



AD HOC QUERY ON 2019.83 Access of victims of trafficking to their rights.

Requested by Michael BEYS on 4 September 2019

Compilation produced on 28 November 2019

Responses from Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Sweden, United Kingdom plus Norway (21 in Total)

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1. Background information

Background information:

A number of asylum seekers in Cyprus has been identified lately as victims of trafficking, but with no criminal proceedings being able to be initiated, mainly for the reason that trafficking and exploitation had taken place abroad where no cooperation with the authorities can be established. Based on what is explained in paragraph 2 below, these people receive an identification certificate by the Police, but they are not granted with a residence permit as victims of trafficking; they continue to reside in Cyprus as asylum seekers, and receive increased rights as victims of trafficking by demonstrating their identification certificate.

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Following European Directives 2004/81 and 2011/36, Cyprus' anti-trafficking law provides that the residence permit granted to a victim of trafficking is linked to the criminal proceedings. Moreover, following Directive 2011/36, Cyprus' anti-trafficking law provides that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might be a victim of trafficking. It also provides that a victim has access to his/her rights as soon as he/she is given an identification certificate by the police, which is the responsible body to officially identify a person as a victim.

Furthermore, following Directive 2011/36, Cyprus' anti-trafficking law provides that a victim has access to his/her rights for an appropriate period of time after the end of the criminal proceedings. This "appropriate period of time" has not been defined in law, and neither is being defined in the Directive. Recital 18 of Directive only stipulates "Where necessary, assistance and support should continue for an appropriate period after the criminal proceedings have ended, for example if medical treatment is ongoing due to the severe physical or psychological consequences of the crime, or if the victim's safety is at risk due to the victim's statements in those criminal proceedings".

Having explained the above, we are examining how to define the grounds on which a victim can have access to his/her rights when no criminal proceedings exist and for how long.

2. Questions

1. Does your law provide for access to victims' rights for an appropriate period of time after the criminal proceedings end?

Available choices: Yes, No

2. If yes to Question 1, have you established certain rules in order to decide if a person can continue to have access to his/her rights as a victim after the criminal proceedings end, or if there are no criminal proceedings at all?

3. If yes to Question 1, have you specified this "appropriate period of time", or do you examine each case on its own merits?

4. Have you had similar cases of victims that no criminal proceedings can be initiated regarding their case? If yes, what type of residence permit have you granted?

We would very much appreciate your responses by **27 September 2019**.

3. Responses

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		Wider Dissemination ²	
	EMN NCP Austria	No	
	EMN NCP Belgium	Yes	<p>1. Yes</p> <p>2. The Belgian law includes a provision on delivering a definitive residence permit after the judicial proceedings so that it is possible for the victim to have access to the same rights as Belgians (art. 61/5 and following of the Law of 15 December 1980 regarding access to the territory, residence, settlement and the removal of foreigners). During and after the criminal proceedings the victim is accompanied by the specialized centres for trafficking in human beings. They receive support: legal, administrative and psychosocial support. These 3 parts are parallel and complementary. If at the end of the investigation the case is terminated without further action by the prosecutor or not prosecuted by the chambers, then the person can no longer benefit from the protection and assistance procedure for victims of trafficking in human beings, and follows an "administrative conclusion" of the guidance by a recognized specialized center.</p>

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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			<p>3. No, each case is examined on its own merits.</p> <p>4. When there is no possibility of starting a criminal proceeding the Immigration Office can grant residence on the basis of art. 9 and 13 of the Immigration Law (humanitarian regularization): This is the case when diplomats are involved. Diplomats are excluded from legal proceedings because of their immunity. Or it concerns the closure of proceedings, this also includes the dismissal by the public prosecutor's office, where they decide to file the case without further action, i.e. they decide not to prosecute anyone. This can be done for several reasons (no crime, perpetrator already deceased, perpetrator unknown, etc.).</p>
	EMN NCP Bulgaria	Yes	<p>1. No In the Republic of Bulgaria third country nationals, who are victims of trafficking in human beings and who have agreed to cooperate to identify the perpetrators of trafficking, are granted special protection status for the duration of the criminal proceedings which includes granting a long-term residence permit in the territory of the Republic of Bulgaria. Obtaining long-term residence permit is issued on the basis of a prosecutor's legal act.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. No</p>
	EMN NCP	Yes	1. Yes

