



CHALLENGES OF RECOGNITION OF THE STATUS OF HUMAN TRAFFICKING VICTIM IN THE REPUBLIC OF SERBIA



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Abstract

Challenges of Recognition of the Status of Human Trafficking Victim in the Republic of Serbia

Introduction

Trafficking in human beings is a global phenomenon encountered with by almost all countries in the world – either as countries of origin, transit, or final destination for the victims. Due to the complexity of the very phenomenon, numerous United Nations and Council of Europe's bodies, as well as international and national NGOs are involved in working on the prevention, suppression and punishment of this criminal offence. ASTRA, founded in 2000, was the first NGO in Serbia to recognise and highlight the problem of trafficking in human beings. Since its establishment, ASTRA has dealt with this problem comprehensively and its work has been aimed at the prevention, identification, and prosecution of the perpetrators of human trafficking, support to the victims, including empowerment and reintegration into the society, as well as the analysis of operation of the institutions responsible for the assistance and support to this category of victims. From 2002 to the end of 2021, ASTRA identified 562¹ victims of trafficking in human beings.²

The most important international documents in the field are the Palermo Protocol³ and the Council of Europe Convention on Action against Trafficking in Human Beings that define the term of trafficking in human beings.⁴

The necessity to put an end to human trafficking in Serbia has also been recognised by the European Union which included trafficking in human beings in the section of Chapter 24⁵ which deals with organised crime. The first strategy to combat trafficking in human beings in the Republic of Serbia was adopted in 2006, while the Second Strategy of the Prevention and Suppression of Trafficking in Human Beings, Especially

¹ The total number of victims of human trafficking identified by ASTRA, including 2021.

² The statistical data pertaining to the operation of the ASTRA SOS Hotline and direct assistance to human trafficking victims for 2020, available at: <https://drive.google.com/file/d/ISOyBQliHx8QPBIcdyytsz3wAkeczZTk/view>.

³ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol)

⁴ "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." Law on Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings ("Official Gazette RS – International Treaties", no. 19/2009), article 4.

⁵ Chapter 24 concerns justice, freedom and security.

Women and Children and the Protection of Victims for the Period 2017-2022 was adopted in 2017, with the aim to “secure a comprehensive and continuous response of the society to trafficking in human beings”.⁶ The crime of trafficking in human beings is also envisaged by Serbian criminal legislation and the commission thereof is punishable by three to twelve years of imprisonment.⁷

In addition to the police, public prosecutor’s offices and courts, the most important institution which deals with the protection of human trafficking victims in Serbia is the Centre for Human Trafficking Victims’ Protection (hereinafter: Centre) the operation of which was analysed by ASTRA in a number of its earlier reports and publications, and which represents the foundation for the development of this public policy document.⁸

Centre for Human Trafficking Victims’ Protection

In line with the Law on Social Care, Government of the Republic of Serbia, by means of a decision, founded the Centre as the social protection institution responsible for identification of human trafficking victims and coordination of their protection.⁹ The Centre consists of two organisational units – Coordination Service for the Protection of Human Trafficking Victims and Shelter for Human Trafficking Victims which started to work only in 2019. The supervision of the Centre’s operation is performed by the ministry competent for social protection.

The Centre has its own Statute¹⁰ which regulates the issues pertaining to its scope of activity, management, operation, appointment and dismissal of the director, as well as its Rulebook on Organisation and Systematisation of the Centre’s Affairs (hereinafter: Rulebook) which more closely defines internal organisation, description of the tasks and professional positions.¹¹

The Centre is managed by its Managing Board¹², while the Director is responsible for the Board’s operation.¹³ Supervision over the Centre’s operation is performed by the Supervisory Board.¹⁴

⁶ Strategy of the Prevention and Suppression of Trafficking in Human Beings, Especially Women and Children and the Protection of Victims for the Period 2017-2022 (“Official Gazette RS”, no. 77/2017).

⁷ Criminal Code (“Official Gazette RS”, no. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 & 35/2019) article 388.

