



## PSYCHOLOGICAL HEALTH IMPACT OF THB AND IMMIGRATION RULES

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### 1. Introduction

The psychological health impact (PHIT) of trafficking in human beings (THB) for sexual exploitation has many consequences not only for the victims of this severe crime, but also for all stakeholders who interact with them. Indeed, THB victims usually do not identify themselves as such, do not report their situation to the police immediately and are not always able to deliver coherent and complete statements about their trafficking experiences. Different factors lead to this behaviour, but stakeholders and other activities of the PHIT project confirm that victim's psychological wellbeing is one of them.

Consequences of PHIT may be also very important in the implementation of immigration rules. Usually, third-country nationals who are victims of THB do not have residence permits and traffickers keep their passports and IDs to control them. From a legal perspective THB victims are undocumented migrants who should be deported if migration rules are implemented strictly.<sup>1</sup> Exposed to retaliation and to a serious risk of being deported to their home-countries, it cannot be expected that THB victims report their situation to the police.

In order to avoid the harmful outcome of this legal system both for the victim and the criminal justice system, Directive 2004/81/EC<sup>2</sup> enables Member States to grant residence permits for third-country nationals who are victims of THB. The purpose of the Directive is clear: to set up special migration rules to protect victims of THB and foster their co-operation with the criminal justice system. The Directive regulates a two-fold mechanism to protect undocumented THB victims: first, Member States shall offer and grant them the so-called reflection period, a period of time that allows victims to recover and escape from the influence of traffickers and in which deportation orders cannot be enforced ; after the expiration of this reflection period Member States shall consider the possibility to issue a residence permit that allows victims to stay in their territory to co-operate with the investigators or the judicial proceedings.

Directive 2004/81/EC contains minimum rules that can be improved by Member States. The Council of Europe Convention on Actions against Trafficking in Human Beings (Warsaw Convention) rules, for example, the possibility to issue a residence permit

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<sup>1</sup> Directive 2008/115/EC of the European Parliament and the Council, of 16 December 2008, on common standards and procedures in Member States for returning illegally staying third-country nationals. According to the so-called Return-Directive Member States shall issue a return decision for all foreigners staying illegally in their territories. This Directive allows Member States to grant at any moment a residence permit or the right to stay only for "compassionate, humanitarian or other reasons", but this possibility depends on the legislation of each Member State.

<sup>2</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country national who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal migration, who cooperate with the competent authorities.

based on the personal situation of the victims and not only on their co-operation with the police.

In any case, stakeholders who are in contact with THB victims and who are partners of the PHIT project agree on the fact that the psychological situation of THB victims plays an important role in the implementation of these migration rules. PHIT may hinder the identification proceeding of a victim and the implementation of the reflection period and the residence permits in different ways: because victims not always identify themselves as such immediately and because law enforcement officers and migration authorities do not take into account PHIT and consider that victims do not meet some requirements of the existing migration rules.

In order to analyse the impact of PHIT in the implementation of migration rules, the PHIT project included a research activity related to the residence permits that THB victims can apply based on their personal situation. This possibility is open in different countries, but the activity was carried out only in Spain, where access to concrete files was possible due to the support of the General Secretariat of Immigration and Emigration of the Spanish Government, which was in charge of processing these files during the development of this activity.

The main aim of this research was to explore to which extent PHIT is mentioned in the applications to describe the personal situation of the victim and to which extent Spanish authorities take it into account to issue or reject the requested residence permit. The analysis of concrete files related to this residence permits offered also the possibility to access to relevant information about the description of PHIT, the administrative proceeding used to process the applications and, of course, about the implementation of the migration rules that try to protect undocumented THB victims in Spain.

This article summarises the main findings of this research activity and is structured in six sections. The first one describes the methodology that has been used. The second analyses the Spanish migration rules about the residence permits based on the personal situation of THB victims. The third gives information about the main data obtained during the fieldwork and the next two sections analyse the profiles of the victims who have applied for these residence permits and the proceeding to process these files. The sixth section focuses on the specific role of PHIT in these proceedings and the final one summarises the main findings of the activity.