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	Croatia		<p>2. Victims have access to rights regardless of stage or end of criminal proceedings, even if no criminal proceedings at all.</p> <p>Croatians Aliens Act provide for access to rights if a person has been identified as a victim of trafficking and accepts the aid and protection programme for victims, and is not related to criminal proceedings. The identification of victims of trafficking in human beings is carried out by the Ministry of the Interior in cooperation with the civil society organizations. If the victim is a minor the Ministry of the Interior cooperates with ministry responsible for social service.</p> <p>To a victim of trafficking in human beings - a foreigner who accepts the aid and protection programme, a temporary stay for humanitarian reasons will be approved.</p> <p>The aid and protection programme includes health and psychosocial protection, safe housing, translation and interpretation services, legal assistance and safe return to the country of origin.</p> <p>Person loses her right to aid and protection if her statement is based on false facts, if the circumstances for which the right to aid and protection has ceased or if the person behaves contrary to the rules laid down in the aid and protection programme.</p> <p>A victim who has been granted temporary residence has the right to safe accommodation in a shelter for victims of THB, health care, financial assistance, education and work. The amount of financial aid for a victim who is unemployed and has no insured costs of personal life is determined by the authority responsible for social care activities. In dealing with victims of THB, special care is kept on pregnant women and persons with disabilities as particularly vulnerable groups of victims.</p> <p>This status will terminate if an abuse of the status is determined, for reasons of the protection of public order, national security and public health.</p> <p>Victims have access to rights regardless of stage or end of criminal proceedings, even if no criminal proceedings at all.</p> <p>Croatians Aliens Act provide for access to rights if a person has been identified as a victim of</p>
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	<p>EMN NCP Czech Republic</p>	<p>Yes</p>	<p>1. No The Czech Republic has established a special Program of the Support and Protection of Victims of Trafficking in Human Beings. Within this Program isolation from the criminal environment, social assistance, psychological and social counselling, psychotherapeutic services, translation and interpretation services, legal counselling, healthcare, requalification courses, safe accommodation are provided to victims. Victims are referred to this program by police or NGOs. Currently the Program is set up to provide these services to victims before and during criminal proceedings, but not after the criminal proceeding ends. Regardless of the Program, there is an other system of assistance to victims of crime in the Czech Republic. Assistance consists mainly in providing or mediating crisis intervention to victims of crime and in providing information about possibilities of psychological, psychosocial or legal assistance provided to victims by external organizations. After the end of the criminal proceedings, care for victims is provided via NGOs.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. In such cases there can be used §42e of the Act No. 326/1999 Coll., on the Residence of the foreign nationals on the territory of the Czech Republic (long-term residence permit for the purpose of protection on the territory) or the tolerated stay visa.</p>
	<p>EMN NCP Estonia</p>	<p>Yes</p>	<p>1. Yes</p> <p>3. Third country nationals to whom cooling-off (reflecting) period is provided will be redirected to victim support services. If, after the identification procedures or the reflection period, a victim has not been granted a residence permit (or other legal ground to stay) or person has left Estonia arbitrarily, the State no longer provide assistance and victim support.</p>

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			<p>4. There is a legal ground to issue an temporary residence permits for participation in criminal proceedings which shall be issued for six up to twelve months on the application of the prosecutor's office (if needed it might be extended up to one year). However, it is not possible to issue a residence permit on this legal ground to persons who are not taking part of criminal proceedings. If the person is also an asylum seeker, the issuance of another residence permit is determined by the outcome of the asylum procedure.</p>
	<p>EMN NCP France</p>	<p>Yes</p>	<p>1. Yes</p> <p>3. see Q2</p> <p>4. Such situation will be examined on a case by case basis. Regarding cases where the accused persons are not sentenced although criminal proceedings were undertaken, a circular of 19 May 2015 mentions the possibility to consider positively such files (and especially whether the issuance of a temporary residence permit is possible either under a residence permit for 'private and family life' ground or for regularization) provided the reality of the facts was confirmed. When victims do not cooperate with the justice (for example, for fear of retaliation), a residence permit for humanitarian grounds or justified by exceptional grounds may be issued to victims of THB. This possibility is recalled in the Ministry of the Interior's instruction of 19 May 2015 on the conditions of admission to stay for foreign nationals that are victims of human trafficking or pimping. Such victims can also be issued residence permits for other grounds, such as family reasons or economic purposes or international protection. Moreover, Law No. 2016-444 of 13 April 2016 aiming to reinforce the fight against prostitution and support people forced to prostitute themselves extended the rights of victims of prostitution, especially regarding the residence right for victims of THB and pimping. Thus, a temporary residence authorisation of a duration of six months may be issued to victims of THB and pimping involved in the programme to quit prostitution, regardless of their cooperation with the judicial services. This</p>

