Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 2 June 2022 [1]

Case C-66/21

O.T.E.
v
Staatssecretaris van Justitie en Veiligheid

(Request for a preliminary ruling
from the rechtbank Den Haag (District Court, The Hague, Netherlands))

(Reference for a preliminary ruling – Immigration policy – Preventing and combating trafficking in human beings – Directive 2004/81/EC – Residence permit issued to third-country nationals who are victims of trafficking in human beings – Article 6 – Reflection period – Start and end dates – Prohibition on enforcing expulsion orders during that period – Concept of 'expulsion orders' – National legislation or rules under which victims may be transferred to the Member State responsible for examining their application for international protection under Regulation (EU) No 604/2013 – Whether permissible)

I. Introduction

1. May a Member State, during the reflection period that it grants to victims of human trafficking under Article 6 of Directive 2004/81/EC, [2] transfer that person to the Member State that, applying the criteria set out by Regulation (EU) No 604/2013, it considers responsible for examining the application for international protection? [3] In addition, what are the start and end dates of that period?

2. Those are, in essence, the questions posed by the rechtbank Den Haag (District Court, The Hague, Netherlands) in this reference for a preliminary ruling.

3. This reference provides the Court with an opportunity to rule for the first time on how the procedure laid down by Directive 2004/81 for issuing temporary residence permits to third-country nationals who are victims of trafficking in human beings interacts with the procedure for transferring those third-country nationals to the Member State responsible for

[1] Original language: French.

[2] Council Directive 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 (OJ 2004 L 261, p. 19).

[3] Regulation of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

examining their applications for international protection, which is governed by Regulation No 604/2013.[4] Although Directive 2004/81 requires the Member State to grant victims of trafficking in human beings a reflection period on expiry of which they may be granted such a residence permit in return for their cooperation, Regulation No 604/2013, in contrast, presupposes that the Member State will transfer the foreign national concerned to the requested Member State as soon as possible so that it can examine the application for international protection.

4. First of all in this Opinion I will set out why I believe that the concept of 'expulsion order' in Article 6(2) of Directive 2004/81 includes measures under which third-country nationals who are victims of trafficking in human beings are required to leave the territory of the Member State in which they are present, as the result of enforcement of a transfer decision adopted under Regulation No 604/2013. In consequence, I will set out my view that, by preventing that Member State from implementing an expulsion order during the reflection period, that article precludes that Member State, during that period, from transferring the foreign national concerned to the Member State responsible for examining his application for international protection, in enforcement of a decision adopted under Regulation No 604/2013.

5. I will express the view, in contrast, that during that period the competent national authorities are still able to adopt a transfer decision or make preparations to enforce that decision, provided those measures do not jeopardise the effectiveness of the reflection period.

6. Secondly in this Opinion I will set out the procedures for calculating the reflection period and, in particular, its start and end dates.

II. Legal context

A. European Union law

1. Directive 2004/81

7. Article 1 of Directive 2004/81 provides:

'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.'

8. Article 3(1) of that directive states:

'1. Member States shall apply this Directive to the third-country nationals who are, or have been victims of offences related to the trafficking in human beings, even if they have illegally entered the territory of the Member States.'

[4] Directive 2004/81 may also be applied to the situation of third-country nationals who have been the subject of an action to facilitate illegal immigration, under Article 3(2) of that directive.

9. The first paragraph of Article 5 of that directive reads as follows:

'When the competent authorities of the Member States take the view that a third-country national may fall into the scope of this Directive, they shall inform the person concerned of the possibilities offered under this Directive.'

10. Article 6 of the directive, entitled 'Reflection period' provides:

'1. Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period referred to in the first subparagraph shall be determined according to national law.

2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

3. The reflection period shall not create any entitlement to residence under this Directive.

4. The Member State may at any time terminate the reflection period if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences referred to in Article 2(b) and (c) or for reasons relating to public policy and to the protection of national security.'

11. Article 7 of Directive 2004/81, entitled 'Treatment granted before the issue of the residence permit', provides:

'1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

2. Member States shall take due account of the safety and protection needs of the third-country nationals concerned when applying this Directive, in accordance with national law.

…'

12. Article 8 of that directive states:

'1. After the expiry of the reflection period, or earlier if the competent authorities are of the view that the third-country national concerned has already fulfilled the criterion set out in subparagraph (b), Member States shall consider:

(a) the opportunity presented by prolonging his/her stay on its territory for the investigations or the judicial proceedings, and

(b) whether he/she has shown a clear intention to cooperate and

(c) whether he/she has severed all relations with those suspected of acts that might be included among the offences referred to in Article 2(b) and (c).

2. For the issue of the residence permit and without prejudice to the reasons relating to public policy and to the protection of national security, the fulfilment of the conditions referred to in paragraph 1 shall be required.

…'

2. Other provisions of EU law

13. I will refer in this Opinion to Articles 21, 29, 31 and 32 of Regulation No 604/2013.

14. I will also refer to Directive 2011/36/EU,[5] which defines the offence of trafficking in human beings and the assistance and protection measures that must be granted to victims of trafficking in human beings, and to Directive 2012/29/EU.[6]

B. Netherlands law

15. The first part and paragraph (k) of Article 8 of the Vreemdelingenwet 2000 (Law on foreign nationals of 2000) of 23 November 2000[7] provides as follows:

'A foreign national is lawfully resident in the Netherlands only:

…

(k) for the period during which the minister provides that person with an opportunity to report an infringement of Article 273f [[8]] of the Wetboek van Strafrecht [Netherlands criminal code[9]]'.

16. Under Article 11(1) and (2) of the Law on foreign nationals, during the reflection period third-country nationals are entitled to the assistance measures established in Article 7 of Directive 2004/81.

17. Article 30(1) of the Law on foreign nationals states that an application for a fixed-term residence permit is not to be examined if it has been established, under Regulation No 604/2013, that a different Member State is responsible for examining the application.

5 Directive of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ 2011 L 101, p. 1).

6 Directive of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ 2012 L 315, p. 57).

7 Stb. 2000, No 495 ('the Law on foreign nationals').

8 On trafficking in human beings.

9 'The criminal code'.

18. The detailed rules relating to the grant of the reflection period are laid down in the Vreemdelingencirculaire 2000 (Circular on foreign nationals of 2000),[10] in particular in Paragraph B8/3.1, which provides as follows:

'The [Koninklijke Marechaussee (Netherlands national gendarmerie)] shall have the same powers as the head of the national police where there are indications of the trafficking in human beings in relation to a foreign national.

…

The Immigratie- en Naturalisatiedienst [Netherlands immigration and naturalisation service[11]] identifies three different scenarios for residence permits in relation to the temporary right of residence of victims of trafficking in human beings and whistle-blowers who report it:

1. the reflection period for victims of trafficking in human beings;

2. the residence permit for victims of trafficking in human beings; and

3. the residence permit for whistle-blowers who report trafficking in human beings.

