



Churches' Commission for Migrants in Europe

Commission des Eglises auprès des Migrants en Europe

Kommission der Kirchen für Migranten in Europa

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Comments

Comments on the Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities (COM/2002/0071 final)

The above-named organisations represent Christian churches throughout Europe, Roman Catholic, Orthodox, Protestant and Anglican, as well as church agencies particularly concerned with migrants and refugees.

We appreciate the European Commission's initiative to come forward with a Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities. This Proposal corresponds to recommendations issued by different international organisations on the fight against trafficking in human beings.¹

We share the main concerns of the European Commission, i.e. the increase in illegal immigration, in its two most odious forms, namely the exploitation of foreign

¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, G.A. res. 55/25, annex II U.N. GAOR Supp. (n° 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

- Integration of the human rights of women and the gender perspective violence against women, report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights Resolution 1997/44, Economic and Social Council, E/CN.4/2000/68.

- Council of Europe, Parliamentary Assembly Recommendation 1545 (2002), 21.01.2002.

nationals in the form of trafficking in human beings and the growth of networks of smugglers acting for non-humanitarian reasons.

We realise that the proposed Directive introduces a residence permit and is not concerned with protection of either witnesses or victims, as this is neither its aim nor its legal basis; we would nevertheless like to bring up a number of concerns. We refer to a letter that was sent to Mr. De Brouwer on January 21st, 2002, following a discussion paper on the topic.

Article 2: Definitions

Paragraph d: “measure to enforce an expulsion order” means any measure taken by a Member State to enforce the decision of an administrative and (add) *judicial* authority ordering the expulsion of a third-country national.

Article 3: Scope

There is no objective basis to limit the scope of this Directive to adults only. As rightly mentioned in the commentaries, the victims of trafficking in human beings are very often minors. They should also be covered by the scope of this Directive. But it is up to the Member States to grant other types of residence permits to minors, insofar as they guarantee a more favourable treatment (Article 6).

Article 4: Safeguard

We would like to add that this Directive shall be without prejudice to the granting of residence permits on humanitarian grounds to victims who do not or who cannot cooperate with the authorities.²

Article 5: Non-discrimination

Member States shall apply this Directive without discrimination on the grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, membership of a national minority, wealth, birth, disability, age or sexual orientation and (add) *nationality*.

Article 7: Information given to the victims

We appreciate the involvement of Non-Governmental Organisations in the information to be provided to victims. The information should be provided in a language understood by the victim.³

Article 8: Reflection period

As far as the reflection period is concerned, a 30-day duration seems appropriate in some cases, but may have to be longer in other cases. We urge the inclusion of a

² According to the European Parliament 2000 Resolution (Sec.21), Member States should introduce temporary residence permits regardless of whether or not the victims wish to testify, as well as special permanent residence permits on humanitarian grounds. Approved NGOs assisting victims of trafficking should be authorized to give their opinion on whether or not residence permits should be issued.

³ “Trafficking in human beings for the purpose of sexual exploitation”. Recommendation n° R. (2000) 11, adopted by the Committee of Ministers of the Council of Europe on 19 May 2000 and Explanatory Memorandum: explanatory memorandum, paragraph 27.

so-called “hardship” clause of three months for traumatised victims, for whom a 30 day-delay will not be sufficient.

We insist that the requirement for the victim to have severed links with the authors of the offences be interpreted in a flexible way.⁴

Article 9: Assistance and care

We appreciate that Member States shall attend to the special needs of the most vulnerable, but would like to add “with special attention to the most traumatized”. Moreover, specialized centres should deal with the special needs of the most vulnerable. Physical protection and physical security of the victims should be assured at all times.

The article stipulates that Member States shall ensure that victims have access to suitable accommodation, emergency medical and psychological treatment and medical care that cannot be postponed, and to the necessary support in the form of social welfare and means of subsistence if they do not have sufficient resources. We urge the Member States to put adequate financial means at the disposal of social service centres that are providing these services.

Article 10: Issue and renewal of the residence permit

Article 10.1 stipulates that the authority must decide on three elements:

- first, whether the presence of the victim is useful;
- second, whether the victim has shown a clear intention to cooperate;
- third, the victim must have severed all links with the smugglers and traffickers.

We have four main concerns regarding this article 10.1:

- We fear that the definition of usefulness of the presence of the victim will restrict his or her safeguards. We subscribe to the opinion of the Social and Economic Committee on this topic.⁵
- that a decision will be taken by the authority responsible for the investigation or prosecution *only*, apparently without any consultation with other organisations, such as Non-Governmental Organisations. By their work in the field, NGOs can offer a valuable contribution in an independent body, set up for this purpose. We share the opinion of the Social and Economic Committee, which believes that provision should be made for a social association providing assistance to a victim to assist him or her to enter into cooperation with the authorities.⁶
- it is necessary to establish clear and objective criteria as to what is considered “useful presence” and “clear intention to cooperate”. On what grounds will the authorities decide whether or not the presence of the victim is useful?
- it should be up to the witnesses to choose whether they prefer female officials in charge of the investigation.

