



IDENTIFICATION OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN INTERNATIONAL PROTECTION AND FORCED RETURN PROCEDURES IN LATVIA

FOCUSSED STUDY

Riga, October 2013

Aim of the study *Identification of victims of trafficking in human beings in international protection and forced return procedures in Latvia* is to examine whether, and how, victims of trafficking in human beings are detected and identified in Latvia's procedures for international protection, and in forced return procedures if they have received a (final) negative decision on their application(s) for protection or have abandoned the procedure.

BACKGROUND INFORMATION

Latvia is considered as the country of origin of the victims of trafficking in human beings rather than the transit or destination country for human trafficking. So far there have not been any cases of identification of human trafficking victims during the international protection or forced return procedures.

Latvia has introduced in its regulatory enactments all requirements set forth in the EU Directives (2004/81/EC and 2011/36/EU).

There is a mechanism in place in Latvia for reaction and cooperation of authorities in identification, recognition and provision of necessary assistance, but so far it has been applied only in respect of Latvian nationals who have been recognized as victims of trafficking in human beings.

The State Border Guard carries out recognition of the victims of trafficking in human beings both during the international protection and forced return procedures.

In the event of doubt that a third-country national might be a victim of trafficking in human beings the State Border Guard notifies the State Police of this fact whereby

the latter takes the necessary measures within the limits of its competence for the alleged victim to be legally identified and to receive the statutory protection and assistance.

During the identification process the victims of trafficking in human beings are informed about the possibility of granting the reflection period and the rights that they would thus acquire – the possibility to receive state-funded social rehabilitation services provided by non-governmental organisations. So far the reflection period has not been granted to any person.

Social rehabilitation services are provided by a non-governmental organisation (presently it is the society “Shelter “Safe House””) with a state-granted funding. The state provides the assistance during criminal proceedings, including translation services and procedural protection of the victim. To receive assistance the third-country national should be recognised as a victim of trafficking in human beings even if he or she is undergoing the international protection procedure. Social rehabilitation services may be also received during the reflection period.

To identify the victims of trafficking in human beings the manual developed by FRONTEX working group is used, the criteria for recognition of a person as a victim of trafficking in human beings included in the Cabinet Regulations are considered and knowledge acquired during different training programmes is applied.

It should be taken into account that the third-country national acquires the status of a victim of trafficking in human beings in case the criminal offence has been committed in the territory of Latvia and criminal proceedings have been started or there is an ongoing adjudication.

So far the issue of identification of the victims of trafficking in human beings within the international protection or forced return procedures has not been topical, although measures for the improvement of the present procedure may be taken in the future.

LEGISLATIVE FRAMEWORK

A person recognised as a victim of trafficking in human beings and a minor accompanied by such person may be granted a temporary residence permit for a period of time that is not shorter than 6 months. The main conditions for receiving a residence permit are that the victim of trafficking in human beings provides information that may help to disclose or prevent cases of trafficking in human beings, as well as in the event his or her stay in Latvia is necessary and he or she does not maintain contacts with the persons suspected of organisation of trafficking in human beings (these conditions are assessed by the performer of procedures).

The right to apply for the temporary residence permit lies with the performer of procedures. Where appropriate, the term of validity of the granted temporary residence permit may be extended until the completion of criminal investigation pursuant to a written application by the performer of procedures.

The temporary residence permit may be annulled if the performer of procedures provides information that the stay of the victim in Latvia is not necessary, if the victim of trafficking in human beings maintains contacts with the persons suspected of organisation of trafficking in human beings or if false information has been provided to investigation authorities.

This provision was included in the Immigration Law on 22 February 2007 when the amendments to the Immigration Law that introduced the provisions of the Council Directive 2004/81/EC of 29 April 2004 took effect.

IDENTIFICATION PROCEDURE

Methodology and criteria

Since the majority of asylum seekers submit the application for international protection on the state border, the detection and identification of victims of trafficking in human beings is carried out according to the methodology for the State Border Guard officials who perform direct border control at the border crossing points and interviewing of persons during the detailed border control.

In addition, the manual developed by FRONTEX working group is used, as well as the criteria for recognition of a person as a victim of trafficking in human beings included in the Cabinet Regulations are considered.

