

## Report

### Second Expert Meeting on Human Rights Protection in the return of trafficked persons to countries of origin

14 April 2010  
Warsaw

The ODIHR anti-trafficking programme organised a meeting on 14 April 2010 to exchange experiences on the return of victims of trafficking to countries of origin. The meeting was part of a series of events following the commissioning of research on this topic in 2009 in Spain, Italy, Germany and the UK and followed-up to the first expert meeting organized on this topic by the ODIHR on 24-25 June 2009<sup>1</sup>. The meeting brought together participants from governmental and non-governmental structures representing countries of origin and destination for trafficking victims. It aimed to share experiences on the identification of and return of trafficked persons to countries of origin and to raise awareness of the human rights standards applicable to the return process.

#### Introductions

In his introduction, the ODIHR Director, Ambassador Lenarcic, thanked participants for their attendance at the meeting, in particular those from countries for which research had been conducted. He urged that more needed to be done to identify victims of trafficking amongst irregular migrants being detained for removal and reminded States of their obligations to ensure that adequate safeguards were in place so that victims of trafficking were never subject to *refoulement*, ill treatment on return or that their expulsion breached their right to family life in the host country. He also noted the importance for countries to monitor returns, to ensure that victims were not subjected to further ill-treatment or re-trafficking after their return.

In her welcoming remarks OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Ms Maria-Grazia Giammarinaro, considered that the issue of return raised important and controversial questions. She asked whether return policies for identified victims in the OSCE area were consistent with the goal of effective identification and prevention of trafficking. The fact that victims were generally obliged to return to their home countries following participation in criminal proceedings

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<sup>1</sup> The report of the expert meeting is available at: <http://www.osce.org/odihr/40796>

dissuaded possibly many victims from reporting crime. Also following their return home evidence suggested that many victims were at risk of re-trafficking. She suggested that States revised their return policies and allowed for temporary residence permits to be converted to longer-term residence permits for victims of trafficking and to possibilities of regularisation. To ensure that return policies generally were consistent with obligations of non-refoulement and human rights protection, she proposed a series of steps. States should establish screening mechanisms for all migrants detained for return to allow for the identification and protection of victims of trafficking. NGOs and international organisations should be given regular access to detention centres to provide rights information and legal counselling to migrants. Legal assistance was important to prevent the criminalisation of trafficked persons for offences linked to their trafficking. Procedures should include rights of appeal on decisions to return or remove a victim of trafficking on grounds of trafficking. Risk assessments were needed in all cases of return of victims of trafficking irrespective of the alleged ‘voluntary’ nature of the return. In the case of children, assessments had to be on securing the best interest of the child and a durable solution for his or her future. Authorities in both countries of origin and destination had to take responsibility for the return process; ensuring that it was in compliance with human rights and successful in terms of social inclusion. Social inclusion programmes were labour intensive and costly and demanded sustained partnerships between countries of destination and origin and long term funding.

### **Morning Session**

The first session gave the floor to government and civil society representatives from the UK, Italy, Spain and Germany<sup>2</sup>. Experts had been asked to focus on a series of questions including (i) the identification of victims of trafficking in their country, (ii) the assessment of the safety of return; (iii) the detention of victims of trafficking prior to return, (iv) access to assistance in the removal process, (v) the return of victims of trafficking under Dublin II regulations and (vi) the monitoring of return in countries of origin.

**The UK government representatives**, from the UK Border Agency (UKBA), focused on the identification of victims of trafficking and voluntary return programmes. They summarised how the newly introduced identification and referral mechanism (NRM) functioned. It included a wide number of organizations (UKBA, UKHTC (UK Human Trafficking Centre), police, local authorities, NGOs and other agencies) acting as ‘first responders’. First responders identified indicators of human trafficking and made referrals of possible victims to a ‘competent authority’ who determined whether there were ‘reasonable grounds’ to consider someone a victim and provide them with a reflection delay. Following this appraisal, a ‘conclusive grounds’ decision could be made which could trigger different residence options. The NRM procedure applied irrespective of the immigration status of the person and was not an immigration procedure. If there was an immigration issue with a victim then the UK Border Agency would take the decision, otherwise the UK HTC acted. Adults needed to consent to be included in the NRM, but for children the NRM was regarded as a safeguard. The UK provided 45 days

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<sup>2</sup> Germany was without government representation at the meeting.

of reflection period that could be extended for a number of reasons, such as information gathering, issues of disclosure, and the needs of an individual victim to access services before a conclusive grounds decision. The return of a victim was not considered until a conclusive grounds decision had been made. If the conclusive grounds decision was positive, the personal circumstances of the victim would be taken into account (meaning Art. 8 of ECHR (private and family life) and questions of non-refoulement and discretionary leave could be given. Police could make an application for a residence permit for a year which could then be extended for another year. If discretionary leave was granted, it was possible to apply for further leave to remain, in consideration of the personal circumstances. First responders were also embedded in detention centres and the Dublin II removal unit and could withdraw an identified victim from removal proceedings. Of those who had had positive conclusive grounds decisions so far, no one had yet been removed (noting that the NRM had been functioning less than a year at the time of the meeting). Access to legal advice and services was being provided when the referral was made, at the stage of reasonable grounds decisions. The UK HTC was responsible for ensuring that all victims were aware of their rights and had access to the services (including legal) that they needed.