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			<p>commitment to a programme to quit prostitution and to promote social and professional integration must be authorised by the Prefect after the opinion of a commission responsible for organising and coordinating action in favour of victims of prostitution, pimping and THB. This temporary residence authorisation gives the right to carry out a professional activity. It is renewed throughout the programme to quit prostitution and to promote social and professional integration (for a maximum duration of 24 months), subject to the continued fulfilment of the conditions stipulated for its issue and with no condition of filing any complaint.</p>
	<p>EMN NCP Germany</p>	<p>Yes</p>	<ol style="list-style-type: none"> 1. Yes 2. Once the criminal proceedings have ended, the residence permit is to be extended if humanitarian or personal grounds or public interests require the foreigner's continued presence in Germany, section 25 subsection (4) of the Residence Act (Aufenthaltsgesetz) (available in English at http://www.gesetze-im-internet.de/englisch_aufenthg/index.html). If no criminal proceedings are conducted, the continuation of residence is determined by the outcome of the asylum procedure. 3. There is no provision for a generally-valid duration of the extension of residence; this depends on the circumstances of the respective individual case. 4. If an individual is not willing to cooperate as a witness in criminal proceedings, or if no criminal proceedings are conducted, the issuance of another residence permit is determined by the outcome of the asylum procedure. It should be noted that there are and have been many cases of persons potentially affected by human trafficking in Germany in which no criminal proceedings are conducted in Germany. Reasons for this can include the fact that the scene of the crime is not in Germany, the victim is not prepared to make a statement to the police, or the victim's knowledge is not sufficient to open investigation proceedings, just to name a few variants.

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	<p>EMN NCP Greece</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. According to the Presidential Decree 233/03 all victims of trafficking receive protection and assistance, regardless of whether or not criminal proceedings have been initiated. Moreover, the Greek Law provides for two possibilities when it comes to the issuing of renewable residence permits to victims of trafficking, nationals of third countries: Granting a residence permit on humanitarian grounds or on the basis of the victims' co-operation with the authorities in the investigation / criminal proceedings.</p> <p>Granting a residence permit on humanitarian grounds Article 19A of the Immigration and Social Integration Code (Law 4251/14) provides for the possibility of granting, by Ministerial decision, a residence permit for humanitarian reasons to third-country nationals who are victims of trafficking and they do not cooperate with the competent authorities, on condition that the person concerned has been formally identified by the competent prosecutor as a victim of trafficking. The residence permit is of one year's duration, entitles the holder to access to the labour market, and it can be renewed for two years each time, on the condition that the relevant criminal proceedings continue. If criminal proceedings are not pending, the residence permit is renewable for one year. In case the initial reasons justifying the issuance of this residence permit no longer prevail, the permit may be renewed for any other reason referred in the Immigration Code.</p> <p>Granting a residence permit on the basis of the victims' co-operation with the authorities in the investigation / criminal proceedings. Pursuant to Articles 52 and 53 of the Immigration and Social Integration Code, a third-country national who has been attributed the status of a victim of THB by decision of a prosecutor shall be granted a residence permit if one the following conditions are fulfilled: the presence of the person in Greece facilitates the investigation or criminal proceedings, he/she has shown a clear intention to co-operate, and the person has broken off all contact with the perpetrators. The residence permit is issued by Ministerial decision. The permit is initially issued for one year and is renewable for the same period, if the previously mentioned conditions continue to be met. The residence permit gives free-of-charge access to health care as well as access to vocational training and labour market. Within one month of the conclusion of the relevant procedure with the delivery of an irrevocable court judgment, the holder of a residence</p>
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			<p>permit in the capacity of victim of human trafficking may be issued with a residence permit for one of the grounds and under the relevant conditions prescribed in the Immigration and Social Integration Code.</p> <p>3. As stated in Q2</p> <p>4. There are no cases of victims (when trafficking has taken place abroad) who have been granted with a residence permit, as mentioned above in answer number 2, if no criminal proceedings can be initiated in Greece. Namely, as stated above, the Immigration and Social Integration Code provides the possibility of granting a residence permit for victims of trafficking, on condition that the person concerned has been formally identified by the competent prosecutor as a victim of trafficking.</p>
	<p>EMN NCP Hungary</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. Based on the Act II of 2007 on the on the Admission and Right of Residence of Third-Country Nationals, a certificate of temporary residence shall be issued to any TCN who is a VoT, if initiated by the victim support authority, for the duration of the reflection period (30 days) (Section 30 e)). Section 45 (4) stipulates that TCNs who are VoTs may be expelled during the time of reflection period only if their residence on the territory of Hungary constitutes any threat to national or public security. According to Section 130(5) of Government Decree No 114/2007 implementing Act II of 2007 (hereinafter: Harmtv.) on the Admission and Right of Residence of Third-Country Nationals (the Government Decree hereinafter: Harmvhr.) if the TCN is a VoT, a reception centre for the placement of the victims of human trafficking or other accommodation maintained under contract may be designated to them. Third country nationals may be accommodated at a shelter based on this legal provision.</p> <p>If the person concerned agrees to cooperate with the authorities, a residence permit based on humanitarian grounds may be issued by the authority. The validity period of such residence permit shall be up to 6 months, that may be extended by up to 6 months at a time.</p> <p>According to the Hungarian authorities, being a victim of THB is not a ground for asylum even though</p>

