In these cases a number of foreign nationals are suspected of acting as victims of human trafficking in order to obtain a temporary or permanent right of residence. Even though these signals are persistent, the extent of the possible improper use of the scheme is unknown. The WODC Research and Documentation Centre at the Ministry of Security and Justice has therefore asked that a study be conducted to examine the possibility of measuring and ascertaining improper use of the Residence Scheme for Victims of Human Trafficking.

Based on 15 fact-finding interviews with the relevant parties (the police, Public Prosecution Service, the Immigration and Naturalisation Service - IND, the Repatriation and Departure Service - DT&V, specialist victim assistance service providers and the police academy) indicators were identified to help detect possible improper use of the Scheme. These factors were subsequently validated by means of a file search on the files of closed cases where use had been made of the Residence Scheme for the Victims of Human Trafficking (validation round 1) and by holding two focus group sessions with experts (validation round 2). In total 40 files were examined: five files related to proven human trafficking cases, two files contained a false report to the police and 33 files related to cases in which it had been decided not to prosecute. During the focus group sessions 15 experts in total were involved in the discussions. The first focus group session was conducted with representatives having the perspective of victim assistance/the victims (Fair Work, an ngo addressing and fighting against labour exploitation; Fier Fryslan, an agency that provides assistance in domestic violence cases; Pharos, a knowledge and advisory centre for migrant health care; Stichting LOS, a knowledge centre for people and organisations that help migrants without a residence permit; the Leiden University Institute of Immigration Law and the Department of Victimology at the same university). The second focus group session was conducted with representatives having an investigative and residence perspective (the Public Prosecution Service, police, IND, DT&V and LIEC, a national information and expertise centre that deals with organised crime).

The above information served to answer the question of whether the extent of improper use of the Scheme in the future could be established by means of a representative and quantitative study. We have presented the key results of the study in the final chapter.

#### *Doubts about the accuracy of the story*

During the exploratory interviews, the parties engaged in investigation and victim assistance both referred to aspects on which doubts had occasionally arisen about the accuracy of the story told by the actual or potential victims who make use of the Residence Scheme for Victims of Human Trafficking. These aspects are a lack of unicity (presenting the same scenarios and travel

routes), a lack of details (relating to the offender, the place of residence and the situation of exploitation), a lack of consistency in the story, giving false information (about identity or travel route), behaviour during questioning or the intake interview, the timing of the application (at the time other legal residency status procedures have been exhausted), the period of time in between the end of the situation of exploitation and the moment of reporting and the manner of reporting (self-reporting). These indicators - often combined - have instilled doubts about the accuracy of the story. Incidentally, this does not mean to say that misuse was actually made of the Scheme in all cases (in other words: an individual acted as a victim while he or she was not a victim in reality), which was underscored by all the interviewees.

*Difficult to test the indicators in practice*

The study shows that for various reasons it is difficult to test the indicators referred to in terms of hard facts and their ability to distinguish between improper and rightful use of the Residence Scheme for Victims of Human Trafficking.

Firstly, the study showed that the parties involved (the Public Prosecution Service and the police) felt that they were not in a position to classify the files into cases of suspected improper use and cases in which this did not apply. Even though these parties can identify indicators based on which a false story sometimes is suspected, at case level they are either unwilling or unable to express an opinion on suspected improper use. What ultimately counts for them are the actual legal outcomes of a case and they do not express an opinion on legally unproven suspicion. In terms of the study, this meant that the indicators could only be tested by comparing the files of proven false reports to the police and proven cases of human trafficking (with a convicted offender). This brings us to the following limitation of the study. Although the study was conducted in the six court districts where the majority of applications are made for the Residence Scheme for Victims of Human Trafficking, in recent years (the period 2009-2012) only two files containing false reports to the police were produced in these court districts. In practice it has proven to be extremely difficult to judicially establish false reports to the police. Due to the limited number of files this means that the outcomes relating to the false reports to the police that came to light must be interpreted with the necessary caution.

*Six potential indicators for improper use following the first validation round*

In total 40 files were analysed using the 22 indicators drawn up on the basis of the exploratory interviews. There were two files containing proven false reports to the police, five files containing proven human trafficking cases and 33 files containing cases in which a decision was taken not to prosecute. A comparison between the false reports to the police and convictions for human trafficking revealed that six of the 22 indicators clearly show the differences between the two types of files. The other indicators portray a varied picture and as a result cannot be unequivocally attributed to false reports to the police

or human trafficking convictions. The six indicators remaining intact after comparing the two types of files are:

- the offender's surname is missing;
- scant information on the place of residence;
- a lack of unicity concerning the escape story;
- a lack of consistency in the story;
- false information about identity and residency;
- a lack of detail about the route to seeking help from victim assistance services/the police.