With regard to the minors it is specifically stated in the Asylum Law that an interview with a minor shall be conducted by an official who has the necessary knowledge regarding the special needs of minors as well as during the international protection procedure the personal and property relations of the unaccompanied minor shall be represented by the Orphan's Court or a guardian appointed thereby or the head of the child care institution.

In the cases of forced return procedure, like in the international protection procedure, personal and property relations of the unaccompanied minor shall be represented by the Orphan's Court or a guardian appointed thereby or the head of the child care institution. In addition, according to the provisions of the Immigration Law the State Border Guard shall act so as to provide for the child's rights and interests over the entire forced return procedure.

An unaccompanied minor within the age of 14 to 18 who is detained during the forced return procedure is located in the structural unit of the State Police instead of the foreigner detention centre.

The principal indicators of whether the person should be recognised as a victim of trafficking in human beings follow from the explanation of the concept of trafficking in human beings in the Criminal Law¹ (Section 154²), namely, human trafficking is the recruitment, transportation, transfer, concealment or reception of persons for the purpose of exploitation, committed by using violence or threats or by means of deceit, or by taking advantage of the dependence of the person on the offender or of his or her state of helplessness, or by the giving or obtaining of material benefits or benefits of another nature in order to procure the consent of such person, upon which the victim is dependent.

When identifying an asylum seeker the criteria set forth in the Cabinet Regulation No. 889² of 31 October 2006 are considered, namely, the person's activities in the areas of migration, employment, security, social ties, objective features and the person's self-assessment and the criteria from the guidelines regarding human trafficking for the purposes of labour exploitation.

¹ Criminal Law. – Latvian Herald, No.199/200, 08.07.1998. – [come into force on 01.04.1999.]

² Cabinet of Ministers Regulations of October 31, 2006 No.889 "Regulations Regarding the Procedures, by Which Victims of the Traffic in Human Beings Receive Social Rehabilitation Services, and the Criteria for the Recognition of a Person as a Victim of the Traffic in Human Beings". – Latvian Herald, No.176, 03.11.2006. – [come into force on 01.01.2007.]

The applicable criteria are based on international standards and practice of other member states.

Sources of information

The asylum seeker whose asylum application has been reviewed or whose application has been rejected and he or she is subjected to forced return himself or herself or through intermediation of a lawful representative may indicate that he/she might be a victim of trafficking in human beings.

Such information could be provided also by the employees of the detention or asylum seekers' reception centres, including the staff that performs medical examinations or provides medical care, as well as representatives of non-governmental organisations and other detained persons or asylum seekers may deliver the information regarding that the person subject to forced return is likely to be a victim of trafficking in human beings.

It should be taken into account that the employees of the asylum seeker reception centre do not perform identification of victims of trafficking in human beings. In case of suspicion the employees of the centre should contact the State Police and the State Border Guard for taking of further measures with an aim to identify the alleged victim of trafficking in human beings.

At the foreigner detention centre though, which is under supervision of the State Border Guard the employees of the centre may themselves identify a victim of trafficking in human beings, although in such case too it is necessary to contact the State Police to legally identify the person as a victim.

To be in different procedures

The asylum seeker may be undergoing both procedures – international protection and trafficking in human beings – at the same time until the decision is passed within one or the other procedure regarding the granting of the protection status or issue of a temporary residence permit as for a victim of trafficking in human beings respectively. If the asylum seeker prefers to stay in the Republic of Latvia on the basis of the temporary residence permit issued to him or her as a victim of trafficking in human beings the protection procedure shall be suspended. The formal identification of person as a victim of human trafficking is done by the State Police.

Regulatory enactments do not contain any provisions that would prohibit a victim of trafficking in human beings receive the assistance pertaining to him or her while at the same time being under the international protection procedure. There have not been any such cases in practice, though.

If person is not recognised as a victim

In case the asylum seeker has not been recognised as a victim of trafficking in human beings he/she still has the right to remain in the international protection procedure. In relation to those asylum seekers whose application has been rejected, he/she still is subject to the forced return procedure.

