CHALLENGES IN COMBATING THE TRAFFICKING IN HUMAN BEINGS IN THE CONTEXT OF MIGRATION FLOWS – STRATEGY FOR IMPROVED APPROACH IN IDENTIFICATION OF VICTIMS AMONG MIGRANTS

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The paper gives overview on the current state of play in combating the Trafficking in Human Beings in Europe. It evaluates the efficiency of the existing EU approach for contesting this phenomenon in the context of mixed migration flows. The paper identifies the main reasons for low number of registered victims of human trafficking among irregular migrants in the transit countries through the experiences of the countries along the so-called “Western Balkans Migration Route”. In addition, it offers a view on possible actions for improvement in identifying victims and potential victims among migrants in transit countries.

Key words: combating, Trafficking in Human Beings, migration, victim, migrants, European Union, Western Balkans Migration Route, transit countries.

1. INTRODUCTION

Problem Actualization. The world faces many global threats that have significant impact on security, but not many of them unite the countries in their willpower to respond jointly and decisively as
Trafficking in Human Beings (THB) does. It is a multidimensional threat that not only reinforces other types of organized crime and endangers global health, but also deprives the most valuable fundamental rights and violates the human dignity. Moreover, in most cases it targets the most vulnerable categories, women and children.

This, along with the fact that it affects all countries, regardless if they are developed, developing or underdeveloped, strengthens the unity not only between the states, but also with the non-state actors in their determination to take joint action against it. Having that on mind, it is not a surprise that unlike some other threats where there is a lack of international consensus on determining priorities, approach, in some cases even in agreeing universally accepted definition of the threat (such as terrorism), the fight against THB is one of the best structured areas in terms of widely accepted, precisely defined and standardized approach.

Subsequently, broadly supported and efficient tool was introduced, which is first global legally binding instrument with an agreed definition on trafficking in persons. Alignment of national approaches has been secured, along with appropriate set of requirements for creating national referral mechanisms.

In Europe, the instrument is additionally strengthened by EU legislation. The EU approach is built on a compact ground, based on international (UN) instruments, reinforced with variety of additional EU tools and relied on coordination and coherence upon which National Mechanisms are built. It is also accepted by non – EU countries, so it can be considered as European approach.

While it achieves solid results in combating domestic THB (within the countries and within EU), current EU approach struggles in combating transnational type of THB, particularly in delivering expected results in identification of victims of THB among the migrants.

Numbers of prosecutions and convictions of traffickers and number of identified victims on European level in the past years did not correspond to migration trends, particularly due to the fact that nearly half of the registered victims are EU citizens and the number of pros-
executions and convictions of perpetrators remained low. Although on a per-capita basis the EU’s overall detection rate in 2016 was amongst the highest in the world, it didn’t follow the developments in the irregular migration since those 11,385 victims were registered in the year when number of detected illegal crossings of EU external border reached more than a half million (2016 – 511,046), and year after almost two million illegal crossings were detected (2015 – 1,822,337).

These indicators urge on immediate action. In order to do that and to determine the further steps for improvement it is necessary to identify the main reasons for this trend and to answer the question is it result of National Mechanisms failure to consistently follow and implement EU requirements, or the EU approach itself needs certain adjustments.

2. RESEARCH RESULTS

1. GENERAL OVERVIEW ON NATIONAL SYSTEMS FOR COMBATING THE TRAFFICKING IN HUMAN BEINGS IN THE WESTERN BALKANS. All Western Balkans (WB) countries clearly stated their aspiration to join EU. Although they are formally at different levels of EU integration, countries are at very similar level in the area of Justice, Freedom and Security, especially in the field of Border Management and Fight against Organized and Serious Crime. This is largely due to the fact that apart from Albania all the other countries derived from former Yugoslavia, having same legislation basis as starting position, all six WB countries committed to full EU accession and finally most of the international and regional projects aimed to strengthen national capacities in alignment with EU standards includes all six countries as beneficiaries.

Therefore, in the past decades a solid platform has been developed and used for continuous cooperation, exchange of information and experiences, joint actions and mutual assistance in the process of achieving EU and international standards in the past decades.

The area of Fight against the THB is no exception. All WB countries are dedicated to efficient fight against the THB, all receive similar support in strengthening the national capacities and as a result,
all of them developed similar national capacities for combating THB. National systems are set in line with the international standards and requirements, consisted of all elements necessary for strategic planning, implementation, monitoring and evaluation of the activities in all areas - prevention, prosecution and protection of the victims of THB. International cooperation in this area is on a very high level not only between the WB Countries, but also in the wider region.