Anyone in the UK without leave to stay were expected to return voluntarily to their country. The UKBA operated three assisted voluntary return programmes in cooperation with IOM office in London including (i) for those in the asylum system; (ii) for irregular migrants; and (iii) for families and children with an entitlement to reintegration assistance. Assistance under these programmes included 500 pounds at departure and up to 3000 pounds in-kind reintegration assistance (various needs, business etc.). Assisted voluntary return for irregular migrants did not generally include reintegration assistance. Vulnerable groups within this category, such as victims of trafficking could however receive a payment of 1000 pounds on a case by case assessment. The UKBA worked with IOM closely on the issue of return and considered that IOM works closely with its IOM offices and governments in countries of origin to ensure a dignified and sustainable return. There is a special process for returning children, regardless of whether or not they are victims of trafficking. In cases of children social services take the decision as to whether or not it is appropriate to return.

The **UK civil society representatives**, from ECPAT, Poppy Project and ATLEP raised a number of issues. ECPAT was concerned that the NRM was not designed in the best interests of children. The authorities taking decisions under the NRM were the same as those authorities taking asylum decision which was inconsistent with the best interest principle. Also, the Dublin II process seemed to have higher authority than the NRM procedure. According to social workers, children were returned so fast that there was no time to make a risk assessment and consider their best interest. In 2009, 25 unaccompanied minors were removed (since 2005 nearly 350). It was assumed that none of them had been assessed in terms of risks of human trafficking. Also risk assessments tended to be made on the country rather than the individual level.

Under Dublin II, default arrangements were relied upon so that if there was no reply to a request to return someone within a specific time period, the person was returned.

Recently one minor victim of trafficking was in the process of receiving counselling and assistance but was returned under Dublin II against the advice of her social worker and found herself exploited again. A second child that was to be forcibly removed resisted so much that she could not be put on the plane. There were also inconsistencies between policies on supporting victims of human trafficking and other policies, such as the forced return/removals, in particular to Afghanistan, Vietnam, China and Nigeria which would be harmful for children.

Poppy questioned whether the NRM was truly multiagency when decision makers were primarily immigration authorities which had an impact on both the reasonable grounds and conclusive grounds decisions and therefore on the identification of victims. Evidence submitted by NGOs to competent authorities about a trafficking victim was given less weight than that submitted by law enforcement which also affected who was identified, returned and ultimately rights protection. In relation to Dublin II, Poppy had recently had a client returned to the specific area in which she had been exploited and controlled. The primary consideration should be safety and the return of someone to a place where exploitation had already occurred was of serious concern to them.

The ATLEP representative did not agree that the NRM process was separate to an immigration process. The UKBA were responsible for the identification of victims which had implications for the allocation of reflection periods and of course residence status. Victims were being asked to waive the reflection period in the interests of a quick decision and it was not clear what advice was being given to them during this time. In terms of detention, ATLEP was sceptical that the UK border agency had officials embedded in detention centres that identified and referred victims to service providers as this was not happening in practice. It was also very difficult to get access to detention centres.

**The Italian government representatives** from the Presidency of the Council of Ministers, Department of Equal Opportunities; the Ministry of Internal Affairs, Department of Civil Liberties and Immigration and Ministry of Justice focused on Italy's approach to protection of victims under Article 18 and voluntary assisted return programmes. Article 18 had been in place for ten years and allowed for two approaches to assistance namely the assistance and social inclusion of victims (social path) and the criminal prosecution of human trafficking (judicial path). Residence permits for victims of trafficking were granted irrespective of their participation in criminal proceedings. However in practice this was not consistently the case across Italy. Residence permits could be granted for six months, renewable for a year and could be converted into work permits. Although there was no codified identification procedure or guidance in Italy, in practice procedures had been established and the formalization of these procedures was Italy's next challenge. A protocol was being developed by the Prosecutors office in Taranto to identify victims of trafficking which also foresaw the appointment of contact persons within immigration offices, police and judicial bodies with responsibility for identifying victims, informing them of the Italian law, their rights as victims and the possibilities for assistance, including legal aid. Return to countries of origin was a residual choice for victims, but in some cases the risks were too high.

