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RISK ASSESSMENT AND THE SAFE RETURN AND REINTEGRATION OF TRAFFICKED PERSONS*

1. Introduction

Trafficking in human beings is a complex crime, a capital perpetration against human's and in particular women's rights and a threat to inter-/national security and freedom. People affected by trafficking often want to or even have to return to their countries of origin, this may occur for example if they intend to reunite with their family or children or if their permit of residence expires. Trafficking victims are entitled to a safe return, which requires collective efforts of state actors, law enforcement agencies, NGOs (non governmental organisations) in the destination country as well as in the country of origin and, if necessary, additional involvement of international actors and organizations. The efforts to facilitate safe return and reintegration are an integral part in combatting human trafficking, as they prevent revictimization, re-trafficking and/or other harms and violations of human rights.

The proper identification, protection and fulfillment of the immediate needs of (presumed) victims of trafficking are an indispensable requirement in taking on responsibility as a country of destination of trafficking in human beings. This responsibility also encompasses "other obligations such as remedies, regularization of status and the right to return."¹ However, the most important step in the safe

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¹ OSCE-ODIHR [the Organization for Security and Co-operation in Europe – Office for Democratic Institutions and Human Rights], *Guiding Principles on Human Rights in the Return of Trafficked Persons*, Warsaw 2014, p. 15.

return process is always the identification of a trafficked person “without which it is impossible to provide them with assistance and protection.”²

As the single officially recognized Austrian NGO in the field of victim protection of trafficked persons, LEFÖ-IBF (Intervention Centre of Trafficked Women) is the author of the paper at hand. The non-governmental organization looks back on 18 years of experience in supportive services for survivors of trafficking, therefore LEFÖ-IBF also assisted numerous survivors of trafficking who decided to return to their home countries. Moreover, the NGO developed and published the *Quality standards for risk assessment and the safe return and reintegration of trafficked persons* (2011), the *Monitoring standards* (2015) and – in cooperation with 17 member organizations of GAATW (Global Alliance Against Traffic in Women) – the results of a participatory research on how to make the assistance programs more responsive to the needs of the clients, namely *Towards Greater Accountability: Participatory Monitoring of Anti-Trafficking Initiatives* (2015).

The present paper deals with the issue of the (preferably) voluntary safe return of survivors of trafficking from the perspective of state authorities. For that matter, it is structured into eight chapters, beginning with the foundation of any further assistance for trafficked persons: the identification process. Following the identification, the paper continues with the framework of a safe return in chapter three, where the measures necessary to successfully carrying out a proper risk analysis and security scenarios are going to be presented. Subsequent to looking into the situation for survivors after the return in chapter four, the role of public authorities will be examined more specifically in chapter five. The examples in chapter six shall then put the discussed theory into a practical outlook, before completing the paper with a checklist. The template in chapter seven is meant to be an abbreviated form of the foregoing contents, in order to have an overview of the required steps for public officers while facilitating the safe return of survivors of human trafficking.

Finally, this paper also aims to contribute to the prevention of trafficking in human beings by deepening the understanding of a human rights based approach in the return assistance of trafficked persons of public authorities and by fostering a networked dialogue between state and non-governmental actors in the process.

2. Identification

The procedure of identifying a (presumed) victim of human trafficking is the basis of any further support-, protection-, safety- and possible legal measures – including the preferably voluntary return of a survivor.

² *Ibidem.*

2.1. What is Human Trafficking?

In order to properly identify victims of human trafficking a clear definition of the term human trafficking is needed³. Within the framework of the Council of Europe Convention on Action against Trafficking in Human Beings, a standardized definition was submitted based on the definition of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000): “For the purposes of this Convention: a) ‘Trafficking in human beings’ shall mean the recruitment, transportation, transfer, harbouring or receipt of 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 shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”⁴

This definition is also implemented in the Polish national penal law which came into force on 8th September 2010.⁵ Article 115 (§ 22) of the Penal Code in Poland contains legal definitions of trafficking in human beings and slavery as following:

Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons by means of:

- 1) violence or unlawful threat,
- 2) abduction,
- 3) deception,
- 4) misleading, the exploitation of a person’s mistake or their inability to properly comprehend the action being undertaken,
- 5) the abuse of a relation of dependence, taking advantage
- 6) of a critical situation or state of helplessness, giving or receiving of payments or benefits or its promise to achieve the consent of a person having control over another person – for the purpose of exploitation, even with the person’s consent. Exploitation shall include, at a minimum, the exploitation of the prostitution of others, pornography, or other forms of sexual exploitation, forced labor or services, beggary, slavery or practices similar to slavery, servitude or the removal of cells, tissues, or organs against the regulations of the article. Should the perpetrator’s behavior concern a minor, it shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in points 1–6 of this article.