Scenario 1. Reflection period

Under [the first part and] paragraph (k) of Article 8 of the [Law on foreign nationals] presumed victims of trafficking in human beings shall be granted a reflection period of a maximum of three months, in which they must decide whether they wish to report trafficking in human beings or otherwise cooperate in police or judicial criminal investigations relating to a person suspected of trafficking in human beings or in the trial on the merits of that person, or whether they do not wish to do so.

The police or gendarmerie commander shall offer the presumed victim a reflection period as soon as there is any indication that the matter involves trafficking in human beings and/or at the request of the Inspectie Sociale Zaken en Werkgelegenheid (Netherlands Social Affairs and Employment Inspectorate) …

During the reflection period, the IND shall suspend the departure from the Netherlands of the presumed victim of trafficking in human beings.

The reflection period shall only be granted once and may not be extended.

The reflection period is available only for foreign nationals who are staying in the Netherlands illegally and who:

– are or have been engaged in a situation involving an offence under Article 273f of the criminal code;

– have not yet been engaged in the Netherlands in a situation involving an offence under Article 273f of the criminal code but may be victims of trafficking in human beings; or

10 'Circular on foreign nationals'.

11 'The IND'.

– have not entered the Netherlands but may be victims of trafficking in human beings, on the premiss that, for the avoidance of doubt, the gendarmerie, where necessary acting together with the [public prosecutor's office], shall offer the reflection period where there is any indication of trafficking in human beings.

…

During the reflection period the presumed victim must attend the allocated regional unit of the police or gendarmerie once a month.

The reflection period shall end when:

– the police or gendarmerie determine that, during the reflection period, the presumed victim has left "for an unknown destination";

– the presumed victim states, during the reflection period, that he or she declines to lodge a complaint or otherwise cooperate in police or judicial criminal investigations relating to a person suspected of trafficking in human beings or in the trial on the merits of that person;

– the presumed victim has lodged a complaint for trafficking in human beings and signed the police report, or has cooperated in police or judicial criminal investigations relating to a person suspected of trafficking in human beings or in the trial on the merits of that person; or

– the presumed victim lodges an application for a residence permit (on grounds other than that under this section).

When the reflection period ends, the IND shall lift suspension of the departure.'

III. The facts of the dispute in the main proceedings and the questions referred for a preliminary ruling

19. The applicant in the main proceedings, a Nigerian national, lodged an application for international protection in the Netherlands on 26 April 2019, having previously lodged three applications for international protection in Italy and a further application in Belgium.

20. On 3 June 2019, the Kingdom of the Netherlands submitted a take back request in respect of the person concerned to the Italian Republic under the first part and subparagraph (d) of Article 18(1) of Regulation No 604/2013, and that request was accepted on 13 June 2019.

21. The registration interview took place on 26 April 2019 and, by letter of 30 July 2019, the person concerned stated that he wished to report to the police authorities that he had been the victim of trafficking in human beings in Italy and that he had recognised one of the criminals involved at a reception centre in the Netherlands. The immigration authorities interviewed him about the matter. By decision of 12 August 2019, the Staatssecretaris van Justitie en Veiligheid (Netherlands State Secretary for Justice and Security) refused to examine the application for international protection of the person concerned on the grounds that the Italian Republic was the Member State responsible for examining that application, and ordered that he be transferred to Italy.

22. On 3 October 2019, the applicant in the main proceedings reported to the Netherlands authorities that he had been the victim of trafficking in human beings.

23. After examining the matter, the Netherlands Public Prosecutor's Office found that there were no indications in the Netherlands supporting the report by the person concerned and that his cooperation in criminal investigations in the Netherlands was therefore unnecessary. The case concerning his report was accordingly closed.

24. The applicant in the main proceedings lodged an appeal to the referring court against the decision of 12 August 2019. He asserts, in particular, that that decision is unlawful in so far as, under Article 6 of Directive 2004/81, he should have been granted a reflection period.

25. According to the referring court, the questions referred concern whether, at any time after 30 July 2019, the applicant should have been granted the reflection period under Article 6 of that directive and, if it should, whether the State Secretary for Justice and Security was entitled, even though no reflection period had been granted, to make preparations to remove the applicant from the territory of the Netherlands and whether – by extension of that question –the decision of 12 August 2019 constitutes an expulsion order. That court is also uncertain as to the implications of the fact that, apart from the indications in the Circular on foreign nationals, national law does not specify either when that reflection period commences or its duration, and that Article 6(1) of that directive has therefore not been transposed into Netherlands law.

26. Under those circumstances, the rechtbank Den Haag (District Court, The Hague, Netherlands) stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'(1)(a) Since the Netherlands has failed to specify in national law when the reflection period guaranteed in Article 6(1) of [Directive 2004/81] commences, must that provision be interpreted as meaning that the reflection period commences by operation of law when the third-country national notifies (communicates) the trafficking in human beings to the Netherlands authorities?

(b) Since the Netherlands has failed to specify in national law the duration of the reflection period guaranteed in Article 6(1) of [Directive 2004/81], must that provision be interpreted as meaning that the reflection period ends by operation of law once the trafficking in human beings has been reported or the third-country national concerned indicates that he no longer wishes to report such trafficking?

(2) Are "expulsion orders" within the meaning of Article 6(2) of [Directive 2004/81] to be understood to include orders for the removal of a third-country national from the territory of one Member State to the territory of another Member State?

3(a) Does Article 6(2) of [Directive 2004/81] preclude the adoption of a transfer decision during the reflection period guaranteed in the first paragraph of that article?

3(b) Does Article 6(2) of [Directive 2004/81] preclude, during the reflection period guaranteed in the first paragraph of that article, the enforcement of a transfer decision which has already been taken, or the preparations for such enforcement?'

27. The Czech, German and Netherlands Governments and the European Commission submitted written observations.

28. The parties were also invited to reply to questions from the Court to be answered in writing and, in particular, to set out their views on how and to what extent it is appropriate to take into account, in order to answer the questions referred, both the provisions relating to preventing trafficking in human beings and protecting its victims, referred to in Directive 2011/36, and the rules on the rights of the victims of crime, set out in Directive 2012/29.

IV. Analysis

A. Preliminary observations

29. Before examining those questions, I would make two observations.

30. The first concerns the order in which I propose to address the questions.

31. I will begin my analysis by examining the point of principle raised by the second question referred, that is to say, the interpretation to be given to the concept of 'expulsion order' used by the EU legislature in Article 6(2) of Directive 2004/81. The referring court is uncertain whether that concept includes a measure by which a Member State transfers a third-country national to a different Member State under Regulation No 604/2013.

32. In the interests of coherence, I will then go on to examine the third question referred, on the extent to which a Member State may commence a procedure to transfer a third-country national who is the victim of trafficking in human beings, during the reflection period laid down in Article 6(1) of Directive 2004/81. Specifically, the referring court is uncertain whether, first, a transfer decision may be adopted (question 3(a)) and, secondly, whether a transfer decision, taken before the reflection period started, may be enforced or preparations made for its enforcement (question 3(b)).

