Balancing protection and prosecution in anti-trafficking policies

A comparative analysis of reflection periods and related temporary residence permits for victims of trafficking in the Nordic countries, Belgium and Italy

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Preface

Every year, millions of people all over the world are trafficked. The Nordic Region is no exception. The Nordic countries act as recipients and as transit countries. The majority of identified victims are women and children trafficked for sexual exploitation, but we hear more and more about other forms of trafficking, such as forced labour, forced begging, or the removal of organs – the list is long.

The Nordic countries have a strong tradition of working together. They derive strength from sharing their experiences and learning from each other. This also applies in the fight against trafficking in human beings. Nordic Council of Ministers has therefore developed a policy of combating all forms of trafficking in human beings

The Nordic countries have national action plans to combat trafficking in human beings. They all work towards the same goal and face the same challenges. The Nordic Council of Ministers is committed to an enhanced regional platform for co-operation, both in the Nordic Region and with our neighbours – primarily the three Baltic States and North-West Russia.

The report “Balancing Protection and Prosecution in Anti-trafficking Policies” identifies and compares systems for supporting and protecting victims of trafficking in the five Nordic countries. Belgium and Italy are included by way of comparison. Both countries have valuable experience in combating human trafficking, but have chosen different solutions. There is considerable variation in the way in which the Nordic countries organise protection and support systems. The report provides an overview and insight into the countries’ differences and similarities.

The crucial aim in establishing support and assistance structures is to make it possible for trafficked persons to break out of the cycle of violence and dependency and to make informed decisions about their future.

The report was commissioned by the Nordic Council of Ministers and written for Fafo ¹ by the researcher Anette Brunovskis, who is responsible for the facts and the accuracy of the material. The authors' views expressed in this publication do not necessarily reflect the views of the Nordic Council of Ministers.

I hope that this report will stimulate debate and provide inspiration in the on-going work to combat human trafficking.

Halldór Ásgrímsson
Secretary General
Nordic Council of Ministers

¹ Fafo is an independent Norwegian research institution specialising in working life, welfare policy and living conditions, nationally and internationally.

Summary

This report analyses and discusses the various forms of reflection periods and related temporary residence permits for victims of trafficking in the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) as well as Belgium and Italy. The study was initiated and funded by the Nordic Council of Ministers, who saw the use of a comparative study of models and experiences in the Nordic countries. In addition, for the purpose of expanding the analysis, Belgium and Italy were also included. These two countries were selected as both have long-standing experience of anti-trafficking work. Both were early actors in implementing temporary residence permits for victims of trafficking, but have adopted different models for reflection periods/temporary residence. As such, their inclusion in this report serves as a backdrop and a foundation for comparison and discussion of the Nordic models of reflection periods and temporary residence permits.

The main focus in this report is on how different policy solutions relate to victims' needs, as well as the needs of states for victims to cooperate in investigation and prosecution of traffickers. These needs can be difficult to reconcile, and the report discusses implications of different models and approaches, remaining sensitive to the fact that there are differences between the countries' social and political contexts. The concept of "best practice" as such is not culturally and politically neutral. What may be a "best practice" in one context is not necessarily transferable to another.

While reflection periods are mandatory for signatory states of the Council of Europe (CoE) Convention on Actions against Trafficking in Human Beings, the countries included in this study have chosen very different policy solutions and implementations. The main difference is between countries that have short (30–45 days) and long reflection periods (up to six months). Another important difference is the extent to which victims need to cooperate with police or authorities in order to be granted temporary residence. Some of the distinguishing features of reflection periods in the seven countries are:

- Denmark differs from the other countries in this study in the stated goal of the reflection period. While victims may be granted a 30 day reflection period, the issue they need to reflect upon is not whether to cooperate with police on investigation of traffickers, but whether they will cooperate on their return. If they decide to cooperate, they can be granted a further 70 days postponement of return.

- Finland's system for reflection and residence permits is flexible, in that assumed victims may be granted a reflection period of between 30 days and six months, depending on their circumstances. If they then decide to cooperate, a renewable permit is issued for six months at a time. If after two years the conditions for the permit are still valid, victims are granted continuous residence. However, there is also the option of granting a continuous residence permit directly, if the victim is found to be particularly vulnerable.
- Iceland implemented legislation on reflection periods and related residence permits for victims of trafficking quite recently, in autumn 2010. Iceland has opted for a system similar to that of Finland, in that victims can be granted a six month reflection period followed by temporary residence in the case of cooperation, but also with the option of granting permanent residence to particularly vulnerable victims.
- Norway has a six month reflection period, which can be followed by renewable year-long residence permits if the victim decides to cooperate with police in prosecuting traffickers. Victims who testify in trials based on a trafficking charge are – as a main rule – to be granted permanent residence permits, regardless of the outcome of the trial.
- Sweden has integrated residence permits for trafficking victims with those for other victims of crime. A six month residence permit may be granted to victims of crime whose presence is necessary for the investigation. In compliance with the CoE Convention, Sweden revised this law to include a 30 day reflection period for victims who may need time to decide whether or not to cooperate.
- Belgium has a 45 day reflection period, during which the victims must decide whether or not to cooperate with police. If they decide to cooperate, they can be granted a three month temporary residence permit, while the prosecutor decides whether or not to go forward with the case. If a case is opened, the victim may be granted renewable six month residence permits.
- Italy's system is based on two paths to residence, given first in the form of a six month residence permit under the so-called Paragraph 18. One is the "legal path", issued when the victim cooperates with police. The second, the "social path", can lead to residence if the victim is particularly vulnerable. Italy did not originally have a reflection period as such, but a three to six month residence permit that can be issued while the authorities seek to establish whether or not the person is a victim. If that is the case, he or she may be transferred to the regular Paragraph 18 system for assistance.

The most important factors that vary between the countries are the length of the reflection period and the extent to which the victim must cooperate with police in order to be granted (temporary) residence after the reflection period. Broadly speaking, shorter reflection periods cater to the needs of police investigations, while longer reflection periods

better accommodate the needs of victims. However, longer periods of residence are only helpful if filled with meaningful rights and activities, and if the process is clear and predictable. It can be a very stressful and nervous time when a victim waits for an investigation to move forward or a trial to take place. Passivity or lack of information can lead to insecurity and even depression.

There is considerable variation between the countries in terms of which actors are mandated with identifying victims and in terms of who can apply on their behalf for reflection periods. In countries where only the police or border guards are authorised for identification, this has some bearing on which categories of victims are identified. Service providers, lawyers or others working directly with assisting potential victims will often come into contact with other groups of victims than law enforcement does; they may interpret cases differently, or have access to other types of information about the cases, indicating whether a person is a victim or not. Victims may also be more likely to self-identify as victims to service providers than to authorities.

A central issue is the extent to which options for (temporary) residence are made conditional on whether victims cooperate with authorities. In several of the countries, victims may be eligible for temporary residence only if they cooperate with law enforcement and/or report traffickers to the police. The advantage in this approach is that it increases the chance that victims will share information with authorities, which may be particularly important in cases when they have left active trafficking networks where others are still exploited. However, there are many problematic aspects with this approach. Many victims will not have substantial information about their traffickers, and will therefore have little to offer in terms of cooperation. This group will then be barred from obtaining (temporary) residence. It may also instrumentalise victims of trafficking, putting the need to prosecute traffickers before the needs of victims. Putting pressure on victims to cooperate with authorities may also be inappropriate in certain situations, depending for instance on their personal situation and relationship with the trafficker(s). This is particularly difficult when victims have been exploited within family networks or have other close relationships with their traffickers.

It must be considered whether residence as an incentive for cooperation may constitute undue inducement, or an unethical level of pressure. In practice, and especially when there is a potential future possibility to obtain permanent residence in the destination country, this can have such a high value for a victim that it may be extremely difficult to decline to cooperate. Many victims come from countries from which it is very difficult to (legally) migrate to Western countries. At the same time, cooperating with the police and particularly taking the stand as a witness in a trial may have very high costs for the victim and even subject him or her to substantial risk.

A central issue is which model is the most conducive for increasing victim cooperation and prosecution of traffickers. Current data does not allow for a direct comparison of the relationship between the number of identified victims and the number of convictions between countries. However, informants from the legal sector were clear that for police and investigative needs, the most beneficial model was a short reflection period, followed by temporary residence for victims who decided to cooperate. This is because information quickly dates; information given after for instance a six month period will often not lead anywhere in terms of investigation. Phone data may be deleted or addresses vacated. On the other hand, shorter reflection periods may offer little incentive for victims to come forward.

The CoE Convention and national legislations declare a dual intention with reflection periods and (temporary) residence permits: to offer protection and assistance to victims, and to facilitate cooperation with authorities. In practice, the latter takes priority over the former. With this in mind, the present report makes the following recommendations for balancing protection and prosecution:

Striking the balance between protection and prosecution:

- It must be acknowledged that it is not in the interests of all victims to cooperate with the authorities and that such cooperation can have serious consequences for their safety and well-being.
- Combined solutions or multi-path designs (with two parallel options for residence; one that presupposes cooperation with authorities, and one that can be used for victims in a particularly vulnerable situation) may reconcile the needs to protect victims and to prosecute traffickers.

The totality of victim assistance:

- For residence permits conditional on cooperation not to constitute undue pressure on vulnerable victims, states must take all measures possible to guarantee their safety and well-being, and minimise risk associated with cooperation. States should also ensure that victims can gain from the experience of testifying or reporting traffickers, through compensation schemes.
- Assistance must include more groups than female victims of trafficking for sexual exploitation. Even such a basic measure as safe housing for male victims is lacking in several countries, as are other forms of assistance especially designed for men.
- When temporary residence is granted it is important to remember that residence in itself is not enough. Residence alone can sometimes be harmful to victims if not handled properly. Long temporary residence permits may create false hopes of permanent residence. The effect of suddenly finding out that residence is no longer an option may be devastating and discouraging.

- Given the heavy reliance on NGOs for service provision for victims of trafficking, one worrying aspect is the general lack of formalised quality control and complaint mechanisms. An overarching tendency is that this sector is not supervised, licensed or presented with formalised quality criteria for service provision, which are available control mechanisms for funding bodies.

Implementation of reflection periods:

- The granting of a reflection period needs to have a genuinely low threshold. This is very important in order to reach different groups of victims, not only those with the most obvious experiences of victimisation. This also means that identification of victims cannot be the sole responsibility of the police, border guards or similar, as this will substantially skew who will be considered as a potential victim.
- Several countries lack clear routines in terms of victims' rights and follow-up. While rights may be regulated by general social rights for various residence permits, there is in practice often confusion when these rights are to be implemented for victims. Several countries could benefit from developing clear guidelines and instructions on procedures for trafficking victims, on technical aspects such as where to seek reimbursement for interpreter expenses, or which office pays for specialist health services, etc.
- For reflection periods to function effectively there must be good cooperation between police and NGOs/service providers. It is often necessary to have a certain level of informality to enable victims to discuss with the police what kind of information they might have that could be useful. If there is no contact or information exchange, not only will it be difficult for the victims to know what they are involving themselves in by cooperating, but the information they can provide may also be of little use to the police.

Knowledge of policy consequences:

- It is very important to minimise any limbo effect caused by victims having to wait for decisions of authorities in various matters, especially in countries where reflection periods are longer. While a longer reflection period has the potential of providing more rights and thus a better foundation, it can also be problematic. A longer waiting time (waiting to decide on whether or not to cooperate, waiting for police investigations, waiting for a trial to go ahead, etc.) can be a considerable strain on the individual.
- It is also important to acknowledge the need to prosecute traffickers and address the root of the problem of trafficking. It remains an open question whether a residence permit for victims is a suitable tool to this end, or whether it should rather be used purely as a means of assisting victims. There is remarkably little systematic knowledge about the circumstances under which victims decide to cooperate, in

spite of the high international profile of the issue. The findings of this report indicate that for the reflection period to be an effective tool for prosecuting traffickers there needs to be some form of contact between victims and police at a stage where their information is still “fresh” and thus provides leads that can be followed up and investigated.

Abbreviations

CBSS	Council of Baltic Sea States
CoE	Council of Europe
IOM	International Organization for Migration
NGO	Non-governmental organisation
OSCE	Organization for Security and Cooperation in Europe
TRP	Temporary residence permit
UNODC	United Nations Office on Drugs and Crime
VoT	Victim of trafficking

Introduction

As anti-trafficking work gained momentum over the past decades, it was internationally recognised that protection of victims was often hampered within existing migration frameworks. Victims of trafficking may lack legal residence, or they may have violated laws while being trafficked. Persons trafficked for sexual exploitation were sometimes detained for offenses under prostitution laws and others, trafficked for begging or criminal activities, could find themselves in similar situations. Thus, many trafficking victims were unceremoniously deported from countries of destination and often not even identified as victims. This was also due to a lack of awareness of human trafficking and how to identify potential victims. Some victims were prosecuted for the crimes that they had committed as a consequence of being trafficked. Not only was this a problem in terms of individual victims' human rights and their protection; it was soon realised that it also posed a significant problem for efficient investigation and prosecution of traffickers. Several countries therefore sought to remedy this by designing special residence schemes for victims, now known as reflection periods. The reflection period was later formalised as an international obligation on the European stage in two instruments, a European Union Council directive from 2004, and the Council of Europe Convention (CoE Convention) on trafficking from 2005.

Ever since human trafficking became a high profile international issue, two competing perspectives have dominated discussions: Should trafficking in human beings be framed primarily as a human rights issue, or as a criminal justice issue? In 2000, the United Nations opened for signatures the Protocol to Prevent, Suppress and Punish Trafficking in Persons, commonly known as the Palermo Protocol, the only global tool in the anti-trafficking field. The discussions leading up to the integration of the Protocol in international law are a case in point. The Protocol was placed under the Convention on Transnational Organised Crime, not the Human Rights Convention, for which many institutions, groups and individuals had lobbied.

The tension between human rights and criminal justice, or the protection of victims and the need for prosecution of traffickers, is particularly poignant in one central measure in anti-trafficking work: the reflection period and subsequent (temporary) residence permits for victims. While this is now an obligation of the signatory states of the Council of Europe convention, the different countries have opted for very different models for protection and residency.

This report describes and discusses approaches to reflection periods and temporary residence permits (TRP) for trafficking victims in seven European countries, with the goal of analysing the consequences and likely outcomes of various models in terms of victim protection and prosecution of traffickers. The aim is to develop a foundation for a discussion of what might be beneficial approaches, taking into account the diverse and sometimes conflicting interests in anti-trafficking policy.

Focus and approach in this study

The central theme in this study is the specific forms and designs of protective measures for victims of trafficking in different countries, focusing on reflection periods/TRPs. In 2010, the United Nations Office on Drugs and Crime and the Council of Baltic Sea States (hereafter: UNODC/CBSS) published a report on the relationship between state and civil society in the fight against trafficking. This report provides a systematic overview of efforts in this field in the eleven countries surrounding the Baltic Sea. The report shows that considerable efforts have been made in this field in less than a decade, but also points to certain weaknesses and areas where progress needs to be made.