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			<p>it could theoretically constitute a consideration in the context of a resident permit granted on humanitarian grounds.</p> <p>In accordance of the above detailed, TCN VoTs are entitled to any kind of support based on the residence permit on humanitarian grounds issued by the authority.</p> <p>It is important to note that no TCN VoT has ever been identified in Hungary, consequently no criminal proceeding as such has ever been initiated in this matter.</p> <p>3. In theory, as TCN VoTs do not automatically qualify for international protection, the „appropriate time” mentioned in the question takes as long as their residence permit is extended.</p> <p>4. No TCN VoT has ever been identified in Hungary, consequently no criminal proceeding as such has ever been initiated in this matter.</p>
	<p>EMN NCP Italy</p>	<p>Yes</p>	<p>1. No</p> <p>No. The Italian law provides as follow. According to art. 18 of law 286/1998, a residence permit for social protection should be asked and issued to trafficking victims by the Police Headquarters (so, outside the international protection's procedure): - On the proposal of Public Prosecutor of the Republic, in cases in which a penal proceeding for violence or serious exploitation is opened; - On the proposal of anti-trafficking institutions (which can be financed by Ministry of Equal Opportunities or social services of local authorities or associations or private organisms, as long as they are recorded in the register of associations and institutions working in the interests of immigrants established in the Ministry of Labour, Health and Social Policies).- On his own initiative; Before issuing this type of residence permit, the Police Headquarters has to verify that the victim has joined the individual program of assistance and social integration agreed with the responsible of the anti-trafficking institution to which the program should be realized. Holders of residence permit for social protection have the right to access to care services, to study, to work and to be registered to the unemployment lines. However, they can enjoy of these rights until their residence permit is valid. To this regard, the residence permit has a validity of 6 months renewable for one year or for all the time necessary for justice's reason. So, it is granted until the process is over (it can be revoked early if the</p>

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			<p>victim voluntarily stops the programme of assistance and social integration or his/her behaviour is incompatible with the purpose of the program of protection). However, it may be useful to specify that the residence permit for social protection can be converted in a working or studying residence permit. In these cases, even though the trial is over, the holder can continue to enjoy rights related to his/her residence permit.</p> <p>ahq_83.docx</p> <p>2.</p> <p>3.</p> <p>4. Also in Italy, as in Cyprus, a number of asylum seekers has been identified as victims of trafficking, but with no criminal proceedings being able to be initiated, mainly for the reason that trafficking and exploitation had taken place abroad. So, with the aim to provide protection to such situations, the National Commission for Asylum, within the Ministry of Interior, and the UNHCR have elaborated (in 2017) Guidelines to Territorial Commissions to identify asylum seekers victims of trafficking (https://www.unhcr.it/wp-content/uploads/2018/02/Linee-Guida-identificazi...). In particular, if during the study of the case or during the interview, the Territorial Commission's officer recognizes trafficking indicators –such as young age, provenience, lack of details about the flight, type of route, frequent absence from the reception center or the refusal of the reception - he stops the interview and with the consent of the applicant, proceeds with the so called “referral mechanism”:</p> <p>the Territorial Commission (administrative authorities competent to examine asylum applications at first instance) contacts an anti-tracking institution with which has been stipulated a memorandum of understanding. The anti-tracking institution carries out several talks with the potential victim and, at the end, sends a report to Territorial Commission, in which has to be highlighted if the applicant has asked or has accepted to adhere to a specific program of protection. Nevertheless, this last element shall not affect the decision of the Territorial Commission about asylum claim.</p> <p>However, considering that the residence permit for social protection shall be asked directly to Police Headquarters outside the asylum procedure, in these cases the only way to obtain a stay permit is to be recognized as a refugee or a beneficiary of subsidiary protection.</p>
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			<p>Otherwise, once the asylum procedure is concluded without any recognition, the anti-tracking institution should propose to the Police Headquarters the issuing of a residence permit for social protection.</p> <p>If the potential victim has not submitted an asylum application and no criminal proceedings has been opened, the issuing of a residence permit for social protection can be requested to Police Headquarters only by anti-tracking institutions who come to know of the vulnerability's situation. In fact, as said in Q.1, the Public Prosecutor of the Republic should propose the issuing of this type of residence permit only in cases in which a penal proceeding for violence or serious exploitation is opened.</p>
	EMN NCP Latvia	Yes	<p>1. Yes</p> <p>2. Yes. Under Cabinet regulations No.344 adopted on 16 July 2019 when there are no criminal proceedings a victim during period of two years can use additional help after he/she has used his/her rights as a victim. As regards on rights after the end of criminal proceedings, there is no specific rules on time in which a victim can use his/her additional rights as a victim.</p> <p>3. Please see prevoius answer</p> <p>4. No. While person is asylum seeker, there is no need for residence permit to stay. If there is no asylum procedure or it is ended and there is no criminal proceedings, it is possible, if necessary, to grant residence permit on humanitarian grounds.</p>
	EMN NCP Lithuania	Yes	<p>1. Yes</p>