33. Lastly, I will end my analysis by examining the first question referred, on how the time limits applicable to the reflection period should be calculated. Since there are no national transposing measures, the referring court is in fact asking the Court of Justice to specify the start and end dates applicable to that period.

34. The second observation concerns the rules in the light of which I am going to examine the second and third questions referred, on the scope of the prohibition on enforcing any expulsion order during the reflection period.

35. In their observations the German and Netherlands Governments have proposed answering those questions by analysing the terms, scheme and purpose of Regulation No 604/2013. That approach reflects the strong inclination of those parties and of the Commission to prioritise the effectiveness of the transfer procedures laid down in that regulation. However, despite the merits of that approach, I believe that the prohibition contained in Article 6(2) of Directive 2004/81 must first of all be examined in the light of the wording, scheme and purpose of that provision, in the context of the mechanism to combat trafficking in human beings of which that directive forms part.

36. Indeed, although Directive 2004/81 and Regulation No 604/2013 both contribute to achieving the area of freedom, security and justice, they nevertheless form part of their own separate regimes and pursue different aims.

37. Directive 2004/81 is an instrument in the fight against trafficking in human beings and applies irrespective of the victim's status. That directive concerns the residence conditions for third-country nationals who are victims of trafficking in human beings or have been the subject of an action to facilitate illegal immigration in the territory of the Member States, and provides in particular that such persons may be issued with a residence permit where, on expiry of a reflection period, they decide to cooperate in criminal investigations or judicial proceedings. That directive must therefore contribute to effectively combating human trafficking and illegal immigration networks while also protecting the victims of those offences.

38. Regulation No 604/2013, by contrast, concerns the management of migration flows. It forms part of the Common European Asylum System and is based on a purely administrative examination procedure intended to identify, according to the criteria laid down by the regulation, the Member State responsible for examining an application for international protection and to which the applicant may be transferred and in which, where applicable, that person will be given a residence permit as a beneficiary of international protection.

39. In a situation such as that at issue it is necessary to ask how those two procedures interrelate. Implementing them concurrently gives rise to a paradox: whereas Directive 2004/81 is intended to grant third-country nationals falling within the scope of the directive a temporary permit to reside in the territory of the Member State in which they have been identified as victims of trafficking in human beings and in which they report that crime, Regulation No 604/2013, by contrast, provides for their transfer, subject to strict time limits, to a different Member State unless the Member State in which they are present is responsible for examining their application for international protection.

40. In order to coordinate those procedures, it is therefore necessary to develop a balanced approach which has regard, of course, to the effectiveness of the 'Dublin' procedures but which should, to my mind, have regard above all to the vulnerability of the persons concerned, both by virtue of their status as victims covered by Directive 2004/81 and of their status as applicants for international protection.

B. The scope of the prohibition on enforcing any expulsion order during the reflection period under Article 6 of Directive 2004/81

1. The second question referred, concerning the interpretation of the concept of 'expulsion order' used in Article 6(2) of Directive 2004/81

41. By its second question, the referring court is essentially asking the Court whether the concept of 'expulsion order' referred to in Article 6(2) of Directive 2004/81 includes a measure by which a Member State transfers a third-country national who has been the victim of trafficking in human beings to a different Member State under Article 26 of Regulation No 604/2013.

42. In other words, that court is seeking to ascertain whether that concept includes all the measures by which a third-country national is required to leave the territory of a Member State, such as a measure transferring a person to another Member State or, conversely, whether the

concept of 'expulsion' covers only measures by which a third-country national is required to leave the territory of the European Union, with the effect that a transfer ordered under Regulation No 604/2013 would not fall within the scope of that definition.

43. Article 6(2) of Directive 2004/81 provides that 'during the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.'

44. The wording of Article 6(2) of that directive gives no indication as to the geographical scope of the concept of 'expulsion'. Nor has the EU legislature defined that concept in the context of the directive. It merely states in Article 2(d) of the same directive that a 'measure to enforce an expulsion order' means any measure taken by a Member State to enforce the decision of the competent authorities ordering the expulsion of a third-country national'.

45. Article 6(2) of Directive 2004/81 also makes any reference to the national law of the Member States. The concept of 'expulsion' (*éloignement*) in that article must therefore be understood as an autonomous concept of EU law. Since that concept has already been defined in Article 3(5) of Directive 2008/115/EC,[12] which, in common with Directive 2004/81, forms part of EU immigration policy, I propose that the Court should refer to that directive.

46. In Directive 2008/115, 'removal' (*éloignement*) is defined in Article 3(5) thereof as being 'the enforcement of the obligation to return, namely *the physical transportation out of the Member State*'. For its part, 'return [decision]' is defined in Article 3(3) of that directive as the process of a third-country national 'going back' to his or her country of origin, or a country of transit or another third country. In the light of those definitions, a removal/expulsion decision and a return decision, even though they may be adopted in a single procedure or instrument, are different in scope. Removal/expulsion is the measure by which third-country nationals must leave the territory of the Member State in which they are present, whereas, in the context of Directive 2008/115, return is the operation by which those nationals must go to a third country or a country of transit or return to their country of origin, that is to say, they must leave the territory of the European Union. Under Article 8(3) of that directive, Member States may thus order the person concerned to be removed in an administrative or judicial decision or act, separate from the return decision, before or after it adopts the return decision. Each of those acts must satisfy the formal requirements set out in Article 12 of that directive and must be amenable to judicial review.[13]

47. In its judgment of 30 September 2020, *CPAS Seraing*,[14] the Court thus distinguished between a removal measure and a return decision: 'it follows from Article 3(3) to (5) of Directive 2008/115 that, by definition, a return decision imposes or lays down an obligation, on the third-country national to whom it applies, to return to a third country, *whereas* the concept of "removal" means the physical transportation of that third-country national out of the Member State concerned.'[15]

[12] Directive of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98).

[13] Article 13(1) of Directive 2008/115.

[14] C-402/19, EU:C:2020:759.

[15] Paragraph 44 of that judgment, emphasis added.

According to the Court, the decision ordering removal 'has, in itself, the effect of precluding the third-country national concerned from being allowed to remain temporarily *in the territory of that Member State*'.[16]

48. The foregoing elements from legislation and case-law make clear that a measure is classified as an 'expulsion order' where it has the effect of requiring the third-country national to leave the territory of the Member State in which he or she is present. Since a transfer decision made under Regulation No 604/2013 sets out an obligation on the third-country national concerned to go to the Member State responsible for examining his or her application for international protection (the requested Member State), enforcement of that decision in itself means removing that foreign national from the territory of the Member State where he or she applied for international protection (the requesting Member State).

49. In the light of the foregoing, I therefore propose that the Court should hold that the concept of 'expulsion order' in Article 6(2) of Directive 2004/81 must be interpreted as including measures under which third-country nationals who are victims of trafficking in human beings are required to leave the territory of the Member State in which they are present, as a result of enforcement of a transfer decision adopted under Regulation No 604/2013.