Voluntary return programs had been offered since 2001 in implementation of the Palermo protocol and Article 18. Since then approximately 100 victims had been assisted in their return. This required the collection of NGO reports on victims of trafficking, cooperation with embassies and consulates for the issuance of travel documents, organization of return travel, assistance at airport, including in transit and destination countries. Each returnee benefitted from legal and psychological assistance in order to ensure that the return was voluntary. Returnees were given a cash payment of 400 Euros prior to departure. An individual assessment and plan of integration was developed (from 1100 Euro to 3000 Euro) for every returnee. Minors were currently not being returned; 17-18 year olds were only returned after an assessment by the competent authorities.

In 2009, Italy participated in over 12000 Dublin II returns. It received over 10400 requests for transfers and issued itself over 1600 requests for transfers to other countries (including two cases of minors). Several requests for minors had been received, but in the end it was determined that they were not minors but adults. It was not clear whether any of these were trafficking victims.

For integration programs, Italy usually cooperated with IOM. These programs were also extended to other vulnerable groups outside Article 18 and in recent years the return of other vulnerable groups had increased. Only where migrants were assessed to be vulnerable could they be included in voluntary return programmes. As illegal migration was now a crime in Italy, if a migrant was not considered vulnerable, a criminal case on illegal immigration could be opened against him/her and an expulsion decree issued. A new 2009 law made assistance to irregular migrants, also under voluntary assisted return, difficult. The monitoring of returns was extended from a period of 3 to 6 months.

It was noted that victims were being instructed by their traffickers to use the asylum system in Italy therefore Italy had started to extend assistance to persons in asylum centres, including in Sicily, with contact persons in the centres responsible for identifying and referring victims for assistance. Training for detention centre staff had also started in the south of Italy, for example through a project in cooperation with UNHCR, IOM, the Red Cross and Save the Children (Praesidium). This was however just a first step with such initiatives needed throughout Italy.

**The Italian civil society representatives** from the Ad Hoc Group on Prostitution and Trafficking in Human Beings and the NGO Association Tampep agreed that Article 18 was not uniformly applied and not everyone was aware of its existence. In practice protection was not always unconditional and many victims were not given a permit of stay if they did not denounce their exploiters. Also assistance mainly targeted women trafficked into sexual exploitation to the detriment of men and victims of other forms of exploitation. As a result many victims were detained in detention or expulsion centres as irregular migrants and were returned to situations of risk. Recently a Nigerian victim of trafficking had been detained in an expulsion centre in Milan. Despite requests from NGOs and lawyers she did not receive a stay permit and was forcibly returned to her country where she was at risk of re-trafficking. In December 2009 transgender sex

workers had denounced their traffickers and applied for assistance. Despite this, they were placed in detention centres for expulsion. One of them committed suicide when called by the trafficker on a mobile phone. Work in detention centres was imperative both to monitor the conditions inside and to offer counselling, assistance and legal action to prevent expulsion. The difficulties encountered providing assistance to victims of labour exploitation were emphasised. In Rosarno migrant workers had organized demonstrations against the violence and exploitation that they had suffered and, although the authorities moved most of them to different locations in Italy to prevent racist attacks, few of them had been recognized as victims of labour exploitation and provided with assistance. The Ad Hoc Group was trying to reach out to workers with the help of trade unions and NGOs to make them aware of their rights and help them apply for assistance.

Tampep explained that it had been possible to visit detention centres with cultural mediators on agreement with the *prefetto*. These agreements had been arrived at over years of meetings and trainings with the police. In Milan however access to the centres had been denied on the grounds that there were no central instructions from the MOI permitting NGOs access to detention centres. Tampep noted that sometimes NGO information was used to inform law enforcement decisions on return. The Aliens Office in Modena had asked Tampep to collect information about a Nigerian women's family before taking a decision on return. Tampep had an office in Benin city to collect information on the risks on return and found that generally the protection offered returning women to Nigeria was poor.

**The Spanish government representative** from the Brigada Central de Redes de Inmigracion focused on reflection delay and residence permit entitlements in Spain and migrants in detention. Only the police identified victims which occurred following raids on traffickers rather than as a result of targeted identification measures. Presumed victims were interviewed individually and the benefits of cooperating with the police were explained to them. No assistance could be extended to victims unless they cooperated with law enforcement. It was hoped that the recently adopted Action Plan would however improve the situation as the Action Plan foresaw the creation of a network of NGOs to provide victim assistance.

Police could apply for a reflection period of 30 days for a victim. If the reflection period was granted, the victim could stay legally in Spain. During the reflection period all procedures that led to deportation were on hold until a decision was made. Victims who cooperated and were third country nationals could receive a residence permit. Cooperation meant providing relevant information on the traffickers. When a victim did so, all return procedures against him/her were cancelled. The legislation on residence permits was due to change. Currently, victims could obtain a residence permit for one year without permission to work. After the first renewal she could be reunified with her family from the country of origin. The permit could however be changed into a work permit if he/she got a job. After five years of work in Spain, he/she could become a permanent resident. Spain lacked clear procedures for returns. Liaison officers in the country of origin could provide country of origin information and assistance upon return. This cooperation did not function in all countries, but it did function quite well with

Romania. Once victims were returned, they were handed over to the country of origin and there was no further monitoring by Spain.