³ LEFÖ-IBF, *Quality standards for risk assessment and the safe return and reintegration of trafficked persons*, Vienna 2011, pp. 4–7.

⁴ Council of Europe, *Convention on Action against Trafficking in Human Beings*, Warsaw, 16.5.2005, <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008371d> [assessed: 5.10.2016] – art. 4 subp. a.

⁵ Journal of Laws of the Republic of Poland 2010: No 98, item 626.

The definition implemented in the Polish legal system are the foundation for the identification of a victim of trafficking in human beings. As failure in the identification procedure is the most common reason for repeated trafficking in human beings or other violations of human rights, a proper implementation of this procedure proves itself to be the basic requirement for risk assessment.⁶

2.2. Indicators

In Poland it is the responsibility of the police, the Border Guards and/or the prosecutors to formally identify victims of human trafficking⁷. Therefore, the following indicators should serve as an identification-checklist for the officers concerned. The indicators were presented before in the Quality Standards⁸ and focus on central aspects of human trafficking and the included exploitation (as in the definition of human trafficking) and are based on international recognized identification standards:

- poor physical condition – marks of violence;
- passport/ID-document was taken (or “stored”);
- intimidated behavior, fear (of revenge), depression – apathetic behavior;
- signs or statements that the person is being controlled;
- isolation – person has hardly any friends in the country, without direction, no (or little) knowledge of national language;
- person was kept locked up or was prevented from moving freely through intimidation, strictly controlling all walks, etc. (threats that she/he would be reported to the authorities in the country of destination or that her/his family would be informed about her/his work and other uncomfortable details; she/he is being forced to commit criminal acts);
- no money.

Exploitation

- Excessive amount of working hours, no days off, no vacation.
- No salary/salary far below minimum wage.
- No possibility to quit job, dependence.

⁶ Cf. *Expert Meeting on Human Rights Protection in the Return of Trafficked Persons to Countries of Origin. Report*, OSCE-ODIHR, Warsaw 2009; *Human Rights Protection in the Return of Trafficked Persons to Countries of Origin. Report of the Side Event Human Dimension Implementation on 1st October 2009*, OSCE-ODIHR, Warsaw 2009; *Report of the Meeting on Human Rights Protection in the return of trafficked persons to countries of origin on 14th April 2010*, OSCE-ODIHR, Warsaw 2010; ICMPPD, *Transnational Referral Mechanism*, 2008.

⁷ Cf. European Commission, Poland 3. Implementation of Anti-Trafficking Policy, 2016, https://ec.europa.eu/anti-trafficking/member-states/poland-3-implementation-anti-trafficking-policy_en [accessed: 17.10.2016].

⁸ LEFÖ-IBF, *Quality standards for risk...*, *op. cit.*, pp. 5–7.

- Extremely bad working conditions (e.g. not allowed to use washing machine in household – has to hand-wash, in case of sex work: use of condoms not allowed).
- No work contract or the like.
- Threat of use of violence or actual violence, also against family.

2.3. Reflection Period

If some of the above indicators apply, a valid suspicion on human trafficking is given. The experts in charge of formal identification have to act upon any suspicion that may arise. As soon as this is the case, a reflection period has to be granted to the (presumed) victim. According to the European Commission Expert Group on Trafficking in Human Beings (2004)⁹ the reflection period should be not shorter than three months. In the course of this time it is not allowed to deport the (presumed) victim back to his or her country of origin. Furthermore, it is necessary to refer the (presumably) trafficked person to a qualified Polish assistance organization, such as La Strada Foundation in Poland.

During this 90-days period the following in-depth indicators for identification are to be elaborated:

- Deceit in the process of recruitment: A person did not know that she/he was supposed to do this kind of job or believed that she/he would earn more. The victim did not know about the living circumstances in the destination country regarding her/his status as a migrant: The person had to work more hours than originally agreed to for less income. She/he had to share her room with other people and received less payment than agreed. She/he was informed incorrectly about the status and legal situation as a migrant in the country of destination. Possibly she/he was promised an education in the country of destination.
- Force in the process of recruitment, violence or threat of violence at the point of recruitment: A person might have been threatened, for example, with passing on information to her/his family or harming her/his family.
- Recruitment by taking advantage of the special vulnerability of a person: The person did not have a supportive family background. She/he may have had to take care of several children or other relatives; did not have any, or only basic education and no sufficient income, did not have any access to information about the country of destination and was not able to plan her/his resettlement her(his)self. She/he received false information about her/his rights in the country of destination to produce anxieties and apprehension towards the authorities there. The person is mentally and emotionally unstable. Force might have been exercised by taking advantage of a person's religious or cultural beliefs.

⁹ European Commission Expert Group on Trafficking in Human Beings, 2004, https://ec.europa.eu/anti-trafficking/eu-policy/report-experts-group-trafficking-human-beings_en [accessed: 12.10.2016].