2. The third question referred, concerning the detailed rules for carrying out a transfer procedure during the reflection period

50. By its third question, the referring court is essentially asking the Court whether Article 6(2) of Directive 2004/81 must be interpreted as meaning that, during the reflection period established in Article 6(1) of that directive, it precludes, first, the adoption of a transfer decision (question 3(a)) and, second, enforcement of a transfer decision taken before the beginning of reflection period, or any preparations for the enforcement of that decision (question 3(b)).

51. I note that, under Article 6(2) of Directive 2004/81, the EU legislature prohibits a Member State from 'enforcing' an expulsion order against a third-country national who is a victim of trafficking in human beings, during the reflection period granted to that person under Article 6(1).

52. Bearing in mind the wording of Article 6 of that directive, I will, in pursuing my analysis, distinguish between two scenarios.

53. The first scenario is that expressly prohibited by the EU legislature, that is to say, enforcement of an expulsion order.

54. The second scenario is that in which, since the wording of Article 6(2) of Directive 2004/81 contains no indication to the contrary, the Member State can, during that reflection period, adopt a transfer decision against a victim of trafficking in human beings, or make preparations to enforce that transfer without, however, actually transferring the third-country national concerned.

[16] Paragraph 45 of that judgment, emphasis added.

(a) Prohibition on enforcing a transfer decision during the reflection period

55. In the light of the foregoing, the prohibition on enforcing an expulsion order entails, to my mind, a prohibition on enforcing a transfer decision against a victim of trafficking in human beings during the reflection period granted to that person.

56. As I will now explain, that interpretation is inevitable in the light of both the effectiveness of the procedure to issue the residence permit established in Directive 2004/81 and the objectives that the EU legislature customarily pursues.

57. According to Article 1, the purpose of that directive is to define the conditions for granting a residence permit of limited duration to third-country nationals who cooperate in the fight against trafficking in human beings by participating in the criminal investigations or judicial proceedings. [17]

58. In that context, it is essential to bear in mind that the provisions of that directive are, in accordance with Article 3(1), aimed at 'the third-country nationals who are, or have been victims of offences related to the trafficking in human beings'.

59. The status of 'victim' is defined in Article 2(1)(a)(i) of Directive 2012/29 as referring to 'a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence'. Status as the victim of a criminal offence is independent of whether the person in question is staying illegally or is resident in the Member State concerned. [18]

60. Furthermore, the EU legislature defines the offence of trafficking in human beings in Article 2 of Directive 2011/36, [19] to which Article 2(c) of Directive 2004/81 refers. [20]

61. It follows from the scope of that directive, as stated in Article 3(1), read in the light of Directives 2011/36 and 2012/29, that the procedure for issuing a temporary residence permit, of which the reflection period forms part, must only be commenced where the competent national authorities consider that the third-country national may be classified as a 'victim of trafficking in human beings'.

[17] See recitals 8 and 9 of Directive 2004/81 and recital 17 of Directive 2011/36.

[18] Contrary to the view expressed by the Netherlands Government in its observations, Article 6(2) of Directive 2004/81 is also aimed at third-country nationals who are victims of trafficking in human beings and are staying legally in the Member State concerned, such as applicants for international protection. See Article 3(1) of that directive, the wording of which shows that the scope of that article includes third-country nationals who have legally entered the territory of the Member State concerned or are staying there legally. See also the second subparagraph of Article 1(1) of Directive 2012/29, according to which 'the rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status'; recital 9 of that directive, according to which 'victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as … residence status …'; recital 10 of the same directive, by virtue of which 'Member States should take the necessary measures to ensure that the rights set out in [Directive 2012/29] are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality'; and recital 18 of Directive 2011/36.

[19] This comprises the following intentional acts: the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation is to include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

[20] The EU legislature refers to Articles 1 to 3 of Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings (OJ 2002 L 203, p. 1), which was replaced by Directive 2011/36.

62. The various stages of the procedure for issuing the temporary residence permit are designed to take into account not only the third-country national's special status as a victim, but the seriousness of the criminal offence concerned. Each of those stages requires that victims be allowed to remain in the territory of the Member State concerned during the reflection period granted to them and that enforcement of any transfer measure adopted against them, therefore, be suspended.

(1) The Member State's duty to provide information

63. The various stages of the procedure for issuing the temporary residence permit are defined in Chapter II of Directive 2004/81.

64. The procedure starts with the provision of preliminary information to the potential victim of trafficking in human beings, under Article 5 of that directive. [21]

65. Under that article, the competent national authorities are subject to the duty to provide information as soon as they '*take the view* that a third-country national may fall into the scope of [that] Directive'. In other words, that duty to provide information is incumbent on those authorities from the moment when they have reasonable grounds to believe that that foreign national is or has been the victim of trafficking in human beings, and therefore before any act has been classified as criminal. [22]

66. In accordance with that article, those authorities must inform the person concerned of the 'possibilities offered under [that directive]'. In other words, the person concerned must be informed that he or she is entitled not only to the reflection and recovery period, but also to the assistance and support measures under Article 7 of Directive 2004/81 and, subject to certain conditions, to a temporary permit to reside in the territory of the Member State in return for his or her cooperation, in accordance with Article 8 of that directive. [23] As can be seen from recital 9 of that directive, the residence permit must offer 'a sufficient incentive [to victims of trafficking in human beings] to cooperate with the competent authorities'.

67. That duty to provide information would reduced to an empty concept if the Member State concerned were ultimately to transfer victims during the reflection period granted to them, even though it has undertaken to grant them not only that period, but also the assistance and support measures under Article 7 of Directive 2004/81 and, subject to certain conditions, a temporary residence permit if the victim agrees to report or give evidence against the perpetrators of the offence. Such a practice would be incompatible with the requirements laid down by the EU legislature in the second subparagraph of Article 1(1) of Directive 2012/29, according to which the competent national authorities must treat victims of crime in a respectful, sensitive and professional manner. [24]

[21] See also Article 11(6) of Directive 2011/36.

[22] See, in that respect, judgment of the Conseil d'État (Council of State, France) of 15 June 2012 (No 339209), in which that court emphasised the obligation on the police and gendarmerie services to provide information to presumed victims and drew inferences from the lack of information.

[23] See also, recital 11 of Directive 2004/81.

[24] See, for example, Article R-316-1 of the Code de l'entrée et du séjour des étrangers et du droit d'asile (Code on the Entry and Stay of Foreign Nationals and the Right of Asylum) (France), under which, 'that information must be given in a language that the foreign national understands and in a confidential manner ensuring that the person concerned is placed at ease and is protected' (JORF of 15 September 2007, version 17).