The present report analyses the specific tool constituted by reflection periods and (temporary) residence permits, their particular content and design in the selected countries, as well as implications and consequences of different models.

The rationale for providing a reflection period for victims of trafficking has, in most countries, always been to give them some time to make a decision on whether or not to cooperate with the police, by providing information or acting as witnesses in court cases. An additional goal is to provide protection and social assistance. In several countries reflection periods/temporary residence permits have been substantially revised since first implemented, with more rights associated to them, meaning that the stakes for victims are even higher when they make their decisions. Saying no to a reflection period may also be to say no to extensive assistance, including, but not limited to, medical, social and financial help. One of the central questions is whether there is an inherent tension between the needs of victims (the social side of anti-trafficking work) and the needs of the police and the judicial system (the legal side).

The possible tensions between social and legal aspects of anti-trafficking measures in the form of reflection periods will therefore be at the core of this study:

- Is it always a good strategy to encourage victims to cooperate in the legal process? Furthermore, does this strategy imply that only those who are willing and able to provide the police with information will receive sufficient social assistance?
- Looking at the same topic from another angle; are there differences in the efficacy of different reflection periods in enabling effective prosecution? Is it preferable to have a shorter or a longer reflection period purely from a police investigation standpoint?

The study was initiated and funded by the Nordic Council of Ministers, and the issues outlined above are analysed through a comparative study of models and experiences in the Nordic countries, Belgium and Italy. The latter two were selected as both countries have long-standing experience of anti-trafficking work. Both were early actors in implementing temporary residence permits for victims of trafficking, but have adopted different models for reflection periods/temporary residence. As such, their inclusion in this report serves as a backdrop and a foundation for comparison and discussion of the Nordic models of reflection periods and TRPs. These seven countries represent different experiences with and approaches to the reflection period and anti-trafficking work in general, providing a basis for a discussion of differences and similarities.

Method

The data for this study were gathered through a combination of document analysis and interviews with experts in the field. The most important and basic source consisted of official documents describing legislation and frameworks for the reflection periods in the respective countries. Further, official information materials directed at service providers and victims provided information about the operationalisation of reflection periods and more detailed descriptions of the process involved in obtaining one. In addition, the analysis was supported by independent evaluations and/or research reports or articles, to the extent that these were available.

The international legal framework for understanding reflection periods is further described in the next chapter, drawing on the existing body of research in this field, which informs the analysis and conclusions in this report. Particularly the Belgian and Italian models are the subject of numerous academic analyses, which also strengthens their suitability as a starting point for a discussion of different models.

In addition to document analysis, data were also collected through interviews with experts in the trafficking field in each country, in order to enhance the understanding of the reflection period models. These interviews were conducted face-to-face where possible (Belgium, Denmark, Italy and Norway) and otherwise by phone (Finland, Iceland and Sweden). Professionals represented among the respondents were police, lawyers, social workers, representatives of relevant ministries/coordinating bodies and others who were directly involved in anti-trafficking measures and had experience of reflection periods/TRPs for victims of trafficking.

1. Framework and background for reflection periods

In the past two decades, human trafficking has been firmly established as an important issue on the international arena. This form of exploitation is not new, but more and more countries experienced that the existing system was poorly suited to face the challenge. Police in several countries reported connections between the networks behind human trafficking and other forms of crime, such as trafficking in drugs and weapons. This lent weight to a strong focus on criminal justice measures in order to target trafficking.

A serious impediment, both in terms of collecting information from victims as witnesses, and in terms of offering assistance, was that trafficking generally took place across borders, and many victims did not have legal residence in the countries where they were exploited. Victims of trafficking were detained or arrested, often on charges that were a direct consequence of their exploitation, and returned to their countries of origin, without being identified as victims or offered assistance.

Some European countries were quite early in designing special measures for victims of trafficking. This partly occurred because they had been introduced to, or became conscious of, the phenomenon earlier than others and, in some instances, to a greater extent. Belgium launched the reflection period for victims of trafficking in 1994 after journalist Chris de Stoop had cast light on exploitation of women and girls in prostitution in Belgium and the Netherlands. This reflection period enables victims to temporarily legalise their stay on Belgian territory for 45 days. During this period victims must decide whether they will give a statement to the police or not. Italy introduced its so-called Paragraph 18 in 1998, which meant that victims of trafficking who were in serious danger were eligible for residence for six months. This residence permit can be prolonged by an additional 12 months, and recipients can later apply for a work or study permit. (Please see below for a more in-depth discussion of reflection periods/TRPs in both of these countries.) These measures served as inspiration for the European work on formalising reflection periods for victims of trafficking.

1.1 The international framework for reflection periods

As previously mentioned, the only global instrument in the effort to combat human trafficking is the so-called Palermo Protocol from 2000. The Protocol is under the UN Convention against Transnational Organised Crime, and this is also reflected in the focus of the different parts: While the section on prosecution of trafficking is extremely clear on the state parties' obligations in this area, the sections on victim protection are far weaker, as the Protocol merely encourages such measures.

In parallel with the implementation of the Protocol there was also work in progress in this field on the European arena. The reflection period was mentioned for the first time in an EU Council Directive² in 2004 on residence permits for victims of trafficking. Prior to this were both binding and non-binding documents and initiatives, for example a Joint Action³ from 1997 which placed considerable weight on securing rights and protection for victims of trafficking and their families. In 2002 there was a framework decision⁴ which made little mention of victims' rights. However it was implied that the measures concerning residence and protection would be treated in the directive that was to come two years later (Gallagher 2006:167).

The 2004 Directive on residence permits for victims of trafficking who co-operate with the authorities kept prosecution as a central component and made it explicit that granting residence permits to victims of trafficking was intended as an incentive to make prosecution of trafficking easier. Chapter 1, Article 1, states:

The purpose of this Directive is to define the conditions for granting residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration. (EU Council Directive 2004/81/EC)

² EU Council Directive 2004/81/EC of 29 April 2004: 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 immigration, who cooperate with the competent authorities.

³ Joint Action 97/154/JHA of 24 February 1997 to combat trafficking in human beings and sexual exploitation of children, <http://eurlex.europa.eu/Notice.do?checktexts=checkbox&checktext=checkbox&val=221539:cs&pos=1&page=1&lang=en&pgs=10&nbl=1&list=221539:cs,&hwords=trafficking%2Bin%2Bhuman%2Bbeings%2Band%2Bsexual%2Bexploitation%2Bof%2Bchildren%257E&visu=%23texte>

⁴ Council Framework Decision 2002/629/JHA of 19 July 2002 on Combating Trafficking in Human Beings. This Framework Decision was replaced in 2011 by Directive 2011/36/EU; "On preventing and combating trafficking in human beings and protecting its victims", which, among other things, revises the definition of offences involving human trafficking, increases criminal penalties and sets out detailed provisions on support and assistance for victims.

In Article 6, the reflection period is described as a time for the victims to recover and escape influence from perpetrators, so that they can make an informed decision about whether they want to co-operate with the authorities.

In the same year as the Directive was issued, an expert group formed by the EU Commission sent a statement⁵ to Commissioner Vitorino about the design of reflection periods for victims of trafficking. Its intention was to clarify the role of the Commission in the on-going negotiations leading up to the CoE Convention on human trafficking in 2005. The group stated that reflection periods and subsequent temporary residence permits should not be made dependent on victims co-operating with the authorities. If residence was made contingent on cooperation, it would imply an instrumentalisation of victims and make them a means to secure a prosecution, without taking the victims' needs as the point of departure. The group argued that unconditional assistance would increase victims' confidence and trust in the state and thereby facilitate cooperation with authorities. Further, the group argued that the reflection period should be at least three months, and should be followed by a temporary residence permit of at least six months, with the option for renewal, independently of whether the person was a witness in a trial of justice. They also argued that victims' needs for protection were not determined by the person's willingness or ability to serve as a witness against traffickers, and that these elements should not be connected to each other.

In 2005 came the CoE Convention⁶ on measures against human trafficking. Generally the Convention is held to be stronger on victims' rights than the Palermo Protocol was. However, this must be seen in light of the Protocol's notorious weakness in this area. The process leading up to the CoE Convention was also characterised by differing interests in terms of whether the main focus should be on criminal justice or on human rights. A recommendation from the Parliamentary Assembly in 2000 put great weight on the importance that the future convention should complement existing instruments by having a focus on criminalisation, harmonisation of penalties and other measures that would secure a prosecution (Gallagher 2006a:172). A report commissioned by the Council's steering committee for equality between men and women concluded that a legally binding instrument should be developed which focused on protection of victims' rights and respect for human rights,

⁵ Experts group on trafficking in human beings (2004): "Opinion on reflection period and residence permit for victims of trafficking in human beings", http://ec.europa.eu/home-affairs/doc_centre/crime/docs/opinion_expert_group_04_xx_xx_en.pdf

⁶ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, Council of Europe Treaty Series, No. 197, 16.V.2005

with the goal of finding a suitable balance between human rights and prosecution (ibid). The discussions leading up to the convention thus mirrored the dual needs for on the one hand to fight human trafficking through criminal justice measures, and on the other, the need to protect the victims.

Concerning reflection periods, the states' obligations were established in Paragraph 13 of the Convention:

Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities.

The convention further addresses temporary residence permits for victims of trafficking after the expiration of the reflection period in Paragraph 14:

Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:

- a: the competent authority considers that their stay is necessary owing to their personal situation;
- b: the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

In practice, this means that the states retained the right to decide that further residence would only be given to those who cooperate on investigation or prosecution (Gallagher 2006:180), even though the Convention mentions that issuing residence can also be considered on the grounds of the victim's personal situation. Nevertheless, the Convention established the states' obligation to have a reflection period of at least 30 days, which formerly was not mandatory. From a purely rights based perspective it can however be problematic to make residence (and by implication, protection) conditional on victims having to co-operate with the authorities.

Residence permits for victims of trafficking are subject to a number of different concerns that are not always easy to reconcile. On the one hand, states have obligations to victims of trafficking, and practitioners in the field underline the importance of offering efficient and necessary assistance. Another concern is the necessity of investigating and punishing human trafficking, not least as a preventative measure. A third concern is the states' need to protect their borders and safeguard against

the abuse of residence schemes for victims.⁷ Connecting residence to cooperation places more emphasis on the state's interests than the victim's need for protection.

1.2 Recommendations and opinions of the Group of Experts on Trafficking in Human Beings of the European Commission

The EU Group of Experts on trafficking in human beings was set up by the European Commission in 2003. The aim of the Group is to provide the European Commission with expertise in the shape of opinions and reports relating to the prevention of and the fight against trafficking in human beings.⁸ Since then, the group has issued a number of reports and opinions on various issues related to human trafficking. These opinions have an advisory function and are not binding for the Commission or the state parties.

There is a palpable difference in tone in the many recommendations and opinions issued by the Expert Group over the years, and in the Directives and the Convention. One major difference between the official position in the Directives and the Convention on the reflection period on the one hand, and the recommendations of the expert group on the other, is the length of the period. While the obligation of the state parties is a minimum 30 day reflection period, the Expert Group has since 2004 consistently repeated their recommendation that it should be at least three months.

Further, in its first report issued in 2004, the Expert Group explicitly states that victims should not become instrumental to investigations or prosecution of traffickers, while the Convention and Directive present recovery and prosecution as equal goals:

⁷ Precisely these types of concerns were the background for Article 13 on reflection periods to become one of the most contested in the Convention. The UK declined for a long time to sign the Convention, and the British government asserted that reflection periods and temporary residence would function as an incentive for migration to the country for people who were willing to falsely present as victims of trafficking (House of Commons 2006:4). The UK did, however, sign the Convention in 2009, the same year as the country introduced a 45 day reflection period for victims of trafficking.

⁸<http://ec.europa.eu/antitrafficking/section.action;jsessionid=z4wGN4DXDKlxQ5kb3y7spyz6k3C77HWTcvjH347ft9q2cS1pFv6V!103889941?sectionId=bc477fc1-f902-44be-8e49-1785218cc652§ionType=SUBSECTIONS&page=1&breadCrumbReset=true>

Granting a reflection period, followed by a residence permit, including all corresponding rights, to trafficked persons – regardless of whether or not they are willing and/or able to give evidence as a witness – assists Member States in their obligation to protect the human rights of trafficked persons and not to treat trafficked persons exclusively as an instrument for the prosecution.⁹

As noted above, the Group recommends that this reflection period is no less than three months, and gives as a rationale that once recovered, a trafficked person with confidence in the State is more likely to cooperate with the authorities in the prosecution of traffickers.¹⁰ The expert group also states that:

Those trafficked persons who do not wish to testify as witnesses – or are not required as witnesses, because they possess no relevant information or because the perpetrators cannot be taken into custody in the destination country – require equally adequate protection and assistance as victim-witnesses.¹¹

This position is upheld in several later documents; see for instance Opinion No. 1/2008 (“On the revision of the Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings”), Opinion No 2/2009 (“On the Commission Proposal for a Council Framework Decision on preventing trafficking in human beings, and protecting victims”), and Opinion No 4/2009 (“On a possible revision of Council Directive 2004/81/EC”).

1.3 The situation and needs of victims

The rationale for a reflection period was observations of the situations victims were in when identified or when exiting a trafficking situation. Today we see that the experiences may have varied from extreme degradation and violence to exploitative, but still bearable, situations. While it is difficult to generalise about the needs of a very diverse group, victims will often have health issues that need attending to. Frequently, victims are assumed to have suffered trauma and violence, but other needs may be related to ill health resulting from lack of medical attention generally. For some, medical care may have been lacking even before they were trafficked, especially when they come from a deprived background.

⁹ European Commission (2004) Report of the Experts Group on Trafficking in Human Beings, p. 104

¹⁰ It must, however, be noted that this statement lacks a solid empirical basis; as of yet there is little or no systematic knowledge of the circumstances under which victims choose or are able to cooperate. In itself, this assumption is perhaps not unreasonable, but is nevertheless unsubstantiated by evidence.

¹¹ European Commission (2004) Report of the Experts Group on Trafficking in Human Beings, p. 104.

In terms of psychological needs, it is very important not to assume that all victims are traumatised or feel helpless – on the contrary, some may also feel a sense of achievement connected to having survived a difficult situation and not least, to have escaped from their exploiters. However, the immediate aftermath may still be a confusing time with a substantial amount of new information to process, and consequences of choices made at the time may be difficult to foresee.

The security needs of victims will again vary – while some may be under severe and direct threat, others will never see their traffickers again. However, regardless of the actual threat, victims may still be scared not only for themselves, but for their families and loved ones. In the initial phase it is often difficult to get a full overview of potential consequences.

How victims left the trafficking situation may also have bearing on their state of mind and the decisions they need to make. Victims may have experienced a sudden removal from the situation on the initiative of others (e.g. in police raids). They may have run away on their own, which sometimes is spurred by an unexpected turn for the worse in their relations with their traffickers. In other cases, victims leave after a longer process, sometimes involving discussions with social workers or others.