3. Safe Return

As an OSCE participating state and a member of the European Union, Poland is required to provide the safety of trafficked persons who wish to return to their country of origin due to international human rights treaties. Among others, the OSCE, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), the Council of Europe Trafficking Convention, the European Union and GRETA (the Group of Experts on Action against Trafficking in Human Beings) impose obligations and requirements, demand commitments and/or formulate recommendations on state parties and member states, that stress first and foremost that the victim's rights, safety and dignity are to be prioritized in case of their preferably voluntary return.¹⁰

GRETA emphasizes moreover the importance of coordinated action in conducting a safe return between state actors and NGOs and, if possible, embassies and consulates¹¹ – a responsibility which has to be highlighted in particular.

3.1. A Human Rights Based Approach

Trafficking in human beings is not only a serious and complex crime, but also a criminal activity with significant consequences on the human rights of victims, states and civil society. Hence, a human rights based approach on safe return must encompass more than the immediate physical safety of the trafficked person and of its family members. It also involves their profound information, their overall well-being, reintegration measures and the prevention of revictimization, re-trafficking and/or other violations of the trafficked person's human rights. Such a response requires the concerted operation of institutions, organizations and entities involved in the victim's assistance on safe return. Several international treaties regulate the overall governmental actions towards preventing and combatting human trafficking from a human rights perspective, such as the 2011 Directive of the European Parliament on preventing and combating trafficking in human beings and protecting its victims.¹²

¹⁰ Cf. *OSCE Action Plan to Combat Trafficking in Human Beings 2005, Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later 2013, UN Global Plan of Action to Combat Trafficking in Human Beings 2005, Council of Europe Convention 2005, European Commission Expert Group on Trafficking in Human Beings 2004* – which advises governments to set out specific protocols for the return of trafficked persons and to apply them to all involved agencies.

¹¹ Cf. OSCE-ODIHR, *Guiding Principles on Human...*, *op. cit.*

¹² Cf. Directive 2011/36/EU 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 Councils framework decision 2002/629/JHA.

3.2. Risk Assessment¹³

After identification, several steps have to be taken. One of them is to find out whether or not it is safe for the trafficked person to go back to his or her country of origin. The work experience of decades of Anti-Trafficking-NGOs shows that some persons do want to return to their home country. In order to guarantee a safe return, it is necessary to carry out an effective risk assessment prior to the actual return in close collaboration with an expert-NGO. Findings show, that a safe return of trafficked persons needs at least a preparation period of two to three months.¹⁴

3.2.1. A Safe Return is a Voluntary Return

A determining factor in the outcome of a return is to whether or not a trafficked person decided voluntarily to go back to his or her country of origin. Findings show that those who do not return voluntarily run a great risk of being re-trafficked or becoming victims of other violations of their human rights.¹⁵ For that matter, a voluntary decision means that there should be no external coercion influencing the decision of a trafficked person to return to his or her country of origin and that the person is provided with an alternative option of a legal residence permit in the country of destination.

3.2.2. Risks

Generally, one has to consider the risks on two levels while carrying out a risk assessment for the possible return and reintegration of victims of human trafficking. On the one hand, it is about the actual risks that affect a person in an acute way, directly connected to the person's return and reintegration (e.g. the risks in connection to the offender as to the point of a life-threatening situation, the person's health, etc.). On the other hand, risks concerning the trafficking of human beings have to be analyzed on a social level. This has to do with risks that lead to the marginalization and stigmatization of a trafficked person. These risks might not appear to be acute in the actual situation but have to be considered on the long run, since they can become causes for repeated trafficking or other violations of human rights.

To guarantee a safe and voluntary return of trafficked persons, increased cooperation between many different actors such as NGOs and national authorities is essential. Human trafficking as an international crime and a violation of human

¹³ LEFÖ-IBF, *Quality standards for risk...*, *op. cit.*, pp. 7–13.

¹⁴ Cf. OSCE-ODIHR, *Report of the Meeting on Human...*, *op. cit.*

¹⁵ Cf. *Expert Meeting on Human...*, *op. cit.*; Human Rights Protection..., *op. cit.*; ICMPPD, *Transnational Referral...*, *op. cit.*; La Strada Moldova, *La Strada Express*, Moldau 2007; *Legal and Protection Policy – The Identification and Referral of Trafficked Persons to Procedures for Determining International Protection Needs*, UNHCR, Brussels 2009.

rights implies the accountability of states to protect and support trafficked persons and the active involvement of state authorities in this process.

The following actors are to be questioned if a risk analysis is carried out:

- Survivors themselves (carried out by the NGO, because only that enables the trafficked person to build a trust relationship with a specialized counsellor, an NGO-member. This enables the survivor to tell the whole story and to simultaneously receive adequate psychosocial assistance).
- Governmental authorities in the country of origin (contacts of Polish authorities).
- Local NGOs (contact through NGO, because of their transnational network and their expert knowledge on adequate support services).
- International organizations (contacts through NGO, as they have the practical experience on the right time and place for the involvement of international organizations).