Irregular migrants could be arrested in Spain and sometimes it was advisable for the security of victims who cooperated with the police and to keep their identity secret to be arrested for a period. In theory there was a right to legal assistance for all irregular migrants in detention centres, although the quality of this assistance was not known. With regard to assistance in detention centres, it was pointed out that the police who ran the centres would interview a victim if approached by him/her and provided with useful information and request the judge to release that person from detention. In one case, a victim had initially provided useful information but no longer wished to cooperate with the police. She had also applied for asylum which had triggered Dublin II rules and her return to Italy. She subsequently withdrew her asylum claim decided to cooperate further and managed to stay in Spain.

**The Spanish civil society representative** from the NGO Women's Link Worldwide Madrid and member of the Anti-Trafficking Network Spain noted the absence of protocols or guidelines for the identification of victims in Spain. The new National Action Plan was still only a policy document without the needed legal framework for its implementation. Currently police officers were the only actors identifying victims and were doing so only if they cooperated in the case against the traffickers. A reflection period existed, but there were no regulations on its implementation yet. Two organizations, including this NGO, brought five test cases in 2009. To date no reflection periods had been granted even in cases where NGOs had been filing applications on behalf of victims.

Unidentified victims in detention centres and at the border were sent back without any guarantees. The only way to stop a return was to seek asylum. Because of the way the law was written, persons stopped at the border technically had not entered Spain. This made the request for a reflection period in these cases risky. No asylum had so far been given to victims of human trafficking which NGOs inferred was the unwritten policy of Spain. Subsidiary protection sometimes was given, but this was discretionary. When filing cases for legal protection NGOs included Article 3 of the European Convention on Human Rights and non-refoulement grounds, but these were not taken into account by the judges. Police had constant contact with victims, whereas NGOs did not have access to detention centres, only the Red Cross (also at the borders). It seemed that lawyers were only called in when the victim was ready to submit a statement to the police. This was confirmed by clients in the three test cases the NGO submitted in 2009. NGOs could only get access through a discretionary permission from the director of the detention centre. In some cases, contact which had been established in this way resulted in worse treatment of the victims by detention facility staff. The new immigration law in Spain allows detention up to 60 days prior to deportation.

Under Spanish Law minors do not have rights to independent counsel, but were represented by specialized services with little or no ability. The return of unaccompanied

minors was a huge problem in Spain, with many of them getting returned, in particularly to Morocco.

Unless a person applied for asylum there was no risk assessment on return. Returns were not monitored. In a test case in March 2010 of a presumed victim of trafficking in a detention centre where UNHCR had advised of a favourable asylum claim and the NGO had filed a report, the victim was deported to Nigeria seven days after the filing of the claim.

**Germany civil society representatives** from the NGO Jadwiga, representing KOK and the NGO Heimatgarten focused on the identification of victims and reintegration. The identification of victims was through police raids, counselling centres and friends of victims. If counselling centres identified a person as a victim, their opinion was given weight by police and immigration. Immigration authorities though had sole authority for deciding whether to issue a residence permit. They were sometimes not sufficiently sensitized to identify a person as a victim. Unidentified victims who were irregular migrants did not get assistance and faced deportation if they did not decide to return voluntarily. If victims in detention self-identified and talked to police, they could be released and assisted.

Most cooperation agreements in Germany between civil society and law enforcement refer to human trafficking for sexual exploitation only. A network comparable to that for sex trafficking does not exist for labour exploitation which impacts on the number of labour victims identified and assisted.

The reflection period of one month was considered too short. In some case it did not even provide sufficient time to collect the necessary documentation for the residence permit application. Residence permits were conditional on the victim's cooperation with law enforcement. If the four week deadline was missed or the charge was changed from trafficking to another charge, the entitlement to a residence permit was lost. Approximately 42 trafficked women a year obtained residence permits. A victim could also apply for a residence permit on humanitarian grounds (on a number of grounds).

The State criminal police or the Federal criminal police (*Bundeskriminalamt*) depending on where the trial took place, were involved in risk assessments prior to the return of a cooperating victim. If a person feared danger on return, she/he could apply for a residence permit for reasons of danger (this endangerment needed to be proven by the police). Officially there were 800 cases of endangerment per year, but the threshold for approval was high and it was very difficult for a victim of trafficking to benefit from this, in particular, if human trafficking was not investigated or could not be proven or the proceedings were for related crimes. Jadwiga often worked with women who did not want to talk to the authorities, but were too scared to return. Some tried to commit suicide or were afraid that if they talked to the police in Germany and returned, they and their families would be harmed by the traffickers. The final assessment and decisions on return were taken by the Ministry of Foreign Affairs, which often allowed for return on



the grounds that victims could relocate inside their country to be safe. In most cases though this was not practically possible.