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			<p>2. According to the Law of the Republic of Lithuania on the Legal Status of Aliens (hereinafter referred to as “the Law”) Article 130(4), an alien shall not be expelled from the Republic of Lithuania or returned to a foreign state if he or she has been granted the cooling-off period, in accordance with the procedure established by the Government of the Republic of Lithuania, during which he or she, as a present or former victim of crimes related to trafficking in human beings, must take a decision on cooperation with a pre-trial investigation body or the court. The alien shall be issued a temporary residence permit with the term of validity of up to one year on the grounds set out in Article 40(1) (8) of the Law.</p> <p>In accordance with the procedure established by the Government of the Republic of Lithuania for granting the cooling-off period during which he, as a present or former victim of crimes related to trafficking in human beings, must take a decision on cooperation with a pre-trial investigation body or the court, the investigating officer, having obtained reasonable data on the victim of trafficking in human beings, informs the alien of the possibility provided by the Law to be expelled from Lithuania or refused to return to a foreign country, if the victim has been granted a cooling-off period in accordance with the procedure laid down by the Law, as well as about the rights and obligations that the victim will have to respect during the cooling-off period and the consequences of non-compliance.</p> <p>According to Article 40(1) (12) of the Law, a temporary residence permit may be issued or replaced to an alien if he or she is allowed to remain in Lithuania because he or she is a victim of trafficking in human beings or illegal employment and cooperates with pre-trial investigation bodies or the court in combating trafficking in human beings or crimes related to trafficking in human beings or illegal employment, in the cases of particularly exploitative employment conditions or the employment of a minor.</p> <p>On this basis, a temporary residence permit is issued, if the pre-trial investigation body or the court mediates in issuing the temporary residence permit to such an alien. A temporary residence permit shall be issued for a period of six months and it may be renewed if a pre-trial investigation body or the court mediates in issuing it. If the alien who has been issued a temporary residence permit on these grounds is not in possession of sufficient means of subsistence, he or she shall be entitled to receive basic medical aid and social services in accordance with the procedure laid down in legal acts of Republic of Lithuania.</p> <p>It can be concluded, that a temporary residence permit is issued to victims only if a pre-trial investigation body (hence, the pre-trial procedure is being initiated) or the court mediates in issuing it.</p>
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			<p>However, this situation of issuing temporary residence permit for a victim has not been addressed in practice in the recent years and other solutions could be possible in practice.</p> <p>3. Please see answer to Q2.</p> <p>4. The issuance of temporary residence permit for a victim has not been addressed in practice in recent years.</p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. No.</p> <p>Indeed, the Article 1 (1) of the Grand-Ducal Regulation of 11 September 2014 on: 1. Execution of Article 2 (1) (a) and (2) and (4) of the amended Law of 8 May 2009 on the Assistance, Protection and Security of Victims of Trafficking in Human Beings; 2. amending the amended Grand-Ducal Regulation of 19 March 1999 concerning government approval granted to providers of services for girls, women and women with children, states that "The benefit of assistance measures shall terminate no later than 3 months after the decision of the court which has finally ruled on the public action (criminal case), or three months if the victim of trafficking in human beings, after a final decision in criminal court, obtains a final decision on his/her civil interests.</p> <p>However, in the case the victim is a minor, the benefit of the assistance measures shall be guaranteed until the age of majority, without prejudice to the provisions of paragraph 2 of this paragraph."</p> <p>Access to a residence permit</p> <p>Once the victim is identified by the Organised Crime Unit of the Judicial Police, the latter informs the Directorate of Immigration. The Directorate will issue a certificate for the period of reflection valid for 90 days so that the person can escape from the influence of the perpetrators of the offence and recover. Cooperation with the authorities in charge of the investigation is not a prerequisite for granting this period of reflection.</p>