⁸ ASTRA, Assessment of the National Referral Mechanism for victims of trafficking in the Republic of Serbia, 2019

⁹ Official Gazette RS no. 16/2012 of 7 March 2012.

¹⁰ Statute of the Centre for Human Trafficking Victims’ Protection.

¹¹ Rulebook on Organisation and Systematisation of the Affairs of the Centre for Human Trafficking Victims’ Protection.

¹² Managing Board is composed of five members, appointed and dismissed by the minister competent for social protection. *Ibid*, articles 18-24.

¹³ Director is appointed by the minister competent for social protection, after a public competition, and upon an opinion provided by the Managing Board. *Ibid*, articles 25-33.

¹⁴ Supervisory Board is composed of three members appointed by the minister competent for social protection. *Ibid*, articles 38-41.

In their direct work with human trafficking victims, Centre is supposed to implement the Standard Operating Procedures in dealing with human trafficking victims (hereinafter: SOP) developed by the Office for Coordination of Activities in Combating Trafficking in Human Beings within the Directorate of the Police of the Ministry of the Interior of the Republic of Serbia.¹⁵ The SOP include the rules and procedures of identification, referral and protection of human trafficking victims in both criminal proceedings and compensation litigations.

Identified Problems

By analysing the Centre's operation, while also working with human trafficking victims, ASTRA has identified **three key issues** that impact realisation of rights for victims of human trafficking.

1. Victims' Identification

As mentioned earlier in the text, identification of human trafficking victims is performed by the Centre in two phases. In case it is suspected that a person is a human trafficking victim, the preliminary identification is initiated. For this purpose, employees of the Centre use the list of indicators developed with the support by the OSCE Mission to Serbia in 2021. Up to that point, the Centre had used the national preliminary indicators for identification of human trafficking victims.¹⁶ The list of the indicators that the Centre currently uses is not available to public and cannot be found on the Centre's internet page.

In case the circumstances from a report indicate that the person is preliminarily a victim of human trafficking, an employee of the Centre should go and hold an interview with the victim within 24 hours. Using the format of structured interview, and paying attention to the physical and psychological condition of the victim, the worker from the Centre adopts a decision, using the internal form for findings and opinions, in which he/she can affirm that the person suspected of being a human trafficking victim is indeed a victim, or is not a victim of human trafficking.¹⁷

Here we encounter the first identified issue/problem, namely, the document adopted by the Centre is a finding and opinion, and in case it does confirm that that the person is a human trafficking victim, this serves as the basis for the victim to exercise certain rights (satisfaction of fundamental living requirements such as food, clothes, shoes,

¹⁵ Standard Operating Procedures of the Office for Coordination of Activities in Combating Trafficking in Human Beings.

¹⁶ Human Trafficking Indicators of the UN Office on Drugs and Crime (UNODC); Human trafficking Indicators of the International Labor Organisation (ILO); Indicators for Preliminary Identification of Human Trafficking Victims for the system of social protection for children; Indicators for Preliminary Identification of Human Trafficking Victims for the system of social protection for adults; Indicators for Preliminary Identification of Human Trafficking Victims for the system of education; Indicators for Preliminary Identification of Human Trafficking Victims for the police.

¹⁷ Standard Operating Procedures of the Office for Coordination of Activities in Combating Trafficking in Human Beings, p. 29.

urgent medical care, or appropriate safe accommodation, etc.). If, on the other hand, the Centre worker does not confirm that such person is a human trafficking victim, then he/she cannot exercise any of these rights.

The Centre is a holder of public authorities¹⁸ and as such, it should adopt decisions in its work, just like administration authorities, rather than findings and opinions. In other words, during identification process, the Centre worker should establish by means of a decision, that the person in question is a victim, thus awarding the status of human trafficking victim to the person. Based on the confirmed status contained in the Centre's decision, the person would in turn be enabled to exercise his/her rights.

Unlike the Centre, when deciding on the rights of their beneficiaries, CSWs adopt decisions, while when asked to perform assessment by the court, they adopt findings and opinions.