Jadwiga noted that sometimes voluntary returnees were subjected to re-entry bans or required to pay back money if they came back to Germany. Quality standards were needed for return and reintegration. Assistance and rights protection should not depend on personal connections. A current challenge for Jadwiga were the many young women and children in asylum procedures held in detention centres.

The NGO Heimatgarten worked on voluntary returns. It was not involved in cases when a person did not want to return. Voluntary returnees would get travel tickets as well as money for reintegration (fixed amounts for specific countries, between 2000-4000 Euros; children receiving half). In the case of irregular migrants returning, the NGO had only four weeks to organise the return whilst for refugees or asylum applicants the deadline was three months which provided a reasonable time frame for preparing a safe return. Irregular migrants could get support under the return program if they were identified by police or a counselling service. Therefore when irregular migrants approached Heimatgarten, their regularization was firstly attempted (*Duldung*) because if they remained irregular and unidentified, there was no entitlement to funding for the return. A safe return for Heimatgarten meant that there would be family support or a job available for the returnee on return. A sustainable return also included access to microloans, a social life and ability to lead an independent life. In their experience sustainable return was only possible if there were specialized organizations that could assist the returnee in the countries of origin. Heimatgarten established contacts with other organizations in countries of origin (such as Nigeria, Togo or Ghana) and had Heimatgarten offices in countries where many returns occurred (Serbia, Ukraine, Russia). Heimatgarten monitored and assisted returns for at least six months in order to ensure that it was possible for the returnee to live back in the country of origin. She confirmed that to access certain return programs there was a duty to repay return funds in case of return to Germany and reentry bans were sometimes issued. This happened disregarding the fact that sometimes a return would be very valuable, such as for participation in proceedings against the exploiters. This resulted in persons returning to Germany with different names and passports.

#### **Comments:**

**IOM** referred to its current activity with UNHCR on the development of standard operating procedures to address gaps between the asylum process and the protection needs of victims of THB. A framework document was available on its website.

**UNICEF** referred to the EU's preparation of its Action Plan on unaccompanied children and the need for standards at EU level for a separate identification and reception procedure for unaccompanied minors. The EU return directive provided for some assistance before return. A lower minimum standard was needed to ensure that every unaccompanied child had a legal guardian, legal aid and other protections. The body making the decision had to be a child protection agency and not an immigration agency. If minimum standards were not provided, adequate identification (whether a child was trafficked or should claim asylum) was not possible. UNICEF also queried whether the

host countries where interpreting the UNHCR guidelines to exempt victims of trafficking from special procedures (such as Dublin II). If not, it was suggested that maybe the guidelines should be reviewed in this regard.

**UNHCR** asked for feedback on whether the UNHCR guidance was being used by countries and whether it was useful in practice.

**ODIHR** referred to its meeting of civil society organisations the previous year on return which had found that there was little awareness of the UNHCR guidelines. Also that many important subsidiary protection questions had been left open in the guidance and needed reinforcement alongside more discussion on the question of relocation for trafficking victims on return.

### **Afternoon Session**

The second session gave the floor to government and civil society representation from Serbia, Albania, Ukraine and Moldova. It focused on the role of countries of origin in the process of return. Key issues to be discussed included (i) the identification of victims on the border; (ii) the role of readmission agreements; (iii) the role of origin countries in assessing risks on return; and (iv) reintegration and re-trafficking.

**The Serbian Government representative** from the Ministry of Interior informed that it was aware of at least three cases of victims of trafficking returned to Serbia in the previous 2 years, who had not been identified as victims in countries of destination. The victims had all been returned as irregular migrants under readmission agreements. In some cases the Serbian police had even provided information to the destination country about the trafficking victim to assist in the person's release. It was noted that in all cases the Serbian authorities had not been informed about the return since if the readmitted person has her passport, the country of origin as a rule will not be notified in advance during the readmission process. If there is notification of readmission, a risk assessment is conducted by the Ministry of Interior. Information about a potential victim of trafficking is transferred to the border police and all necessary preparation is made. If risks to the victim are identified, the Ministry would try to stop a removal procedure but it did not believe that this information would prevent the sending country from returning someone.

**The Serbian civil society representatives** from the NGO Atina noted that all victims referred to their shelter had been identified at the border by the Serbian border police and the Agency for Coordination of Victims Protection. They had all been returned as irregular migrants, or returned on their own, and none of them had been assisted by state or non-state organizations in the country of destination. Also, none of them had been identified or referred by NGOs in destination countries. A case of a victim born in Switzerland, of Macedonian origin, who had been deported to Serbia, even though she had no connections with the country was mentioned. She also added that her NGO had never been involved in the conduct of risk assessments as there was no information from

sending countries on returning persons. She concluded that it was crucial to improve the identification mechanism in countries of destination, especially in detention centres.