(2) Reflection period

68. The reflection period is granted in the circumstances set out in Article 6 of Directive 2004/81. Although the EU legislature defines neither the duration of that period nor when it starts, leaving those details to be determined by each Member State, it is, in contrast, much more explicit as regards the purpose of the reflection period. It states expressly in Article 6(1) that the period must allow victims to recover and escape the influence of the perpetrators of the offence so that they can take an informed decision in the light of the risks they may incur as to whether to cooperate with the police, law enforcement or court authorities. [25] By establishing the reflection period, the EU legislature therefore recognises the particular vulnerability of the victim and the very specific nature of the offence, in so far as the victim is, quite apart from the elements constituting the offence, 'often reduced to slavery going beyond the physical and extending to coercive control'. [26]

69. The fact that the Member State concerned is obliged under Article 6(2) of Directive 2004/81, first, to satisfy the victim's specific basic needs by affording the treatment referred to in Article 7 of that directive during the reflection period and, secondly, not to enforce any expulsion order during that period, is in keeping with the rationale of the scheme thereby established, since the person concerned is temporarily authorised to stay in the territory 'while awaiting the decision of the competent authorities'. [27] The two requirements are linked because the assistance and support measures can only be granted to third-country nationals who have not left national territory. [28] As well as linguistic and legal assistance, the Member State concerned must guarantee the victim's dignity and safety and satisfy his or her specific needs, in particular any need for psychological assistance or psychotherapeutic care and the provision of emergency medical care. [29]

70. By prohibiting the enforcement of any expulsion order during the reflection period and requiring that victims be temporarily allowed to remain in national territory, the EU legislature is seeking, first, to consolidate an approach that facilitates the protection of the rights of such victims of trafficking in human beings, which is an objective enshrined in numerous international instruments, [30] and, second, to ensure the effectiveness of a criminal prosecution, since the police authorities can expect that that victim, if he or she consents, will participate in the investigations and any judicial proceedings. [31]

[25] See also recitals 11 and 12 of Directive 2004/81 and recital 18 of Directive 2011/36.

[26] See paper given by Bruno Lasserre to the Franco-British-Irish Judicial Cooperation Committee on 21 July 2019, entitled 'How courts treat vulnerability in cases of slavery and human trafficking', available [in French] at https://www.conseil-etat.fr/publications-colloques/discours-et-interventions/le-traitement-contentieux-de-la-vulnerabilite-dans-les-affaires-d-esclavage-et-de-traite-humaine-discours-de-bruno-lasserre-vice-president-du. See also the definition of the offence of human trafficking in the judgment of the European Court of Human Rights (ECtHR) of 7 October 2021, *Zoletic and Others v. Azerbaijan*, CE:ECHR:2021:1007JUD002011612, § 155.

[27] Under Article 6(3) of Directive 2004/81, 'the reflection period shall not create any entitlement to residence under this Directive'.

[28] See recital 18 of Directive 2011/36.

[29] It is apparent from recital 18 of Directive 2011/36 that a person must be provided with those measures as soon as there is a reasonable-grounds indication for believing that he or she is or has been the victim of trafficking, irrespective of his or her willingness to act as a witness. See Article 13(1) of the Council of Europe Convention on Action against Trafficking in Human Beings, signed in Warsaw on 16 May 2005, which came into force on 1 February 2008 (CETS No 197) ('Convention on Action against Trafficking in Human Beings'). The victim ceases to be entitled to those measures after completion of the identification process or on expiry of the reflection period if he or she is not considered eligible for a residence permit or does not have lawful residence in that Member State, or if he or she has left the territory of that Member State.

[30] Amongst others, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, concluded in New York on 15 November 2000 (*United Nations Treaty Series*, vol. 2237, p. 319) and the Convention on Action against Trafficking in Human Beings'.

[31] See, to that effect, Plouffe-Malette, K., *Protection des victimes de traite des êtres humains: approches internationales et européennes*, Bruylant, Brussels, 2013.

71. Lastly, it is on expiry of that reflection period, or earlier if the competent authorities take the view that the third-country national has already expressed a clear intention to cooperate, that the Member State concerned may, in accordance with the conditions laid down in Article 8 of Directive 2004/81, issue the victim with a residence permit with a minimum duration of six months so that he or she can cooperate with the criminal investigations or judicial proceedings.

72. In my view, it follows that where a victim is transferred during the reflection period, there is a failure to guarantee the effectiveness of the rights that that victim of trafficking in human beings enjoys under Directive 2004/81, both as regards his or her recovery and protection and his or her cooperation in investigations or judicial proceedings.

73. First, the reflection period must enable the victim to recover and the competent national authorities to assess the degree of his or her vulnerability, not only in order to tailor the treatment under Article 7 of that directive but so that they can carry out a risk assessment before enforcing any expulsion order. [32] In that context, the Commission enjoins the Member States to pay very particular attention to the specific situation of trafficked victims who are non-EU citizens when transferring them to the country where they first arrived, since they become accessible to traffickers and exposed to risks of being re-trafficked. [33] Similarly, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) believes that a risk assessment is necessary to prevent victims being sent back to a country where they first applied for international protection but where they may be re-trafficked. Any transfer decision must therefore be assessed in the light of the risk of secondary victimisation in the Member State requested to take back a victim. [34]

74. It seems to me that the enforcement of a transfer decision during the reflection period jeopardises that intention, first of all because it would result in separating the victims from the individuals and the specialised assistance services from which they have found support; [35] next, because it would result in the treatment granted to victims under Article 7 of Directive 2004/81 being suspended or even interrupted; and, lastly, because it could require that the person concerned be detained. [36]

75. Admittedly, under Articles 31 and 32 of Regulation No 604/2013, the Member State that transfers an applicant for international protection is required to communicate to the Member State responsible the information and data that it considers essential to safeguard the applicant's rights and may also transmit the immediate measures to be adopted in order to meet the special needs of that person including immediate health care. It is also true that, in such a situation, the applicant for international protection is covered by the specific provisions that Directive 2012/29 establishes for victims residing in a Member State other than that where the criminal offence was committed. Recital 51 of that directive in fact states that the Member State of the victim's residence should provide the assistance, support and protection required for that victim's

[32] See, in that respect, the June 2020 Guidance note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection, of the Group of Experts on Action against Trafficking in Human Beings (GRETA), available at https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44.

[33] See, in that respect, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021- 2025 of 14 April 2021 (COM(2021) 171 final, p. 18.

[34] Under recital 62 of Directive 2012/29, 'for victims of crime to receive the proper degree of assistance, support and protection, public services should work in a coordinated manner and should be involved at all administrative levels – at Union level, and at national, regional and local level.'

[35] On the important role of specialised support services for the victims of serious crime in a Member State of which they are not nationals and in which they are not resident, see recital 38 of Directive 2012/29.