It is implemented both on strategic and on operational/expert level, through regular meetings, exchange of experiences, mutual assistance and operational cooperation. Both state authorities and National Rapporteurs issue regular Annual Reports and the progress is evaluated by relevant bodies. According to the US State Department’s Trafficking in Person Report from 2020, WB countries are classified on Tier 2, which is also an overall trend for the last decade.

Table 1. Trafficking in Persons Report tier placements of WB Countries 2011-2020, based on US State of Department’s Annual Trafficking in Persons Reports

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Evaluation Reports indicate that there is a lot of room for further improvement, but also confirm the continuous progress and significant efforts by national authorities of WB countries in the area of fight against THB. The progress is visible not only by the number of detected victims, but also in activities taken in other areas as noted in the Reports (rising awareness, rehabilitation of victims etc.).

The total number of identified victims of THB in WB in 2018 was 185: Serbia – 76, Albania – 60, Bosnia and Herzegovina – 36, North Macedonia – 9, Montenegro – 4\(^{106}\).

Despite these positive indicators, if analyzed more thoroughly the overall trends do not look so optimistic. Namely, in the same period the region was severely hit by the migration crisis. According to Frontex, in 2015 and 2016 combined the region recorded almost 900,000 detected illegal crossings. Furthermore, the “WB Migration Route” has been opened for legal transit since 2015 until March 2016, in which period North Macedonia registered nearly 800,000 migrants that met conditions for entry and transit. And finally, most of the identified victims in this period were either domestic or citizens of neighboring countries. GRETA Country Reports from that period among the other urge WB countries, especially Serbia and North Macedonia, “to pay increased attention to detecting potential victims of trafficking among migrants and asylum seekers” and that “there are concerns that efforts to identify victims of trafficking have diminished as the authorities, in particular the Border Police, have been overwhelmed by the migration situation”. Further improvements of national capacities were undoubtfully needed in many areas, but was that the main reason for such a small number of identified victims in the WB countries? Would the fully developed, 1st Tier National System produce significantly higher numbers of identified victims among

\(^{106}\) Trendovi i izazovi u borbi protiv trgovine ljudima na Zapadnom Balkanu. URL: https://www.astra.rs/trendovi-i-izazovi-u-borbi-protiv-trgovine-ljudima-na-zapadnom-balkanu/
the migrants or there are other factors that needs to be taken into consideration?\textsuperscript{107}

Proper identification of reasons why potential victims among the migrants are “invisible” for the authorities in transit countries is crucial in order to determine proper course of action that will strengthen the international mechanism, and more importantly, to rescue, protect and rehabilitate as many victims as possible.

2. IDENTIFICATION OF VICTIMS OF TRAFFICKING OF HUMAN BEINGS ALONG WESTERN BALKANS ROUTE.

The number of identified victims among the migrants in WB countries in the past period was low. Since the solid development of national systems has been recognized and verified as described above, the next question is if it is implemented properly into the practice and one of the ways to do that and to determine how exactly low the number of identifications was is to compare it with better developed systems. Part of the “WB Migration Route” are not only the WB Countries, but also EU Member States. In 2020 TIP Report of the US State of Department some of them are placed also on Tier 2 (Greece, Bulgaria, Croatia, Hungary). Romania and Bulgaria are among the TOP 4 EU countries that reported most registered victims in the period 2017-2019. In the period 2011-2015 Romania identified 4622 victims of THB, out which only 15 foreign nationals. Among those 15, only 1 was from non-European country. There is no information for identified victims among the foreigners in Bulgaria in the same period. In 2013 and 2014, as result of the humanitarian crisis triggered by the conflicts in Syria, nearly 18,000 persons applied for asylum in Bulgaria, but there were no identified victims among the asylum seekers.

Croatia, Slovenia and Austria are directly affected by the trends on the WB Route and although not formal part of the region, they

\textsuperscript{107} Western balkan route URL: https://frontex.europa.eu/along-eu-borders/migratory-routes/western-balkan-route/
are considered as part of the route and transit countries toward the Western European countries (Austria is both transit and destination country). In the period 2015-2019 Croatia identified 200 victims, out of which 86 foreigners. However, among them only 6 could be connected with the migration flow on the WB Route (3 from Pakistan, 2 from Afghanistan and 1 from Nigeria). Slovenia and Austria are placed on Tier 1, and according to GRETA Evaluation Reports in the period 2013-2016 Slovenia identified 119 victims of whom 114 were foreigners, all from European countries (GRETA (2017)38, p.7), while in the period 2015-2018 Austria identified 1226 victims of THB. Victims mainly originated from Eastern Europe, Asia and Africa, but it is not clear how many of them can be connected with the WB Route since data are not disaggregated by nationality (GRETA (2020)05, p.9). Finally, EU’s overall detection rate in 2016 on per-capita basis reached 2.2 per 100,000 which was amongst the highest in the world.