3.3. Steps

The following three steps are pivotal for risk assessment prior to the voluntarily and safe return of a trafficked person.

3.3.1. Step 1 – History of the Trafficked Person

The aim is to compile all possible essential individual facts and experiences to be able to evaluate the chances for a safe return. Concerning a big part of the target group, namely trafficked women, it is important to keep their special individual vulnerability in mind. Experiences demonstrate that danger derives mostly from perpetrators and criminal organizations, while the political and economic situation of the trafficked person in the country of origin adds to her/his individual vulnerability. Therefore, the first step of an effective risk assessment has to be based on the person's individual history.

Analysis of a trafficked person's history

Falling prey to trafficking has a massive impact on the individual's sense of safety and is often a severely traumatizing experience. Consequently, a human rights based approach to the safe return of trafficked persons calls for the adequate psychosocial counseling through a specialized organizations. Experience as well as the findings of the participatory research of GAATW¹⁶ show, that from a human rights perspective it is necessary to cooperate with Anti-Trafficking Organizations. Moreover, this is the only way to learn about the whole story of the survivor, as it is very difficult for most trafficked persons to gain trust in state authorities, such as

¹⁶ *Towards Greater Accountability. Participatory Monitoring of Anti-Trafficking Initiatives: Re-building Lives. The need for sustainable livelihoods after trafficking*, GAATW 2015.

police officers. The basic requirement during or latest after proper identification is therefore the transfer of the victim to a specialized NGO, and the close collaboration as well as the confidential communication with that NGO. The trust relationship between the trafficked person and his or her counsellor, the NGO-member, is the foundation of any further outcome. This relationship is not something that just exists, but it requires a certain time span to be developed¹⁷ and is crucial in gaining the necessary information.

The aim is to compile the entire story to the greatest possible extent and to identify possible risks. It is also relevant for effective risk assessment to include the history of the person. The person's fears should be related to objectified risks. Risks on the following levels have to be taken into consideration:

Risks in the context of a person's history

- Evaluate the family: What does the person's intimate environment look like? What is the economic situation of the family? Whom can the person trust? Is the family in danger itself? Are there any debts the family has or the person has to her family? How is the family handling the trafficking experience?
- Circumstances in country of origin: Does the person belong to any political or other kind of minority? Is she/he at risk of facing persecution, punishment or discrimination and is, therefore, exposed to a higher risk of being re-trafficked or falling prey to other violations of human rights?

Risks caused by the trafficking process

- Criminal organization of perpetrators: Who is involved? Which contacts exist in the country of origin? How high is the probability that perpetrators will take revenge in the case of return? What does the criminal organization of the perpetrators look like, how strong is the perpetrators' influence?
- Investigate and analyze family and friends locally: Where can family and friends be found? Are they possibly in danger themselves or to what extent does the trafficked person run a risk of being found by her/his perpetrators if stays with the family? Has the family moved? Is the family itself involved in trafficking?

Risks of stigmatization

- Analysis of the socio-political situation in the country of origin: To what extent is reintegration (into the community, into the labor market) possible? How high is the risk for the person to be excluded as a result of the previous migration or kind of job (sex work)? Stigmatization can be caused simply by a return connected to

¹⁷ Cf. IOM, *Coping with Return*, Netherlands 2006; La Strada Moldova, *La Strada...*, *op. cit.*

women trafficking, since it is generally assumed that exploitation in the form of prostitution took place.

- Analysis of living conditions of the person in the country of origin: What are the victim's chances of being able to connect to people in country of origin based on her/his history?

Based on the history of a trafficked person, who should **not** be sought as a source of information for risk assessment in the case of a safe and voluntary return.

Example 1:

A trafficked woman was exploited in the household of an ambassador of her country who was working in Austria. For a return it is therefore impossible to contact or cooperate with this embassy. It can also be assumed that great risk is involved concerning political influences within the country of origin in the case of return.

Example 2:

It is mentioned in a woman's story that following her testimony given to the police, her parents were taken in by the police within her country of origin to endure an extensive interrogation with the aim to invalidate the woman's testimony. In this case, cooperation with the police of the country of origin should be avoided for reasons of risk assessment, since there is to suspect a possible connection to the network of perpetrators.

Target:

To extract as much information as possible about the individual history of the person from the person's own perspective, which can now be supplemented by additional general research about the country of origin in step 2.

3.3.2. Step 2 – Researching Additional Sources

In addition to the first information obtained in the interview with the trafficked person, further reliable sources about the country of origin have to be gathered (professional Internet research and reports on country information as well as local experts). For this research, the entirety of all reliable sources of information provided by NGOs or contacts and cooperation with government authorities should be used.