The person who is being in any of mentioned procedures may provide additional information on the basis of which the relevant authorities may repeatedly assess his or her correspondence to the criteria of the victim of trafficking in human beings. It should be noted that this will not constitute the grounds for suspension of the forced return procedure. At the same time third country national can address other institutions, but as the State Police is the institution who legally identifies victims of human trafficking, these institutions would need to address the State Police.

TRAINING

Qualification Improvement Programme “Prevention and Combating of Trafficking in Human Beings” of the State Border Guard College

Intended for the officials of the State Border Guard who will host training in the area of prevention and combating of trafficking in human beings for the border guards who perform the direct border control and interviewing of persons.

The aim of the programme is to improve the knowledge and increase professional qualification of the officials of the State Border Guard in prevention and combating of trafficking in human beings. The training programme includes the methodology for identification of the victims (potential victims) of trafficking in human beings, organisers and/or supporters of trafficking in human beings, as well as rules of interviewing and information acquisition method. The programme includes special methods for working with minors.

Within the scope of the above mentioned programme 18 officials of the State Border Guard were trained in May 2013. It is planned that the trained tutors will organise training of the staff of the territorial offices of the State Border Guard in relation to prevention and combating of trafficking in human beings.

Meetings organised by FRONTEX Risk Analysis Unit regarding the conflicts between the organisers and victims of trafficking in human beings

The State Border Guard participates in the training organised by FRONTEX agency to deepen the knowledge of the officials of the State Border Guard regarding the options of identification of victims of trafficking in human beings during border control.

During the training the tactics and methods of interviewing and profiling used by the law enforcement authorities of other member states of the European Union are studied and such practices are assessed. The best practice resulting from the assessment is summarised and included in the manual for border guards. A training programme has been developed at the State Border Guard College on the basis of the information included in the above mentioned manual.

Professional Improvement Education Programme at the State Police College

The programme “Investigation of the Cases of Trafficking in Human Beings/Procuring” was developed in 2010. The aim of the programme is to create understanding in the employees of the police regarding the correct conduct when receiving information regarding alleged organised prostitution, procuring, trafficking in human beings (in all forms thereof) in order to facilitate the understanding among the police employees regarding these criminal offences, that will result in improved investigation performance in the cases of committing of such criminal offences.

The programme is implemented in the regional training classes of the State Police College.

Working group for coordination of the implementation of the programme for prevention of trafficking in human beings 2009-2013 is established.

The aim of the programme is to improve the present measures and to develop new initiatives against trafficking in human beings as a gross violation of human rights.

The working group comprises representatives from the Ministry of Interior, the Ministry of Foreign Affairs, the Ministry of Welfare, the Ministry of Justice, the Ministry of Economics, the Ministry of Education and Science, the Ministry of Health, the Prosecutor General's Office, Liepāja Prosecutor's Office, the Welfare Department of Riga City Council, the Committee of Safety, Order and Prevention of Corruption of Riga City Council, Riga Municipal Police, the State Police, the State Border Guard, the Office of Citizenship and Migration Affairs, the society "Shelter "Safe House"", the association "Resource Centre for Women "Marta"" and the Latvian Office of the International Organisation for Migration (IOM).

Representatives from the State Labour Inspectorate, the State Employment Agency, the Free Trade Union Confederation of Latvia, the Information Centre of the Ministry of Interior and the Ombudsman's Office were invited to the working group as experts. The meetings of the working group take place on average 3-4 times a year.

This network of cooperation ensures timely exchange of views and information, discussions as well as decision-making regarding further actions in important matters in the solution of which several authorities are engaged.

The employees of the State Border Guard, the State Police and the Office of Citizenship and Migration Affairs regularly as experts take part in different training courses organised by international organisations and NGOs.

For example, in 2011 a seminar devoted both to the aspects of trafficking in human beings and compliance with human rights was organised by the Latvian Human Rights Centre within the project "Steps to Freedom. Asylum Seeker Detention Monitoring and Promotion of Detention Alternatives in Latvia, Lithuania, Estonia, Slovakia and Czech Republic".

In 2012 a regional seminar on investigation of the cases of trafficking in human beings and criminal prosecution and trial of offenders was organised with a financial support from the Nordic Council of Ministers, where there were representatives from Russia, Estonia, Lithuania, Norway and Latvia.