In sum, the period following exit from trafficking may be a confusing one, which lends support to the importance of a reflection period to provide the opportunity to recover and make informed choices about the future.¹²

¹² For more information about the situation and needs of victims after leaving a trafficking situation, please see Brunovskis and Surtees 2007, Brunovskis and Surtees 2012, Surtees 2007, Zimmermann 2003.

2. Reflection periods and related TRPs in the Nordic countries, Belgium and Italy

This chapter describes reflection periods and TRPs in the seven countries included in this study. As the countries show a wide variety of policies and challenges in the human trafficking field, the accounts will vary in terms of the main focus. However, two of the most important elements for all countries are the length of the reflection period and whether it is followed by options for further temporary residence permits or even permanent residence. A central question is what conditions are attached to the granting of reflection periods and whether, and to what extent, victims are required to cooperate with authorities.

This chapter first describes the Nordic models, before moving on to Belgium and Italy. The distinguishing features and longer history of the models in the latter two countries provide a background for discussion of the policy models in the Nordic countries.

2.1 Denmark

- Initial length: 30 days
- Who is eligible: Potential victims of trafficking as established by the police
- Type of initial period permit: Postponement of obligation to leave Denmark. Will not be issued with prohibition of returning to Denmark.
- Mandatory cooperation with police: Only on repatriation, not on trafficking case
- Followed by: 70 days postponement of departure, if victim agrees to cooperate on repatriation, or if necessary due to health problems, or if the person will act as witness in a trial.
- Permanent residence permit option: No special arrangement for VoT, but they may, like anyone else, apply through common refugee/asylum provisions
- Assistance mandatory: Yes
- CoE Convention status: Signed: 5 September 2006
Ratified: 19 September 2007

The Danish system is very much based on repatriation and return of trafficking victims. Denmark's position thereby differs from several other countries, in that the goal of the reflection period is neither victim protection nor prosecution of traffickers, but in the field of migration control. An important background factor for understanding this difference is that when the EU Council Directive on residence permits for victims who cooperate with the authorities on prosecution came into force in 2004, Denmark and Great Britain negotiated an opting-out clause. This means that these two countries were exempt from the requirement on all other EU countries to bring their national legislation in line with the directive before August 2006 (Gallagher 2006:168). Denmark has however signed and ratified the European Council Convention on human trafficking, and is therefore also bound by the Convention's Paragraph 13 on reflection periods.

The "reflection" aspect of the reflection period does not refer to the reflection necessary to determine whether or not to cooperate with police, which is the implication in most of the other countries that have this arrangement. Rather, this is a period of time where the victim will have to prove that he or she will cooperate on his or her return. If the person cooperates, the deadline for departure can be extended by up to 100 days. This change came about in 2007. In the same year, Denmark also changed its practice on expulsion; foreigners without legal residence who were assumed to be victims of trafficking would now be returned, rather than expelled, meaning that they retain the option to return to Denmark at a later stage if they have the necessary visa (NAP Status Report 2009:6).

In practice, this means that there is not much incentive built into the reflection period. It is not a tool to pursue more efficient prosecution, but rather a migration control measure, whereby victims of trafficking are given a slight delay in their departure from Denmark compared to other irregular migrants, and where the return may be planned for at least a little more time than previously. The focus in this measure is also reflected in the terms used to describe it in official documents; rather than referring to a reflection period, the more common term for the 100 days is "prepared return" (*forberedt hjemsendelse*).

During the 30 or 100 days, victims must live either in an asylum reception centre, or in a shelter/crisis centre. They are offered psychological assistance, health care and legal aid. The intention is also to develop a reintegration plan for when the victim has returned to his or her country of origin/residence, which should include plans for accommodation and activities in the first three months after return.

In the experience of the Centre against Human Trafficking (CMM), the reflection period is not greatly attractive for victims. Most of those who are informed that they will be returned wish to leave as soon as possible. In 2008 to April 2009 six women returned as part of the planned return programme during the reflection period (NAP Status Report 2009:11).

The majority of those who received the reflection period disappeared before return could be executed (NAP Status Report 2009:20). Service providers have noted that it is very unclear what happens to victims after return.

2.2 Finland

- Initial length: Variable; 30 days to 6 months
- Who is eligible: To be granted when there are reasonable grounds to believe that the person is a VoT
- Type of initial period permit: TRP
- Mandatory cooperation with police: For a renewable TRP, but there is also the option of issuing a continuous residence permit to a particularly vulnerable VoT
- Followed by: Renewable permit for 6 to 12 months; or continuous residence permit in special cases
- Permanent residence permit option: Either issued from the beginning (type A) or after two years of renewable permits (type B)
- CoE Convention status: Signed: 29 August 2006
Ratified: 11 May 2012

The Finnish legislation on reflection periods and (temporary) residence permits for victims of trafficking is among the most flexible of the seven countries studied here. A reflection period may since 2006 be granted to potential victims who need time to decide whether or not to cooperate with the authorities. The length of the reflection period is decided in each case, but has to be at least 30 days and no more than six months. Until 2009, fewer than ten reflection periods had been granted, leading the Finnish Rapporteur on trafficking to conclude that this option was not yet internalised by the authorities (Finnish Rapporteur 2010:81). Another alternative is a temporary or continuous residence permit that may be issued directly or after the reflection period. The temporary residence permit (referred to as a type B permit) can be issued to victims who fulfil certain requirements:

- The victim's residence in Finland is based on pre-trial investigation or court proceedings concerning trafficking in human beings
- The victim is prepared to cooperate with the authorities in the apprehension of those suspected of trafficking
- The victim no longer has any ties with those suspected of trafficking

There is, however, also the option of granting residence to victims who are deemed to be particularly vulnerable; this is referred to as a Type A continuous residence permit. The Finnish Immigration Service makes the decision on what type of permit is to be issued, based on information and documentation submitted with the application. The information may include minutes of interviews with the victim, health certificates, evidence of the trafficking, etc. The human rights situation in the victim's home country will also influence the decision.¹³ With the type A residence permit the only requirement apart from the establishment of trafficking and vulnerability is that the victim may not be in voluntary contact with those suspected of trafficking. A type A permit also allows for family reunification, whereas type B does not.

Type B permits are granted for 6 to 12 months at a time, and the victim will have a work permit during the period. Further, if after two years of renewable permits the requirements for residence are still present, victims are granted a continuous (type A) residence permit.

In practical terms, assistance to victims with a temporary or continuous residence permits is organised through two state reception centres, in Joutseno and Ulaåborg. The former is responsible for assistance to adults, while the latter organises support and services for victims who are minors.¹⁴

However, it has been observed that, as in many other countries, reception centres are not ideal for providing assistance to victims, particularly in cases of trafficking for sexual exploitation. Questions have been raised about the security of victims in such an environment. Victims are therefore often referred to the care of NGOs, and reception centres used as a last resort (UNODC/CBSS 2010:77).

The office of the Finnish Rapporteur on trafficking states that while the system is in principle and on paper a very good one, a major concern is the small extent to which it has been used. As mentioned above, few victims have been issued with a reflection period. By the end of August 2009 seven had been granted temporary residence, while only one had been issued with a continuous Type A residence permit. It is also striking that only in one of the cases was the victim trafficked for sexual exploitation, while the others were being trafficked for labour. Few victims of trafficking for sexual exploitation are identified in Finland, which is unusual given that in most other countries this group dominates the statistics, to the extent that it is often assumed that this masks the presence of other groups of victims. According to the Pro Centre, a non-profit organisation offering assistance and support to persons in prostitution,

¹³ Finnish Immigration Service: Fact sheet on residence permit for victims of trafficking in human beings.

¹⁴ Minoritetsombudsmannen: "Rights of victims of human trafficking";

<http://www.intermin.fi/intermin/vvt/home.nsf/Pages/0C464DB69A79BF6CC22576C500399293>

foreigners in prostitution are often deported.¹⁵ The Rapporteur's office also explains that the reflection period is rarely used, generally because victims already have some form of legal residence, or because the authorities have granted residence permits on the basis of cooperation with police or the victim's vulnerability.

According to the Rapporteur's office, permits have generally been issued in situations where potential victims have been identified in transit, e.g. at border crossings. The Rapporteur holds the view that in order for the system to be more sensitive to the needs of victims, reflection periods should be shielded from investigative needs. Permits should therefore be issued not by the police or border guards, as the situation is today, but by the immigration authorities.

2.3 Iceland

- Initial length: Six months
- Who is eligible: Persons assumed to be VoT
- Type of initial period permit: Residence permit
- Mandatory cooperation with police: After six months, though not if particularly vulnerable
- Followed by: One year residence permit if VoT cooperates, or if VoT is vulnerable
- Permanent residence permit option: May apply for residence on humanitarian grounds, expert opinions on dangers of re-trafficking are to be given weight in the decision
- CoE Convention status: Signed: 16 May 2005
Ratified: 23 February 2012

Iceland is at a very early stage of developing anti-trafficking policies, and launched its first action plan against trafficking in March 2009. Not many victims have been identified, but the first trafficking conviction in the court system took place in May 2010. Five Lithuanian men were convicted of having brought a 19-year-old woman into Iceland for sexual exploitation in prostitution. In 2009, Iceland followed Sweden and Norway in banning the purchase of sexual services. In 2010, strip clubs were also banned, not least because they were believed to function as fronts for prostitution and possibly trafficking for sexual exploitation.

¹⁵ Helsingin Sanomat Intl. Ed.; <http://www.hs.fi/english/article/Victims+of+human+trafficking+often+not+identified+in+Finland+/1135257455557>

The law on residence permits for victims of trafficking was passed in September 2010, which means that it is early at this stage to comment on how it is implemented or functions in practice. After having considered the systems in place in other countries, Iceland opted for a six month low threshold reflection period. This can be followed by a one year residence permit, granted either on the basis of cooperation with the authorities, or on the grounds of the victim's personal situation. After the expiration of the second residence permit, victims may apply for permanent residence in the same way as anyone else. However, should they choose to apply on humanitarian grounds, the assessment of the experts in the National Team on Trafficking or the police on whether the person may be in danger of re-victimisation or otherwise under threat, should be given weight in the final decision.

While the reflection period and trafficking-specific residence permit are new, Iceland has formerly granted residence on humanitarian grounds to a victim, and assisted others while they did not have legal residence.

Assistance is provided through the National Team, which consists of state and NGO participants and coordinates efforts. The direct assistance is provided through the NGO Stigamot or the one women's shelter in Iceland.

2.4 Norway

- Initial length: Six months
- Who is eligible: Potential VoT, referred by police or assistance provider. Do not need to self-identify as victims.
- Type of initial period permit: Temporary residence permit
- Mandatory cooperation with police: If a new temporary residence permit is to be granted after six months
- Followed by: Renewable for one year if victim cooperates with police, renewable further if there is a need for the victim to stay in the country.
- Permanent residence permit option: Victims who testify in trafficking cases are to be granted permanent residence regardless of trial outcome
- Assistance mandatory: Victims must agree to be assisted, but it is not specified by whom or in which ways.
- CoE Convention status: Signed: 16 May 2005
Ratified: 17 January 2008

The Norwegian reflection period has been in existence since 2004, but has undergone substantial changes since then. Originally, the reflection period consisted of a 45 day delay in repatriation. However, assistance providers reported that 45 days was not enough for those they came into contact with, and that the reflection period in this form did not provide a perceived solution for many victims. This was also reflected in the very low number who applied for a reflection period, in fact, only one woman in a two year period.

As this was not considered to be a particularly efficient measure, the reflection period underwent substantial changes in 2006. The initial reflection period was expanded to six months and it was also specified that the threshold for granting the reflection period should be very low: it is not necessary to present evidence that the person is a victim of trafficking. It should suffice that police or assistance providers present a plausible account of circumstances in the person's life that make it probable that he or she is a victim. Further, based on the observation that many people who are trafficking victims according to the legal definition do not identify with this term, it is not necessary to see oneself as a victim.

One of the stated goals of the temporary permit is that the person should be given a chance to break ties with the "environment" behind the trafficking, but there is no requirement that this has to happen immediately before or after applying for the reflection period.

The reflection period can be followed by another temporary residence permit of up to one year. For this to be granted, however, there are other requirements that must be fulfilled. At this point the victim must have ceased contact with traffickers and reported them to the police. Further, the police must have started an investigation or prosecution of the traffickers and also deem it necessary for the case that the victim stays in Norway.¹⁶

A relatively recent addition is a third step. Victims who testify as an injured party in cases based on Paragraph 224 (trafficking) are to be granted permanent residence in Norway, unless they are eligible for asylum or there are particularly strong reasons not to grant such a permit.¹⁷

The Norwegian model appears to be something of a hybrid between the socially oriented systems and those focusing on prosecution. The granting of the initial period has, on paper at least, a very low threshold and there is no requirement to give information to the police. The language in the official documents describing the reflection period is very much focused on the victims' recovery. Further, the intention of the re-

¹⁶ Rundskriv RS 2010-141, <http://www.udiregelverk.no/default.aspx?path={A7282E28-4C05-4E7A-A211-C8902C907398}>

¹⁷ Rundskriv AI-84/08, <http://www.regjeringen.no/nb/dokumentarkiv/stoltenberg-ii/aid/rundskriv/2008/ai-6408-instruks-om-oppholds--eller-arbe.html?id=534411>

reflection period is to make it possible for victims to get away from traffickers. However, if residence is to be renewed after six months there are very clear requirements that the victim should cooperate and indeed, *report* traffickers to the police. So while the initial period resembles the Italian model with its social focus, the subsequent options for renewed residence are very much dependent on cooperation with police, and thus more like the Belgian model. An important addition is the very clear provision that victims who testify against their traffickers are to be given permanent residence, which provides clarity and predictability when making what is, for many victims, a dramatic and potentially dangerous decision to testify.

As with all models, key informants report a variety of experiences. Assistance providers are clear that the long initial reflection period is an improvement on the old model, and that now they have something to offer potential victims. The experience of service providers is that more victims feel that there may be a way out of exploitation when they are able to secure more time to find out what they want to do and what their options are. As such, the reflection period is seen as a tool for more actively encouraging victims to leave their trafficking situations. However, there are still some challenges. The Norwegian system of assistance is decentralised, and safe housing, for instance, is provided in a total of 19 crisis centres spread across the country. Medical and financial assistance is also to be provided within the regular welfare state systems. In some cases this has proven to be a difficult process, since many local authorities have limited experience of trafficking cases. In the initial period at least, there has been a need for much individual follow-up by the central actors working with victim assistance, but it has still been difficult to put into practice the goals inherent in the reflection period. One example is the work permit tied to the reflection period, which has the potential of being an important element. If victims who return to their home countries are able to bring some money, this substantially eases the process of reintegrating in local communities and reuniting with families (Brunovskis and Surtees 2012). A similar challenge has been to find psychological assistance, as waiting lists for psychiatrists and psychologists in Norway are very long. The reflection period may thus be over before assistance can be found.