## **2. Methodology**

The research was conducted only in Spain and not in the rest of the countries involved in the PHIT project, because migration rules are different in each country and access to migration files is not always possible. At first stage, desk research identified existing legislation, literature, data and reports about the Spanish residence permit for THB victims based on their personal situation. Although this authorisation dates from 2010, the findings of the desk research were scarce. However, the fact that the author of this

article worked as General Director of the Spanish Government by time this permit was ruled counterbalances to some extent the lack of previous studies.

After the desk research it was possible to access all migration files related to the residence permits based on the personal situation of THB victims. This is for sure the most relevant contribution of the research, because no previous studies have analysed the concrete implementation of the existing rules. These files are processed by a governmental body placed in Madrid. Originally, the Secretary of State of Immigration and Migration, afterwards by the General Secretariat of Immigration and Emigration and nowadays by the Secretary of State of Migration. The changes in the official name of this governmental unit have not affected the concrete officials in charge of processing the files. The support of this governmental unit enabled the access to all files processed between 2011 and 2018 as well as to the officials who are processing them. The fieldwork was carried out in May 2018 and March 2019 by 3 students of Barcelona University<sup>3</sup> hired and trained to collect data for the specific database designed for this activity. The officials in charge of processing these migration proceedings were always available during and after the fieldwork to answer questions about concrete files and general issues related to the administrative proceeding<sup>4</sup>. The preliminary findings of the research were discussed during the Final Conference of the PHIT project and in a workshop that gathered these officials and lawyers of the main Spanish NGOs that assist THB victims and represent them in the migration applications<sup>5</sup>.

### **3. Residence permits based on the personal situation of the victim**

Art. 59bis of the Spanish Migration Law<sup>6</sup> and arts. 140-146 of the Migration Regulation<sup>7</sup> rule the situation of THB victims. According to these provisions, THB victims need to be identified as such by specialised police officers. Deportation orders cannot be neither enforced nor started during the identification proceeding. Once a trained police officer believes there are reasonable grounds for considering that an undocumented person is a THB victim, a reflection period is offered. During this period, deportation proceedings cannot be processed neither. According to the Spanish legislation, identification and reflection period are unconditional to the victim's report. However, in practice police officers tend to require some kind of co-operation to combat the traffickers in order to be identified as human trafficking victim.

According to the Spanish legal system, THB victims require the so-called 'responsibility exemption' for their previous unauthorised stay before they can apply to a residence

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<sup>4</sup> The author wants also to thank Carlos Klett Reig and Isabel Gonzalez Corral for their support and help during the whole research activity and wants also to acknowledge their professional commitment to process patiently and in an individualized way each application.

<sup>5</sup> Both the Final Conference and the workshop took place in November 2018 in Barcelona.

<sup>6</sup> Organic Law 4/2000, of January 11th, on rights and freedoms of foreigners in Spain and their social integration.

<sup>7</sup> Royal Decree 557/2011, of April 20th, which contains the governmental regulation developing the previously mentioned Organic Law.

permit. This exemption can be obtained because the victim is co-operating with the police or due to the 'personal situation' of the victim. Co-operation and personal situation are the two alternatives that play a central role in the Spanish protection system. Co-operation remains an open concept that depends at the very end from the requirements of police officials. It remains unclear what kind of co-operation is required to get the responsibility exemption for previous unauthorised stays and if the co-operation needs to be qualified in order to give access to a residence permit. The same happens with the concept of personal situation. It is an open concept and no normative criteria define its content. However, in the Spanish legal system protection to THB victims is not limited (like in the EU-Directive and in many countries) to those who co-operate with the police.

Once the exemption is declared, THB victims are entitled to apply for themselves or through their representatives to a residence and work permit based on their co-operation with the police or on their personal situation. Both applications can be lodged simultaneously, although the relation between them remains unclear. Permits based on co-operation are issued by the Secretary of State of Security, while permits based on the personal situation of a victims are issued by the Secretary of State of Migration. In both cases a provisional permit can be obtained if the Foreigner's Office agrees. Definitive permits last for five years, but it is not clear when and in which cases definitive permits should be issued. Finally, it is important to point out that both permits can be extended to minor or disabled children of THB victims who are already present in Spain.