Issues regarding trends and combating of the trafficking in human beings and identification of victims, etc. are included in the annual consular training programmes for the consular officials.

CONCLUSIONS

Although all EU legal provisions that regulate the rights and recognition of victims of trafficking in human beings are in place in Latvia, so far in practice there have not been any cases where victims of trafficking in human beings would have been identified in the international protection or forced return procedure.

Hence, it has not been possible to check how the regulation stipulated by the regulatory enactments would work in practice and which measures it is necessary to improve.

It cannot be ruled out that if the examples described in the study occurred in practice it would turn out that certain provisions might give a precedent for the abuse of the rights.

The fact that detection of victims of trafficking in human beings within both the international protection procedure and the forced return procedure is performed by one authority – the State Border Guard – has to be positively assessed. This allows following the person's actions and conduct over a longer period of time, to learn his/her motivation and considerations, thus facilitating detection of victims of trafficking in human beings at least within the forced return procedure, if not within the international protection procedure.

Regardless of Latvia being neither target nor transit country for the trafficking in human beings, the employees of responsible authorities regularly participate in both regional and national training, thus improving their qualification in identifying of victims of trafficking in human beings. In such way the readiness of the staff to perform their duties in detection, prevention and combating of the cases of trafficking in human beings is ensured.

LIST OF LITERATURE AND SOURCES

1. Asylum Law. – Latvian Herald, No.100, 30.06.2009. – [come into force on 14.07.2009.]
2. Cabinet of Ministers Regulations of October 31, 2006 No.889 “Regulations Regarding the Procedures, by Which Victims of the Traffic in Human Beings Receive Social Rehabilitation Services, and the Criteria for the Recognition of a Person as a Victim of the Traffic in Human Beings”. – Latvian Herald, No.176, 03.11.2006. – [come into force on 01.01.2007.]
3. Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. – Official Journal, L 261, 06.08.2004.
4. Criminal Law. – Latvian Herald, No.199/200, 08.07.1998. – [come into force on 01.04.1999.]
5. 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 Council Framework Decision 2002/629/JHA. – Official Journal, L 101/1, 15.04.2011.
6. Immigration Law. – Messenger, No.169, 20.11.2002. – [come into force on 01.05.2003.]
7. Informatīvais ziņojums par 2012.gada cilvēku tirdzniecības novēršanas un apkarošanas rezultātiem Latvijā (Informative report on the results of preventing and combating trafficking in human beings in Latvia, reference year 2012). Available: http://www.iem.gov.lv/lat/nozare/Cilvektirdzniecibas_noversana/files/text/INFORMACIJA%20PRESEI%20-%20CT%20REZULTATI%202012%20-%20INFO.pdf – [see: 18.09.2013.]
8. Law “On Residence of a Victim of Trafficking in Human Beings in the Republic of Latvia”. - Latvian Herald, No.23, 08.02.2007. – [come into force on 22.02.2007.]

Pursuant to Council Decision No. 2008/381/EC of 14 May 2008, the European Migration Network was established, its objective shall be to meet the information needs of European Union institutions and of Member States' authorities and institutions, by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas. The European Migration Network also serves to provide the general public with information on these subjects.

The Network is composed by the European Commission and the contact points designated by the Member States. Each contact point establishes a national migration network.

The contact point of each state prepares studies, whose topics have been set in the respective annual programme of activities. The topics of studies are related to the area of migration of third-country nationals.

The Latvian Contact Point of the European Migration Network is the Office of Citizenship and Migration Affairs.

Contacts:

Čiekurkalna 1. line 1, b-3,
Riga, Latvia, LV-1026
Telephone: +371 67219492
Fax: +371 67219431
E-mail: emn@pmlp.gov.lv
Web page: www.emn.lv

Author:

Kristīne Bērziņa, Expert of the Latvian Contact Point of the European Migration Network

Expert:

Vita Kozuliņa, Senior Desk Officer of the Asylum Affairs Division of the Office of Citizenship and Migration Affairs

Reviewed by:

Jānis Citkovskis, Deputy Head of the Office of Citizenship and Migration Affairs