However, this number was achieved in a year when number of detected illegal crossings of EU external border reached more than a half million (2016-511.046), and year after almost two million illegal crossings were detected (2015 – 1.822.337). Moreover, the biggest contributors in the number of detections were UK and Netherlands, which are predominantly destination countries, as well as Bulgaria and Romania, which are mainly countries of origin, and which, according to the GRETA Reports, in 2013 and 2014 detected in total 1 foreign victim from non-European country combined. Obviously, the increase of number of registered victims in EU does not follow the developments in the area of irregular migration and recent migration crisis and this constatation applies not only to EU, but entire Europe.

Based on this, it is evident that in terms of identification of victims among the migrants, trends in WB Countries does not differ from the trends in EU MS and in entire Europe. Deeper analysis on various relevant Country Reports on TiP indicates that systems are at various level and they face various specific challenges in combating THB, but when it comes to combating THB in the context of
migratory movements the efficiency also largely depends on the fact if it is a transit or destination country.

3. CHALLENGES IN COMBATING THE TRAFFICKING IN HUMAN BEINGS IN TRANSIT COUNTRIES. The biggest challenge for transit countries in combating THB in migration flows is the first step – identification of the victim of THB. Without proper identification, large part of the National System (in the part of prosecution and protection) becomes useless since there is no one to prosecute or to protect. Some non-state actors find the reasons in lack of interest or insufficient training of the law enforcement agencies, low awareness and failing to recognize indicators for potential victims, which is not a case. Having well developed, efficient National Mechanism for combating THB is obviously ultimate goal for every country and activities in mentioned areas are essential part of every relevant National Strategy. Real causes for this challenge lay in the specifics of the transit countries.

Many factors combined contribute to low numbers of identified victims of THB, but among the most important ones are insufficient time for identification and insufficient cooperation from migrants - due to characteristics of THB as a crime, migrant goals and specifics of the transit countries. In the area of prosecution, lack of element of exploitation significantly decreases number of convicted traffickers.

3.1. Insufficient time for identification. Formal identification of victims of THB is a process that takes time, and time is a resource that in most cases authorities in the transit countries does not have at their disposal. Initial identification of presumed victims faces same challenges. Countries accommodate migrants in open type facilities (reception centers, asylum centers, shelter houses, etc.), while detention is applied only when necessary and in individual cases. Persons can leave those facilities anytime and this is what happens in transit countries on a regular basis, regardless of the formal status of the person. The average time of their stay in such facilities depends on various factors (weather, health conditions, personal reasons – mi-
grants are waiting for the rest of their group or money transfer from relatives, etc.). However, most of them leave the facility as soon as, in their opinion, conditions are met to continue their trip to Western Europe. This interrupts all ongoing processes (educational, support processes, asylum procedures etc.), including the process of identification.

Period of stay in the centers in various transit countries also differs due to other factors - size of the country, living conditions and opportunities to earn money on the grey market, possibilities to connect with smugglers, etc. In the countries along WB Route migrants stay longer (some of them for years) in Turkey, Greece, Serbia, and Bosnia and Herzegovina (in Bosnia mainly due to significantly strengthened measures on Croatian border), while they stay much shorter in Albania, North Macedonia and Montenegro. In terms of identification of victims of THB, authorities in the first group of countries have more time to work with the persons and consequently have bigger numbers of identified victims.

3.2. Insufficient cooperation from migrants. In most cases migrants are reluctant to cooperate with the authorities due to various reasons, both personal and practical.

First set of reasons is connected with the characteristics of THB as type of crime. In order to minimize the risks during the transport, traffickers aim not to show the real intentions until reaching the destination point. In such cases, in the phase of transit migrants are not aware that they are possible victims of HT. Even if authorities recognize indicators, they are not able to obtain more information since migrants believe that traffickers are only smugglers that help them to reach destination point. Biggest challenge for authorities and NGO staff in these situations is to convince the persons that they are exposed to risk. These attempts are mostly with modest success, and the best that competent authorities can do is to act success, success, so authorities can only act preventively, to raise persons awareness, and, if the perpetrator is available, to the law
enforcement to prosecute him according to other charges (i.e. for human smuggling).