Compared to other countries and to the content of the 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, the Spanish legislation is quite protective. THB victims and their children are eligible for residence permits based on co-operation or the personal situation of the victims. Both permits allow them to reside and work in any sector and region. The fact that these permits may be provisional shows also a clear intention to protect THB victims as soon as possible.

As mentioned before, little is known about the concrete implementation of all these rules. Access to official data is not easy and figures lack sometimes methodological coherence. However, official data show clearly that all these provisions are used less than expected and that undocumented human trafficking are still under-protected. In the period 2011-2015, for example, 1.043 victims were identified by national police forces, but only 125 obtained a definitive residence permit.<sup>8</sup> Table 1 shows also clearly that the majority of definitive residence permits are based on co-operation with the police and that permits based on the personal situation of the victim are issued in around a dozen of cases each year.

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<sup>8</sup> Centro de Inteligencia contra el Terrorismo y el Crimen Organizado (CITCO).

	<b>Permits based on the personal situation of the victim</b>	<b>Permits based on co-operation</b>
<b>2012</b>	1	6
<b>2013</b>	4	19
<b>2014</b>	12	25
<b>2015</b>	19	38
<b>2016</b>	30	127
<b>2017</b>	12	?

**Table 1:** Definitive residence permits issued in the period 2012-2017

**Source:** GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in Spain. Second Evaluation Round, March 2018

The first GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in Spain published in September 2013 draw attention to the need to ensure that victims took full advantage of the right to be granted residences permits for their personal situation and for co-operating with the police.<sup>9</sup> Five years later, the second GRETA Report considered that Spanish authorities should continue making efforts to ensure that victims of trafficking can fully benefit in practice from the right to obtain a renewable residence permit for their personal situation or for co-operating with the authorities. In its 2018 report GRETA also urged Spain to improve the timely identification of victims of human trafficking by a more proactive approach and to review the rules and application of the recovery and reflection period.<sup>10</sup>

Some stakeholders criticize that law enforcement officers still implement the existing regulation from a co-operation perspective. Although identification does not require an active role of the victim of human trafficking, police officers seem to request some kind of co-operation in most cases. This conditional character of the protection system is also present in the case of residence permits based on co-operation and, more precisely, in the interplay between provisional and definitive permits. Although provisional permits are supposed to last only until definitive permits are processed, in practice they are only issued once a criminal proceeding has declared that the trafficking situation did really happen. Taking into account that judicial proceedings usually take time, this practice means that provisional permits need to be renewed yearly. Officials in charge of processing the permits based on the personal situation of the victims have also acknowledged that Foreigner's Offices at provincial level (which issue provisional permits) implement migration provisions not always in the same way and that some kind of co-operation is almost always requested.

#### **4. Main findings of the fieldwork**

Although residence permits based on the personal situation of THB victims are available since April 2010, the first permit was issued in 2012. This is the reason why the fieldwork

<sup>9</sup> Group of Experts on Action against Trafficking in Human Beings (GRETA) Report (2013)16.

<sup>10</sup> Group of Experts on Action against Trafficking in Human Beings (GRETA) Report (2018)7.

carried out during this research activity encompasses the period 2012-2018. During this 7 years, 128 proceedings have been initiated. THB victims started the great majority of them. Namely, 109 proceedings (85%), while 19 proceedings (15%) were related to their children, to whom residence permits may be extended.

105 proceedings initiated by THB victims (96% of the total) were related to THB for sexual exploitation, while only 4 (4%) involved trafficking for labour exploitation. Although other forms of THB have been already detected in Spain, residence permits based on the personal situation of the victims remain unexplored in these cases.

64% of the files processed between 2012 and 2018 ended up with the issue of the residence permit. As processing these files takes several months, it is not possible to identify yearly variations in the success rate of these applications. However, it is important to point out that only one application was rejected. The rest of the files was closed mainly because the Secretary of State of Security issued during the proceeding a residence permit based on co-operation (22% of all files) or because the victim disappeared or renewed contact with the traffickers. As it will be explained later, in 12% of the cases proceedings ended up with a different residence permit based on the discretionary power of the Secretary of State of Migration to grant a residence permit in cases in extraordinary cases that are not covered by Spanish legislation<sup>11</sup>.