In the experience of the police, the current model is not ideal for their purposes, primarily because of the length of the initial residence permit. The pressure or incentive to talk to the police and provide information comes only after six months, and information given at this late stage is very likely to be outdated and of little value to the investigation. For instance, typical information that can be used for establishing the identity of traffickers may consist of phone numbers and addresses. However, traffickers routinely change phone numbers and particularly so if someone has left the network. In central registers, phone data are deleted after three months. This means that what could have been a fruitful ave-

nue, had the information reached the police at an earlier stage, is in many cases useless by the time victims share it with the police. Another common strategy is to identify addresses where exploitation has taken place or that are in other ways tied to the trafficking. Again, after six months traffickers are likely to have moved on. One aspect is that this impedes the efficient prosecution of traffickers. Another is that in the last instance it can also have negative consequences for the victims, who are less likely to get an extended residence permit when the police are not able to open an investigation.

2.5 Sweden

- Initial length: 30 days
- Who is eligible: Possible VoT
- Type of initial period permit: Temporary residence permit
- Mandatory cooperation with police: after 30 days
- Followed by: Renewable six month temporary residence permit
- Permanent residence permit option: No special arrangement for VoT, but they may, like anyone else, apply through common refugee/asylum provisions
- Mandatory assistance: No
- CoE Convention status: Signed: 16 May 2005
Ratified: 31 May 2010

Sweden differs slightly from the other countries in this study in that trafficking victims' rights to temporary residence are integrated with the rights of other crime victims without legal residence in the country. Since 2004, victims (in general) without residence permits can be granted a six month residence permit.¹⁸ The condition is that the police find the presence of the foreigner necessary, either for pre-trial investigation or trial (Utlänningslagen 2005:716, Chapter 5, Paragraph 15). In these cases, the head of investigation (*förundersökningsledaren*) applies to the migration authorities for a residence permit. The permit is renewable upon application, again from the head of investigation. Conditions for the granting of such a permit is that the foreigner has demonstrated willingness to cooperate with authorities and has ceased all contact with those suspected of the crime under investigation.

¹⁸ At the time of writing, discussions were taking place on expanding this to one year. Please see Justitiedepartementet 2009:7, Migrationsverket 2010: Remissvar på departementspromemorian Uppehållstillstånd för skyddspersoner (Ds 2009:52) <http://www.migrationsverket.se/info/1813.html>

In response to the European Council Convention's call for reflection periods, this type of residence permit was expanded to include a 30 day reflection period in cases where the victim would need time to recover, and to decide whether or not to cooperate with authorities. The option for a reflection period was thus open also for victims of other types of crime, not only trafficking. (Government Proposition 2007:6). The legislation also opens for the reflection period to be extended under special circumstances.¹⁹ During this period, the victim is granted a work permit, the right to health care and, if needed, psychological assistance, as well as social support. These are important elements, but experience has shown that it is a challenge to find meaningful activities for victims during their time in Sweden (Stockholms Län 2010:36).

Sweden has also observed the same changes as several other countries in how trafficking takes place: Whereas "the first wave" saw relatively clear cases of deceit, coercion and control, the picture is now more complex. It is also worth noting that during the period when several of the current policies and laws were formulated, most victims, particularly in the Nordic countries, came from the Baltic States, the former Soviet Union and Eastern European countries. These victims, predominantly women and girls trafficked for sexual exploitation, presented with relatively clear stories of victimisation. In recent years, however, and particularly with the introduction of victims from other regions and countries, notably from Nigeria, the picture has changed. Social workers, police and researchers all find that the trafficking trajectory has become less straightforward, and, significantly, therefore also more difficult to investigate and prosecute. A member of a prostitution outreach group in Gothenburg observes that trafficking today is more of an agreement between the recruiter in the country of origin and the trafficked person. Control mechanisms are more subtle, and a situation of dependency is created by the traffickers by arranging the journey, visas, dwelling, etc. Since the persons are also probably able to keep more of their income than previously, it becomes very hard to establish whether they are in fact victims (Stockholms Län 2010:38). This, in practice, means that it is more difficult in the Swedish context to offer assistance and temporary residence to these "new" groups of possible trafficking victims, because the six month temporary residence permit is so clearly tied to an ongoing investigation.

It is interesting to note that the reflection period is rarely used for victims of trafficking, as "most victims opt for return" (UNODC/CBSS 2010:164). This is also confirmed by the national coordinator for trafficking issues, who has observed this tendency since 2004 (Stockholms Län

¹⁹ Socialförsäkringsutskottets yttrande 2009/10:SFU4y

2010:34). Comparing this to the situation in neighbouring Norway, where there has been a substantial increase in the use of the reflection period following its expansion to six months, it is not entirely unlikely that the tendency for return rather than reflection is related to the shorter reflection period and limited options for permanent residence in Sweden.

Sweden's approach of integrating the rights of victims of trafficking with those of other crime victims is interesting in that it does not distinguish trafficking in human beings as a different category requiring separate measures altogether. On the other hand, the limited use of the reflection period underlines the strong link to police priorities. Whereas in many countries the reflection period is used as a means to "buy time" in order to gain a better overview of the person's situation and also allow for a delay in communication, the Swedish practice presupposes a fairly strongly established case of trafficking, that is, strong enough for the police to get involved, before any kind of legalised residence is granted. The pragmatic use of reflection periods in order to gain an overview of a victim's situation for assistance purposes should not be underestimated. One topic currently discussed in Sweden is who should be allowed to identify victims and apply on their behalf for assistance. Currently, only the police can decide on an application for a temporary residence permit. This is also the case for the reflection period, though this is more of a theoretical issue, as it has never been used. However, this also has some consequences for who is identified and thereby also the numbers of reported victims.

2.6 Belgium

- Initial length: 45 days
- Who is eligible: Potential victims as identified by one of three NGOs
- Type of initial period permit: "Ordre de quitter la territoire" (order to leave the country). Postponement of obligation to leave Belgium.
- Mandatory cooperation with police: After 45 days
- Followed by: Three months TRP while prosecutor decides on whether to pursue case, then renewable TRP for six months at the time
- Permanent residence permit option: Can apply after trial. Outcome dependent on trial outcome or prosecutor's assessment of whether person is a VoT even if defendant is acquitted.
- Assistance mandatory: Victims must agree to be assisted by one of three appointed NGOs
- CoE Convention status: Signed: 17 November 2005
Ratified: 27 April 2009

The Belgian system of reflection periods is one of the oldest in existence. Belgium had an early start in awareness of and policy against trafficking in human beings. When in 1993 journalist Chris de Stoop published a book²⁰ about trafficking of women and girls to the sex industries of Belgium and the Netherlands, it set in motion a range of events. One was the creation of a senatorial investigative committee on human trafficking issues. As part of the process, trafficking for labour exploitation also came to the fore.

The reflection period itself and the associated temporary residence permits follow clear requirements: victims may be eligible for a 45 day reflection period, which means that their presence on Belgian territory is temporarily legalised and they are issued with an “*ordre de quitter la territoire*”. During this period they must decide whether or not to cooperate with police. If they decide to make a statement to the police, they can be granted a temporary residence permit of three months, which involves extended rights, including a work permit. During this period, the prosecutor’s office will decide whether the case will be further pursued. If so, the victim may receive a renewable six month temporary residence permit, with even more rights, including family reunification. Victims also have the right to stay in the country while court proceedings take place.

There are also options for permanent residence. The chances of getting permanent residence are high if the traffickers are found guilty, but this is not an absolute requirement for a residence permit to be granted. In certain cases it can suffice that the prosecutor states that it is likely that the person is in fact a victim of trafficking, in order to obtain permanent residence.

Perhaps the most distinguishing feature of the Belgian system is the particular position and history of the trafficking NGOs. An application for a reflection period can only and exclusively be sent to the Aliens Office by one of three NGOs that provide assistance to trafficking victims: Payoke in Antwerp, Pag-asa in Brussels and Surya in Liège. Furthermore, the authorities early on took the initiative to the formation of these NGOs for service provision to trafficking victims: Pag-asa and Surya were formed at the specific request of the authorities. While Payoke was already in existence, its focus had been on prostitution, and the organisation was approached with a request to redirect its activities to assisting trafficking victims. The NGOs have thus been an integral and stable part of the anti-trafficking policy in Belgium for a very long time. Furthermore, these NGOs have a very strong and explicit position in legislation, as law enforcement is obliged to cooperate with the organisations.

²⁰ *Ze zijn zo lief, meneer* (They Are So Sweet, Sir), 1993

They also have the formal right to accompany victims in their meetings with police.

The Belgian system is focused on prosecution of traffickers and victims' cooperation with the police. Brussels-based Pag-asa says that in most cases victims will already have decided whether or not to cooperate with police when they come into contact with the NGOs, and that in these cases they will apply directly for a three month residence permit. The legal system in Belgium (Code Napoléon) means that victims are not required to testify in court against traffickers, but that their statements will be presented as evidence. While a victim can in theory decide to cease cooperating with the police and prosecution at any time, in practice the only consequence would be a loss of the right to residence. Once a statement has been made and a case has been opened, the prosecutor can proceed with the case regardless of the victim's consent. Further, previous statements can still be admitted as evidence.

While this spares the victims the potential ordeal of having to be subjected to examination and cross-examination in a courtroom, it also means that once the wheels are set in motion there is nothing the victim can do to stop the court process. On the one hand this takes some of the direct responsibility away from the victim. On the other, it means that the decision of cooperating with police is irreversible, and for some it may be a question of whether 45 days is enough to make this kind of decision.

If the victim after 45 days has decided not to cooperate with the police, he or she is obliged to leave the country. In practice, however, this rarely happens. In the case of returns, the NGOs cooperate with the International Organization for Migration (IOM). However, there are reportedly only a handful of voluntary returns through a repatriation scheme each year. The rest try to stay in Belgium illegally or try to go to another country. What remains unclear is what happens to victims who after 45 days of contact with authorities and NGOs re-enter irregularity, and how many return to the exploitative situation they had initially left. In the view of service providers, victims may hope to find other (irregular) work, or in the case of prostitution, try to operate independently. However, the prospects for a foreign woman to work independently in prostitution were considered to be limited.

An open question, and not only for Belgium, is whether the reflection period is actually used for making the decision to cooperate with the police. Do victims who are in doubt change their minds during this period? The answer to this is inconclusive. While the NGO representatives interviewed for this report shared the view that in most cases victims had already decided to press charges when they came to the NGOs, they also had experience of cases where the victim was in doubt and needed time to think. One factor that appeared to help victims decide to make a statement to the police was living in the communal shelter with other victims who had advanced further in the process of pressing charges. According to service providers, seeing that others cope with the process

and that they are treated decently made giving a statement to the police a more tangible and predictable option.

The most important motivating factor for cooperating with the police is, according to service providers, the prospect of obtaining a permanent residence permit. This means that entering into the reflection period and subsequent temporary residence is also an attractive option for victims who come from EU countries, and not only for the third country nationals for whom it was originally intended. Another very important factor was recognition of the wrong that had been committed, and being believed as a crime victim.

All in all, the Belgian system, having had a stable existence for more than a decade appears to work according to its purposes. What remains an open question is whether such a system that is strongly focused on prosecution is able to address the needs of all types of victims, or whether victims with cases that are not easily “prosecutable” are excluded. According to many service providers in this sector internationally, numerous victims need considerable time to open up and discuss what has happened to them.

2.7 Italy

- Initial length: Six months (§18), or three months (§13)
- Who is eligible: VoT in serious and imminent danger (§18) or potential VoT (§13)
- Type of initial period permit: Temporary residence
- Mandatory cooperation with police: Under the legal course of §18 cooperation is required from the outset; under the social course, VoT must give a statement to establish whether they are victims, but further cooperation is not required.
- Followed by: Options for renewing TRP if necessary, either due to investigation or for social reasons
- Permanent residence permit option: VoT may apply to have their TRP changed into residence based on work or studies.
- Assistance mandatory: TRP depends on VoT being granted a place in an approved programme
- CoE Convention status: Signed: 8 June 2005
Ratified: 29 November 2010

Together with Belgium, Italy was among the very first countries to introduce a system of protection and residence permits for victims of trafficking and this was one of the sources of inspiration for the reflection period in the CoE Convention on Trafficking. Under Italian law, since 1998, victims of trafficking can be granted temporary residence in the

country.²¹ The initial period of residence is six months, which can then be prolonged by a further 12 months if this is deemed to be necessary. A precondition for the granting of this permit is that the person is in serious and imminent danger as a result of either trying to escape traffickers or having made statements during preliminary trial investigations (Ministero dell'Interno et al 2005:1). During the period of residence, the victim must agree to receive assistance from one of the assigned NGOs in the field. After this period (up to 18 months) has expired, the victim can seek to change the residence permit provided under Article 18 into a work or study permit, which can then be granted for up to two years at a time. This presupposes that victims can document that they have regular work or are admitted into a learning institution.

While this model was one of the forerunners for the reflection period in the CoE Convention, the Italian system did not originally include a reflection period as such. Most countries that provide temporary residence on the grounds of suspected or confirmed trafficking connect this residence permit to cooperation with the authorities in one form or another. The initial temporary residence or postponement of order to leave the territory is intended to allow reflection and recovery. Since the continued provision of temporary residence in Italy does not necessarily rely on cooperation with police or other authorities, the purpose of the Italian initial residence permit is not to allow reflection, but to provide protection, and it is therefore not a reflection period per se. But there is one other option. As noted in the section on Belgium, the reflection period is often used as a pragmatic means for NGOs or authorities to buy some time to assess the situation of a person who may or may not be a victim of trafficking. Since 2005 there has been a similar option in the Italian system, with the provision of Article 13. Under this article, potential victims may be granted a temporary residence permit of three to six months, during which the authorities may seek to establish whether the person is a trafficking victim or not, in which case he or she can be given an Article 18 permit and enrolled in an assistance programme.

It has been argued that this is the only system that does not require victims to cooperate with police (Gallagher 2006b:169). Currently, the picture is a little more complex. According to assistance providers, the possibilities for getting an Article 18 permit have diminished. In principle, there are two paths on the way to obtaining residence under Article 18: the judicial procedure and the social procedure, that is, as victim-witnesses or as victims, regardless of their witness status. In the judicial procedure, the victim will for instance have been identified in the course of police operations, or as a result of the victim self-identifying and wish-

²¹ Article 18: Residence based on social protection, in *Law Decree No. 286/1998*; Consolidated act of measures governing immigration and the condition of foreign citizens

ing to press charges. In these cases, the police and justice system will be involved in the case, and the victim will be cooperating with the police, right from the beginning. Following the social procedure, on the other hand, victims may have been identified by an NGO, such as one of those doing outreach work in prostitution areas. In these cases, NGOs can apply for a residence permit on behalf of the victim. However, in order to obtain such a permit, it must be assessed as probable that the person is in fact a victim of trafficking. This means that the story of the person must be taken down in as much detail as possible, and presented to the police, who will then judge whether it is likely that the person is a victim or not. Furthermore, the police also have the right to start an investigation based on this material, and the initial statement may also be admitted as evidence in court at a later stage. So while the requirements are less strict, they are not completely disconnected from providing information to the police.

