

# Preventing “Criminal Tourism” in Schengen Member States

by **Geert Verbauwhede**

Since many years the Belgian Immigration Office is confronted with imprisoned foreign national offenders with third country nationality having a residence permit in another EU Member or a European Economic Area state (EEA). These persons can only receive an entry ban limited to Belgium since their right to freedom of movement having a permit in the other member states. As there are no border controls within Schengen, such a national entry ban can easily be circumvented.

Every foreigner has the choice to indicate to which country he or she wants to be removed, provided that this person has the proper documentation to enter or stay that country, and / or an agreement of this country to let this person enter or stay there is available. This means that most of these foreign national offenders chose to go back to this EU/EEA member state.

Furthermore, the Belgian Immigration Office has established that some of these foreign national offenders came back to Belgium and committed new crimes, for which they were – again – condemned and imprisoned.

These facts frustrated all concerned Belgian authorities. On the basis of this frustration, an idea grew to avoid this “criminal tourism”.

As we established that many of these third country nationality (TCN) offenders (most of them from Moroccan nationality) had a staying permit in Spain, and most criminal offenses were drug related, it seemed for the Immigration Office a self-evidence to develop a project together with the Spanish authorities. It was important to create a tool which gave a dissuasive effect and avoided the return of these “criminal tourists” on the Belgian territory; at the same time this would also help the member states (MS) who has issued the staying permit, in order to avoid recidivism of these persons on the territory of that MS as well as on the whole of the Schengen territory.

Thanks to long standing bilateral contacts with the Spanish authorities, as well directly as via the Spanish and Belgian police liaison officers, the Immigration Office could rapidly detect whom to involve in the project.

It was proposed in 2014 to the Spanish authorities to seek possibilities how to revoke / withdraw Spanish staying permits for TCN foreign offenders who were incarcerated in Belgian prisons.

## **Establishing a procedure**

In order to know in which cases a staying permit could be revoked or withdrawn, Spanish and Belgian authorities had to establish some criteria:

- The number of years that a TCN should be condemned;
- The reasons why this TCN was condemned (what kind of offence was committed);
- What kind of staying permit has the TCN (temporary, unlimited, family member of EU citizen or Spanish / Belgian citizen,...); and is this staying permit linked to a protection status (subsidiary protection, recognized refugee → in those cases the protection status has to be revoked as well, if a removal to the third country would be considered);
- Number of years living in the EU; born in the EU;

- Family in the EU, in the MS which has issued the staying permit (spouse, children, others, ...) + nationality / status of the family members; ...

All these criteria could affect the decision to withdraw or revoke the staying permit. Furthermore, due to national legislation and jurisprudence, the threshold to use these criteria was different for Belgium and for Spain. E.g. in order to revoke a Spanish staying permit, the TCN should be condemned to at least a criminal sentence of 1 year.

Once these criteria were clear, the withdrawal procedure could be established. In order to request this withdrawal to the Spanish authorities, the Belgian Immigration Office should send a formal request, which includes the specific circumstances and information linked to the TCN (kind of conviction, reasons why, copy of the staying permit if available, copy of the ID or travel document if available, photograph, finger prints) and a summary (if possible in Spanish) of the sentence (certainly the reasons why the TCN has been condemned and – if this is the case – any aggravating or mitigating circumstances concerning the behaviour of the TCN).

On the basis of this information, the Spanish authorities will assess whether a withdrawal is possible. If this is not the case, this will be communicated as soon as possible. In such case, the TCN will be able to return to Spain as soon as he is set free by the Belgian Penal authorities.

However, if the staying permit should be withdrawn, the Spanish authorities will redact a decision of withdrawal, which will be sent by diplomatic mail – via the Embassy of Belgium in Spain – to the Belgian Immigration Office; this decision will be redacted in Spanish and in a language the TCN will understand (e.g. for Moroccan citizen in Arabic). A staff member of the Immigration Office will go with this decision to the prison, explain the decision to the TCN offender, notify the decision to him (he will receive an original copy of this decision). The signed decision will be sent back to Spain. Within a certain delay, the TCN has the possibility to appeal against the decision. The TCN can do this himself or with the help of a (Spanish in most cases) lawyer. This appeal needs to be sent to the Spanish authorities. If the TCN does not appeal or if the appeal is rejected, the decision becomes definitive. The Spanish authorities will then send a letter to inform the TCN, which also will be notified to the TCN in prison.