[36] See Article 28 of Regulation No 604/2013.

recovery-related needs.[37] The EU legislature also requires that that Member State inform that victim of any special measure, procedure or arrangements 'which are available' to protect his or her interests in the Member State where the first contact with the competent authority was made, clarifying that the extent or detail of the information may vary depending on the specific needs and the type or nature of the crime.[38] Where the victim is unable to make a complaint in the Member State where the criminal offence was committed, he or she must be able to do so to the competent authorities of his or her Member State of residence which must, in addition, take appropriate measures with regard to the organisation of the proceedings, in particular at the time that victim makes his or her statement or is questioned.[39]

76. However, although those provisions are clearly helpful, I am not convinced that they are sufficient to provide a continuous and targeted response to the specific requirements of victims of trafficking in human beings.[40] In particular, a transfer to a new Member State involves placing the victim in new reception facilities that do not necessarily have immediate access to sufficient resources to meet the victim's specific needs. It also involves the victim commencing new procedures with new authorities. There is no doubt that such a situation, and the need to repeat witness statements in particular, is likely to exacerbate the victim's vulnerability.

77. Second, the reflection period must enable the competent national authorities to establish a relationship of trust with that victim so that, by virtue of the prospect of a temporary residence permit, he or she cooperates with the criminal investigations and/or judicial proceedings. I doubt whether that objective could be attained if, alongside the procedure to issue a residence permit, the third-country national concerned is informed that a transfer decision will imminently be enforced against him.

78. Third, the reflection period is necessary to enable the competent national authorities to gather reliable evidence of the existence of the offence and its nature (for example, whether it is domestic or transnational) for the purposes of commencing a criminal prosecution. During that period and, in the words of Article 6(2) of Directive 2004/81, 'while awaiting the decision of the competent authorities', enforcement of a transfer could compromise the effectiveness of the criminal investigations to an extent that would be contrary to the interests of the victim and of the Member States concerned.

79. Recital 1 of Directive 2011/36 states in that respect that 'trafficking in human beings is a serious crime, … a gross violation of fundamental rights and explicitly prohibited by the Charter of Fundamental Rights of the European Union.'[41] In recital 2 of Directive 2004/81, the EU

[37] Recital 51 of Directive 2012/29 reads as follows: 'if the victim has left the territory of the Member State where the criminal offence was committed, that Member State should no longer be obliged to provide assistance, support and protection except for what is directly related to any criminal proceedings it is conducting regarding the criminal offence concerned, such as special protection measures during court proceedings. The Member State of the victim's residence should provide assistance, support and protection required for the victim's need to recover.'

[38] See Article 4(1)(g) of Directive 2012/29.

[39] See Article 17 of Directive 2012/29.

[40] As the Netherlands Government highlights in its observations, Regulation No 604/2013 does not anywhere refer to Directive 2004/81. That regulation only mentions the situation of applicants for international protection who are victims of human trafficking in the context of determining the best interests of the child, in Article 6(3)(c).

[41] In that recital, the EU legislature also states that 'preventing and combating trafficking in human beings is a priority for the Union and the Member States', and in recital 7 specifies that the directive seeks to achieve more rigorous prevention, prosecution and protection of victims' rights, and requires the Member States to tackle each form of the trafficking in human beings by means of the most efficient measures.

legislature recalls the recommendations of the European Council, meeting in Tampere (Finland), to concentrate efforts on detecting and dismantling criminal networks while protecting the rights of victims.

80. Those provisions are reflected in particular in the case-law of the ECtHR.[42] That case-law in fact imposes positive obligations on the Member States, resulting from Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms,[43] which apply from the moment at which the competent national authorities become aware of circumstances from which it can reasonably be suspected that an individual is the victim of trafficking in human beings. The signatory States to that convention therefore have a procedural duty to investigate situations of potential trafficking, the investigations must be effective and the authorities must take whatever reasonable steps they can to collect evidence and elucidate the circumstances of the case.

81. In that context, the victim's testimony may be of paramount importance, in particular in relation to the opening of investigations or commencement of judicial proceedings. I would recall that trafficking in human beings does not necessarily involve a transnational element and may exist on a purely domestic level. Under Article 10(1) of Directive 2011/36, the Member States have territorial jurisdiction to prosecute offences committed in the territory or by one of their nationals.[44] In such a situation, transferring the third-country national concerned to a different Member State, even before that national has indicated whether or not he or she wishes to cooperate with the criminal investigations, would have the effect of removing the victim of the offence from the territory of the Member State that is competent to prosecute the perpetrators of that offence, whereas that victim should, in contrast, be present in that territory in order to participate as fully as necessary in the protection of his or her interests and in the ongoing criminal investigations.

82. Admittedly, in relation to transnational offences, the EU legislature tends to favour coordinating investigations and prosecutions by encouraging close cooperation between the law enforcement services of the Member States, with the effect that a transfer of the victim is not a major obstacle to the prosecution of the perpetrators of the offence.[45] However, in my view, those mechanisms do not necessarily apply at the very early stage at which the victim is granted a reflection period. They apply subsequently, when the law enforcement authorities have opened investigations or brought a prosecution against the perpetrators of the offence.

83. All those factors suggest that from the time at which a Member State takes the view that a third-country national falls within the scope of Directive 2004/81 as the result of being identified as a victim of trafficking in human beings or finds that there are reasonable grounds for believing that the third-country national may be a victim of that offence, it cannot enforce any transfer decision against that person during the reflection period granted under Article 6(2) of that directive.

[42] See, in particular, judgment of the ECtHR of 25 June 2020, *S.M. v. Croatia*, CE:ECHR:2020:0625JUD006056114, § 306.

[43] Signed in Rome on 4 November 1950.

[44] Member States may however establish further jurisdiction in the circumstances set out in Article 10(2) of Directive 2011/36.

[45] See recital 5 of Directive 2011/36. I am referring, in that regard, to the enhanced cooperation with Europol and Eurojust, the setting-up of joint investigation teams and implementation of Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflict of jurisdiction in criminal proceedings (OJ 2009 L 328, p. 42).

84. As the Office of the United Nations High Commissioner for Human Rights recommends: 'during that time, victims and presumed victims are not to be removed from the territory of the State party'. [46]

85. In the light of all of the foregoing, I therefore propose that the Court should hold that Article 6(2) of Directive 2004/81 must be interpreted as meaning that it precludes a Member State, during the reflection period laid down in Article 6(1) of that directive, from enforcing a decision to transfer a third-country national who is the victim of trafficking in human beings to the Member State responsible under Regulation No 604/2013 for examining the application for international protection.

(b) The amount of leeway available to a Member State to adopt a transfer decision or make preparations to enforce such a decision during the reflection period

86. Different reasoning applies in respect of whether a Member State may adopt a transfer decision or make preparations to enforce that transfer during the reflection period. The wording of Article 6(2) of Directive 2004/81 in fact prohibits only the enforcement of an expulsion order. Bearing in mind how I propose that concept should be interpreted, only the enforcement of the transfer decision is prohibited, and the Member State therefore has a certain amount of leeway to adopt such a decision or make preparations for the transfer. Nevertheless, however much freedom the Member State may have, those measures may not jeopardise the effectiveness of Article 6 of Directive 2004/81.