Migrants also decide to remain “invisible” from practical reasons. In such cases they are aware of the fact that they are exploited during the transit, but they don’t cooperate either because they are afraid that entire process will delay their travel to destination country, or they accept their exploitation (sexual, labor exploitation, exploitation through their involvement in criminal activities) as a mean to reach desired destination. Also, sometimes they decide to remain silent because of their local community or the group they are traveling.

In all cases, main reason for their reluctance for identification is that it will prolong their stay in the transit country, which is not their interest. Moreover, they are not willing even to reveal their real identity, since they are afraid that it will decrease their chances to obtain protection and legal stay in desired destinations and they might be returned in some of the transit countries. Once they reach their final destinations these persons are much more cooperative with the authorities of destination countries, they reveal their identity and speak openly about their experiences. All of these, in addition to the fact that they stay there for a longer period, makes the identification process in countries of destination much more easier than in the transit countries.

3.3. Lack of element of exploitation. This factor derives from previous two and it’s mostly connected with the formal classification of the cases. In cases where exploitation starts at the destination point this element is lacking, while in others it is hard to prove it due to insufficient time and reluctance of potential victims to cooperate. Migrants still have full access to medical, humanitarian and other support needed, especially the vulnerable categories, and potential traffickers might be prosecuted and sentenced upon charges for other crimes. Nevertheless, such cases are not counted in official HT statistics, which is the reason why the lack of the element of exploitation needs to be considered as a factor for the low number of identified victims.
3. CONCLUSIONS AND FURTHER RESEARCH PERSPECTIVES

Considering the connections between THB and migration, the extreme vulnerability of migrants and anticipated number of victims among them, the number of identified victims of THB among the migrants in Europe is extremely low. Although the EU’s overall detection rate per capita is amongst the highest in the world, it is mostly due to the identified domestic victims of THB or foreign victims that are not directly connected with the recent migration crisis.

Combating THB in the context of migration movement largely depends on timely identification on victims and initial identification of presumed victims. Failure in this area means that other capacity of the systems can’t be used regardless how well developed they are. The analyses suggest that despite the diversities, transit countries face common challenges in identification of victims, primarily due to lack of time and lack of cooperation from the migrants caused by their desire to reach their destinations as soon as possible. Formal identification brings many benefits for them in the transit country, but this is not in line with their ultimate goal to arrive in Western Europe.

The EU approach (that can also be considered as joint European approach) to the fight of THB provides solid platform for combating this type of crime. However, it needs adjustments in order to meet current challenges, especially in identification of victims among migrants, trough measures necessary for eliminating the roots for their reluctance to cooperate while in transit countries.

In order to achieve that, steps to regain migrant’s thrust needs to be taken. In that direction, measures in following areas might be considered:

Further support of National Referral Mechanisms: This measure is necessary in order to maintain and improve the capacities for rising awareness and for efficient initial identification of possible victims, quality of rehabilitation process and protection.

Increased formal use of Transnational Referral Mechanism: Regardless how well-developed are, National Referral Mechanisms es-
especially in the transit countries can hardly complete the process of formal identification of victims and prosecution of traffickers without intensive international cooperation because of the reasons mentioned above. In most cases, contribution of authorities from two, three, even more countries is necessary for efficient outcome.

Increased joint operational activities in dismantling Organized Criminal Groups in the area of THB, coordinated or supported by relevant EU and international Agencies.

Strengthened border control: Although repressive, this area improves the possibilities for more efficient identification through detection and prosecution of perpetrators and providing more time for identification of potential victims.

Measures and activities in areas mentioned above would increase the efficiency of fight against THB through decreasing the capacities (human and financial) of OCG’s, raising the awareness among migrants and enhancing their resilience. The key for success remains the cooperation, especially between transit and destination countries.

**LITERATURE**


мігрантів у країнах транзиту уздовж так званого “Західнобалканського міграційного шляху”.
Окрім зазначеного пропонується напрямки удосконалення процесу ідентифікації жертв і потенційних жертв серед мігрантів у країнах транзиту.

Ключові слова: протидія, торгівля людьми, міграція, жертва, мігранти, Європейський Союз, Західнобалканський міграційний шлях, країни транзиту.