2. Right to Appeal

The second identified problem is in direct connection with the first one. As the Centre adopts findings and opinions, these acts are not subject to re-examination by a second instance authority. A footnote to the SOPs mentions that in case it has been established that the person is not a human trafficking victim, the Centre would once again assess the bases for such decision, yet that this is not a formal appeal as stipulated by administrative procedure.¹⁹

The right to legal remedy is a constitutionally guaranteed right that the persons for whom the Centre has established they are not victims, are denied. For this reason, it should be envisaged for the Centre to adopt decisions that can be appealed against in second instance proceedings. After the decision by a second instance authority, the victim should additionally be allowed to initiate an administrative dispute before administrative court, as well as to eventually file a constitutional complaint to the Constitutional Court.

However, the persons who are not designated human trafficking victims lack this option now, and they would not have it in the future either, since the development to the new Social Protection Law is currently underway and in the latest draft of this Law, it is stated that the Centre still adopts findings and opinions, just like before.²⁰

On the other hand, CSW beneficiaries are entitled to file an appeal against CSWs'

¹⁸ Law on State Administration ("Official Gazette RS", no. 79/2005, 101/2007, 95/2010, 99/2014, 47/2018 & 30/2018 – other law), article 3.

¹⁹ Standard Operating Procedures of the Office for Coordination of Activities in Combating Trafficking in Human Beings, footnote no. 76.

²⁰ Draft Law on Social Protection, article 53.

decisions to the Belgrade Centre for Social Work when they believe that certain right has been denied to them.

3. Disciplinary Action against Workers of the Centre

All the rights pertaining to the employment of the workers are decided on by the director, and the Centre currently operates in line with two rulebooks – Rulebook on Organisation and Systematisation of the Affairs and Positions within the Centre for Human Trafficking Victims’ Protection and Rulebook on Professional Discipline and Conduct of Employees in the Centre for Human Trafficking Victims’ Protection. Both these rulebooks stipulate that employees of the Centre are obliged to exercise due attention in their interactions with beneficiaries of the Centre²¹ as “rough, indecent, rude, insulting or in another way inadequate behaviour”²² is prohibited.

To breach this obligation and prohibition, according to the Rulebook, constitutes a failure to respect professional discipline, and may result in termination of the employment contract.

Additionally, the Rulebook stipulates that in the event of professional discipline being breached, every employee of the Centre is obliged to report it to the director.²³ So, only employees of the Centre are able to report inappropriate behaviour of another employee to the director, while there is no option for a breach of professional discipline by an employee of the Centre to be reported **by a beneficiary**. Accordingly, beneficiary whose rights are potentially infringed through an unwarranted or prohibited behaviour of an employee, **lacks legal provision** to report such infringement to the director of the Centre and to demand engagement of another case manager until the potential breach of professional obligation has been examined. It is unclear why such possibility has not been envisaged for beneficiaries, bearing in mind that operation of the Centre is primarily oriented towards beneficiaries and that they are actually the ones whose rights are most commonly infringed during the identification procedure.

Draft Law on Social Protection

As has already been mentioned in the text, a new Law on Social Protection is currently being prepared, including some questionable solutions pertaining to the Centre for Human Trafficking Victims’ Protection.

Firstly, the introductory remarks contain reference to establishment of the status of human trafficking victim as one of the Centre’s professional tasks, while the

²¹ Rulebook on Professional Discipline and Conduct of the Employees in the Centre for Human Trafficking Victims’ Protection, Article 6.

²² *Ibid*, Article 7, Paragraph 1, Item 2

²³ *Ibid*, Article 12.

subsequent article which more closely defines the tasks performed by the Centre does not mention that the Centre establishes the status of human trafficking victim after the finalisation of the identification procedure, but it rather “recognises” the victims.²⁴ Earlier in the text it has been mentioned that it is necessary for the Centre to perform identification and to subsequently establish the status of human trafficking victim. Similarly, the Draft Law retains the provision according to which the Centre adopts findings and opinions, thus depriving the persons who have not been identified as human trafficking victims to appeal against such decision, since no right of appeal against findings and opinions has been envisaged.