The granting of residence under Article 18 is administered by the police through the *questura* (Provincial Police Headquarters), to which applications are addressed. There is no central coordination of the granting of TRPs, so it is difficult to tell whether it is practised in the same way all over the country. There are suggestions that it is not, and according to an NGO in Rome, it had become almost impossible to obtain Article 18 residence through the social procedure in Rome. This has also been noted by others: “... in practical implementation of the law there appears to be a tendency to implement mostly the judicial procedure and link the provision of support and protection to the cooperation of the victim with the investigative and prosecutorial authorities” (Konrad 2006:129). In any case, a requirement for the granting of Article 18 residence is that the police believe that the person is a victim of trafficking. It is therefore an open question just how much documentation must be provided for an application to be deemed credible. The general attitude from professionals in the field was also that it had become more difficult following a general tightening of migration policies. In particular, the new legislation on irregular migration as part of the security package was held to have also substantially tightened control of trafficking victims.

In addition, the granting of Article 18 residence permits is also contingent on the victim accepting assistance and enrolling in a programme administered by a certified NGO in the trafficking field. There is a network of so-called Article 18 NGOs that are allowed to provide assistance (dwelling, career guidance and training, etc.). The granting of Article 18 residence also therefore depends on the capacity of these organisations. In some cases it has been problematic to find assistance options for male victims of trafficking, as most services are directed towards women, and traditionally women in prostitution. This therefore becomes an obstacle for male victims to be granted Article 18 residence permits.

3. Discussion

It is interesting to note the diversity in the models chosen for the reflection period for victims of trafficking in the seven countries in this study. This is not least the case when comparing the five Nordic countries, several of which have a relatively similar starting point in terms of their human trafficking situation. Two of the Nordic countries, Finland and Iceland, have, in line with the Italian model, specifically formulated the option to grant residence to victims based on their vulnerable situation and not solely on the grounds of cooperation with authorities. Sweden is more similar to Belgium; both countries have shorter reflection periods (30 and 45 days respectively) leading up to a decision on whether or not to cooperate with authorities. Denmark also has a 30 day reflection period. However, the aim is not prosecution, but prepared return of victims, which separates the country from the others included in this study. Norway has a long reflection period, which again is similar to the Italian model, but will only renew residence based on cooperation.

This very diverse picture gives room for discussion of these variations and what they imply, as well as the experiences reported by practitioners in the field. It is important to keep in mind that these seven countries also represent very different experiences with the trafficking phenomenon itself: While Italy in 2006 identified 7300 women victims of trafficking (male and minor victims not included), Iceland only recently had its first trial on trafficking. The countries also differ in socio-economic structure, with respect to migration patterns and migration control, and several other factors that are crucial for an understanding of policy development and context.

A discussion of best practices must therefore be sensitive to the differences between the countries and to the fact that “best practice” is not a culturally and politically neutral concept. What may be a “best practice” in one context is not necessarily transferable to another. Rather than identifying and recommending concrete and specific formulations and policy designs, the goal in this chapter is to analyse and discuss implications of different models and principles.

In the context of the complex issue of trafficking, and the multiple goals of the reflection period as a policy measure, it is useful to focus on the two main stated goals of the reflection period in the international framework: 1) To provide a tool for social protection of victims; 2) To create a tool for promoting prosecution of traffickers.

This chapter discusses first the elements that vary in the different approaches to reflection periods and temporary residence permits, before

examining what can be concluded about reflection periods as a tool for prosecution. The chapter closes with a discussion on implications for the victims' rights if the criminal justice side of trafficking is given priority.

3.1 The factors that vary

All countries included in this study have some form of reflection period or temporary residence permits, but the precise form they take varies substantially between countries. The most important aspects that differ are:

- The length of the reflection period – ranges from 30 days to six months
- The nature of the permit – postponement of return or a (temporary) residence permit
- The social and legal rights associated with the reflection period
- The obligations associated with the reflection period: Is it mandatory to accept assistance, or mandatory to cooperate with police?

The table below summarises the main features of the different models as described in the previous chapter:

Table 1: Overview of reflection period models in the Nordic countries, Belgium and Italy

	Denmark	Finland	Iceland	Norway	Sweden	Belgium	Italy
Initial length of RP:	30 days	30 days to six months	Six months	Six months	30 days	45 days	3 months (§ 13) or 6 months (§ 18)
Type of permit	Postponement of obligation to leave	TRP	TRP	TRP	TRP	Postponement of obligation to leave	TRP
Mandatory cooperation with police	Mandatory cooperation on repatriation, not on trafficking case	After initial RP, unless VoT is particularly vulnerable	After initial RP, unless VoT is particularly vulnerable	After six months if further TRP is to be granted	After 30 days if further TRP is to be granted	After 45 days if further TRP is to be granted	If “legal course”; yes. If “social course”; no, apart from initial statement
Followed by:	70 days postponed departure if VoT cooperates, is ill, or testifies in trial	Six to 12 months renewable TRP, or continuous RP in special cases	One year renewable TRP	One year renewable TRP if VoT’s presence is required for investigation	Six month renewable TRP if VoT’s presence is required for investigation	3 month TRP, then 6 month renewable TRP if case is pursued by prosecutor	Renewable TRPs, either for investigation or for social reasons
Who is eligible	Potential VoT identified by the police	Potential VoT	Potential VoT	Potential VoT	Potential VoT identified by police	Potential VoT; identified by three assigned NGOs	§ 13: potential VoT, § 18: VoT in serious danger; ID by police
Permanent and trafficking-specific residence option	No	Yes	Yes	Yes	No	Yes	May apply for residence based on work or study
Mandatory assistance	Yes	No	N.a.	Yes; not specified from whom	No	From one of three appointed NGOs	From appointed NGO
CoE convention status	Signed 5.9.06 Ratified 19.9.07	Signed 29.8.06 Ratified: 11.5.12	Signed 16.05.05 Ratified 23.2.12	Signed 16.05.05 Ratified 17.1.08	Signed 16.05.05 Ratified 31.5.10	Signed 17.11.05 Ratified 27.04.09	Signed 8.6.05 Ratified 29.11.10

3.2 Length and nature of the reflection period

One of the most striking differences between the reflection period models is in length, ranging from 30 days to six months. 30 days is the minimum stated in the Council of Europe Convention. However, several experts, including an expert group formed by the EU commission, recommend a minimum of three months. Previous research has found that a relatively high proportion of victims display symptoms of Post-Traumatic Stress Disorder (PTSD) in the first three months after trafficking (Zimmermann et al 2003, 2006); this is also an argument in favour of having at least a slightly longer reflection period. The shorter reflection periods tend to be a postponement of the return of an irregular migrant victim, or an “ordre de quitter”, while longer reflection periods are temporary residence permits in their own right, generally also including a work permit.

There are advantages and disadvantages of both long and short reflection periods, mainly along the lines of whether they benefit victims’ needs or the needs of authorities: A shorter reflection period may mean that victims are unable to sufficiently recover and fully understand and assess the implications of cooperating with the authorities. A short reflection period may therefore be at odds with the stated goal of the Convention that victims should be given the opportunity to make an informed decision about making a statement.

On the other hand, shorter reflection periods may ensure that information passed on to the police during this period is relevant and not outdated, thereby improving the chances of successful investigation. It may put more pressure on victims to decide whether or not they will cooperate. It is important to remember that this is not exclusively about looking after the states’ needs to investigate and prosecute crime; in some cases victims may have escaped from a still active trafficking network, meaning that there may be other victims still exploited and in need of assistance. In this perspective, putting a certain amount of time pressure on victims to give a statement may be justifiable. Conversely, longer reflection periods may jeopardise the chances of successful investigation and prosecution, as information given for instance towards the end of a six month period will often be outdated. Police in one country with a longer reflection period had repeatedly experienced that information (typically phone numbers or addresses of suspected traffickers) was of little use, as phone data was only kept for three months, and apartments and houses were often deserted by the time police obtained the information. Valuable resources were therefore wasted on following up on “dead” leads. Further, victims may become less reliable witnesses over time, having perhaps forgotten important details or changing their statements, leaving their accounts less credible or more fragile, faced with cross-examination by the defence.

With regard to social needs, however, the longer reflection period can greatly improve chances of providing substantial assistance to victims of trafficking, and importantly, to other categories of victims. Shorter reflection periods will rarely be seen as an incentive to come forward for a victim who is considering taking steps to exit a trafficking situation. As established by several studies, the conditions of and control over trafficking victims vary considerably, and some victims are in principle able to move relatively freely. However, there are usually other factors than direct force that may make it difficult to escape the influence of traffickers; one of these is whether or not the victim can see any alternatives to his or her situation. While a 30 day reflection period will rarely be seen as sufficient to find alternatives and really consider one's options, a six-month residence permit might be suitable. There is therefore a difference in how reflection periods are used depending on their length: the shorter periods are more likely to be issued as a consequence of victims being identified by others, for instance following police raids, while the longer reflection period is more likely to function as an incentive to come forward and self-identify as a victim. It is therefore likely that the two measures will reach different groups of victims.

Further, some victims may be traumatised or confused at the time of identification. A longer reflection period may make it more likely that they will eventually provide information to the authorities, as they may need substantially more time to reach the point where they can make that decision.

In light of the above, it may seem apparent that a longer reflection period would always be in the interest of victims. There are, however, some caveats. When reflection periods are longer, it is even more important that they are filled with meaningful rights and contents, and that the process is clear and predictable. If not, there is a real risk that victims are left in limbo, with a great deal of insecurity about what the future will hold. It is important to constantly assess whether the residence regimes offered are conducive for the victim to move on with his or her life in a meaningful way. One very important aspect is to ensure that likely future outcomes are as predictable as possible, and that false hopes of permanent residence are not instilled. This is especially the case where victims opt to cooperate and are given renewable TRPs, meaning that the total length of the legalised stay may be considerable, in some cases up to several years. It must be acknowledged that to wait for a trial to be prepared or investigation to come to a conclusion can be extremely stressful, particularly so where the victim's continued residence depends precisely on whether his or her presence is necessary for the authorities. As discussed below, it must be considered whether it is right, in all cases, to encourage victim cooperation and/or testimony, and also what the real implications are of attaching residence to investigations or prosecution.

Another issue is that the longer the reflection period is, the more important its contents are, not least to avoid jeopardising trust with the victim. While all countries have formalised the rights of victims, several practitioners in the field experienced that it was often difficult to translate these rights into practice. For instance, work permits are potentially important as they may give victims an option to return with money, which is very important in terms of reintegration. Returning with no money at all after a long absence can cause questions and suspicions about trafficking, which in many environments is highly stigmatising. However, if victims return with what may be passed off as reasonable earnings for the period they have been away, and perhaps even new skills, this may help construct a “cover story” for where they have been and help to avoid stigma. In practice, however, it has been very difficult for victims in many countries to actually find a job during the period they are in the destination country. Similarly, in some countries victims have had to join the general waiting lists for psychological assistance, resulting in difficulty in starting meaningful therapy in cases where this might have been beneficial before the reflection period is up. Thus, the longer the reflection period, the higher are the demands on states to follow up with a well-functioning assistance system for victims. It is very common that the victims’ rights are not well known outside the environments that work directly with victims, meaning that it can be a struggle to make local authorities or other bodies provide assistance in line with their obligations. It is well documented in studies of asylum seekers that waiting can take a severe toll on health and well-being (see for instance Brekke 2004). Observations from service providers support this for trafficking victims – passivity quickly leads to worries and anxieties about their situation. This underlines the importance of providing opportunities for meaningful activities during this period.

3.3 Implementation of the permit

Key issues for the implications and uses of the reflection period are tied to how it is implemented. Of particular importance are the questions of who is entitled to identify a victim and apply, on his or her behalf, for a reflection period, and whether assistance is mandatory. Further, some countries have the provision that victims cannot be involved in prostitution during the reflection period.

The issue of who is allowed to identify has some bearing on how the reflection period is used. In several countries, there is a strong element of police involvement early on in the process. For instance, in Sweden, only the pre-trial investigator may identify a victim and apply for a reflection period/temporary residence permit. This indicates a very strong focus on the police cooperation element of the provision, as not even the 30 day reflection period can be granted without police involvement. In

fact, as noted in the description of the Swedish measures, ties to prosecution are so strong that the reflection period is hardly used; victims are usually granted the residence permit that presupposes some degree of cooperation. In Belgium, on the other hand, the police are not entitled to identify victims or apply for reflection periods at all, but have to go through one of the three designated NGOs that are the only actors mandated with this task.

It is important for other actors than the police to retain the right to identify victims and apply for reflection periods, in order to ensure that those victims with more complex stories less clearly connected to trafficking can also be offered assistance and the option for clarifying their situation. In countries where non-state actors are also able to identify victims this appears to function well, and ensure a low threshold for offering reflection as the first step in assistance. In addition, experience has shown that different actors may have different approaches to identifying trafficking. Making sure that a variety of actors are allowed to identify also increases the chances of reaching more categories of victims, as they may be in contact with different types of institutions and organisations. During interviews, representatives of the police would generally describe the reflection period as a tool for investigating and prosecuting trafficking, while service providers and social workers would place more weight on the options the reflection period gave for providing assistance.

In several countries, assistance is also mandatory for victims who are granted a reflection period; that is, they have to agree to be assisted, usually by specific actors in the anti-trafficking field. On the one hand, this can be an advantage, in that it gives the state, or the assigned NGOs, a better opportunity for following up victims, both in terms of providing necessary assistance, and in terms of providing information about the various options open to the victim and the workings of the judicial process. This may be particularly important when victims come from countries with weak or more or less non-functioning states, or with high levels of corruption. In these cases, it has often proved difficult to provide accessible information about what to expect, for instance in contact with the police. Also, when the provision of assistance is mandatory, it may decrease the chances of a low-threshold residence option being abused.

On the other hand, when assistance is mandatory, states also have an extra moral obligation to ensure that the quality is satisfactory. In many cases, poor assistance may be worse than no assistance. For instance, if assistance provision fails to address the need for meaningful activities, the risks of depression and passivity increase. Further, disappointment with assistance has been shown to be an important reason for victims to decline assistance at a later stage, due to lack of trust (Brunovskis and Surtees 2007). Assistance provision for trafficking victims has to a large extent been outsourced to non-state actors, meaning that there is a myriad of different approaches to what is offered and under which ideological umbrella. Some organisations may for instance have a pronounced

anti-prostitution standpoint, and thus may be less suitable for persons who had prostitution as part of their migration project. In fact, many of the provisions surrounding anti-trafficking measures “combine” anti-trafficking policies with anti-prostitution policies, even though the language in the international framework on this topic is vague. For instance, Rutvica Andrijasevic (2003: 263–264) notes that Article 18 of the Italian residence regime for victims institutionalises and essentialises the rhetoric of victimisation. It also requires that applicants leave prostitution, which disqualifies prostitution as part of some women’s migration experience, and establishes a normative narrative of victimhood, meaning that women in prostitution cannot have prostitution as a continued strategy if they are to obtain rights as victims of trafficking.