A factor analysis was then performed to examine the relationship between these indicators. The analysis brought two components to light, i.e. a component relating to the level of detail in the story and a component relating to the level of consistency and inconsistency in the story. In respect of these components the two false reports to the police also clearly differ from the proven cases of human trafficking.

All files, including the cases in which a decision was rendered not to prosecute, were given scores on the basis of the six indicators. The indicator scores for a limited number of the cases in which a decision was rendered not to prosecute are similar to those of the proven cases of human trafficking (around five out of the 33 cases). A limited number again have similar scores to those of the files containing false reports to the police (3 out of 33). The majority of the cases in which a decision was rendered not to prosecute however, cannot be clearly identified based on the indicator scores. Moreover, there are too few files of which the outcome of the case is known (false reports to the police or proven cases of human trafficking) to be able to statistically assess the probability of rightful use or improper use of the Residence Scheme in the cases in which a decision was rendered not to prosecute.

*The six indicators do not remain intact after the second validation round*

During two focus group sessions, in which one interview has held taking the perspective of victim assistance/ the victims and one interview taking an investigative and residence perspective, the results of the file search and the six indicators in particular were further tested. It emerged from the group interviews that the six indicators do not say that much about improper use of the Residence Scheme for Victims of Human Trafficking. The parties involved were therefore unable to ascribe the probability of improper use of the Residence Scheme to the indicators.

From the perspective of victim assistance/the victim all indicators were labelled as weak to very weak, in other words they have insufficient distinctive character to be able to distinguish between the improper use and the rightful use of the Residence Scheme for Victims of Human Trafficking. The respondents substantiated the above based on alternative explanations entailing why a victim sometimes provides scant information, tells an inconsistent story or gives false information. Reference was made to aspects such as trauma, a lack of faith in the police, fear, shame and cultural factors as

a result of which some aspects of the story, for instance, are regarded as irrelevant by the informant (but relevant by the police). These aspects also emerged in various studies conducted in the Netherlands and abroad into victims of human trafficking. They furthermore refer to the interview process which frequently is brief and geared towards detecting weakness in the story. Additionally, concrete counter-examples were given per indicator (including a case in which an extremely detailed explanation ultimately proved to be a false/concocted story) which showed that it is not possible to ascribe certain indicators unequivocally to cases of improper use.

From an investigative/residence perspective two indicators were deemed to be weak (the offender's surname is missing and a lack of consistency in the story). The remaining indicators are deemed to be relatively strong but not an absolute indicator for improper use. According to the respondents, these indicators relate more to the lack of prospects of conviction (and hence are a good indicator for a human trafficking story that cannot be proven) rather than determining whether or not victimhood applies. The police and the Public Prosecution Service mainly look at these cases from an investigative perspective - reference is made to an implausible account of human trafficking - rather than from the perspective of establishing victimhood. The respondents stressed that this is not their line of work but in more general terms are sometimes sceptical about individuals applying for protection.

#### *Quantitative study on improper use is not possible*

The results of the study show that in the current circumstances it is not possible to conduct a quantitative study on the extent of improper use of the Residence Scheme for Victims of Human Trafficking. Good indicators are required in order to determine what the probability of improper use is based on a random sample of files. Although there are various indicators based on which the parties concerned have raised doubts about the accuracy of a human trafficking story, quantifying the extent of improper use has proven to be problematic. The study has shown the following:

- Most indicators (16 of the total of 22 indicators) have insufficient distinctive character to be able to distinguish between false and proven human trafficking files at case level. They therefore cannot be deemed as statistically valid.
- While the remaining six indicators are statistically valid, in other words they can make a distinction between false and proven accounts of human trafficking, the second validation round showed that these indicators are statistically unreliable at the level of the individual. In fact, at the level of the individual a range of alternative explanations for the presence or absence of specific indicators often apply.
- In order to design a quantitative model the level of unreliability must be quantified. However, this has proven to be unfeasible. The court decisions provide insufficient certainty because in the majority of cases the decision was rendered not to prosecute and hence there are few cases in which human trafficking or false reports to the police have been proven. As a

- result, it has proven to be problematic to assess unreliability statistically. An alternative to the above would be to ask experts to make an educated guess concerning the probability of improper use corresponding to an indicator. However, the second validation round revealed that the experts were not in a position to ascribe the probability of improper use to the indicators because due to their professional background they - understandably - primarily express their opinion in terms of legal validity (an indicator is valid if it enables you to express an opinion about one person).
- Due to the fact that the measurement reliability of the indicators cannot be properly determined, there is no sound basis for creating a quantification model for assessing the extent of improper use of the Residence Scheme for Victims of Human Trafficking.