- General research on the legal situation: Are people being punished for irregular migration? What are the legal grounds concerning e.g. sex work in the country of origin?
- Research on possible contact persons: What kind of government authorities can be contacted? What kind of knowledge can be obtained through government authorities without putting the person in danger?
- Information from specialized local NGOs: How do experts from countries of origin evaluate the security situation and a possible reintegration? How do they evaluate the possibilities of stigmatization of a returning trafficked person? What kind of support for physical and psychological recovery is offered? What kind of support is offered to trafficked persons in their countries of origin?
- Look up additional information with international organizations.

The aim of performing the first two steps before proceeding to step 3 is the extraction of all possible risks in the case of return.

3.3.3. Step 3 – Shaping Security Scenarios

This step requires again effective cooperation between the NGO carrying out the risk assessment and the government authorities as well as their contacts and their knowledge concerning security questions about the particular countries of origin. The trafficked person herself has to become actively involved in shaping security scenarios. Support from government authorities has to be offered especially in the areas of safe transport and transfer, data protection and shaping security scenarios concerning the perpetrators. Generally, every return of a trafficked person is linked to a risk of re-trafficking. That's why a safety plan has to be drafted every time a person expresses the wish to return, always taking into account the individual history of the survivor.

- Where can safe resources for the trafficked person be found in the country of origin? Are there NGOs or family members who were not involved in the act of trafficking? Is there any reason to suggest a return to a different area within the country where there is no relation to trafficking?
- Safe transport and transfer: Plan for escort. How secure is passing the borders if there is no passport? Is there a need to organize security measures in the transit area? Is a safe escort all the way from the airport to the country of origin necessary and welcome?
- Data protection against stigmatization: Which data should not be made public due to the fact that a risk of stigmatization exists or punishment of the person based on the political situation cannot be ruled out? Generally, only absolutely necessary data should be passed on to others and only with the approval of the trafficked person.
- Possibilities of reintegration within communities and within the labor market: Which communities already exist? If reintegration in the existing communities

is not recommendable, what other possibilities for social integration in other communities can be established? What possibilities exist for reintegration in the labor market? What qualifications in the area of education obtained in the country of destination or in the country of origin make sustainable reintegration possible?

- Can an efficient physical and psychological healing be ensured? What is offered in the country of origin? Which steps for physical and psychological healing should happen in the country of destination before a return, due to only marginal offers in the country of origin?
- If perpetrators are assumed to be in the country of origin, how can they be avoided? To what extent can safety be guaranteed?
- If a safe return to the country of origin cannot be guaranteed based on an analysis of the first steps, but the trafficked person still wishes to leave the country of destination due to his or her traumatization, is resettlement in a third country an option for the person? Which countries does the person consider as an option? Afterwards, analyze all listed aspects.

Following the completion of the return process

Maintain contact to the returned person to guarantee that the return and reintegration are sustainable and in order to document possible cases of re-trafficking. After their return, survivors of human trafficking should receive support to be able to resettle to the destination country in case they find themselves in danger in the country of origin.

4. After the Return

In most human trafficking cases the affected person migrated in order to create for him- or herself (and for his or her family) a sustainable livelihood. Yet, falling victim to trafficking of human beings deteriorated their economic situation further. From the perspective of trafficked persons, as the decades of experience in Anti-Trafficking NGOs show and as identified in the participatory research from GAATW,¹⁸ the improvement of their livelihood continues to be the main target for the affected persons after their trafficking history: *What I needed more rather than food and shelter was a job* (Nepali interviewee in Nepal).

The survivors told the member organizations of GAATW that the economic independence was both individually and socially empowering, strengthened their sense of confidence and built up their resilience to the stigma they were confronted with by the community. *I don't care what people say that insult... I forgot the problem, I am happy and I've got a job* (Indonesian interviewee in Indonesia).

¹⁸ *Towards Greater Accountability...*, *op. cit.*

The participatory research further states, that “[t]rafficked persons who do not succeed in building a sustainable livelihood, have debts and/or face stigma and discrimination, may decide to remigrate to look for better economic opportunities. This, however, exposes them to risks, even of being trafficked again.”¹⁹ Therefore, it is the responsibility of state authorities and NGOs to assist the trafficked person beyond their immediate needs and to take measures of reintegration in their countries of origin prior to their actual return.

4.1. Successful (Re)integration²⁰

A safe return includes a successful reintegration. The latter is given, if the affected person is socially (re)integrated into his or her country of return. Thereby, a social (re)integration encompasses economical and psychosocial embeddedness as well as an integration into the social networks of the relevant region in the country of origin.²¹

However, the focus of this paper lies on the concrete responsibilities of Polish public authorities, who are not directly accompanying the reintegration process of the victims in their countries of origin. Nevertheless, it also lies within the range of their assignment to transfer the trafficked persons to suitable support organizations in their home countries, if desired by the victims. Naturally, those organizations have to follow a certain quality of execution which has to be examined prior to sending survivors there. Moreover, monitoring of successful return and reintegration processes of trafficked persons is vital for an improvement of the anti-trafficking activities set by public authorities.

