

MINISTRY OF JUSTICE, MINISTRY OF THE INTERIOR, MINISTRY OF EMPLOYMENT AND MINISTRY OF SOCIAL AFFAIRS, HEALTH AND ENVIRONMENT

13 JANUARY 1997- Instructions to the Foreigners Department (Office des Etrangers), the prosecuting authorities, the police and the social law inspection service and social inspection services concerning assistance to victims of human trafficking¹

These instructions are for the practical application of the circular regarding the issue of residence and work permits to foreign nationals who have been victims of human trafficking, published in the *Moniteur Belge* of 7 July 1994. The circular comes under the implementation of the act of 13 April 1995 (M.B. 24.04.1995) providing for the suppression of human trafficking and child pornography.

1. Definition of the concept of human trafficking

Human trafficking refers to a variety of situations in which people, including foreign nationals, are exploited in various sectors of activity. It consists primarily in exploiting a person or their work in various economic sectors. The sex industry poses a particular risk in this area.

Human trafficking is punishable under section 1, § 1 of the new act of 13 April 1995, as follows:

"whoever contributes, be it directly or through an intermediary, to allowing a foreign national to enter Belgium or reside there and, in so doing,

1. subjects the foreigner, either directly or indirectly, to acts of fraud, violence, threats or any form of coercion,
2. or takes advantage of the foreigner's particularly vulnerable position, occasioned by illegal or provisional status or by pregnancy, illness, infirmity or physical or mental disability,

shall be sentenced to a prison term of one to five years and fined between five hundred and twenty-five thousand francs."

Harsher sentences may be imposed on persistent re-offenders or if the offence constitutes participation in the principal or auxiliary activities of a criminal gang (sections 1, § 2 and § 3).

A parallel provision relating to human trafficking has also been inserted into Article *380bis*, § 3, of the Criminal Code on living off immoral earnings and prostituting a third party.

2. The fight against human trafficking

The parliament and the federal government, in collaboration with the communities and regions, have developed a policy aimed firstly at assisting victims of human trafficking and secondly at reinforcing action against traffickers and their networks. The victim support policy covers both assisting and counselling victims in Belgium and helping them to return to their country of origin.

The provisions allowing victims to legally reside in the country for the duration of legal proceedings against the exploiters make it easier to carry out an in-depth judicial investigation and enable victims to act as witnesses in the trial.

3. Victim support centres

In order to ensure that victims of human trafficking receive appropriate support and counselling, the authorities have set up a victim support centre in each region: the "Payoke" Centre in Antwerp, Flanders, "Pag-asa" in the Brussels-Capital Region, and "Siirya" in Liege, in the Walloon Region. All three centres are non-profit making organisations, which provide psychological and social counselling and offer legal aid to victims wishing to defend their interests in the court proceedings.

These three centres, like the social welfare organisations already mentioned in the circular of 7 July 1994, are empowered to request residence permits for victims of human trafficking.

A victim support centre may also be a local social service which has signed a co-operation agreement -approved by the relevant community or regional minister -with one of the three aforementioned centres.

4. Efficient collaboration between victim support centres, the police, the social inspection services, the Foreigners Department and the courts

Effective action against human trafficking depends on the development of active co-operation between the victim support centres and the police, the social inspection services and the prosecuting authorities.

Complementary action by all the parties involved can only be achieved if the victims or presumed victims of human trafficking are put in touch with the support centres.

The police or social inspection service must immediately contact the Foreigners Department about any person residing illegally in Belgium, or whose residence status arouses suspicion.

All victims or presumed victims, whether legally or illegally resident in Belgium, must be put in contact with a support centre.

When a support centre takes on the counselling of a victim or presumed victim, it becomes responsible for the administrative follow-up with the Foreigners Department. The police unit or social inspection service concerned must inform the Foreigners Department of the intervention of the victim support centre.

In the event of a support centre being unable to provide counselling, the police unit or social inspection service concerned must follow the Foreigners Department's instructions, according to the usual procedure.

5. Organising contact with victim support centres

1. If the police or social inspection service has good reason to believe that they are dealing with a victim of human trafficking, they take the necessary measures to ensure that the person is taken in by a victim support centre, and they inform the Foreigners Department of the fact if he or she is an illegal or provisional resident.

2. If the police or social inspection service is not certain whether a person is a victim of human trafficking, the support centre must be given the opportunity to establish contact with this person. This can be done by, for example, inviting a staff member of the support centre to the police station, if the person in question agrees to this.

3. Finally, if there are indications that one or more persons detained are implicated in the organisation or pursuit of human trafficking, and are therefore not victims, they are not to be put in contact with a victim support centre.

Whenever the police or a social inspection service encounter a person who may be a victim of human trafficking, it is their duty to give him or her the information leaflet about the support centres, which has been produced in different languages by the Centre for Equal Opportunities and Action Against Racism and is available from the organisations mentioned in this circular .