**The Albanian government representative**, the Head of Readmission Unit in the Ministry of Interior referred to the many readmission agreements and protocols signed by Albania. The biggest problem was the way in which these documents were implemented. Sending countries did not notify Albania about the planned returns, or sent notifications only two to three months later. In 2009, 64855 persons were returned to Albania. Only 520 persons had been returned with requests and 108 with preliminary notice. In such situations it was almost impossible for the Albanian authorities to identify victims of trafficking bearing in mind the large number of people at the borders, particularly with Greece, and a time limit of 10 hours for keeping persons there. The identification of victims was conducted within the NRM which included many state institutions and NGOs. Specially trained police officers interviewed (potential) victims by using a standardised questionnaire addressing all phases of trafficking. Social workers were also included in this process. In the case of readmission without prior notice, there were no risk assessments, but the police would refer victims to one of five shelters in Albania and protect them in case of any risks. There was a special agreement with Greece on the return of children victims of trafficking but the representative was not satisfied with its implementation.

**The Albanian civil society representatives from Vatra shelter and the Albanian Helsinki Committee** had raised its concerns about the identification of repatriated victims with the relevant institutions in Albania. It had requested that the National Anti-Trafficking Coordinator appoint social workers on every border crossing point to enable the identification of victims. Vatra also noted that the questionnaires used to identify victims failed to recognise men exploited in labour but solely focused on women and unaccompanied children. The biggest challenge was to identify victims of trafficking among those returned as irregular migrants. Such persons often lacked documents and the Albanian police let them free, without identifying and offering them assistance. A large number of women and children, victims of trafficking, were returned this way, especially from Greece. The Palermo Convention clearly determined the obligations and responsibilities of destination and origin countries regarding the identification and treatment of victims of trafficking. Many countries, particularly Italy and Greece failed to implement these obligations, while at the same time had the highest number of Albanian victims returned as irregular migrants. With regard to the conduct of risk assessments, Vatra had been providing information on possible ill treatment on return of victims of trafficking on several occasions. In their compilations, they always mentioned acute social problems, such as unemployment, illiteracy, violence in the family and society, extreme poverty, patriarchy and the presence of organised crime in the country. Their reports had prevented several returns of victims of trafficking to Albania. The failure to identify victims of trafficking meant that not all victims were offered rehabilitation and reintegration assistance. As there was no state support either, many victims were re-trafficked internally. From 2001 till 2009, 1350 victims were assisted by Vatra. Approximately 800 had been integrated, while the remainder (about 30%) had probably been re-trafficked. Lack of employment as well as stigmatisation and lack of

opportunities made the reintegration of victims of trafficking, especially those exploited in the sex industry, almost impossible. In addition, the victims who denounced their traffickers had to stay in high security shelters because of the danger from traffickers. Another problem in this regard was the high number of minors in the shelters who, after reaching 18 years, would be left out without family or state support. The only choice that faced them was voluntary prostitution or re-trafficking.

Reference was also made to Article 297 of the Criminal Code of Albania on illegal border crossing. Although the Albanian authorities do not always enforce this article for returnees who have crossed borders illegally, unless borders were crossed more than 3 times, it was noted that victims of trafficking could be prosecuted under this article too.

**The Ukraine civil society representatives** from the NGO Faith, Hope, Love from Odessa mentioned that Ukraine predominantly deals with the return of irregular migrants and not of trafficked persons. Even with the entry into force of an EU readmission agreement in January 2010, the procedures regarding returns of victims of trafficking have not been changed. Victims are still returned as irregular migrants, even when they disclose their situation and denounce their traffickers. Often law enforcement in countries of destination do not find substantial evidence/witnesses for prosecutions so simply deport the victims back without notifying the Ukrainian authorities and without conducting risk assessments. Some victims were returned jointly with their traffickers. Victims will always be issued re-entry bans and not only when returned from Germany under voluntary return programmes. When victims were returned, they were identified by NGOs working with migrants. If foreign victims were identified by NGOs or state authorities, they would be returned to their home country with the assistance of IOM Ukraine. The NGO established cooperation with NGOs and state authorities in Moldova as many Moldovans were returned to Ukraine via Odessa. Victims from Uzbekistan, Kirgizstan, Georgia and the Russian federation had also been returned through Odessa. The NGO was unaware of any risk assessments prior returns.

The NGO Heimatgarten office in Odessa explained that the role of the NGO was to create a network of NGOs working with migrants and they had received around 200 migrants from Germany, Poland, Romania and Bulgaria over the past years. More than 70% of these migrants were women. The returned migrants were mostly victims of labour exploitation, exploited in Germany and Poland. Most of them lived in extreme poverty without education and came from villages or small towns. They were not aware of their rights and could not defend them and agreed to any work they could find. Most migrants returned from Poland to Ukraine with various health problems. Some worked in factories of meat production with low temperatures for 12 hours and had only one meal a day, no special clothes or shoes. The money earned was not enough for treatment in Ukraine. They were very scared and it was hard to explain to them what the NGO was about and what it was doing. None of them accepted the offer to take claims to court. All they accepted were small sums of money so they could buy a small farm, land or livestock for a small business.