Likewise, demands that the victim should sever ties with prostitution suggest that the target is not only to prevent exploitation, but that there is also an implicit goal that the persons leave prostitution entirely. By implication, the policies then conflate trafficking and prostitution, meaning that anti-trafficking measures are also anti-prostitution measures.

While this may be discussed with respect to women’s agency, particularly in contexts where prostitution is not illegal, there is still a pragmatic aspect that needs to be considered. If there were no requirement to break ties with prostitution, there could be a risk, particularly in countries with long and low-threshold reflection periods, that these could be abused by traffickers to legalise residence for victims. In any case, it is crucial to have a critical perspective on assistance and the extent to which it is in fact empowering or disempowering for those it is meant to reach.

An important issue is the quality and organisation of services in general. Although it is outside the scope of this study to discuss the content and structure of services to trafficking victims, one important feature that should be noted is the heavy reliance on NGOs in assistance provision in many countries. This has many potential advantages, in terms of flexibility and commitment to the issue. However, one worrying aspect is the general lack of formalised quality control and complaint mechanisms. Services often appear to be of good quality and staff often go to considerable lengths to make sure that victims do not suffer when structures are insufficient and services are difficult to access (Brunovskis, Tveit and Skilbrei 2011), so commitment rarely seems to be a problem. Nevertheless, an overarching tendency is that this sector is not supervised, licensed or presented with formalised quality criteria for service provision, which are available control mechanisms for funding bodies. The data collected for this study give no foundation for conclusions about the respective assistance systems, but transgressions and abuse of power have been known to occur in similar contexts elsewhere. This is not least tied to victims’ rights to self-determination and freedom of movement, which are basic human rights (See also Brunovskis and Sur-

tees (2008) and Gallagher and Pearson (2010) for further discussion of this subject).

3.4 When protection is contingent on cooperation

The issue of protection and cooperation is most central when considering the TRPs that can generally follow the reflection period. While the reflection period is, in most cases, intended for victims to decide on whether or not to cooperate, the ensuing TRPs differ in terms of what victims need to deliver. Among the countries included in this study, Finland, Iceland and Italy include the explicit option of providing victims with residence permits based solely on their personal situation, regardless of whether they cooperate or not. The issue of (temporary) residence being contingent on cooperation with authorities is one of the most important in terms of striking a balance between the victims' needs for protection and the need to investigate, prosecute and penalise trafficking.

Looking first at the advantages of using temporary residence as an incentive for cooperation, it is clear that this has the potential of more success in investigating and prosecuting traffickers. As previously mentioned, this may be especially important in terms of assisting and offering exit to victims who may still be exploited. But the preventive effect should also not be underestimated. One obstacle in anti-trafficking work has been the relative impunity enjoyed by traffickers. An argument in favour of not making assistance conditional on cooperation has been that if victims are assisted and gain more trust in the state, this will lead to more cooperation. This has yet to be proven, and there is also a great chance that many victims who are not required to cooperate will opt not to. This is entirely understandable based on the often confusing and frightening situation they may be in, and from the standpoint of the individual victim this may be the most sensible option. The risks and discomfort involved may be considerable. However, it also means that many cases may not be investigated. There is also the chance that those who choose to cooperate, without any additional pressure, may be those whose cases are more clear-cut in terms of who are the victims and who are the perpetrators. Victims who have a more ambiguous role, which according to service providers across Europe is a phenomenon on the rise, may be less convinced that it is in itself a good idea to cooperate. All of this points in favour of retaining some form of incentive, or pressure, to ensure cooperation from victims.

However, considering the often very complex situation victims are in, and the multifaceted reality of trafficking where few cases are the same, the notion of making assistance to a large extent conditional on cooperation is very problematic. One of the main issues is that in reality residence regimes based on cooperation favour a very specific type of victim having been subjected to a specific type of trafficking.

3.4.1 Favouring victims with “prosecutable” cases?

It has been asserted that “... trafficking victims, unlike criminals turned informants, are unlikely to be able to furnish investigative authorities with the necessary information to convict traffickers.” (Goodey 2004:37). In the current situation, where the nature and knowledge of trafficking has changed substantially since 2004, this statement may be a little too broad. It nevertheless highlights a challenging issue when it comes to who is able to be of use to the police in an investigation and thus secure more rights. Trafficking victims can often provide the police with information about phone numbers, addresses, clients, and so on; this information can be very useful in an investigation. Those however who are under more or less total control with no insight into the dealings of their exploiters will have very little to offer in terms of information. With present policies, these are the ones less likely to be able to secure social rights under many of the current forms of temporary residence schemes in many countries, simply because they may be of limited use to law enforcement.

The present system therefore disfavours victims who have little or no tactical information about traffickers and favours those who may have been more involved. This makes sense when considering the reflection period simply as a prosecution tool in which the victims are mainly seen as instrumental to the investigation and where social assistance has a goal of enabling them to become better witnesses, as well as functioning as an incentive to cooperate. However, if another goal is individual recovery, this mechanism disfavours those who may have the greatest needs. A further point is that ultimately many of those who may be able to provide extensive information are people who on some level have been involved in the trafficking network themselves. Although not necessarily always the case, it is not uncommon that trafficked women can rise in the “organisation” with time, leaving a very complicated picture of being simultaneously both victim and exploiter of others in the eyes of the law (Skilbrei and Tveit 2008). While victims in this category should obviously also be offered protection, it is an open question whether policies should put them in a stronger position with respect to their rights than those who had very little information and control.

3.4.2 Is cooperation always appropriate?

Another issue to consider is to what *extent* the system requires the victim to cooperate in order to issue a temporary residence permit. Several countries have the provision that the permit will be renewed for as long as the person’s presence is required in the country for the needs of investigations or trials. In this sense, the victim becomes merely an instrument, and the assistance trajectory and continued residence is based not on the victim’s needs, but those of the authorities. It must however

be remembered that even giving a statement to the police may be a very frightening and unpredictable situation, as further discussed below.

What is clear is that the situations of persons who fall under the term “trafficked” vary enormously, as do their priorities and desires for the future. While some are very clear that they just want to escape from the exploitative situation, for others the circumstances may be more ambiguous. The toll of cooperating or testifying may be particularly harsh for victims of trafficking who have close ties with their exploiters. It is therefore an open question whether this type of measure fully appreciates the complexities of trafficking, of chain migration and of interdependencies between exploiters and victims of trafficking (who may sometimes even belong to the same family). For instance, reporting an uncle to the police may have consequences for relationships with other family members; parents, siblings or cousins. A young woman interviewed for a former project had been trafficked by her own mother, who had made her have sex with men for money starting at age eleven. During all of her childhood, she was subjected to violence, abuse and neglect, at times denied food to the point that she was gnawing at the plaster on the wall in starvation. However, now grown up and receiving assistance, she was adamant that she did not want to press charges against her mother, simply because she was, after all, her *mother*. She also wished to remain in contact with her and (re)build some form of relationship, despite the serious concerns of social workers involved in her case. As this was a case of internal trafficking, issues of residence in return for cooperation did not come into the picture. However, had this been a case of transnational trafficking, it is very questionable whether it would be right to encourage this woman to cooperate with authorities in return for residence, as it would have been so directly in conflict with her own wishes. Given the situation she was in and her very real lack of prospects in her home country, it is not unlikely that it would have been an agonising decision to say no. Situations like these must also be considered when assessing whether residence for cooperation is a good approach and what the consequences for victims might be.

In many contexts, not least those in several well-known countries of origin for trafficking victims, the consequences of falling out with a social or family network can be very grave indeed, as exclusion from the family may substantially increase the risk of poverty and social exclusion in general. When victims have had complicated and emotionally involved relationships with those who exploited them, they can be very reluctant to report these persons to the police (Brunovskis and Surtees 2007). It is not exceptional for a trafficker to be a friend, boyfriend or husband, and the situation of exploitation to have gradually developed over time. Attaching protection and residence to cooperation may therefore favour the so-called innocents; those who can with conviction argue that they were lured, tricked or duped into exploitation by a relative stranger. They may also find it easier to tolerate cross-examination by

defence lawyers than someone who may feel that their “complicity” in their exploitation may be more unclear. On the other hand, it may be important to set some conditions for residence permits in order to avoid abuse of the measure. With a “no strings attached” model there is a real risk that the measure designed to protect victims may in fact be abused by traffickers in order to secure a short term legalised residence.

3.4.3 *The need for flexibility*

In light of the above, it is clear that an efficient and defensible system of reflection periods and TRPs for trafficking victims needs to be flexible and capable of accommodating the great variety of circumstances of the victims. In this respect, the most promising models are those in Iceland, Italy and Finland, where TRPs can be used as an incentive for cooperation while still retaining the option of offering protection to particularly vulnerable victims. While many countries of origin have developed assistance systems for returning victims, it is clear that these models are often limited, requiring for instance shelter stays as part of the assistance. Service providers in destination countries working with returning victims observe that most of them do not want to be assisted in such a framework upon return. Victims are often reluctant to accept assistance that may potentially identify them as associated with trafficking, which may happen if they are seen in the offices of an organisation known to be working with victims. It is therefore very common that returning victims will de facto stand without assistance upon return. Offering protection in the country of destination is an important element and should in several cases not be made contingent on cooperation.

Another issue, however, is how often the option to offer TRPs on the basis of social vulnerability is used. In the two countries that have some experience with this model, Finland and Italy (it has only very recently been implemented in Iceland), non-state actors stated that while the model was good on paper, in reality it was rarely put into practice. Close monitoring of these practices is necessary, particularly in times of increased pressures on migration control. Further, when victims are granted residence on the grounds of cooperation and possible testimony in court, there is also the question of how they are followed up, and how they gain from the experience, not least in cases where their testimony does not lead to conviction.

3.4.4 *Residence in return for cooperation: Due or undue inducement?*

An important issue is the relative emphasis placed on the two aspects of the stated goal of reflection periods: Are they primarily a tool for the justice sector to promote access to intelligence, evidence and witnesses in order to build cases? Or are they primarily social tools for providing

assistance and (re)integration services, where victims' subsequent cooperation with law enforcement is a welcome bonus?

The general picture today is that reflection periods and temporary residence permits are primarily used as tools for investigation and prosecution of traffickers, and many rights follow from cooperation with police. While three countries included in this study keep open the option to grant legal residence on the grounds of vulnerability regardless of cooperation, this is rarely applied in practice. And in Italy, where this system has been in place the longest, statements must still be made to the police containing as much detail as possible, for a social path permit to be issued. While the CoE Convention is a step in the direction of increased victim rights, it must however be noted that this so-called rights-based approach still generally requires cooperation with law enforcement. In that sense and in practice, the reflection period and related TRPs are rights-based not necessarily for “trafficked persons” in general, but rather for “trafficked persons who cooperate and also have valuable information”. The relatively weak position of victims in terms of rights is also reflected in the fact that in most countries a negative decision on an application for a reflection period cannot be appealed, or if it can, only by the police, as in Sweden.

It is important to discuss whether and in what form it is appropriate and ethical to encourage victims to cooperate with authorities, since this lies at the foundation of current policies and practice. While reflection periods and TRPs for victims are, in international and national legislation, construed as incentives for cooperation, the option of residence may make it very difficult for vulnerable migrants to decline participation in an investigation or trial. Saying no to cooperation in several countries also means forfeiting the option to obtain legal residence. It must therefore be discussed whether promises of temporary or permanent residence constitute an ethical means for encouraging cooperation.

In this context, relevant terms are “due inducement” and “undue inducement”, or in layman’s terms, whether someone is given an offer they cannot refuse. Important factors in determining whether we should have ethical concerns about incentives are related to the presence of risk and the relative vulnerability of the person offered the incentive, as well as whether there is a potential gain for the person. The central issue is whether someone is induced to take a risk they otherwise would not have taken when what is at stake is too attractive to miss.

For many trafficking victims, (permanent) legal residence in a Western country may be the Holy Grail they have been looking for. This means that the relative value of residence as an incentive can be extremely high, particularly for people coming from countries with very limited options for (legal) migration to Western countries. At the same time, risks and discomforts involved in cooperating with police or in testifying against traffickers can be considerable. These risks are tied to the danger of retaliation, but also to the measures often necessary to

avoid retaliation, or create a sense of security. Victims have been forced to go more or less into hiding or in extreme cases change their identity and limit or cease contact with family and friends. Victims who cooperate with authorities sometimes speak of fear and nervousness several years on, constantly keeping an eye open for people who look like their trafficker or their acquaintances (Brunovskis and Tyldum 2004, Brunovskis and Surtees 2007). Further, it is not unlikely that the effects of taking the witness stand against traffickers can be a considerable strain or even re-traumatising for victims. However, as much as international law emphasises measures to encourage victims to cooperate, there is very little knowledge about the outcome of this process for victims over time.

Following the logic of due and undue inducements above, it may therefore be seen as unethical to offer residence as an incentive for cooperation, due to the high value of the incentive (residence), and the potential risks and harmful effects for the individual in cooperating or taking the stand as a witness (retaliation, fear, major life changes). The situation can be improved by minimising the risks involved, and by increasing the gain victims can make from cooperating.

3.5 Return of victims to countries of origin/residence

The notion that it is ethical to offer residence in return for cooperation also rests on the idea that it is justifiable to return victims who do *not* cooperate. However, the considerable difference in numbers between identified or assumed victims in destination countries and the numbers of victims who seek out and receive assistance when they are returned draws attention to a shared challenge in international anti-trafficking work, i.e. cross-border assistance provision. Social workers and other practitioners in several countries have the same experience, namely that victims are often reluctant to return to their country of origin, and that if they return/are returned, they will very often decline assistance within the anti-trafficking framework. This means that the current focus in many countries on returning victims must be carefully examined, and the consequences must be taken into account when designing policies.

States generally justify the return of victims by referring to the presence of an assistance framework in the receiving country. However, a former study (Brunovskis and Surtees 2007) has documented that victims will decline assistance when it is not suited to their needs. In many cases, victims will be afraid of accepting assistance, either because they may fear retaliation from traffickers or others if they are somehow perceived to be cooperating with authorities, or because they may be afraid that the assistance will identify them as trafficked in their local communities. Other reasons for declining are that the assistance is not suited to the victims' needs, which may be providing for a family or other dependents. Some-

times assistance is only offered within the context of a shelter stay and far too often restrictive demands are made on victims. Programmes may limit beneficiaries' contact with people outside the programme by banning personal mobile phones and offering only limited and supervised phone calls to families. There are also examples of programmes exercising strict control over behaviour, such as punishing undesirable behaviour by denying access to go outside the shelter, and awarding "good behaviour" with more freedom (Brunovskis and Surtees 2008). This means that the realities of whether return is appropriate must also be considered in light of the *de facto* availability of assistance and to what extent this assistance is suitable for the victims' needs. In the current situation, the assistance available may not meet the needs of many victims, meaning that they are in practice returned to fend for themselves.