6. Joint supervision

Without upsetting the smooth running of the planned action, it will be advisable, when specific checks are carried out on foreign labour, in particular joint checks carried out by the district inspection units (co-operation agreement between social inspection services of 30 July 1993 and co-operation agreement between the federal government and the regional governments of 31 March 1995), to ask the victim support centres in advance to stand by with a view to taking in or making contact with any victims of human trafficking.

7. Assistance to victims by the police and the prosecuting authorities

As set out in section 46, paragraph 1, of the act of 5 August 1992 on the functions of the police, as well as in circular *OOP15bis*, it is the duty of the police to refer victims to the most appropriate support facility.

The police should also inform victims of the existence of the victim support units set up by the prosecuting authorities.

The prosecuting authorities can make a direct request for assistance from the victim support centres both during the investigation, when the victim will be taken in by the support centre, and during the preparation of legal proceedings.

8. Practical application of the circular of 7 July 1994

Residence and work permits are issued to victims of human trafficking in successive stages in parallel to the legal proceedings.

8.1 Stage 1: issue of an order to leave the country within 45 days

This 45-day period should allow the victim who is leaving a human trafficking environment and embarking upon counselling provided by the support centre to recover mental stability . During this period, victims can decide if they wish to make

statements concerning the persons or human trafficking networks that exploited them or if they wish to prepare for a return to their native country .

Therefore, when the police or a social inspection service encounter a presumed victim of human trafficking, it is important that they establish immediate contact with a victim support centre, following the procedure set out in paragraph 5.

The police unit in question must also contact the Foreigners Department and, if appropriate, inform them that the presumed victim has been directed to a support centre.

If the victim immediately lodges a complaint or makes a statement, the support centre responsible for his or her counselling can request that the Foreigners Department move on to the second stage.

8.2 Stage 2: issue of a three-month residence permit

A victim who has lodged a complaint or made a statement within the 45-day period will receive a temporary residence permit valid for three months, in the form of a certificate of arrival.

During this period, counselling by a support centre is also compulsory .In stage 2, the victim may also be granted a temporary work permit.

The Foreigners Department will ask the Crown prosecutor immediately, or no later than a month before the expiry of the three-month period what action has been taken on the victim's complaint or statement, and will indicate the deadline for a reply.

The prosecuting authorities must provide two items of information: 1. whether the case concerns human trafficking; 2. whether or not the case is still in progress.

At the same time, the Crown prosecutor will communicate this information to the victim.

If no reply is forthcoming from the prosecuting authorities, the request for information will be directed to the Principal Crown Prosecutor.

8.3 Stage 3: issue of a foreigner's registration certificate

If the Crown prosecutor answers the two questions in the affirmative, the victim will receive a residence permit valid for longer than three months (usually six months) which may be renewed until the legal proceedings come to an end.

Throughout this period, counselling by a victim support centre remains compulsory .The victim may, from this stage, obtain work permit B.

Finally, in accordance with the report of the Parliamentary Commission of Inquiry, and in order to ensure the safety of victims, steps may be taken to obtain a residence permit of unlimited duration from the Foreigners Department. A request for such a permit may be made by a victim whose complaint or statement has resulted in a court summons, if the complaint or statement is considered of importance to the proceedings.

9. Social assistance for victims

From the time when a victim of human trafficking receives a temporary residence permit, i. e. from Stage 1, he or she is entitled to social assistance benefits from the CP AS or through a victim support centre (Royal Decree of 13 May 1994).

10. Useful addresses

10.1 Foreigners Department (Office des Etrangers):

Boulevard Emile Jacqmain, 152/1, 1000 Brussels

Tel: -General enquiries: 02/205.54.11 -Head office: 02/205.58.47 -Duty office: 02/205.55.00

10.2 Victim support centres (open 24 hours)

10.2.1 Flemish Region -"Payoke"

Centre Zirkstraat 27, 2000, Antwerp Tel: 03/ 232.24.40 Fax: 03/233.23.24

10.2.2 Brussels-Capital Region -"Pag-asa"

Centre Rue Saint-Christophe 38, 1000 Brussels Tel: 02/ 511.64.64 Fax: 02/ 511.58.68

10.2.3 Walloon Region -"Sürya" Centre

Rue Hors-Chateau 28, 4000 Liege Tel: 041/21.35.57 Fax: 041/23.66.28

10.3 Co-ordination and monitoring of the policy on action against human trafficking:

Centre for Equal Opportunities and Action against Racism, "Human Trafficking" Unit

Rue de la loi 155, 1040 Brussels Tel: 02/233.06.11 Fax: 02/233.07.04

1. Richtlijnen aan de dienst Vreemdelingenzaken, parketten, politiediensten, inspectie van de sociale wetten en de sociale inspectie omtrent de bijstand aan slachtoffers van mensenhandel. Ministerie van Justitie, Ministerie van Binnenlandse Zaken, Ministerie van Tewerkstelling en Arbeid en Ministerie van Sociale Zaken, 13 januari 1997, *B.S.* 21.02.1997.