

Illegal immigration and trafficking in human beings: residence permit issued to victims

2002/0043(CNS) - 29/04/2004 - Final act

PURPOSE: To define the conditions for granting residence permits of limited duration to third country nationals willing to co-operate in the fight against human trafficking or actions which facilitate illegal immigration.

LEGISLATIVE ACT: Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigrations, who co-operate with the competent authorities.

CONTENT: This Council Directive has come about in order to define the conditions for granting residence permits of limited duration to those who are willing to co-operate in the fight against human trafficking. It does not apply to the United Kingdom and Ireland, nor does it apply to Denmark. It has come about in response to the Tampere European Council, which called on the Member States to concentrate on detecting and dismantling criminal networks engaging in the trafficking of human beings and who exploit migrants for economic purposes. The Directive strengthens and complements Council Directive, 2002/90, defining the facilitation of unauthorised entry, transit and residence and Council Framework Decision 2002/629 on combating trafficking in human beings.

The provisions of the Directive are to act as an incentive to victims of human trafficking by offering them a temporary residence permit in return for information on those involved in illegal immigration. This Directive lays down the criteria for issuing a residence permit, the condition of stay and the grounds for non-renewal and withdrawal. Thus, the right to stay is subject to conditions and is provisional in nature. The provisions set out in the Directive are as follows:

- For the sake of consistency and clarity the subsequent terms have been defined: third-country nationals, action to facilitate illegal immigration, trafficking in human beings, measure to enforce an expulsion order, residence permit and unaccompanied minor.
- The Directive covers all third-country nationals, regardless of whether they have entered the territory illegally, who are victims of human trafficking, who have been the subject of an action to facilitate illegal immigration or who have reached the age of majority according to the Member State concerned.
- Member States should inform those falling under the scope of this Directive of the possibility to co-operate and offer them a reflection period allowing them the chance to recover and escape the influence of the criminal gangs. The length and duration of the reflection period shall be determined by national law. Whilst the reflection period does not give them the right to residence it does allow for access to medical treatment (including psychological assistance) as well a safe and protected environment in which to live. The reflection period can be terminated at any point where the competent authorities have established that a person has renewed contact with the perpetrators of the offences.
- Following the reflection period, the authorities may wish to consider prolonging the residence permits for up to six months in cases where they consider the person's stay could offer further

useful opportunities for the investigation of judicial proceedings, in cases where he/she has shown a clear intention to cooperate and in cases where they have severed all relation with those suspected of enacting criminal activities.

- Minors can fall under the scope of the Directive, in which case the Member States must take the best interests of the child into account. Minors should have access to the education system under the same conditions as nationals. Member States will be responsible for establishing the identity of the minors, their nationality and if they are unaccompanied or not.
- Those co-operating with the authorities will be granted access to work, vocational training and education during the period of their residence permit.
- When the residence permit expires ordinary aliens' law applies.
- The residence permit may be withdrawn at any time if the holder has actively, voluntarily and on their own initiative renewed contact with those suspected of committing the offences, if the authorities decide that the victim's co-operation is fraudulent or wrongful, for reasons relating to national security, when the victim ceases to co-operate or when the competent authorities decide to discontinue the proceedings.

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