*Doubting the human trafficking story does not equate to improper use*

In the discussion surrounding the improper use of the Residence Scheme for Victims of Human Trafficking two issues seem to have been confused, i.e. the discussion surrounding legal victimhood (can human trafficking be legally proven) and the discussion surrounding actual victimhood (is an individual actually a victim of human trafficking). The latter discussion relates to the principle of improper use of the Residence Scheme (an individual says that he or she is a victim of human trafficking but is not a victim in reality). In the discussion, however, the lack of legal victimhood, in other words the possibility of proving that this is the case, is frequently deemed equivalent to improper use. The lack of prospects of conviction, however, says nothing about actual victimhood. The fact that legal victimhood cannot be established in numerous cases perhaps explains the persistent rumours about improper use of the scheme. These two aspects should in fact be separated in order to make a better judgement on use (and the functioning) of the scheme.

*Broadening the perspective: friction between investigative practice and establishing victimhood*

When examining the Scheme from a broader perspective, as also advocated in EU's human trafficking policy, the objective of the Scheme should be twofold: first, to lower the threshold for reporting to the police and to retain witnesses for the purpose of investigating and prosecuting offenders and second, offering victim assistance and protection based on a humanitarian interest in the victim. While the study was not conducted for the purpose of establishing to what extent both objectives have been achieved, a number of relevant comments can be made following the study.

The picture emerging from the study is that the investigative authorities are confronted with numerous cases which professionals cannot do anything with but on which they must spend time. This is frustrating for those involved at the police and Public Prosecution Service, it takes up valuable investigative capacity and often ultimately does not lead to achieving the objective of investigating and prosecuting offenders. On the other hand, examination of these cases through the 'eyes of the investigative authorities' often fails to

result in recognising actual victimhood and could consequently render victims ineligible for the right to protection and assistance.

Given the above, the current practice in respect of these two aspects is not entirely effective and it would be worthwhile addressing this field of tension.

Facilitating shorter processing for handling cases, as demonstrated under the pilot project currently being conducted with 'Applications that have no chance of success', can help to deploy the available investigative capacity more effectively with a focus on cases which do have prospects of conviction. This in fact means more effectively establishing legal victimhood. This measure could additionally contribute to preventing any improper use of the Scheme because the shorter processing times would to some extent eliminate any residence incentives for making use of the Residency Scheme for Victims of Human Trafficking. Incidentally, after the police have taken a decision on an application which has no chance of success, applicants still have an opportunity to submit an application for continued residence for humanitarian reasons. The parties concerned will also be given the time to prepare for an application of this nature.

An equally important notion is that shorter processing times in the proceedings should not be at odds with the focus on the victim; from a broader perspective, this is the flip side of the coin. Genuine victims must be given an opportunity to tell their story and this requires trust and a period of recovery. However, it remains to be seen whether within the time frame available to the police and their focus (investigation) the actual story will surface. Nevertheless, efforts could also be put in possibilities of making these applications more successful.

#### *Suggestions for a follow-up study*

The study gave rise to a number of contiguous questions that are relevant to the discussion concerning the rightful use and improper use of the Residence Scheme for Victims of Human Trafficking. These questions could be answered by means of a follow-up study. We are therefore providing a number of suggestions for a follow-up study.

It emerged from the interviews with the relevant parties (both victim assistance services and the investigative authorities) that in some cases the actual exploitation of potential victims only commences (or recommences) after the right of residence has been granted. In the cases that were closed based on a decision not to prosecute but where the informant was in fact later granted continued residence on humanitarian grounds, it would be interesting to examine to what extent these individuals can be tracked down in legality and to what extent they have not succumbed to exploitation.

A further aspect that could be examined is the effect of revoking the right of residence after a decision has been rendered not to prosecute in a criminal case, as a result of which the informant is no longer able to await the outcome of the complaint in the Netherlands compared with the number of applications

for the Residence Scheme for Victims of Human Trafficking. The feeling is that this will lead to fewer applications but it has not yet been established statistically. Obtaining insight into the above can contribute to the discussion concerning the use of the Residence Scheme.

To conclude, the above study shows that only fragmented and sporadic information is available, based on which the issues surrounding the possible improper use of the Scheme can be studied. It would be worthwhile considering whether to continuously monitor the applications to help determine any improper use of the Scheme. This could be carried out at a central location by giving scores to all applications in line with the defined indicators. The indicators for which scores were unable to be given in the current study could perhaps also be incorporated, such as suddenly explaining human trafficking, immediately after having received information about a residence permit. While the indicators still require further negotiation and fine-tuning, the objections (e.g. in terms of reliability) will largely be rendered redundant when applying time series (the bias will remain constant over time). This method will help to monitor trends in cases containing suspicious features. Any patterns emerging can be used as a starting point for further phenomenological research. ‘