4.1.1. Definition of Monitoring

The Toolkit of UNODC (United Nations Office on Drugs and Crime) defines monitoring as “a continuing function that uses systematic collection of data on specific indicators to provide the management and the main stakeholders of an ongoing intervention with indications of the extent of achievement of objectives and progress in the use of allocated funds.”²² Surtees developed a definition of the monitoring process of a safe return and reintegration in a scientific context as following: “Monitoring is the continuous oversight of the implementation of project activities, assessing progress, identifies operational difficulties and

¹⁹ *Ibidem.*

²⁰ Cf. LEFÖ-IBF, *Monitoring standards*, Vienna 2015.

²¹ Cf. M. Van Houte, M. de Koning, *Towards a better embeddedness. Monitoring assistance to involuntary returning migrants from Western countries*, Centre for International Development Issues Nijmegen: Radboud Universiteit Nijmegen 2008.

²² UNODC, *Toolkit to Combat Trafficking in Persons. Global Programme against Trafficking in Human Beings*, United Nations Publication, New York 2008, pp. 501f.

recommending actions. Monitoring is aimed at improving the efficiency and effectiveness of a project and ensures that activities are transformed into results/ outputs. It is undertaken during the course of the project.”²³

4.1.2. Indicators of a Successful Reintegration

In order to assess the success of a safe return, which includes the reintegration process, following indicators upon return of the trafficked person should be taken into consideration:

- 1) motivation and participation in the reintegration process,
- 2) safe and adequate accommodation,
- 3) social situation and state of legal proceedings,
- 4) options on the labor market,
- 5) options to vocational and skills training,
- 6) safety,
- 7) supportive social environment (no discrimination and/or marginalization),
- 8) positive relationships,
- 9) economic situation,
- 10) physical well-being,
- 11) psychological well-being,
- 12) access to counselling and support centres,
- 13) judicial needs of the court procedure,
- 14) assistance resp. counselling of secondary affected persons (e.g. family members, partners, etc.).

4.2. Phases of Reintegration

The monitoring length varies between one and three years upon arrival in the country of origin, according to the experience of Anti-Trafficking NGOs, to international documents and to professional publications.²⁴ This period varies depending on the trafficked person, his or her personal history and on the situation in the country of origin. A general timeframe was developed by Surtees²⁵ as following:

- 0–3 months (upon arrival in the country of destination)
- Crisis intervention – stabilization – recovery
- Depending on the support in the country of destination.

²³ R. Surtees, *Re/Integration of Trafficked Persons: handling ‘difficult’ cases*, Brussels-Vienna 2008, p. 48, <https://nexushumantrafficking.files.wordpress.com/2015/03/reintegration-of-trafficked-persons-handling-difficult-cases.pdf>.

²⁴ Cf. *ibidem*.

²⁵ *Ibidem*, p. 48.

4–12 months (upon arrival in the country of destination)
Transition period

13–36 months (upon arrival in the country of destination)
Reintegration – social inclusion
– Beginning of the process of social embeddedness.

However, the most influential aspect on the success of the reintegration process is the quality of assistance in the country of destination. Though the collective performance of public authorities, Anti-Trafficking NGOs and other involved actors is crucial, there are also macro-level-factors influencing the outcome of a safe return and reintegration. Those are e.g. residence policies and access to social services in the country of destination and the political and social situation in the country of origin. The micro-level is characterized by the concrete assistance of each institution, entity and organization involved, by the personal options of the trafficking victims, by the reasons of return, the motivation in the preparation period before return, the conditions within the family and the community in the country of origin, etc. The better the crisis intervention, the stabilization and the recovery take place in the country of destination, the shorter and safer the periods of reintegration turn out. The return and reintegration phases create states of stress and crisis even if optimum counselling, accompanying and assistance are given. Nevertheless, those irritations can be solved more easily and their turning into serious threats is preventable, if the assistance by all players of the country of destination was effective.

5. Role of Public Authorities

Considering the safe return of trafficking victims, public authorities in the state of origin, of transit as well as in the state of destination have an important role to play. On a structural level they are the ones to set the legal framework, e.g. concerning the residence permit and the freedom of mobility of a trafficked person.