3.6 The main pros and cons of different types of reflection periods

As shown above, there are many elements to consider when comparing different approaches to reflection periods and temporary residence permits. What is clear is that it is not possible to identify one model that gives equal weight to the different needs of all victims and the needs of police and authorities. The table below summarises some of the main elements that vary and the main advantages and disadvantages of different approaches:

Table 2: The main advantages and disadvantages of central elements in the reflection periods

	Pros	Cons
Length		
Short	Police obtain more relevant information when victims decide to cooperate.	Victims may be unable to sufficiently recover and fully assess their options and the implications of cooperating with police.
Long	More victims may be able to come into contact with assistance and eventually decide to cooperate. More suited to include victims who are very traumatised or confused, and who need longer to recover physically and psychologically.	Information to police is likely to become outdated. There is a greater risk that victims will have forgotten important details. Victims may have a false sense of hope that they will get permanent residence.
Type of permit		
“Ordre de quitter”	Puts more pressure on victims to cooperate, and can therefore result in more statements to the police.	Will not be particularly attractive for many victims, not least if the “ordre” is put into practice. Accepting will mean being registered with authorities and making it harder to hide as an irregular migrant.
Longer TRP with work permit	Will be more attractive and may encourage victims to contact services. Theoretical option for legal work can be important, as returning in most cases is much easier with money.	Strongly dependent on a well-functioning and smooth assistance system. Rights can be difficult to realise within the time span of the RP, meaning that rights function more on paper than in practice.
Contingent on assistance		
No	Respects victims’ rights to decide whether they need assistance.	Greater chance of RP being abused or victims not being able to escape from traffickers.
Yes	Gives closer follow-up of victims and more systematic likelihood of information about assistance and judicial process.	Can easily conflate trafficking and prostitution, as assistance in most cases sets as a condition that the person has to stop prostitution. Very dependent on the quality of the assistance system: bad assistance can be worse than no assistance.
Contingent on cooperation		
No	Makes victim protection a priority over prosecution. Victims may find it easier to cooperate if they can do so on their own terms and in their own time.	Prioritises individual victims’ rights over victims who may still be exploited by traffickers. Open question whether many victims will cooperate if they do not need to.
Yes	Makes conditions clear and fulfils the purpose of RP as a tool to promote prosecution.	Favours certain types of victims: those who have information and are able to share it. Means that many victims are in reality not eligible for protection through RP/TRP.

3.7 Reflection periods and prosecution

As established, the seven European countries examined in this study have different approaches to the reflection period, its design and its contents. In most countries, one of the stated goals of the reflection period is to contribute to successful prosecution of traffickers. It is, however, very difficult to assess whether one approach or one model is more successful than the others in this respect. There is some disagreement among actors from the justice sector and actors from the social sector on which model is the most beneficial. From the prosecution perspective, it was difficult to see the use of a longer (e.g. six month) reflection period. As discussed above, the more time passes before a victim is required to

share information with the police, the greater the chance that this information will be useless. Importantly, it will also be time-consuming to establish whether the information can lead anywhere.

One solution would be measures that encouraged victims to share information at an early stage that could be helpful for an investigation, but in a way that would not bind them in any way to future cooperation. However, a precondition to secure victims' rights would be strong support through proper legal advice at an early stage, from lawyers well versed in the situation and legal rights of trafficking victims. Currently, several countries have very limited provisions for legal advice and foreign language interpretation. For instance, Norway offers a six month temporary residence permit as a reflection period, but up until recently, only three hours of free legal advice were included during this time²². In practice, this is in many cases barely enough to fill in the paper work necessary to apply for the reflection period. Furthermore, psychological or other forms of counselling, in order to assist in sorting through options, could also be helpful for victims in assessing what to do. If victims are safe and secure in their conviction that sharing information with the police will not bind them in any way to future cooperation, the threshold for sharing potentially important information may be lower.

Another issue that must be considered is that testifying against traffickers will in many cases be frightening and can cause considerable strain. One key informant in the justice sector held the view that it was unethical to build cases on the testimony of victims, precisely due to the pressure this caused and the potential for re-traumatisation. Investigative methods that result in other types of evidence can take a great deal of pressure off victims, many of whom will find it an extraordinarily uncomfortable experience to face a trafficker in court. However, there is a danger that this may lead to more surveillance of potential victims, which is particularly problematic with persons in prostitution. The intimate and generally stigmatised nature of prostitution increases the risk of transgressions of personal integrity associated with surveillance. Methods to establish whether prostitution takes place at all can for instance include police posing as potential clients, or undertaking covert observation, which potentially violates very intimate personal boundaries.

²²Amendments were made in 2009. Rundskriv G-15/05 notes that cases where victims need to consider whether to report traffickers will often be of such a complex nature that exceptions to the three hour rule will routinely be made (Rundskriv G-15/05: Ny forskrift om salær fra det offentlige til advokater m.fl. etter faste satser ved fri rettshjelp og i straffesaker (stykkprisforskriften)).

3.7.1 Limitations of data on trafficking

A useful point of departure for discussing the efficacy of different models of promoting prosecution of traffickers would be data that could substantiate correlations between the models and the relative number of prosecutions in the eight countries included. However, reliable data remain scarce in the field of trafficking in general. Monitoring developments and differences between countries remains close to impossible due to unreliable data and vague categories for classification that are almost never comparable between countries and sometimes even over time within the same country. Further, “bad” data may give a faulty impression that we know more than we really know.

Several countries report declining numbers of victims of trafficking. It may be tempting to interpret this as a sign of policy success. However, it can also be a sign of a system that has gone stale and no longer responds to the changing nature of trafficking (Friesendorf 2007:391) and the changing needs of victims (Brunovskis and Surtees 2007). People working in the field consistently report that the victims *have* changed: They are very often no longer traumatised young women and girls that were freed in police raids, but exploited migrants with complicated stories and roles. As the assistance system is often more responsive to the needs of the first category of victims, others may be more likely to avoid being identified. In terms of data, this means that victims who fit in with the system will generally be counted, while many who do not will be omitted.

Looking at the available data on prosecution and trafficking, it quickly becomes clear that direct comparisons between countries have serious limitations. The UNODC recently conducted a global study with data collection on human trafficking and prosecution (UNODC 2009). For the countries included in our study the data on numbers of victims and on prosecution of traffickers show the following:

Table 3: Numbers of victims of trafficking in human beings and numbers of convictions for trafficking in human beings 2003–2007, by country, as listed in UNODC (2009). A dash (-) signifies that data were not available in the UNODC study. The categories in the different countries are not comparable, please see explanation below.

Country	Victims/convictions	2003	2004	2005	2006	2007
Belgium	Victims (1)	-	184	145	160	-
	Convictions (2)	401	362	281	-	-
Italy	Victims (3)	34	120	208	178	70
	Convictions (4)	111	199	297	217	148
Denmark	Victims (7)	-	-	-	-	-
	Convictions (8)	-	3	7	3	8
Finland	Victims (9)	-	-	-	-	31
	Convictions (10)	-	-	-	-	-
Iceland	Victims	0	0	0	0	0
	Convictions	0	0	0	0	0
Norway	Victims (11)	-	-	18	31	37
	Convictions (12)	-	-	-	-	7
Sweden	Victims	-	-	-	-	-
	Convictions (13)	1	0	7	11	-

1. Victims of human trafficking and smuggled migrants identified by the police.
2. Persons convicted of human trafficking and smuggling of migrants.
3. These numbers refer to victims of human trafficking identified by law enforcement in Italy. According to the UNODC, due to the lack of a central national database on victims of trafficking, the recorded cases of trafficking might overlap to an unknown extent (UNODC p. 260). In addition, victims of trafficking may also have been registered as victims of slavery or victims of slave trading. In these categories there are registered an additional 350 and 5–20 persons per year respectively.
4. This category poses the same concerns as the victim category above; traffickers may also have been prosecuted and convicted of slavery and slave trading, but overlap cannot be estimated.
5. 5: The UNODC report does not include any numbers for identified victims in Denmark. The closest category would be the number of reported trafficking offences, increasing from 1 in 2003 to 11 in 2007.
6. Persons convicted of trafficking in human beings in Denmark.
7. The Finnish numbers of victims are not available per year. This number refers to victims assisted at two reception centres in Finland.
8. The Finnish number of convictions is not available. The annual number of persons investigated for human trafficking varied between 4 and 10 in the years 2005 to 2008.
9. The Norwegian numbers refer to persons assisted within one specific assistance programme for victims, ROSA.
10. Annual numbers of convictions not available; seven persons were convicted from 2005 to 2007.
11. Persons convicted of trafficking in human beings in Sweden.

The category of trafficking victim is not comparable across countries for a number of reasons. In fact, only the Italian (3) numbers to some extent actually signify solely victims of trafficking identified by the state. However, according to the UNODC, due to the lack of a central national database on victims of trafficking, the Italian recorded cases of trafficking might overlap to an unknown degree (UNODC 2009: 260). In addition, victims of trafficking may also have been registered as victims of slavery or victims of slave trading. In these categories there are registered an additional 350 and 5–20 persons respectively per year, but again, the overlap between categories is unknown. Numbers from some countries include other populations than trafficked persons, e.g. the Belgian numbers (1) include victims of trafficking, but also smuggled persons identified by the police. Others are quite clearly not exhaustive; both the Norwegian (11) and the Finnish (9) numbers only include victims who are assisted within specific programmes, not the total number identified by

state authorities or others. The number of identified victims in Sweden is not included at all.

Numbers of convictions in trafficking cases are seemingly more consistent, but still not comparable. Again, only the numbers for Sweden (13) and Denmark (8) actually show the annual number of persons convicted for trafficking in human beings. The Norwegian numbers (12) are not given on an annual basis, but show that seven persons were convicted between 2005 and 2007. While the Italian numbers (4) also show convictions for trafficking, it is to be noted that a number of traffickers may also have been convicted for slavery or slave trading, and that there is likely to be considerable, though unestimated, overlap between the categories. Numbers for Belgium (2) again include both persons convicted for human trafficking *and* human smuggling. Numbers for Finland (10) are not included, and the report lists only the number of persons investigated for human trafficking.

The most important problem in using convictions of traffickers as a measure for developments in the trafficking field, however, is that according to police in several countries, traffickers are often prosecuted not for trafficking or related crimes such as slavery that could be identified in statistics, but for other aspects that are impossible to separate from convictions unrelated to trafficking. Examples of this are pimping, kidnapping, violence, drug crimes, money laundering, etc. This is because it is often extremely complicated to build evidence for a human trafficking charge. Police and prosecution may therefore choose to build a case based on related crimes rather than trafficking, in order to maximise the chances of getting a conviction at all.

As the above clearly illustrates, even if the measure of success of the reflection period is simplified to successful prosecution of traffickers, a clear answer as to which model functions the best is not obtainable based on the data available.

4. Conclusion and recommendations

As the preceding discussion has shown, reflection periods exist in a nexus between human rights, criminal justice and immigration policy. They are intended to support two very different goals; the recovery of and social support to victims, and the prosecution of traffickers. Further, trafficking victims find themselves in very different situations and have a variety of needs and aspirations. This huge disparity among victims indicates a need for flexibility, while at the same time, they move within systems (such as immigration legislation and the justice system) that rest on the rigour and clarity that are necessary for predictability and equal treatment. Finding a perfect policy design to suit all of these needs is complicated and inevitably requires compromise.

In considering the policy models for temporary residence in the Nordic countries, there may at first glance appear to be a fairly clear division between longer (Finland, Iceland and Norway) and shorter (Denmark and Sweden) reflection periods. However, upon closer examination, the systems differ more than they are alike, as does the surrounding framework.

4.1 Striking the balance between protection and prosecution

While the specific design of reflection periods and TRPs may vary in the seven countries in this study, they all include a focus on the prosecution of traffickers, though to varying degrees. In terms of the usefulness of the reflection periods in this regard, it seems that shorter periods are better suited for the needs of police and prosecution, but that these may have consequences for the categories of victims that come into contact with authorities (e.g. more clear-cut stories of exploitation and victimisation). In addition, shorter periods may make it more difficult to fulfil the other stated goal of the reflection period, namely to provide assistance and options for recovery for all victims.

Importantly, for various reasons, not all victims will be *able* to cooperate with authorities. Not all victims have information to share that can be used to this end. Victims who have been under very strict control will have had limited information about the operation and organisation of their exploiters; sometimes they may not even know where they have been. In other cases, it is doubtful whether it would benefit the victim to

testify or give information, particularly when there are serious threats to the victim or the family. Challenging traffickers under such circumstances may have extremely serious consequences even if there is no retaliation on part of the traffickers. Victim protection programmes, for instance, mean effectively giving up one's identity and former life. In other cases, security measures implemented for victims have effectively robbed them of their personal freedom.

In addition, victims become very reliant on police resources and commitments to investigate their case, which may vary greatly. Not least in the current climate of the European financial crisis, expensive international investigations with uncertain outcomes and difficult access to evidence may not always be high on the list of priorities for police everywhere. Tying residence to cooperation with authorities may therefore exclude groups of victims from protection in the destination country.

Recommendations

- It must be acknowledged that it is not in the interests of all victims to cooperate with the authorities and that such cooperation can have serious consequences for their safety and well-being. States should acknowledge their obligations to protect individuals who were exploited in their territory, and consider solutions that would not require victims to cooperate with authorities in order to obtain protection.
- Combined solutions or multi-path designs may reconcile the needs to protect victims and to prosecute traffickers, i.e. the dual goals in the CoE Convention, Article 13. Finland, Iceland and Italy all have two parallel options for residence; one that presupposes cooperation with authorities, and one that can be used for victims in a particularly vulnerable situation²³. Assessment criteria should however be clear, as the use of the latter option may become too contingent on political changes in migration regimes and tolerance for migration, thereby compromising predictability. Here, one could look to the Belgian system, where there are established bodies with substantial experience and institutional memory in terms of determining vulnerability. Vulnerability in trafficking victims is often not apparent or easily observed, and experts in the field should know which factors to look for. These include: education, family background, general socio-economic background, health (physical and mental), the presence of children and other dependants, etc. It is also important to have on-going discussions about the changing nature of trafficking and the needs of victims.

²³ These options exist in other countries as well, generally under legislation on residence on the grounds of humanitarian needs, but are not formulated as part of the legislation on reflection periods and related TRPs as such.