## **5. Victim's profiles**

The fieldwork reveals interesting information about the victims who apply to residence permits based on their personal situation. Except one case, all victims were always female. The fact that 96% of the files refer to THB for sexual exploitation shows clearly that other forms of THB remain out of the Spanish protection system.

Nigeria is by far the most frequent country of origin of the victims who applied to residence permits based on their personal situation. 72,6 % of all files refer to Nigerian women, while the Dominican Republic (5,5% of the files), Paraguay (3,9%) and many other countries (with up to three files in each cases) are the other home countries of the rest of the applicants.

The average age of the THB victims who applied to the permits was 27, although ages range from 18 to 47. The average age of the children who applied to the extension of the permit was 5, although cases vary from 0 to 28.

Half of the files contained little information about the social and economic context in which victims were living in their home-countries. However, in the rest of the cases the files refer to situations of poverty and great vulnerability. Only in few cases, victims seem to come from well-off families. It is important to point out that in many cases the file analysis has revealed that the victims suffered from sexual abuse and gender-based

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<sup>11</sup> The last paragraph of the first additional disposition of the Spanish Regulation on Migration empowers the Secretary of State to grant these kind of permits. The only requirement is that the case is not ruled and that the Secretary of State of Security delivers a report about each specific case.

violence in their home-countries and received personal and economic support only in few cases. So, the file study has confirmed one of the main findings of the life-history interviews with THB victims conducted in other research activity of the PHIT project: in many cases these victims have suffered different types of violence before being trafficked and have not received support to recover.

Regarding the way victims were recruited the file analysis has revealed that almost all victims (94,5% of the cases) were recruited in their home-countries. Recruiters were in more than half of the cases people they already knew and in many cases someone of their own family.

Concrete information about the debt incurred by the victims, the route used to arrive in Spain and their mobility once within the country has confirmed that trafficking is a wide ranging issue and that traffickers use different routes and transportation means. Some patterns can be identified in the case of Nigerian victims, who travel frequently through Niger, Algeria and Morocco to reach Spain as boatpeople. The route through Niger, Libya and Italy is also very common, although cases of transportation by plane have been also identified. In the case of Latin-American victims air transportation is always used, although the EU external border airport may vary and is not always Madrid but other major European cities.

The file analysis has also revealed that once in Spain, victims are transported to different cities frequently. No concrete mobility patterns have been identified, but the routes of victims who arrived as boatpeople appear to be quite similar. Transportation takes place usually by bus or airplane and in some cases is very frequent as victims are transported to different night-club within Spain.

The information obtained through the fieldwork is very fruitful and confirms previous knowledge about THB in Spain. However, for the purpose of this activity it is important to point out at least three aspects. First, that some patterns in the way victims are trafficked do exist, so that it should be possible to improve the situation with training and capacity building. Second, that most of the victims do have contact with different public authorities and NGOs before they are formally identified as victims. Finally, that victims have usually suffered different types of violence before being trafficked and that this fact should be taken into account to understand why they were recruited and trafficked and which is their behaviour during their trafficking experience and once they are rescued.

## **6. The proceeding to obtain the residence permit based on the personal situation of THB victims**

The analysis of the files processed between 2012 and 2018 has revealed relevant information about how this residence permit works in practice. The first aspect that is worth mentioning is that only victims who are assisted by specialized NGOs apply to this kind of permits. In fact, the three Spanish organisations that have joined the consortium

of the PHIT-project assisted 37% of the applicants and have confirmed that without their support it is very difficult that a victim could apply to a permit by herself.

A second revealing finding is that 64% of the applications started in the provinces of Madrid, Barcelona and Valencia. The residence of the applicant determines the Representation of the central government at provincial level and the Foreigner's Office who process the identification, the reflection period and the exemption of responsibility of previous unauthorised stays. Foreigner's Offices placed in the capital of each province and provincial police offices are also competent for the issue of provisional residence permits and ID cards. The fact that 47 Spanish provinces have little experience with THB victims confirms that specialized NGOs play a crucial role in the implementation of the migration rules. NGOs are not allocated in all provinces in the same way and Madrid, Barcelona and Valencia concentrate the headquarters of the main entities. Moreover, the fact that most Foreigner's Offices have little experience with THB victims explains also the already mentioned unequal implementation of some of the existing legal rules. The officers in charge of the analysed files confirmed that the criteria used to decide upon the reflection period, the exemption of responsibility and the issue of provisional residence permit are not exactly the same in the different provinces and that the implementation of existing migration rules may be different in some territories.