87. Two observations should be made in that connection.

88. First, I would recall that the reflection period must enable the competent national authorities to establish a relationship of trust with the victims of trafficking in human beings and encourage them to cooperate with the criminal investigations by offering them the prospect of a temporary permit to reside in the territory. During that period, the Member State must also offer victims the assistance and protection measures necessary on account of their vulnerability. I believe that those objectives may be jeopardised if, at the same time, victims are informed that preparations have been made to enforce the transfer decision, especially if those preparations consist of placing them in detention so that they can be transferred.

89. Second, as well as merely adopting a transfer decision or making any other preparations to enforce it, in my view the competent national authorities necessarily face difficult choices, given the strict time limits within which they are required to act under Regulation No 604/2013. I would recall that they have an extremely limited amount of leeway as regards the time limits for taking such measures, failing which responsibility for examining the application for international protection is transferred to the requesting Member State. Under Article 21(1) of that regulation, the requesting Member State must submit its take back request within a maximum of *three months of the date on which the application for international protection was lodged*. If that request is accepted, it then has *six months in which to transfer the applicant*, in accordance with Article 29(1) of that regulation. In a situation such as that at issue, that time limit cannot be extended. [47] Those time limits are mandatory.

[46] Office of the United Nations High Commissioner for Human Rights, commentary on *Recommended principles and guidelines on human rights and human trafficking*, section 8.6, p. 153, available at: https://www.ohchr.org/sites/default/files/Documents/Publications/Commentary_Human_Trafficking_en.pdf.

[47] Under Article 29(2) of Regulation No 604/2013, that time limit may be extended to one year if the transfer could not be carried out because the person concerned is imprisoned, or to eighteen months if that person concerned absconds.

90. Whether it is feasible to coordinate the procedure for issuing a temporary residence permit and the transfer procedure and, if it is, the arrangements for doing so, therefore depend on a number of variables, and in particular the time limits applicable to each of those procedures (I would recall that the duration of the reflection period is determined by national law) and the intentions and behaviour of the victim during or on expiry of that reflection period.

91. Thus, in the situation referred to in Article 6(4) of Directive 2004/81, in which, during the reflection period, the third-country national concerned actively, voluntarily and on his/her own initiative renews contact with the perpetrators of the offence, the administrative authorities are entitled to adopt a transfer decision against that person at the same time as or immediately after the police and law enforcement authorities put an end to that reflection period, in accordance with that article.

92. Conversely, where the opposite is true and the victim expresses very early an intention to cooperate with the criminal investigations, the feasibility of a transfer will depend on whether or not that person is granted a temporary residence permit. If that victim is granted that permit, no transfer can take place within the time limits laid down by Regulation No 604/2013. Indeed, under Article 8(3) of Directive 2004/81, the residence permit is valid for a minimum of six months, after which, if the transfer has not taken place, the Member State responsible is released from its obligation to take back the applicant. [48]

93. Lastly, I note that the Member State concerned can always avail itself of the option afforded by the discretionary clause laid down in Article 17(1) of Regulation No 604/2013. There are no specific requirements for applying that clause and, in principle, it is for each Member State to determine the circumstances in which it wishes to use that option and agree to examine an application for international protection for which it is not responsible under the criteria laid down by that regulation. [49]

94. It is self-evident that coordination between the procedures requires close cooperation between the national authorities responsible for the procedure to issue the temporary residence permit and those responsible for the 'Dublin' procedures.

95. In the light of the foregoing, I propose that the Court should hold that Article 6(2) of Directive 2004/81 must be interpreted as meaning that it does not preclude a transfer decision from being adopted or preparations being made to enforce it, during the reflection period under Article 6(1) of that directive, provided those measures do not jeopardise the effectiveness of the reflection period.

C. The first question referred, on how the reflection period should be calculated

96. By its first question, the referring court is essentially asking the Court whether, in the absence of any transposition measures, Article 6(1) of Directive 2004/81 must be interpreted as meaning that the reflection period under that article commences automatically as soon as the third-country national informs the competent national authorities that he or she is the victim of trafficking in human beings (question 1(a)) and ends automatically once that third-country national has lodged a complaint concerning trafficking in human beings or, in contrast, has informed those authorities that he or she does not wish to do so (question 1(b)).

[48] See Article 29(2) of Regulation No 604/2013.

[49] See judgment of 23 January 2019, *M.A. and Others* (C-661/17, EU:C:2019:53, paragraphs 59 and 60 and the case-law cited).

97. Although the parties appear, in their observations, to dispute the manner in which Article 6(1) of Directive 2004/81 has been transposed into the Netherlands legal order,[50] the referring court takes the view that that provision has not been transposed into national law and wishes to apply it directly. The request for interpretation consequently concerns how the reflection period should be calculated, and in particular its start and end dates.

1. The start date of the reflection period

98. By its first subquestion, the referring court is asking the Court whether the reflection period can start as soon as the third-country national concerned informs the competent national authorities that he or she is the victim of trafficking in human beings.

99. I note that Directive 2004/81 does not determine the starting point of the reflection period, in the same way that it does not determine its duration. Although in its proposal, the Commission envisaged a 30-day reflection period, reproducing the reflection period set out in Article 13(1) of the Council of Europe Convention on Action against Trafficking in Human Beings,[51] the EU legislature nevertheless left those decisions to the discretion of each Member State.[52]

100. In the present case, the referring court is asking the Court whether the reflection period can begin to run at the time the third-country national *informs* the competent national authorities that he or she is the victim of trafficking in human beings.[53] In the light of the terms in which the question is put, such a situation seems to me to be different from that in which the third-country national reports or gives evidence against a person, accusing that person of participating in the trafficking concerned.[54]

101. However, if the reflection period began to run from the time at which the third-country national concerned merely stated to the competent national authorities that he was the victim of trafficking in human beings, where those authorities had no indication as to the existence or nature of the offence, such an arrangement would, to my mind, be incompatible with the scope *ratione personae* of Directive 2004/81. Indeed, I would recall that the procedure for issuing a temporary residence permit, of which the reflection period forms part, must only be commenced once those authorities have identified the third-country national concerned as a victim of

50 As can be seen from the national legal framework set out, the Kingdom of the Netherlands has not determined the duration or starting point of the period of reflection in the Law on foreign nationals, only in the Circular on foreign nationals.

51 The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005 and came into force on 1 February 2008. Article 13(1) provides as follows: '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. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.' See also, Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, paragraph 177, available at: https://rm.coe.int/16800d3812.

52 The Experts Group on Trafficking in Human Beings, set up by Commission Decision 2003/209/EC of 25 March 2003 setting up a consultative group, to be known as the 'Experts Group on Trafficking in Human Beings' (OJ 2003 L 79, p. 25), for its part, in its opinion of 16 April 2004, recommends a period of at least three months. In France, Article R-316-1 of the Code de l'entrée et du séjour des étrangers et du droit d'asile (Code on the entry and stay of foreign nationals and the right of asylum) (JORF of 15 September 2007, version 17) sets that period as 30 days.