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			<p>According to article 95(1) of the amended Law of 29 August 2008 pertaining to the free movement of persons and immigration (Immigration Law), a residence permit may be issued after the expiry of the reflection period if the following conditions are fulfilled :</p> <ul style="list-style-type: none">the victim has filed a complaint or made statements with regard to the allegedly guilty persons or networks, or her/his physical presence is required for the investigation or proceedings ;the victim has broken all ties with the alleged perpetrators of the offence ;the victim is not considered a risk to public order or national security. <p>The residence permit may even be issued before the expiry of the reflection period if the above mentioned conditions are fulfilled.</p> <p>The residence permit is valid for six months and is renewable for a further period of six months if the criteria are still fulfilled.</p> <p>After the residence permit for victims of trafficking has expired, the person in question may apply for an authorisation and a residence permit for private reasons. This residence permit is valid for one year and is renewable if, when reviewed, the victim's situation has not changed. The person may also apply for a residence permit for salaried worker without being subject to the condition of priority employment of EU nationals.</p> <p>Access to support measures</p> <p>Once the victim is identified by the Organised Crime Unit of the Judicial Police, the latter immediately notifies the support services for victims of trafficking.</p> <p>Formal identification as a victim of trafficking enables support measures to be triggered. The person may, before being identified, receive psychosocial support from these services whose role is to instill trust so that the person accepts the need for contact with the police in order to be identified as a victim of trafficking.</p> <p>The amended Law of 8 May 2009 on support, protection and security for victims of trafficking in human beings stipulates that a victim, to enable her/his physical, psychological and social recovery, is entitled to:</p> <ul style="list-style-type: none">• accommodation, social and socio-educational support, material and financial support, medical, psychological or therapeutic support depending on their needs;
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			<ul style="list-style-type: none"> • linguistic support; and • legal support. <p>3. The appropriate period of time is fixed to three months.</p> <p>4. N/A.</p>
	EMN NCP Netherlands	Yes	<p>1. Yes</p> <p>3. See question 2</p> <p>4. Dutch legislation stipulates that a third country national will be granted a temporary regular residence permit in case of a criminal investigation. This residence permit is issued almost immediately after the third country national has made a declaration. In August 2019, this policy was adjusted for Dublin claimants: they will only receive a residence permit if the Public Prosecution Service indicates that their presence is necessary for the criminal proceedings. Finally, for third country nationals who cannot make a declaration because of medical reasons, threats, or because it concerns a minor, they are also granted a temporary residence permit. In that case, there is no condition of an ongoing criminal investigation.</p>
	EMN NCP Poland	Yes	<p>1. Yes</p> <p>2. The Act on Social Assistance on the basis of which benefits are granted to victims of trafficking in human beings does not contain any provisions relating to the stage of criminal proceedings in a crime case (trafficking in human beings), which would determine the provision of assistance to</p>

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			<p>victims of trafficking in human beings or would diversify the assistance provided in its scope or time dimension.</p> <p>Moreover, victims of trafficking are cared for by the National Consulting and Intervention Center (KCIK), financed from the state budget. Victims at every stage of investigation (also after or even when an investigation has not been launched) can benefit from the Centre's main tasks which include: informal identification of victims of trafficking, intervention, organisation of safe haven, provision of medical, legal and psychological assistance, interpreter's support, preventive counselling, consultations for institutions and individuals.</p> <p>Pursuant to the general principles of social assistance, the period and scope of providing benefits for entitled persons is determined individually on the basis of the needs of a specific person or family recognized by a social worker during an environmental interview. However, assistance in the form of crisis intervention (providing shelter, meals, necessary clothing, special-purpose allowance) to victims of trafficking is provided for the duration of the validity of the special certificate issued for the alleged victim of trafficking in human beings (3 months for adults and 4 months for minors) or the validity of temporary residence permit for victims of trafficking in human beings (up to 3 years). It must be said that based on art. 106 par. 2 of the Act on Social Assistance provision of benefits in the form of crisis intervention does not require an administrative decision.</p> <p>3. As it was mentioned before, each case is assessed individually.</p> <p>4. Not every victim of trafficking in human beings is willing to or decides to cooperate with law-enforcement authorities which in turn in Poland is a condition to be granted a temporary residence permit for victims of trafficking in human beings. In such cases no type of residence permit is granted to such person unless s/he is entitled to be granted a temporary residence permit on the general principles (work permit, study, family reunification etc.).</p>
	<p>EMN NCP Portugal</p>	<p>Yes</p>	<p>1. Yes Following the Directive 2011/36 and according to the Directive 2012/29/EU (in Article 8), Portugal anti-trafficking law provides that a victim have access to his/her rights for an appropriate period of</p>

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			<p>time after the end of the criminal proceedings. This “appropriate period of time” has not been define in law, and neither is being define in the Directives mentioned. In Portugal, victims continue to receive assistance, where necessary and taking into account their specific needs resulting from the type of exploitation and the program that was designed to his/her reintegration.</p> <p>2. There are no concrete rules in order to decide if a person can continue to have access to his/her rights as a victim after the criminal proceedings.</p> <p>The access to his/her rights is where necessary and taking into account their specific needs at a concrete moment of the assistance programmes in order to have a full reintegration.</p> <p>3. Each case is examined on its own merits.</p> <p>4. No. If there is a victim – even if presumed – it means that the competent authority initiated a criminal proceeding.</p> <p>However, if the status is not confirmed or the criminal proceeding initiated there is a legal possibility of the National Anti-Trafficking Coordinator (having compelling reasons to believe that this person is a victim of trafficking) to request to the Minister of Home Affairs a residence permit, request evaluate following:</p> <ul style="list-style-type: none"> - The safety of the victim, his or her relatives or persons who have close relationships with her; - The health of the persons referred to in the previous paragraph; -With your family situation; -With other situations of vulnerability.
	<p>EMN NCP Slovakia</p>	<p>Yes</p>	<p>1. No The Criminal Code requires the law enforcement authorities and the court to enable the victim, in the</p>