The fieldwork has also revealed that the requirements for applying to a residence permit based on the personal situation of the victim (the exemption of responsibility and to hold a valid ID) and the possibility to be represented by someone are not tough. In fact, the file study shows that applications are analysed in depth and very carefully by the officers in charge of them and that shortcomings are solved case by case through constant interactions with the NGO that assists the applicants. For instance, cases in which the victim takes part in assistance programs of different NGOs are analysed individually to decide which is the one who represents the victim. This pro-active attitude of the officers in charge of the files may explain that in 64 % of the cases the applied permit was issued, only one application was rejected and that 12% of the applications have ended with the issue of an extraordinary permit for cases that fall out of the existing migration rules.

Moreover, the most relevant finding of the fieldwork related to the proceeding is the role of a report of the Secretary of State of Security that is not mentioned in the applicable migration rules. Indeed, due to the fact that victims can apply simultaneously to residence permits based on co-operation and on their personal situation the competent Secretaries of State who issue each permit (the Secretary of State of Migration and the Secretary of State of Security) interact while they process their applications. In the case of the applications for residence permits based on the personal situation of the victim the fieldwork has shown that the officers of the Secretary of State of Migration ask the Secretary of State of Security to send a report about each case. The report is almost always positive and states that the applicant does not appear in any police data base and has not already obtained a residence permit based on co-operation with the police. In fact, if the latter is the case, the application for a residence permit based on the personal situation is closed. However, in most of the cases the report states that the Secretary of State of Security does not oppose to the application. This informal



practice does not hinder the issue of the permits. Moreover, the fieldwork has revealed that in many cases it delays the decision of the Secretary of State of Migration. The exact time that the Secretary of State needs to deliver the required report has not been calculated in the fieldwork. But the analysis of all files and the interviews with different stakeholders have confirmed that this reports delay the whole proceeding too much taking into account their limited content. In fact, the fieldwork has shown that 60% of the files were decided in less than 300 days. But the files that need more than 600 days to be completed are increasing, mainly due to the delay of the Secretary of State of Security to deliver the requested report.

Finally, the fieldwork has also revealed that 64% of the applications of the victims end up with the issue of the residence permit. In the case of children of THB victims, the success rate is 100%, because the required permits are extensions of the authorisations already issued. Once the filiation is confirmed, there are no further requirements. The issued residence permits last five years and allow to live in any Spanish province and work (if the holder is at least 16 years old) without limits in any sector.

As mentioned before, 22% of the applications were closed mainly because a residence permit based on co-operation had been already issued or in few cases because it was not possible to contact the applicant or because she renewed contact with the traffickers. However, it's important to point out that 12% of the applications ended up with the issue of a different residence permit, based on the discretionary power of the Secretary of State to authorise the residence of a person when 'exceptional circumstances' not included in the existing regulation concur.

This discretionary power is used in different cases (not only with THB victims) and it is difficult to know which are the criteria that are used in practice. However, the fieldwork has shown that in THB cases this permit is issued when the engagement in the activities organised by the NGO that assists the victims is doubtful or when it is not clear that the applicant is a THB victim. It is important to take into account that this exceptional permit needs to be renewed in one year and allows only to reside. Whereas if the victim has obtained a provisional permit, is taking part in the activities organized by the NGO that assists her and the report of the Secretary of State is positive, the decision of the Secretary of State is always to issue the applied five-year residence and work permit.

## **7. The role of PHIT in the proceedings related to residence permits based on the personal situation of THB victims**

The fieldwork has focused specially on the role of PHIT in this kind of residence permits. As mentioned earlier, the regulation of these permits does not specify which personal situations may justify the issue of a provisional or definitive residence and work permit for THB victims and their children. During the discussion about the existing regulation, NGOs demanded some concretion about this concept, but the Spanish Government considered that it was too early and that any description would have a negative impact on the potential implementation of this concept.