4.2 The totality of victim assistance

As important as the length of the reflection periods is the totality of the victim assistance system. For reflection periods to function well, it is a prerequisite to have an efficient and flexible system for victim identification and referral, and for subsequent assistance provision. Reflection periods as a tool can only be applied after victims are actually identified, meaning that their application and use is contingent on what happens in the immediate contact between victims and identifying actors. There is also the issue of *which* victims are identified – the mandate to identify should be broader than just law enforcement. The social sector and criminal justice sector emphasise different elements when assessing whether a person is a victim (Skilbrei 2010). Looking at the process of being identified and offered assistance, it is clear, from the victim's perspective, that this is a very sensitive process and for many also marked by strong scepticism and distrust. If the system fails at some point, victims are easily "lost"; that is, if they lose trust in those they are dealing with they will often opt out and sometimes return to the exploitative situation they were in. As important as the exact form the reflection period takes is the requirement that its conditions and terms are made clear. This means that they also need to be clear to all the organisations and individuals who come into contact with victims during the assistance trajectory.

Some aspects of the design of reflection periods are more beneficial than others, both for the purposes of prosecution and for the purpose of victim assistance. First of all, there needs to be a real incentive for the victims. A simple and short postponement of return is less likely to be of interest than a somewhat longer period that also involves proper social assistance. The specific experience of the Norwegian policy documents this fairly well. When the reflection period was changed from a 45 day postponement of return to a six month temporary residence permit which also included a work permit, the number of victims who accepted increased from one in a two year period (2004–2005) to 27 in 2006, and has further risen in the following years. An attractive reflection period means that authorities have the chance to come into contact with more victims, and victims that may be different from those identified through police raids and similar interventions.

It is also extremely important to consider the longer term impacts of reflection periods, and to have a plan for what happens after the period expires. Longer periods, although of a temporary nature, can give the impression that permanent residence may be an option at a later stage. If this is not the case, it needs to be clearly stated to the victims. Putting one's life on hold in the hopes of residence when this is not going to be an option can create a limbo in which life is not moving in any direction.

Recommendations

- For residence permits conditional on cooperation not to constitute undue pressure on vulnerable victims, states must take all measures possible to guarantee their safety and well-being, and minimise risk associated with cooperation. States should also ensure that victims can gain from the experience of testifying or reporting traffickers, through compensation schemes. These schemes should not depend solely on the ability to retrieve funds from traffickers; victims must also be able to seek compensation from the state.
- Assistance must include more groups than female victims of trafficking for sexual exploitation. Even such a basic measure as safe housing for male victims is lacking in several countries, as is assistance especially designed for men in general. This is particularly problematic where residence permits are contingent on victims being willing to accept assistance. Research has shown that men have different assistance needs than women, and that the problematic aspects of accepting a role as victim may conflict with male role expectations and norms. (Surtees 2008) Men may therefore also be less likely to self-identify as victims of trafficking, as they may perceive it as humiliating.
- When temporary residence is granted it is important to remember that residence in itself is not enough. Residence alone can sometimes be harmful to victims if not handled properly. Longer temporary residence permits may create false hopes of permanent residence. The effect of suddenly finding out that residence is no longer an option may be devastating and discouraging. Previous research has shown that sudden and unexpected negative life circumstances can increase vulnerability to being exploited, as the victim may feel trapped and desperate (Brunovskis and Tyldum 2004).
- Given the heavy reliance on NGOs in service provision for victims of trafficking, one worrying aspect is the general lack of formalised quality control and complaint mechanisms. An overarching tendency is that this sector is not supervised, licensed or presented with formalised quality criteria for service provision, which are available control mechanisms for funding bodies. The data collected for this study give no foundation for conclusions about the respective assistance systems, but transgressions and abuse of power have been known to occur in similar contexts elsewhere. This issue is not least tied to victims' rights to self-determination and freedom of movement, which are basic human rights.

4.3 Implementation of reflection periods

An experience common to several counties was a gap between how reflection periods and TRPs were described in legislation and how they worked in practice. One lawyer held the view that in his country, the reflection period was rather like a cheap old car with a Mercedes emblem stuck on the front. While rights to residence permits and work were clearly stated in official documents, he felt that what was meant to be a low threshold permit was often difficult to obtain for his clients, and that work permits were of little value as long as victims were in reality unable to find work. This again underlines the importance of monitoring the implementation of anti-trafficking measures, not only their policy formulations.

Recommendations

- The granting of a reflection period needs to have a genuinely low threshold. If there is reason to believe that someone has been trafficked, that person should be treated as a victim unless and until another determination has been made (Gallagher and Holmes 2008:329), meaning that a reflection period should be granted to facilitate an assessment of the situation. This is very important in order to reach different groups of victims, not only those with the most obvious experiences of victimisation. This also means that identification of victims cannot be the sole responsibility of the police, border guards or similar, as this will substantially skew who will be considered as a potential victim. Service providers or lawyers will often come into contact with other groups of victims, interpret cases differently and, importantly, have access to other types of information about cases, indicating whether a person is a potential victim or not. While victims may be very reluctant to share details about their situation with police, they may often speak more freely with social workers or others that they more readily perceive to be on their side. Permits should be issued by migration services to ensure independence from investigative needs.
- Several countries lack clear routines in terms of victims' rights and follow-up. While rights may be regulated by general social rights for various residence permits, there is in practice often confusion when these rights are to be implemented for victims. This is particularly the case when victims have trafficking- specific residence permits that may not be well known to those not directly involved in anti-trafficking work on a daily basis but nevertheless involved in assistance provision, such as local authorities or health care services. Several countries would benefit from developing clear guidelines and instructions on procedures for trafficking victims, on technical aspects such as where to seek reimbursement for interpretation expenses, which office pays for specialist health services, etc. This is

not least the case for the initial, often short, reflection period, where any delay may compromise victims' access to real support.

- For reflection periods to function properly there must be effective cooperation between police and NGOs/service providers. It is often necessary to have a certain level of informality to enable victims to discuss with the police what kind of information they might have that could be useful, and what events would be set in motion should they decide to cooperate. If there is no contact or information exchange, not only will it be difficult for the victim to know what he or she will become involved in by cooperating, but the information provided will also in many cases be useless to the police.

4.4 The importance of knowledge of policy consequences

Only a limited amount of knowledge has been produced – and perhaps as importantly, disseminated – on which kinds of measures for trafficking victims can be expected to have which kinds of effects. There has also been a notable tendency in anti-trafficking policies and programming to treat trafficking as a *sui generis* phenomenon, i.e. a unique category of its own. This implies that policies and measures have also to a large extent been developed from scratch, only in some cases leaning on past experience with other vulnerable groups. Goodey (2004:35) notes that well-intentioned NGOs sometimes suggest “good practice” for trafficking victims without prior knowledge about what is already in existence for other groups, such as rape victims or victims of domestic violence.

One might also look to other groups about whom there is more established knowledge, for instance asylum seekers, migrants in general and return migrants. Trafficking victims waiting for the outcome of their applications for extended residence permits will share many similar challenges with asylum seekers who await the decision on their applications. The strain of waiting for an uncertain outcome should be taken into account when designing reflection periods and deciding their lengths. This could also inform decisions about what kinds of measures are necessary to ensure that victims do not suffer unnecessarily from the psychological strain of waiting. Furthermore, trafficking victims are in the vast majority of identified cases also migrants who are part of a family structure. The impact of family expectations on their perceived room for action will be similar to that faced by other migrants, for instance in terms of a sense of obligation to bring back money or remit while still abroad. Trafficking victims who return to their countries of origin will in many cases be confronted with certain reintegration challenges, again shared with many other migrants who were not trafficked. However, bringing back money or new skills is known to ease reintegration and

serve to improve status in local communities. Understanding these mechanisms and leaning on the considerable amount of literature on transnational families could provide a shorter route to understanding the importance of providing opportunities for victims of trafficking.

Recommendations

- It is very important to minimise any limbo effect caused by victims having to wait for decisions of authorities in various matters, especially in countries where reflection periods are longer. While a longer reflection period has the potential of providing more rights and thus a better foundation, it can also be problematic. A longer waiting time (waiting to decide on whether or not to cooperate, waiting for police investigations, waiting for a trial to go ahead, etc.) can be a considerable strain on the individual. Also, the fact that some countries have a permanent residence permit as an incentive or reward for victims who testify, means that there is a great deal at stake for victims, and the future trajectory of the individual's life can be very uncertain. A longer period gives more time for recovery, but also more time to grow attached to the destination country, potentially making a subsequent return all the more painful. There is also an indication that some victims may think that the longer they manage to stay legally, the better the chance of staying permanently. It is therefore crucial that victims have realistic information about what are the likely outcomes of their cases.
- It is also important to acknowledge the need to prosecute traffickers and address the root of the problem of trafficking. It remains an open question whether a residence permit for victims is a good tool to this end, or whether it should rather be used purely as a means of assisting victims. There is remarkably little systematic knowledge about the circumstances under which victims decide to cooperate, in spite of the high international profile of the issue. The findings of this report indicate that for the reflection period to be a useful tool for prosecuting traffickers there needs to be some form of contact between victims and police at a stage where their information is still "fresh" and thus provides leads that can be followed up and investigated.

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Sammendrag

Denne rapporten diskuterer forskjellige utforminger av refleksjonsperioder for ofre for menneskehandel og relaterte midlertidige oppholdstillatelser i de nordiske landene (Danmark, Finland, Island, Norge og Sverige) og Belgia og Italia. Refleksjonsperioden er en spesiell ordning for ofre for menneskehandel, forankret i flere EU-dokumenter og Europarådets konvensjon mot menneskehandel. Hensikten med refleksjonsperioden slik den er beskrevet i disse internasjonale dokumentene er at mulige ofre for menneskehandel ikke skal umiddelbart utsendes fra et destinasjonsland dersom de ikke har lovlig oppholdsgrunnlag, men skal få tid (minst 30 dager) til å komme seg og å reflektere over hvor vidt de vil samarbeide med politiet eller ikke.

Studien er finansiert og initiert av Nordisk ministerråd. Belgia og Italia er inkludert fordi begge landene var tidlig ute med refleksjonsperioder eller lignende ordninger for ofre for menneskehandel, men har valgt forskjellige løsninger. Dette gir en interessant bakgrunn for å diskutere de forskjellige modellene i de nordiske landene. Landene som er inkludert i denne studien har alle signert og ratifisert Europarådets menneskehandelskonvensjon, men har valgt til dels svært ulike utforminger av refleksjonsperioden. Hovedforskjellen er mellom land som har korte (30 – 45 dager) og lange (opp til seks måneder) refleksjonsperioder. En annen sentral forskjell er i hvilken grad ofre for menneskehandel må samarbeide med politiet eller myndighetene for å få innvilget midlertidig opphold. Noen av særtrekkene ved hvert lands refleksjonsperioder er:

- Danmark skiller seg fra de andre landene i rapporten ved det uttalte målet med refleksjonsperioden på 30 dager, som er at ofrene skal reflektere over hvorvidt de vil samarbeide om retur; ikke over hvorvidt de vil samarbeide med politiet. Dersom de samarbeider, kan returen utsettes i ytterligere 70 dager.
- Finland har en fleksibel refleksjonsperiode på mellom 30 dager og seks måneder, avhengig av offerets situasjon. Det er også en eksplisitt mulighet for å gi permanent opphold til særlig sårbare ofre.
- Island innførte refleksjonsperiode høsten 2010, og har en lignende ordning som Finland – fleksibel refleksjonsperiode med mulighet for permanent opphold for særlig sårbare ofre.
- Norge har en refleksjonsperiode på seks måneder. Ofre som vitner i rettssaker om menneskehandel skal som hovedregel innvilges permanent opphold, uavhengig av utkommet av rettssaken.

- Sverige har integrert oppholdstillatelser for ofre for menneskehandel med regelverket for andre ofre for kriminalitet, som sier at ofre hvis tilstedeværelse er nødvendig for etterforskning kan gis opphold i seks måneder. Denne lovgivningen ble revidert til å inkludere en 30 dagers refleksjonsperiode.
- Belgias refleksjonsperiode er på 45 dager, fulgt av henholdsvis tre og seks måneder dersom offeret bestemmer seg for å samarbeide.
- Italias system er basert på to ulike veier til opphold, og inneholdt ikke opprinnelig en egentlig refleksjonsperiode som sådan, på tross av at landet var en av inspirasjonskildene for det internasjonale arbeidet med refleksjonsperioder. Ofre kan få en seks måneders oppholdstillatelse enten ved å samarbeide med politiet, eller fordi deres situasjon tilsier at de trenger opphold. I tillegg finnes en tre måneders oppholdstillatelse som gir rom for å fastslå om en person er offer for menneskehandel eller ikke.

De mest sentrale faktorene som varierer mellom landene er lengden på refleksjonsperioden og i hvilken grad offeret må samarbeide med politiet for å få innvilget (midlertidig) opphold. Grovt inndelt vil kortere refleksjonsperioder bedre oppfylle behovene i en politietterforskning, fordi det øker sjansen for at politiet får relevant og etterforskbar informasjon. Tar det for lang tid før offeret gir opplysninger til politiet vil for eksempel ofte telefonnumre være byttet og adresser ikke lenger være bebodd. Lengre refleksjonsperioder kan derimot bedre ivareta ofrenes behov, og gi rom for mer omfattende hjelp og bedre tid til å kartlegge alternativer.

Refleksjonsperioder befinner seg i et skjæringspunkt mellom menneskerettigheter, kriminal- og migrasjonspolitik. De har som intensjon å fremme to forskjellige mål: At ofre for menneskehandel skal få nødvendig tid til å vurdere sine alternativer og motta den hjelpen de måtte trenge, og, på den andre siden, straffeforfølgelse av menneskehandlere. Den store forskjellen mellom forskjellige ofre for menneskehandel tilsier et behov for fleksibilitet, samtidig som de beveger seg i systemer (migrasjonsforvaltning, justissektor) som krever konsistens og likebehandling. Det er dermed vanskelig å finne en perfekt utforming av refleksjonsperioder som ville møte alle disse behovene og det vil ofte være nødvendig med kompromiss og avveininger. I realiteten kan det se ut som målet om å straffeforfølge menneskehandlere har en viss forrang foran ofrenes behov, i utforming og/eller praksis. Med dette som utgangspunkt konkluderer rapporten med utvalgte anbefalinger på fire områder: Balansen mellom beskyttelse og straffeforfølgelse; helheten i assistansetilbudet til ofre; implementering av refleksjonsperioder; og til sist, nødvendigheten av å vurdere konsekvensene av forskjellige utforminger av refleksjonsperioder.

Balancing protection and prosecution in anti-trafficking policies

When victims of trafficking are identified in a country of destination, they are often in a situation marked by lack of clarity. In response to this, most European countries have a so-called reflection period for victims of trafficking, typically lasting from 30 days to six months, during which the victim cannot be sent out of the country, and where he or she can reflect upon the above issues and receive assistance. The intention of the reflection period is to help protect victims, but also to prosecute traffickers. How can these two – sometimes conflicting – goals best be met? This report discusses implications of the models in the Nordic countries, Belgium and Italy.

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