**The Moldovan government representatives from** the Ministry of Labour, Social Protection and Family and Bureau of Migration and Asylum, Ministry of Internal Affairs reported that Moldova had developed procedures for the return of migrants and children. They were repatriated only when the state authorities were assured that the person agreed to be returned and in the case of children, after the best interest of the child had been determined and when it was possible to reunite with the family. The Ministry was responsible for all actions, including preparation and initiation of repatriation. All costs for transportation were on the basis of readmission agreements.

Regarding cooperation with authorities in destination countries, it was explained that the Moldovan authorities were informed within five days by the Ministry for Foreign Affairs (MFA) about Moldovan nationals abroad. The Moldovan embassies sent information to the MFA and they offered assistance with transportation and other assistance (medical etc). During and after return, the Ministry of Labour and Ministry of Interior conducted risk assessments and checked options for integration within the family, including the risk of stigmatization or other risks. If any risks were identified, the Ministry of Labour and Ministry of Interior would request that a police officer goes to the country of destination to accompany the victim or meet the victim at the border crossing. Victims would also receive protection in the shelter where they would be accommodated. If health issues were identified, the Ministry of Health would offer medical assistance. Regarding re-trafficking it was noted that there were no statistics in this regard, but sometimes when victims filled in forms in shelters for developing their reintegration plans, they indicated that they had been victims before.

#### **Comments:**

**IOM** queried what was meant by ‘successful reintegration’ and asked the NGOs to explain how it worked in practice and how long it took.

The NGO Vatra, informed that Albania had five reintegration and rehabilitation shelters. Victims stayed between six months and two years after which they could return to their families or stay in rented apartments. Vatra jointly with state authorities offered professional training and then employment to victims of trafficking. During their stay in shelters the first phase was to rehabilitate the victims. They received medical and psychological, as well as legal assistance and advice after which they received professional training and employment. During the reintegration process and after finding employment, victims still stayed in shelters and part of their income was saved. If they decided to stay in rented apartments by Vatra, their stay was monitored for a while.

IOM added that its programmes lasted for a year and could be renewed dependant on funding. One good practice for IOM was the involvement of the private sector such as its small business training for victims of trafficking.

The **ODIHR** closed the meeting highlighting a number of issues. The overwhelming number of people arriving through readmission agreements meant that border personnel

needed support in possibly identifying returning victims of trafficking. Also the number of unidentified victims in destination countries was significant and did little to support reintegration on return. Therefore efforts to identify victims of trafficking had to be stepped up in destination countries. Also although countries of origin had a role in the process of risk assessment this could not be exercised where countries of destination did not notify on the planned returns of irregular migrants or on returns of victims of trafficking. Finally the burden on origin countries to cover the costs of medical assistance for health problems arising from trafficking had to be raised with countries of destination in cooperative efforts to ensure sustainable returns.

**Recommendations:**

The following recommendations were made during the discussions:

- Dublin II should not be used for returning victims of trafficking;
- Dublin II cases should be proactively screened for cases of trafficking;
- Screenings for trafficking victims in detention/prisons should be provided and specialized NGOs should be given access to detention centres, prisons and at airports where potential victims of trafficking could be identified;
- The identification of victims should include the participation of NGOs;
- More cooperation was needed between NGOs, institutions and police in all countries to avoid foreigners being seen as illegal migrants but also as potential victims;
- More efforts were needed to raise awareness of authorities and other actors about the legal tools available to protect victims;
- Clear guidance on the application of a reflection period was needed which should apply independent of the willingness of a victim to testify;
- There was a need to provide alternatives to return;
- Residence permits for victims should be extended beyond the end of criminal proceedings against traffickers;
- Victim protection and rights of victims should be the focus during return;
- Return programmes should be done by NGOs that proved to be independent and always acted in the interest of the victims;
- NGOs should receive financial resources for their work on victim identification and assistance;
- Easy access to assisted return was needed for persons who wanted to return but not to participate in specific programmes;
- Risk assessments, including of the complete living situation on return, were needed;
- Standards/guidelines for return and integration were needed and should be developed;
- More efforts were needed to train NGOs in countries of origin and programmes on micro-financing for returnees to assist in their reintegration.



## **Meeting on Human Rights Protection in the return of trafficked persons to countries of origin**

**14 April 2010**

### **Background**

Recent reports indicate that countries have been increasingly resorting to measures to return undocumented migrants to countries of origin. These measures are also applied to trafficked persons who do not have a regular residence status in the state of destination. In light of this, in 2008/2009 the ODIHR commissioned a series of papers on the return of trafficked persons and/or undocumented migrants to countries of origin with a view to examining the different aspects of the process and its overall compliance with international human rights standards. The laws, policies and practices relevant to returning victims of trafficking or migrants were explored in the UK, Germany, Spain and Italy; all important destination countries for trafficked persons in the OSCE region.