In this context, one of the aims of the fieldwork was to assess to which extent PHIT is used to justify the need of a residence permit, to determine how PHIT is described in the applications and if it plays an important role in the issue of the permits. To achieve these goals, the research analysed how PHIT is mentioned by the different parties in all files.

A first finding of the file study is that the applications mention the psychological well-being of the victims in 34% of the files. In most cases, psychological symptoms appear in the social report provided by the NGOs that assist the victims. Few files include specific psychological reports signed by professional psychological practitioners. In 63% of the cases the references to PHIT were detailed, while 37% of the applications contained brief references to some of its symptoms.

The symptoms of PHIT were described in many different ways, but the most repeated were anxiety, fear, insomnia, post-traumatic stress disorder (PTSD), sadness, mistrust, and anguish. However, references to nervousness, physical pain (headaches), alteration of cognitive processes or emotional instability appeared also in some applications. The use of such variety of concepts and the mixture of symptoms and pathologies confirm the deficits in the existing knowledge about the psychological health impact of THB. In any case, references to recurrent recalls, dissociative experiences, embarrassment, problems to communicate and interact with people show once again the frequent and heterogeneous impact of THB in the psychological and physical health situation of the victims.

Although PHIT is not always mentioned in the applications and is not always described in a detailed way, the second important finding of the file analysis is that it does not play an important role in the issue of provisional and definitive residence permits. Indeed, the issue of these permits never refers to PHIT and never discusses the references to it made by the applicant. As mentioned before, the issue of residence permits is based on the existence of previous provisional permits, on the fact that the victim is involved in assistance programs of NGOs and on the fact that the Secretary of State of Security does not oppose the permit. The personal situation of the victim is interpreted in a broad sense and is never discussed if the applicant shows proofs of the trafficking situation and of the active enrolment of the victim in support programs organised by specialised NGOs.

## **8. Conclusions**

The psychological health impact of THB has usually many consequences for the victims, but also for the stakeholders who interact with them. In the case of migration provisions, PHIT may play a role in the implementation of many protection measures such as the formal identification of a victim, the reflection period or the issue of residence permits for undocumented third-country national victims.

However, the role of PHIT may be different in each of these measures. In the case of the residence permits based on the personal situation of THB victims ruled in Spain, the

research activity has confirmed that PHIT is mentioned in around a third of the applications, although it is described in many different ways. The lack of knowledge regarding PHIT and the way in which it is described in the applications could have a negative impact on the success rate of these kind of applications. However, contrary to the criminal justice system, in which these deficits hinder the implementation of criminal and procedural provisions, in the case of residence permits based on the personal situation of the victim Spanish authorities do not discuss and do consider PHIT to be a crucial factor in the issue of the residence permit. PHIT is not disregarded, but Spanish authorities take preferably into account if the victim has enjoyed a provisional residence permit, if she is engaged in assistance programs of NGOs and if the Secretary of State of Security does not oppose the application.

The research activity has also revealed how these residence permits work in practice in Spain and which are the victims who apply to them. The fieldwork has demonstrated that the implementation of these permits is less frequent than expected, that processing the files is in many cases delayed by a report of the Secretary of State of Security that is not mentioned in the existing rules and that provisional permits may delay the definitive decision of the Spanish authorities. The way in which the existing legislation is implemented is not always in line with the protective spirit of the legislation.

In any case, the fieldwork has also revealed that the files are analysed in a very careful and pro-active way, that the success rate is around 65% of the cases and that in an important number of cases the authorities issue a less favourable residence permit that avoids a rejection decision. The Spanish case illustrates that residence permits based on the personal situation of the THB victims are a good alternative to residence permits based on co-operation with the police: first, because it makes protection unconditional to co-operation; second, because victims usually are not able to co-operate as much as law enforcement officers require; and third, because the concept of personal situation is more suitable to address a great variety of THB situations; and finally, because it is victim-centred and open to the concrete needs of the victims.