Following the focus of the paper at hand, the everyday range of responsibilities of public actors concerning the safe return of a trafficking victim begins with specific awareness raising of state authorities and members of law enforcement in trafficking of human beings and according operational training of the latter. That entails organizing trainings on identification of victims of human trafficking for the police, the Border Guards, judges and prosecutors, employees of the Office for Foreigners and employees working in Asylum Centres, who are interviewing clients applying for the refugee status, for officers of Labour Inspectorates and for social workers (on identification, crisis intervention and cooperation with relevant institutions). Furthermore, regularly concerted training activities should also be taken into consideration as an important platform to strengthen and improve the cooperation among the involved actors.

As the most important step for public authorities is the identification of (presumed) victims, it is during or very latest directly upon the identification process that state authorities should necessarily contact and cooperate with a specialized Anti-Trafficking NGO in order to properly finalize the identification and/or transfer the trafficked person to adequate assistance – if the affected person desires so.

Experienced staff of the National Consulting and Intervention Centre for Victims of Trafficking (KCIK; La Strada Foundation) has been interviewed on the role of Polish authorities and they described the range of responsibilities of the state actors as threefold:

- 1) Support in the safe return of Polish citizens who have been victimized in other countries.
- 2) Support in the safe return of foreign trafficked persons in Poland who wish to return.
- 3) Support in the integration process of foreign trafficked persons who want to stay in Poland.

The recommendation of the interviewee from La Strada Foundation, is to create state-funded programs that support victims accordingly: “We believe that there should be three separate state-funded programs that support victims. We think that it is necessary to emphasize the importance of designing and supporting local programs. Such programs are already operating, conducted by NGOs and by social assistance, but they are dispersed and unstructured. We are involving ourselves in performing these tasks, even if there is a lack of funding dedicated directly to perform these activities. Therefore, we are also actively looking for funding – for example to perform elaborated reintegration programs” (employee of La Strada 2016).

Cooperation with specialized NGOs in order to provide adequate assistance to the victim, help to design crisis intervention and in order to determine the full trafficking history of the affected person for proper risk assessment.

Another important responsibility of Polish state authorities lies in interventions concerning the residence and free mobility of a (presumed) victim of trafficking. Including the expertise of a specialized NGO prevents failures in identification. In the experience of Anti-Trafficking organizations Europe-wide (as well as worldwide), there have been countless cases in which actual victims were not recognized by the authorities as such because of their lack of expertise. That led to numerous persons being re-trafficked and revictimized, as they didn't want to return but were deported because of their – then – irregular residence on the territory of the country of destination.

The experience of Anti-Trafficking NGOs furthermore shows, that there are cases in which trafficked persons are detained, charged or prosecuted because of unlawful activities during their trafficking process. An example would be third country nationals who get banned to enter the European Union because

of their unjust punishment for offences they committed in the context of their trafficking history. Under such circumstances, state authorities have to follow the recommendations on the Non-Punishment Principle, which is part of the binding Directive 2011/36/EU and which has also been elaborated as following in the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002): “Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”²⁶ Following the example stated above, authorities should intervene in case of an entry ban to the European Union and support the trafficked person in its right to free mobility.

While the main actor in the risk assessment procedures should preferably be the NGO to which the victim of trafficking has been referred with his or her consent, the role of state actors is to support the NGO in the risk assessment wherever possible. One responsibility of the state authorities during risk assessment is to provide the necessary information on the country of origin to which the affected person wants to return – or to provide the same information on a third country, if the survivor wants to resettle into another country than his or her country of origin. The resettlement into a third country can be a solution in cases in which the trafficked person faces unacceptable risks in both, the country of destination as well as the country of origin. The research on the country in which the trafficked person wants to be resettled (hereafter: country of return) is best to be carried out by the authorities, as they can benefit from reliable international contacts and insider information.

Further proceedings encompass the provision of a safety scenario and the support in the resettlement of the trafficked person in close cooperation with the assisting NGO in the destination country, as well as with state authorities as well as with a local NGO in the country of return (if desired by the survivor). The goal of that last step is to ensure a safe travel and to eliminate any possible problems for the trafficked person in the departure, the migration itself and the entry into the country of return.

5.1. Prospects and Challenges

As La Strada Foundation assesses the current framework of and cooperation with Polish state authorities in the voluntary safe return of trafficking survivors, it is accurate and efficient. Their recommendation is to not change the fundamental

²⁶ OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002) – Addendum to the Report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf> [accessed 1.11.2016].

operational structures. Nevertheless, the work on the paper at hand made improvements detectable in the mechanisms operationalized by Polish state authorities in a safe return of survivors of trafficking.

5.1.1. Inform trafficked persons about their rights and involve specialized NGOs as early as possible

According to a member of La Strada Foundation, there are cases in which the NGO is only involved when the trafficked person is already testifying. This suggests the conclusion that the trafficked person was not aware of her/his right to a reflection period of three months. As this conclusion was confirmed by a specialized Polish NGO in the field, it is required to involve experts into the process of identification as early as possible, as they are specialized in transmitting the necessary information about rights and options to the trafficked person in a sustainable way.