53 In view of the terms used by the referring court, I would distinguish that situation from the situation in which the third-country national reports that offence by making a report to the competent authorities.

54 In addition, such a scenario also seems to me to be different from the one addressed in the Circular on foreign nationals. It is apparent from the provisions of that circular that the police or gendarmerie commander is to offer the presumed victim the reflection period as soon as there is 'any indication that the matter involves trafficking in human beings' and/or as soon as the Social Affairs and Employment Inspectorate becomes involved.

trafficking in human beings or once, on the basis of all the information and relevant circumstances of the case, there are reasonable grounds for believing that the third-country national is a victim of that offence.

102. In the light of those factors, I consequently believe that, in a situation in which a third-country national informs the competent national authorities that he or she is the victim of trafficking in human beings, the reflection period may start as soon as those authorities take the view, on the basis of all the information available to them, that there are reasonable grounds to believe that that third-country national falls within the scope of application of Directive 2004/81 and, as a result, informs that person of the possibilities that that directive offers, in accordance with their obligations under Article 5 thereof.

2. The end date of the reflection period

103. By its second subquestion, the referring court is asking the Court whether the reflection period under Article 6(1) of Directive 2004/81 can end, automatically, once the third-country national has reported trafficking in human beings or, conversely, has informed the competent authorities that he or she does not wish to make such a report.

104. Contrary to the starting point of the reflection period, which is left to the discretion of each Member State under the second subparagraph of Article 6(1) of Directive 2004/81, in Article 6(4) of that directive the EU legislature lays down the situations, in addition to expiry of the reflection period, in which a Member State may terminate that period at any time. The first situation is that in which it has been established that the person concerned has 'actively, voluntarily and on his/her own initiative' renewed contact with the perpetrators of the offence, and the second is a situation in which there are reasons relating to public policy and to the protection of national security.

105. The situations in which a Member State may automatically terminate the reflection period enjoyed by the third-country national under Article 6(1) of Directive 2004/81 are therefore confined to particularly serious situations in which, having regard to the nature of the links between the person concerned and the perpetrators of the offence and the threat this may represent for its interests, the Member State may decide to discontinue the procedure for issuing a temporary residence permit.

106. In so far as Article 6(4) of that directive limits entitlement to the reflection period granted to a third-country national who is the victim of trafficking in human beings, I believe that it must be interpreted restrictively. None of the circumstances described by the referring court corresponds to any of the scenarios that the EU legislature envisages in that article. I am therefore of the view that neither of those scenarios allows the Member State to terminate that reflection period automatically.

107. In the light of those factors, I consequently propose that the Court should hold that, where the reflection period under Article 6(1) of Directive 2004/81 has not expired, a Member State cannot terminate that period automatically in situations other than those expressly referred to in Article 6(4) of that directive.

108. I would add two further observations.

109. As regards, first, the situation described by the referring court, in which the third-country national concerned makes a report accusing the perpetrators of the offence, that initiative does indeed show clearly that the victim intends to cooperate. In that context, the reflection period can be considered to have had its intended effect. However, I note from reading Article 8 of Directive 2004/81 that such a circumstance is not necessarily sufficient for a residence permit to be issued. Under Article 8(1) and (2) of that directive, that residence permit may only be issued if, first, the person concerned has not only expressed a clear intention to cooperate but has also severed all links with the alleged perpetrators of the offence and if, second, the competent national authorities consider it appropriate to prolong the stay of the person concerned in national territory for the purposes of the investigations or judicial proceedings. According to Article 8(1) of that directive, that assessment is carried out 'after the expiry of the reflection period, or earlier if the competent authorities are of the view that the third-country national concerned has already [expressed a clear intention to cooperate]'.

110. There are no grounds for asserting that a Member State may terminate the reflection period automatically as soon as the victim expresses an intention to cooperate. I am therefore not convinced that the fact that a report has been made accusing the perpetrators of the offence is, in itself, sufficient to terminate that reflection period, which, in accordance with Article 6(1) of Directive 2004/81, must enable the victim to recover and escape the influence of the perpetrators of the offence. [55]

111. As regards, second, the converse situation referred to by the referring court, in which, before the reflection period has expired, the third-country national expresses an intention not to report the suspected perpetrators of the offence, it can indeed be found that the person concerned has taken a decision on whether to cooperate and that, therefore, the reflection period has had its intended effect. However, such a rule would not, in my view, ensure the protection of victims of trafficking in human beings unless it were accompanied by requirements of particular care. In accordance with Article 6(1) of Directive 2004/81, the Member State must ensure that the decision is an 'informed decision' and is the result of the free and informed intention of the third-country national concerned and not of any intimidation or retaliation of which that person may again be a victim. I would recall that the offence of trafficking in human beings, as well as exploitation of the victims, typically involves the perpetrator having an economic and psychological hold over the victim, through the use of physical and psychological violence. In order to guarantee that the reflection period is effective, it is therefore essential to ensure that it is not unfairly curtailed where the victim has not had time either to recover or to escape the influence of the perpetrators of the offence. [56]

V. Conclusion

112. In the light of all the foregoing, I propose that the Court should reply as follows to the questions referred for a preliminary ruling by the rechtbank Den Haag (District Court, The Hague, Netherlands):

(1) The concept of 'expulsion order' in Article 6(2) of 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 must be interpreted as including measures under

[55] See also recitals 11 and 12 of Directive 2004/81 and recital 18 of Directive 2011/36.

[56] See also recitals 11 and 12 of Directive 2004/81 and recital 18 of Directive 2011/36.

which a third-country national who is the victim of trafficking in human beings is required to leave the territory of the Member State in which he or she is present, as a result of enforcement of a transfer decision adopted under Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

(2) Article 6(2) of Directive 2004/81 must be interpreted as meaning that it precludes a Member State, during the reflection period laid down in Article 6(1) of that directive, from enforcing a decision to transfer a third-country national who is the victim of trafficking in human beings to the Member State responsible for examining the application for international protection pursuant to Regulation No 604/2013.

By contrast, that provision does not, during that period, preclude the Member State concerned from adopting a transfer decision or making preparations to enforce such a decision, provided those measures do not jeopardise the effectiveness of the reflection period.

(3) Article 6(1) of Directive 2004/81 must be interpreted as meaning that, in a situation where a third-country national informs the competent national authorities that he or she is the victim of trafficking in human beings, the reflection period may start as soon as those authorities take the view, on the basis of all the information available to them, that there are reasonable grounds to believe that that third-country national falls within the scope of that directive and, as a result, inform the latter of the possibilities that that directive offers, in accordance with their obligations under Article 5 of the directive.

(4) Where the reflection period under Article 6(1) of Directive 2004/81 has not expired, a Member State may only terminate that period automatically in the situations expressly referred to in Article 6(4) of that directive.