



**Ad-Hoc Query on types of residence permits that victims of trafficking who do not cooperate with the authorities are granted**

**Requested by GR EMN NCP on 5<sup>th</sup> May 2009**

**Compilation produced on 16<sup>th</sup> June 2009**

**Responses from Belgium, Bulgaria, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden (16 in Total)**

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**1. Background Information**




Questions have arisen concerning the victims of trafficking in human beings who do not cooperate with the competent authorities in the fight against criminal networks, whether they should be granted some kind of residence permit. In order to develop our policy in this field, since the Greek legislation does not provide for the issuance of residence permit in this case, we would like to inform us about your practises.

- a) Does your country issue some kind of residence permit to victims of trafficking who do not cooperate with the competent authorities in the fight against trafficking in human beings?
- b) If yes, the permit is issued according to your national legislation or it provides high protection based on the Directive 2004/81/EC?

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**2. Responses**

		<b>Wider Dissemination?</b>	
	<b>Belgium</b>	<b>Yes</b>	<p>Belgium does not issue residence permit to third country nationals who are victims of trafficking in case that they do not cooperate with the competent authorities in order to fight the trafficking in human beings.</p> <p>The procedure which has been enforced in order to allow the victims – in the framework of criminal proceedings against the alleged offenders – to stay legally in Belgium, reinforces the possibilities of launching a thorough criminal investigation. The status of victim of human trafficking can be granted to nationals from third-party countries as well as to citizens of the Union.</p> <p>This procedure involves that maximum guidance and support are going to be provided for the victims of human trafficking and that collaboration with the judicial authorities, in the form of a statement or a complaint against the alleged offenders, will be asked for with a view to an effective fight against human trafficking and its related networks.</p> <p>In order to be able to obtain the status of victim of human trafficking, three conditions must be cumulatively fulfilled:</p> <ul style="list-style-type: none"> <li>- the contacts with the alleged offenders have to be severed;</li> <li>- one has to be supervised by a specialized reception centre which is recognized by the competent authorities;</li> <li>- one has to cooperate with the judicial authorities by issuing statements or by filing a complaint.</li> </ul> <p>Should the victim fulfil the three cumulative conditions (his/her presence is useful in the framework of the proceedings, the person concerned shows willingness to cooperate and has severed the ties with his/her exploiters), the Minister or his/her deputy will issue the foreigner with a 6-month valid certificate of registration in the Foreigner Registry.</p> <p>The terms and conditions for issuing, extending, renewing and withdrawing the stay and residence permits are determined according to the evolution of the judicial proceedings and the further fulfilment of the three cumulative conditions.</p> <p>Should the Belgian Public Prosecutor decide to press charges in his/her criminal proceedings, the victim of human trafficking, who has considerably contributed to the investigation, shall be issued with a stay permit of indefinite duration.</p>
	<b>Bulgaria</b>	<b>Yes</b>	<p>According to the Bulgarian Law of Fighting the Illegal Traffic <b>only victims</b> of illegal traffic <b>willing to collaborate</b> for discovering the traffickers shall be granted special protection for the period of the penal proceedings, including residence permit for continuous stay.</p>
	<b>Finland</b>	<b>Yes</b>	<p>According to Section 52a of the Finnish Aliens Act:</p> <p>(1) A victim of trafficking in human beings staying in Finland is issued with a temporary residence permit if:</p> <p>1) the residence of the victim of trafficking in human beings in Finland is justified on account of the pre-trial investigation or court</p>