5.1.2. Eliminate the probability of a forced return

Trafficked persons often show symptoms of posttraumatic stress disorder, making it extremely difficult for them to talk about their story openly or in a coherent way, to identify themselves as victims, to call out their offenders or to make decisions on further proceedings independently. Therefore, it is urgently necessary to empower them and encourage their cooperation with specialized practitioners from NGOs. Unfortunately, it is sometimes the case, that NGOs are not involved during the identification process – which can lead to the victim not being identified as such by authorities. This sometimes results in the punishment of a trafficked person because of her/his irregular residence status or other offences in the context of the trafficking history. In order to prevent such cases, awareness raising, operational training and the involvement of expert NGOs in the identification process is required.

5.1.3. Enable proper integration programs for survivors

One of the reasons why victims of trafficking want to return to their country of origin, are the complexities posed in their attempt to integrate into the hosting society. Those difficulties comprise amongst others finding employment, learning the language or complications considering their own residence permit or the same for partners or children. Facilitating the grounds for an accomplishable integration is therefore a requirement in account of the state.

5.1.4. Provision of the necessary funds for specialized NGOs

The fact that even La Strada Foundation has to continuously apply for funds poses difficulties in their everyday working routine. It is thus required to ensure adequate funds in a long term perspective for specialized Anti-Trafficking NGOs. The interviewee from La Strada Foundation stressed furthermore the necessity of funding reintegration programs and supporting local NGOs in countries of origin.

6. Examples

6.1. Best Practice

Mrs. X contacted the Anti-Trafficking NGO herself, as she fell prey to human trafficking in the context of domestic work by diplomats. Mrs. X couldn't arrange an appointment for counselling because of her fear of leaving the house of the perpetrators. Therefore, the NGO and the Ministry of Foreign Affairs worked together in order to arrange an official appointment with the survivor at the office of the public authority. There, the psychosocial counsellor of the NGO would meet Mrs. X for her first counselling at the Ministry itself. Though Mrs. X had the wish to return but had no documents, she needed new travel documents. This challenge could be solved through the collective action of the Ministry of Foreign Affairs, the NGO and the embassy. Finally, the embassy issued the needed documents very fast. As a further problem, the costs of return wouldn't be met by the Ministry of Interior at first, because the employee of the responsible office wasn't able to identify her as a victim of trafficking. The reason for that was the employee's lack of awareness concerning trafficking in the context of domestic work. Therefore, the Anti-Trafficking NGO intervened into the process by clearing up the survivor's status as a victim, her endangered situation and by raising awareness about the fact, that human trafficking is prevalent in the context of domestic work too. The intervention has been successful, so the survivor's return costs could be met by co-financing of the European Union and national funds. Meanwhile, a reintegration plan was carried out for Mrs. X, whose goal was to undergo an education to becoming a sewer in her country of origin. Later on, the relevant embassy supervised and organized the safe transfer of Mrs. X (escort to the airport and transit) to the country of origin. In order to keep in touch with the client, the NGO in the country of destination kept in touch with the local NGO in the country of origin who accompanied Mrs. X in the reintegration phase. This also led to a meet-up of the counsellor from the NGO in the destination country with the client in her own country, which enabled a successful personal monitoring.

6.2. Bad Practice

Ms. Z, a trafficked person, was transferred through a return counsellor of an association for asylum seekers to a specialized Anti-Trafficking NGO. The original return counsellor already arranged the return but did so in a very short termed planning horizon. Additionally, the survivor got an entry ban to the European Union and became even more vulnerable, considering that she therefore could not re-emigrate any more on legal grounds. The state department responsible for the entry ban assigned the ban with the intention to protect the woman, but really created the opposite for her. Under those timely and legally constrained circumstances a proper risk assessment could not be carried out, as the client had no time whatsoever to gain trust into her new return counsellor from the specialized Anti-Trafficking NGO. This case shows how pressure of time and entry bans or other restrictions concerning free mobility are counterproductive.

7. Conclusions

International documents²⁷ stress the responsibility of the state in the safe return and reintegration of trafficking victims: “Receiving states must facilitate return by, for example, conducting identification checks, undertaking risk and social-inclusion assessments prior to a trafficked victim’s return, issuing the necessary personal, travel and other documents, and co-operating with returning states to determine whether the planned return of a trafficked victim is safe. Of particular importance is co-operation within a state between those agencies mandated to identify victims of trafficking and those responsible for their care and protection, as well as between authorities responsible for trafficking issues and those working in the field of migration and asylum.”²⁸

²⁷ Cf. OSCE-ODIHR, *Guiding Principles on Human... , op. cit.*; UNODC, *Toolkit to Combat Trafficking... , op. cit.*

²⁸ OSCE-ODIHR, *Guiding Principles on Human... , op. cit.*, p. 30.