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			<p>course of the entire criminal proceedings, to fully exercise his/her rights, which must be properly, in an appropriate way and comprehensibly instructed. The criminal proceedings must be conducted with all due regard to the victim. His / her personal situation and immediate needs, age, gender, possible disability and maturity shall be taken into account, while fully respecting his / her physical, mental and moral integrity. This is without prejudice to the provisions of a special law on the rights of victims of crime. According to the Act on victims of crime, the victim is entitled to receive professional assistance in accordance with his / her specific needs and to the extent proportionate to the harm caused by the crime. The right to professional assistance is guaranteed to the victim regardless of filing of a criminal complaint or his/her active participation in criminal proceedings. Regulation of the Ministry of the Interior of the Slovak Republic on ensuring the program of support and protection of victims of human trafficking no. 144/2018, if the victim cooperates with law enforcement authorities during the criminal proceedings, crisis care will be provided during criminal proceedings. Victims under paragraph 3 letter a) is a citizen of the Slovak Republic who is reasonably suspected to have become a victim in the territory of the Slovak Republic or abroad. Victim under paragraph 3 letter b) and c) is: b) a citizen of the European Union who is reasonably suspected to have become a victim in the territory of the Slovak Republic, c) a third-country national who is reasonably suspected to have become a victim in the territory of the Slovak Republic. Pursuant to article 5 para 6 of the abovementioned Regulation of the Ministry of the Interior, if the victim according to art. 3 letters b) and c) (Union citizen of TCN) cooperates with the law enforcement authorities, crisis care will be provided during criminal proceedings if his/her presence is necessary for the purpose of criminal proceedings in the Slovak Republic.</p> <p>2. n/a</p> <p>3. n/a</p> <p>4. So far, in the Slovak Republic there was no case of a victim of trafficking from third country in which case it would not be possible to start criminal proceeding. Due to this reason the question of residence permit was not a question yet.</p>
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	<p>EMN NCP Sweden</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. According to the Swedish Aliens Act (chapter 5, section 15) a temporary residence permit valid for at least six month shall be granted to an alien staying in Sweden upon application from the person in charge of the preliminary investigation if it is necessary to enable an investigation or a main hearing in a criminal case. If the alien wants a reflection period so as to recover and be able to decide on whether he/she wants to cooperate with the authorities, a permit valid for 30 days shall be issued upon application from the investigator. The residence permits are not extended after the criminal proceedings end.</p> <p>In Sweden, there are no other formal/official victim identification apart from the one made by the investigator. Hence, if a preliminary investigation is not initiated, the victim will not have increased rights as victims of trafficking. However, as asylum seekers, the victims have access to medical care that cannot be deferred etc.</p> <p>3. Not applicable</p> <p>4. Yes, the Swedish Migration Agency has experienced a number of cases where it is not possible to start a criminal investigation. In some cases, the victims have been granted asylum as they are cannot return to their home countries. If they do not meet the criteria to be classified as in need of international protection, no permit can be granted according to the Swedish Aliens Act. The victims that are not given permits often turn to the civil society for assistance.</p>
	<p>EMN NCP United Kingdom</p>	<p>Yes</p>	<p>1. Yes</p> <p>2. The National Referral Mechanism (NRM) in the UK is a victim identification and support process. It is designed to make it easier for all the different agencies that could be involved in a modern slavery case, for example local authorities, non-governmental organisations and immigration authorities, to co-operate, share information about potential victims and facilitate their access to advice, accommodation and support. NRM decisions regarding victim identification are independent of any</p>

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			<p>other process or consideration and are undertaken by the Single Competent Authority within the Home Office.</p> <p>If a person is a victim of modern slavery then they are a victim of a crime. Police and other law enforcement agencies may therefore investigate the criminal offence and share information about the case to inform the NRM assessment. However, potential victims are under no obligation to cooperate with the police and some may not want them to be involved. An individual's entry to and the support available to them through the NRM is therefore not dependent on cooperation with law enforcement or with criminal proceedings.</p> <p>Moreover, whilst an individual must be present in the UK to enter the NRM they may actually have become a victim of modern slavery overseas and subsequently travelled to the UK of their own accord. UK law enforcement may therefore be unable to undertake criminal proceedings against those who have exploited a victim, and although they may be far removed from their modern slavery situation, the victim may still be traumatised by their experience and require support through the NRM.</p> <p>The NRM is a two-stage process for identifying victims of modern slavery. The first is the reasonable grounds test, which acts as an initial filter to identify potential victims. The second, for those identified as potential victims, is a substantive conclusive grounds decision as to whether the person is in fact a victim.</p> <p>Potential victims of modern slavery, i.e. those with positive reasonable grounds, are entitled to a supported recovery and reflection period for a minimum of 45 days and until a conclusive grounds decision is made. Support is provided to those who request it. Leave to remain or a residence permit due to being a potential victim are not issued to those without the right to stay in the UK during this time, however the individual will not be subject to possible removal action from the UK until the conclusive grounds decision, and therefore the identification process, is complete.</p> <p>Victims who receive a positive conclusive grounds decision are currently able to access move-on support for 45 days. The Home Office is in the process of reviewing this policy to ensure that support is based on need. However, being identified as a victim of modern slavery does not result in an</p>
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			<p>automatic grant of leave to remain in the UK or any associated residence permit.</p> <p>A grant of discretionary leave to remain may be made to a victim of modern slavery where it is necessary owing to their personal circumstances, they are seeking compensation from those who exploited them, or if they are willing to assist with police enquiries and criminal proceedings regarding their exploitation and are requested to remain in the UK.</p> <p>3. Please see Q2</p> <p>4. Please see Q2</p>
	<p>EMN NCP Norway</p>	<p>Yes</p>	<p>1. No</p> <p>2. Q1. No.* *Comment: However, this does not follow explicitly from Norwegian law (access to victims' rights). Persons identified as presumed victims of human trafficking may be granted a reflection period and/or limited residence permit (the Immigration Regulations section 8-3 subs. 1 and 2).</p> <p>The access to rights for a presumed victim in Norway is thus regulated by the person's immigration status, which again is determined by the immigration authorities' laws and regulations. This means that if there are no longer grounds for a residence permit as a presumed victim of trafficking (e. g. after criminal proceedings), and there are no other grounds for issuing a residence permit, the law does not provide for access to the rights provided for victims of trafficking.</p> <p>In practice however, the person can apply for a safe return as a presumed victim of trafficking and as such be offered continued support by civil society actors, and thus accessing some of the rights provided for presumed victims of trafficking, until the return has been effectuated.</p>