Another problematic solution proposed in the Draft stipulates that the Centre “provides services of assessment and planning, the service of emergency accommodation of human trafficking victims and other services”.²⁵ In case this Draft is adopted, the Centre would also provide social protection services – which is not the current practice. Namely, the Centre’s Statute stipulates that it “coordinates the activities of social protection services’ provision”²⁶ and thus cooperates with CSWs and other agencies. Accordingly, the Centre, after identification of a person as a human trafficking victim, should refer the person to other social protection service providers who would provide the services in his/her best interest. The proposed legal solution is in direct contradiction to the Centre’s Statute, and it would give the Centre much wider competences than it currently has. The authority which realises identification of victims should not also provide services, but instead make plan and assessment of the services (as stipulated by the Government’s Decision on the establishment of the Centre) about to be provided by other social protection institutions, while the Centre itself would retain its primary competence concerning identification of human trafficking victims.

RECOMMENDATIONS

1. Draft Law on Social Protection to be amended so that Article 53 should stipulate that the Centre “performs identification procedure to collect data with the purpose of establishing the status of human trafficking victim for the person, hereinafter, identification of human trafficking victims”.
2. The same article of the Draft Law should specify that the Centre “performs assessment of the condition, needs, strengths of, and risks for the victim of a human trafficking, as well as coordination of the provision of the necessary assistance and support”.
3. “Identification of human trafficking victims represents a special professional procedure of assessment which determines presence of general and specific indicators of the person being a human trafficking victim, upon which the person **receives the status of human trafficking victim.**”

²⁴ Draft Law on Social Protection, Article 53

²⁵ *Ibid*, Article 52

²⁶ Statute of the Centre for Human Trafficking Victims’ Protection, Article 9, Item 4.

4. “Based on the performed procedure from the previous paragraph, **professional worker adopts the decision, that the beneficiary may appeal against within 15 days of the decision’s adoption, to the ministry competent for social protection, according to the rules of general administrative procedures.**”
5. The Centre for Human Trafficking Victims’ Protection provides the findings and opinion, upon a special demand by the court, investigation authorities, other authorities and institutions, **civil society organisations**, pursuant to this Law and special regulations.”
6. It is necessary to amend article 15 of the Rulebook on Professional Discipline and Conduct of the Employees of the Centre for Human Trafficking Victims’ Protection so that, in addition to any employee of the Centre, **both the person in the process of identification and civil society organisations** who reported the existence of a potential victim to the Centre, may report prohibited or unprofessional behaviour of an employee of the Centre.
7. Amend Article 63 of the Law on Foreigners so that **civil society organisations** are **also** given option to file application for temporary residence of foreign nationals who are victims of trafficking in human beings on the territory of the Republic of Serbia.

Introduction

Trafficking in human beings represents a global phenomenon extensively discussed for more than two decades now at the highest level of international and national political decision-making. In addition to numerous UN and Council of Europe's bodies which have been engaged in the suppression of this phenomenon, a major role in identification of, and provision of assistance and support to victims of this crime is played by local and international NGOs, whose engagement in the field is invaluable for the prevention of this global problem.

Complexity of the phenomenon, number of victims which increases each year, as well as the global social and political situation marked by wars, migrations and increased poverty, led to this problem being recognised in a number of international documents.

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol)¹, is the most important international initiative aimed at the prevention and suppression of the crime of human trafficking, and is related to the UN Convention against Transnational Organised Crime (UN Convention). In addition to defining what human trafficking involves², Palermo Protocol confirms that the phenomenon represents a criminal activity transnational in character, which requires special protection of minors from human traffickers, and that the very consent of a victim in a situation of human trafficking has no weight whatsoever.

The Council of Europe Convention on Action against Trafficking in Human Beings (CE Convention) similarly states that "‘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

¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol).