⁴ Preliminary draft opinion of the Section for Employment, Social Affairs and Citizenship of the Economic and Social Committee, SOC/104 paragraph 3.2.

⁵ Preliminary draft opinion of the Section for Employment, Social Affairs and Citizenship of the Economic and Social Committee, SOC/104 paragraph 3.3.2.

⁶ Preliminary draft opinion of the Section for Employment, Social Affairs and Citizenship of the Economic and Social Committee, SOC/104 paragraph 2.7.

10.3 As a strong incentive towards cooperation with the authorities, a renewed permit after the initial 30 days should be no less than 6 months, and a possibility for a longer term permit should be foreseen.

Here again, particularly for traumatised victims, a longer term permit may prove essential, as it will be difficult to overcome the trauma, which is necessary to be able to testify against their traffickers.

10.4 With regard to family members, we refer to the Council Regulation of 23.11.1995 on the protection of witnesses in the framework of the fight against organised international crime, stipulating that protection offered to victims must also be extended, if necessary, to the parents, children and other close relatives of witnesses. Although we are aware that this topic falls outside the scope of this Directive, we feel that there is a need, not only to protect family members present in the European Union Member States, but also to protect family members of victims, who have remained in the home country and for whom protection from traffickers' possible revenge actions seems highly advisable.

Article 12: work, training and education

We appreciate that Member States shall authorise the holders of a short-term residence permit to have access to the labour market, vocational training and education, thereby avoiding that they are being re-trafficked. However, we think that family members of holders of a short-term residence permit should have access to the labour market, vocational training and education as well .

Article 13: medical and psychological care

Medical and psychological care should be assured by specialized service centres.

Article 14: victims who are minors

In view of the special situation of minors, we agree that it is up to each Member State to take due account of the best interests of the child when applying the provisions of this Directive.

In case minors should be excluded from this directive, they should be given the opportunity to benefit from a residence permit on humanitarian grounds.

Article 15: rehabilitation programmes for victims

If a victim has to be returned to his/her country of origin, this return should take place with his/her full consent. We welcome Commissioner Vitorino's proposal to launch a debate on the need for a common policy for the return of illegal residents (Green Paper). The signatory organisations will contribute in writing to this debate. We do hope that the development of a common return policy will be compatible with the need for protection under international and European law in the evolving common European asylum system.

Article 16: non-renewal

Victims should be offered the perspective of a permanent stay when the prosecution of the criminal network has been shown to be either successful or not successful.

A victim who has testified against his/her traffickers and has to return at the end of the judicial investigation might face retaliation once back in the home country, and

should therefore be offered a permanent stay whether the prosecution has been successful⁷ or not.

The Parliamentary Assembly of the Council of Europe⁸ provides a recommendation stipulating that residence permits of a permanent nature are granted to victims of trafficking for those who are willing to testify in court and need protection, and of a temporary but renewable nature for all others on humanitarian grounds.

Article 17: withdrawal

We refer to article 10: what exactly is believed to be fraudulent or wrongful complaint by the judicial authority?

What are the reasons relating to the protection of public order and national security?

Article 3 of the ECHR establishes the non-refoulement principle.⁹

Article 19: exchange of information

We believe that Non-Governmental Organisations can participate in the assessment of effectiveness of rehabilitation programmes.

Apart from the number of short-term residence permits issued, the proceedings initiated and their outcome, we think it is recommendable to have information on the countries where victims come from as well, in order to have a comprehensive overview of the phenomenon.

To conclude, we insist on the development of a Community policy that tackles the root causes of trafficking. Accession countries, both in their capacity as future members of the European Union and as countries of origin and/or transit should be involved from the very beginning in the shaping of this Proposal for a Council Directive. Root causes of trafficking should also be addressed in non-EU countries. We insist on a fair development cooperation policy whereby the fight against poverty and the promotion of human rights are crucial.

As far as funding is concerned, we plead for appropriate funding for organisations that are involved at the grass root level in anti-trafficking activities and for a quick and efficient decision-taking process as to the release of funds.

Brussels, 3 June 2002

⁷ Article 3 of the ECHR obliges states not to expel trafficked persons if there is evidence that upon return to their home country their life might be endangered by violent acts by the traffickers.

⁸ Council of Europe, Parliamentary Assembly Recommendation 1545 (2002), 21.01.2002.

⁹ In the case Ahmed v. Austria e.g. the European Court of Human Rights held that state parties to the Convention are obliged not to expel an alien, "where substantial ground have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. This obligation is valid irrespective of the person's conduct, "however undesirable or dangerous" the activities of the individual in question are".