International legal instruments have set standards with respect to the return of trafficked persons requiring that return should be with due regard to the rights,<sup>3</sup> safety and dignity of that person, for the status of any legal proceedings related to the fact that the person is a victim, and should preferably be voluntary. With respect to children, states must firstly assess whether return would be in the best interests of the child.<sup>4</sup> The 2003 OSCE Action Plan to Combat Trafficking in Human Beings requires that states ensure the effective application of the principle of non-refoulement and recommends *'assisting the victims of trafficking in preferably the voluntary repatriation to the country of origin with due*

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<sup>3</sup> Commentary to the Council of Europe Convention on Action Against Trafficking further highlights the rights to be considered including rights not be subjected to inhuman or degrading treatment, the right to the protection of private and family life and the protection of identity. See Explanatory Report to Council of Europe Convention on Action Against THB, para 202.

<sup>4</sup> See in particular UN Convention Relating to the Status of Refugees (article 33 (1)), UN Palermo Protocol (Article 8); Council of Europe Convention On Action Against Trafficking in Human Beings (Article 16).

*regard to their safety and that of their families*'. At the 2006 Brussels Ministerial Council Meeting participating States also committed to '*seek to diminish the risk for repatriated victims to be re-trafficked*' and to '*conduct risk assessments to ensure that return of victims is done with due regard for their safety*'.<sup>5</sup> Finally, guidelines have been developed and other commentaries point to additional measures necessary to enhance the protection of trafficked persons in the return process.<sup>6</sup>

The papers commissioned by ODIHR have highlighted a number of important issues. These include continuing difficulties with the identification of trafficked persons resulting in possibly significant numbers of trafficked persons not being given the opportunity to establish their status during immigration proceedings to remove them. In turn, this may entail the detention of vulnerable people, the failure to conduct risk assessments to ensure the safety of the return, and the application of re-entry bans. At the same time legal advice and sometimes emergency medical assistance are not available to such persons. For identified victims of trafficking, none of the countries reviewed allow for permanent residency. Therefore, at some point, irrespective of their wishes, trafficked persons must return to their country of origin. Programmes to assist in the 'voluntary' return of trafficking victims are in place in all countries. Failing voluntary return, trafficked persons may be forcibly returned.

From the papers, it appeared that no country had developed clear procedures to ensure that the return was conducted with due regard for the safety of the person concerned, in accordance with OSCE commitments. Instead these issues were only systematically considered in countries where the person had applied for asylum or humanitarian protection from return. The existence of re-trafficking was also referenced in all reports, seemingly the result of failed return policies.

### **Aim of meeting**

- To share experiences on the identification of and return of trafficked persons, from the perspective of both countries of destination and origin, with a view to highlighting human rights standards in this process;
- To raise awareness of and strengthen implementation of the standards on the protection of victims of trafficking.

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<sup>5</sup> OSCE MC decisions 02/03 and 14/06.

<sup>6</sup> For example see the Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons (pp 286-287 and pp 310-311) Anti-Slavery's international recommendations regarding return and reintegration of victims of trafficking (cited at p329 *UNODC Toolkit to Combat Trafficking in Persons*, New York, 2008), recommendations listed in '*The Way Forward: Europe's role in the global refugee protection system*', ECRE, 2005 and '*Position on return by the European Council on Refugees and Exiles*', ECRE, 2003 and '*Twenty Guidelines on Forced Return*', Council of Europe, 2005.



## **Morning session (9.30 – 13.00)**

**Introduction and welcome by ODIHR Director, Ambassador Lenarčič and OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Ms. Maria Grazia Giammarinaro**

**Presentations by experts from countries of destination, describing the situation in their country**

*The aim of the session is to share experience on (i) the identification of victims of trafficking and the prevention of their expulsion, (ii) the assessment of the safety of the return, (iii) the detention of victims of trafficking prior to return, (iv) the availability and access to assistance in the removal process, (v) the return of victims of trafficking under Dublin regulations, and (vi) the monitoring of return in countries of origin.*

Speakers from government authorities and NGOs in Italy, Germany, Spain and UK followed by general discussion with contributions from international organizations.

## **Afternoon session (14.30 -17.30)**

**Presentations by experts from countries of origin, describing the situation in their country**

*The aim of this session is to share experience on the (i) screening of returned migrants to identify victims of trafficking, (ii) cooperation with countries of destination in assessing risks on the return of victims of trafficking, (iii) detention of vulnerable people and issuance of re-entry bans, (iv) harm experienced on return, and (v) sustainability of return and success of reintegration.*

Speakers from government authorities and NGOs in Albania, Serbia, Ukraine and Moldova followed by a general discussion with contributions from international organizations.

**Conclusions and follow up**