If the withdrawal or appeal procedure is not finished at the moment of release by the Belgian Penal authorities, and if these procedures cannot be closed within a reasonable time, the TCN will be transferred back to Spain (only if in possession of an original national passport and the original Spanish residence card), where he will be able to stay pending the result of the procedure. If the procedure can be closed within a reasonable time, the TCN will be put in immigration detention, under the responsibility of the Immigration Office, pending the result of the procedure.

In case of withdrawal of the staying permit, the TCN will be removed to his country of origin or another third country where he can enter or stay, but for sure, he will leave the territory of the MS which subscribe the EU acquis. This return decision is usually accompanied by an entry ban.

### **Towards an EU/EEA wide system**

After a successful trial period, it was decided to make publicity of this procedure to the other MS. The EURESCRIM (“residents within EU, who have committed crimes”) procedure was introduced to the steering groups of two AMIF programs (Asylum, Migration and Immigration Fund), EURLO (network of MS with common return liaison officers) and EURINT (network of MS looking to improve cooperation with third countries on identification and return of TCN).

Consequently, it has been decided on the EURINT steering group meeting of September 2015 that a EURESCRIM working group will be created. The first working group meeting was held in December 2015, the second one in November 2016.

These two meetings gave the opportunity to explain to the participating MS what was the objective of the EURESCRIM procedure, to be able to identify the judicial, legislative and practical gaps and problems linked to this procedure, and to identify the thresholds which every MS has to take into account in order to be able to withdraw such staying permits for TCN offenders.

Moreover, a matrix with an inventory of contact persons, procedures and minimal standards for withdrawal of staying permits has been created and will be systematically updated.

The Belgian political interest for the EURESCRIM procedure is very high. One of the top priorities of the Secretary of State for Asylum and Migration, Mr. Theo Francken, is the removal of foreign offenders from the Belgian territory. The EURESCRIM procedure provides a tool which stimulates the effective return of TCN offenders; for this reason the Secretary of State has informed his colleagues at the Justice and Interior Council of Ministers of the EU about the EURESCRIM procedure and working group, as well in bilateral contacts with his EU/EEA counterparts. Publicity on EURESCRIM is also made on different international fora.

### **Statistics**

Since the start of the EURESCRIM procedure, Belgium has submitted 155 cases to Spain, of which in 82 files a decision to revoke/withdraw the staying permit has been taken. In 16 cases the withdrawal was not possible (these TCN could therefore return to Spain, once they have been released by the Belgian Penal authorities). 20 TCN had no longer a right to stay and could therefore, without the necessity to take a withdrawal decision, be removed to their country of origin after having purged their sentence. 3 TCN had in the meanwhile obtained the Spanish nationality (1 TCN has a pending nationality procedure). For 33 cases the assessment is still ongoing.

Spain has submitted 2 cases to Belgium; in one case the staying permit has been withdrawn. For the other case the assessment is ongoing.

Belgium has also submitted 2 cases to the Netherlands; the assessment is ongoing but withdrawal will be difficult, since the 2 concerned TCN were born in the Netherlands. A first case with Poland was successful. More are ongoing. A case with Sweden did not end with a withdrawal decision.

Different cases with Italy are still pending. Spain has also mentioned that some cases will be submitted to Germany. There is also a cooperation between the Nordic countries, but statistics are as for now not available.

## Contact details

If you want more information about the EURESCRIM procedure and how we can work together in the future, please feel free to contact the two “founding fathers” of EURESCRIM:

Mr. Kris Vanhoecke, attaché, [kris.vanhoecke@ibz.fgov.be](mailto:kris.vanhoecke@ibz.fgov.be)

Mr. Johan Hongenaert, attaché ff: [johan.hongenaert@ibz.fgov.be](mailto:johan.hongenaert@ibz.fgov.be).

If you have a specific case you want to submit to the Belgian Immigration Office, please send a mail to [eures.crim@ibz.fgov.be](mailto:eures.crim@ibz.fgov.be).

## Conclusion

Thanks to the diligence and the motivation of my Belgian colleagues, I can conclude that the EURESCRIM procedure is already successful, at least in the framework of our cooperation with Spain.

I’m confident that a further broadening of the EURESCRIM network, to which already have joined Immigration Services from Belgium, Bulgaria, Denmark, Estonia, Germany, Hungary, Italy, Luxemburg, the Netherlands, Sweden, Norway, Poland, Portugal, Spain and the United Kingdom, with FRONTEX as an observer, will lead to a more effective management of foreign national offenders from third countries in our Penal environment.

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