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			<p>proceedings concerning trafficking in human beings;                  2) the victim of trafficking in human beings is prepared to cooperate with the authorities so that those suspected of trafficking in human beings can be caught;                  and                  3) the victim of trafficking in human beings no longer has any ties with those suspected of trafficking in human beings.</p> <p>(2) If the victim of trafficking in human beings is in a particularly vulnerable position, the residence permit may be issued on a continuous basis regardless of whether the requirements laid down in subsection 1(1) and (2) are met.</p> <p>In other words, a victim of trafficking is usually issued with at least temporary residence permit in accordance with Section 52 a. Before issuing a residence permit laid down in section 52a, a reflection period of at least thirty days and a maximum of six months may be granted to a victim of trafficking in human beings. During the reflection period, a victim of trafficking in human beings must decide whether he or she will cooperate with the authorities referred to in section 52a(1)(2).</p> <p>If the victim of trafficking refuses to cooperate he or she may be issued with a continuous residence permit in accordance with Section 52a subsection 2.</p>
	<b>Germany</b>	<b>Yes</b>	A victim of trafficking in human beings who is not willing to cooperate with the criminal prosecution authorities in principle does not receive a residence title unless the preconditions are exceptionally met on the basis of another purpose for the residence (such as family reunification as a result of the conclusion of marriage) or the return to the state of origin is impossible for other reasons for which the person concerned is not responsible (for instance as a person requiring subsidiary protection). In such cases, the issuance of the residence title is not based on Directive 2004/81/EC.
	<b>Greece</b>	<b>Yes</b>	Our country does not issue residence permit to third country nationals who are victims of trafficking in case that they do not cooperate with the competent authorities in order to fight the trafficking in human beings.
	<b>Hungary</b>	<b>Yes</b>	<p>According to the Article 30 paragraph 1 of the Act II of 2007 on the Entry and Stay of Third-Country Nationals (hereinafter referred to as: Act on Aliens) a certificate of temporary residence shall be issued to any third-country national who is a victim of trafficking in human beings, if initiated by the victim support authority, for the duration of considering the cooperation with the Hungarian authority. The validity period of this certificate of temporary residence is one month.</p> <p>According to the Article 29 paragraph 1 point c) of the Act on Aliens residence permit on humanitarian grounds shall be granted to any third-country national, or other affiliated third-country nationals on his/her account who has cooperated with the authorities in a crime investigation and has provided significant assistance to gather evidence for substantial national security or law enforcement reasons - by initiative of the national security or law enforcement agency. As it seems from the legal background a victim of trafficking in human beings shall only be granted a residence permit on humanitarian grounds if he/she cooperates with the responsible authorities.</p>





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	<b>Latvia</b>	<b>Yes</b>	The Latvian legislation does not envisage a possibility to issue a residence permit to third country nationals who are victims of trafficking and who do not cooperate with the competent authorities, but in cases when it is particularly necessary due to humane considerations the residence permit can be issued to the person with the order of the minister of Interior. Up to now in Latvia there have been no such cases.
	<b>Lithuania</b>	<b>Yes</b>	In Lithuania the Law on the Legal Status of Aliens states: the temporary residence permit (6 months) may be issued to <b>an adult alien</b> who is or has been a <b>victim of human trafficking</b> and <b>cooperates</b> with pre-trial investigation body or the court, combating trafficking in human beings or crimes concerning human trafficking, if the pre-trial investigation body or the court mediates in issuing the temporary residence permit for such an alien. If the victim does not cooperate the temporary residence permit may not be issued (Article49’).
	<b>Malta</b>	<b>Yes</b>	Malta is able to grant a residence permit to Third Country Nationals who are victims of trafficking and who co-operate with the competent authorities in the fight against trafficking in Human Beings. The relative legislation does not cover the granting of a residence permit to persons who <b>do not</b> co-operate.
	<b>Netherlands</b>	<b>Yes</b>	The ‘B9 procedure’ applies to both victims of trafficking in human beings and witnesses-informers when they cooperate with the authorities/ press charges. The residence permit is granted only for the period that the victim or witness is required by the prosecution to remain in the Netherlands, during the trial and any appeal. However, there is also a possibility of issuing a residence permit to the victims of trafficking who do not (yet) cooperate with the authorities. In that case the victim is entitled to a residence permit if there are certain exceptional individual circumstances which are not listed. The permit issued is based on the discretionary powers of the State Secretary of Justice.
	<b>Poland</b>	<b>Yes</b>	Victims of trafficking who hesitate to cooperate with authorities can stay in Poland up to 3 months. This time is, so called, “reflection period” (EU Directive). During this time they have to decide whether they do or do not want to cooperate with authorities. If they decide not to, there are no grounds to legalize their residence. According to Act on Aliens of 13 June 2003 (Article 53 and 56), the residence permit for a fixed period shall be granted (inter alia) to an alien, who is a victim of trafficking in human beings within the meaning of Council Framework Decision of 19 July 2002 on combating trafficking in human beings (O.J. EC L 203 of. 1.08.2002), and fulfils jointly the following conditions: a) resides on the territory of the Republic of Poland; b) has undertaken cooperation with an authority competent with respect to conduct procedure on combating trafficking in human beings; c) has terminated contacts with persons suspected of committing related to trafficking in human beings. In this case the residence permit for a fixed period is granted for the period of 6 months.
	<b>Portugal</b>	<b>Yes</b>	“Exceptionally, <b>on a casuistic basis</b> , residence permit could be issued to victims of trafficking in human beings or persons who have been the subject of an action to facilitate illegal immigration <b>who did not cooperate with the authorities</b> , if special circumstances related to the victim’s (or to his /her family) security, health, family situation or vulnerability occurred. (Act n.º 23/2007, 4 <sup>th</sup> of July and Decree-Law n.º