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			<p>Q2. On access to victims' rights in Norway in general</p> <p>Persons identified by the authorities as presumed victims of human trafficking are entitled to assistance and protection under the Council of Europe Convention: right to assistance to physical, mental and social restitution. These rights are aimed at providing presumed victims with an opportunity to break free from a situation of exploitation. In Norway, presumed victims may be entitled to:</p> <ul style="list-style-type: none">- information about rights and support measures and legal assistance (at least three hours of free legal advice to assess aspects of importance for filing a criminal report, the counsel for the victim can apply to the County Governor for additional free legal advice)- a reflection period (a limited residence permit of six months) and further leave to stay upon meeting certain criteria.- necessary security measures (following risk assessment)- necessary medical assistance- safe and adapted housing- money to support themselves (and offers of activities and/or employment schemes)- assistance for a safe return and re-establishment in their home countries <p>Unaccompanied minors are entitled to have their interests protected by a representative or legal guardian. Minors are also entitled to basic education and may also be entitled to high-school education. As there is no single agency responsible for identifying victims of human trafficking, there is no single agency responsible for determining whether the conditions for granting if certain rights have been met. The authorities responsible for the respective sectors will consider each case individually.</p> <p>The authorities responsible for their respective sectors, i.e. the police, Child Welfare Services, the immigration authorities, the health authorities, the Norwegian Labour and Welfare Administration (NAV), the education authorities, counsels for the victim, representatives and legal guardians and NGO's, are therefore responsible for following up the duties imposed by the Convention.</p>
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			<p>3. Though we responded No to Q1, Norway does have rights in place for presumed victims of trafficking Limited residence permits for victims of human trafficking Persons identified as presumed victims of human trafficking may be granted a reflection period and/or limited residence permit (the Immigration Regulations section 8-3 subs. 1 and 2):</p> <ul style="list-style-type: none">• The reflection period entails a six-month residence permit which cannot be renewed. The purpose of the permit is to enable the victim to break ties with the trafficking environment. The assessment will emphasise whether there are signs that the person is a victim of human trafficking, and whether the person is motivated to receive support and follow up the offered measures.• A limited residence permit is granted for up to 12 months and can be extended. The purpose of the permit is to facilitate prosecution of the traffickers. The conditions for being granted such a permit is that the person has broken ties with the trafficking environment, that the matter has been reported to the police, that an investigation or prosecution against the traffickers has been initiated and that the police or the prosecuting authority considers the foreign national's presence in Norway necessary to achieve a conviction. <p>Residence permit for witnesses in cases concerning human trafficking A foreign national who applies for protection after having given testimony as an aggrieved party in legal proceedings in which an indictment has been preferred under section 257 (human trafficking) of the General Civil Penal Code shall be granted a residence permit that forms the basis for a permanent residence permit under section 38 of the Immigration Act, unless</p> <p>(a) the foreign national meets the conditions for protection under section 28 of the Act, or (b) there are special grounds for not granting a permit.</p> <p>Even if the conditions for a residence permit under the first paragraph are not met, a residence permit may be granted to a foreign national who has given testimony to the court or to the police in a case under section 257 (or section 315, first paragraph, (procurement)) of the General Civil Penal Code, if there are grounds to deem that the foreign national, on account of his/her testimony, is in a situation as difficult as that of such foreign national as mentioned in the first paragraph.</p>
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AD HOC QUERY ON 2019.83 Access of victims of trafficking to their rights.

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