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			368/2007 of 5 <sup>th</sup> of November)”
	<b>Slovak Republic</b>	<b>Yes</b>	The Act on the residency of foreigners determines the conditions for granting the tolerated stay for the persons who are victims of trafficking in human beings. In line with the Directive 2004/81/EC, to the foreigners of third country nationals, who are victims of the THB is granted a so called reflection period allowing them to reach an informed decision on whether they wish to cooperate with the law enforcement authorities. For this period of time which is in the Slovak Republic maximum 40 days (during this reflection period the victim is not obliged to cooperate with the competent authorities) a permit for tolerated stay is granted. This period can be repeatedly extended by minimum 180 days, if the reason for the granting of the permit is still pending and the presence of the foreigner is inevitable for the reasons of the criminal proceeding. If the foreigner decides not to cooperate with the law enforcement authorities the law does not regulate any other form of the residence related to the victims of THB. The foreigner can apply for any other type of the residence permit for other purposes as the THB, in line with conditions defined by Act on the residency of foreigners.
	<b>Slovenia</b>	<b>Yes</b>	Republic Slovenia can issue temporary permit to victims of trafficking for a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to cooperate with the competent authorities. Republic Slovenia has implemented the Directive 2004/81/EC, and can issue such a permit according to the Aliens act for a period of three month, that can be prolonged for another three months in case of well grounded reasons. Persons with such permit, enjoys the rights of free basic social and health care.
	<b>Spain</b>	<b>Yes</b>	In Spain, in accordance with Article 59 of Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their integration, the possibility of facilitating stay and residence in addition to a work permit is foreseen <b>only for illegal foreigners</b> under circumstances when those who themselves have been victims of trafficking in human beings <b>denounce or cooperate with the competent authorities</b> . All of this without prejudice to the possibility of being issued a temporary residence permit for humanitarian reasons by virtue of the criteria established in Article 45.4. of the Regulations that develop the aforementioned Law.
	<b>Sweden</b>	<b>Yes</b>	The Swedish Aliens Act contains a provision regarding temporary RP to victims of trafficking who <u>do</u> cooperate with the authorities. There is no provision specially aiming at trafficking victims who <u>do not</u> cooperate.  Chapter 5, Section 6 of the Aliens Act states that:  <i>“If a residence permit cannot be awarded on other grounds, a permit may be granted to an alien if on an overall assessment of the alien’s situation there are found to be such exceptionally distressing circumstances that he or she should be allowed to stay in Sweden. In making this assessment, particular attention shall be paid to the alien’s state of health, his or her adaptation to Sweden and his or her situation in the country of origin.</i>  <i>Children may be granted residence permits under this Section even if the circumstances that come to light do not have the same seriousness and weight that is required for a permit to be granted to adults.”</i>

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			<p>The fact that an alien is a victim of trafficking can be taken into account when deciding whether the alien should be granted RP according to the above mentioned provision, or not.</p> <p>The possible need of protection in Sweden for an asylum seeker being victim of trafficking and, the will of cooperation in the pursuing a law suit in the trafficking case, are considered to be separate cases.</p>
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