² Trafficking in human beings includes "‘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." Law on Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings ("Official Gazette FRY – International Treaties", no. 6/2001), article 3.

organs“.³ Criminal offence of trafficking in human beings is also envisaged in Serbian criminal legislation and the commission thereof is punishable by three to twelve years of imprisonment.⁴

Based on the provided definitions, it is clear that trafficking in human beings is far from being a problem faced with by only one country, be it the country of origin, transit, or destination for human trafficking victims, but rather a global problem that must be tackled by the entire international community.

When we talk about the Western Balkans, ASTRA was the first NGO in Serbia, founded in 2000, which recognised and highlighted the importance of the problem of trafficking in human beings. Since its establishment, ASTRA has dealt with this problem comprehensively, i.e. tackled both the different forms of human trafficking and different categories of victims – women, children and men. It has simultaneously worked on the prevention, education, raising public awareness, provision of direct support to victims, reintegration, research and reporting, as well as public advocacy on the strategic and operational levels, while also supporting the development of a functional and effective system of suppressing the trafficking in human beings, which fully respects the human rights of victims.

Considering that Serbia is a country of origin, transit and destination for human trafficking victims, ASTRA's work is focused on identification and criminal prosecution of human traffickers, comprehensive prevention of the crime and support to victims, as well as analysis of operation of the institutions responsible for assistance and support to this category of victims. From 2002 to 2021, ASTRA identified the total of 562⁵ human trafficking victims.⁶

The necessity to put an end to human trafficking in Serbia has also been recognised by the European Union which included trafficking in human beings in Chapter 24 which deals with justice, freedom and security, in the section dealing with organised crime. The first strategy to combat trafficking in human beings in the Republic of Serbia was adopted in 2006, while the Second Strategy of the Prevention and Suppression of Trafficking in Human Beings, Especially Women and Children and the Protection of Victims for the Period 2017-2022 was adopted in 2017, with the aim to “secure a comprehensive and continuous response of the society to trafficking in human beings”.⁷

One of the most important state institutions responsible for identification of human

³ Law on Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (“Official Gazette RS – International Treaties”, no. 19/2009), article 4.

⁴ Criminal Code (“Official Gazette RS”, no. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 & 35/2019) article 388.

⁵ The total number of victims of human trafficking identified by ASTRA, including 2021.

⁶ The statistical data pertaining to the operation of the ASTRA SOS Hotline and direct assistance to human trafficking victims for 2020, available at: <https://drive.google.com/file/d/ISOyBQliHx8QPBIcdyytsz3wAkeczZTk/view>.

⁷ Strategy of the Prevention and Suppression of Trafficking in Human Beings, Especially Women and Children and the Protection of Victims for the Period 2017-2022 (“Official Gazette RS”, no. 77/2017).

trafficking victims on the entire territory of Serbia, is the Centre for Human Trafficking Victims' Protection (hereinafter: Centre), established in 2012 via a decision by the Government of the Republic of Serbia.⁸

In its operation thus far, ASTRA has analysed the Centre's operation a number of times, and these findings, inter alia, represent the foundation for the development of this public policy document.

The purpose of this document is to analyse the legal status of the Centre, manner of its operation, as well as the decision-making procedures and possibility of deliberating on a beneficiary filed complaint/appeal, but also to offer recommendations for the improvement of its work and operation. The very document is intended for the Ministry of Labour, Employment, Veteran and Social Affairs as the ministry responsible for the Centre's operation, as well as to all key actors in combating trafficking in human beings in Serbia.

The document is divided in three sections. The first includes an analysis of the institutional framework within which human trafficking victims in Serbia are identified; the second section identifies major problems in the Centre's operation, while the third and final section offers recommendations that could potentially improve the system of identification of and support to human trafficking victims.

⁸ After the adoption of the Regulation on the Network of Social Care Institutions (Official Gazette no. 16/2012 of 7 March 2012), the Government of the Republic of Serbia founded the Centre for Human Trafficking Victims' Protection via its Decision of 13 April 2012.

I. Institutional Framework

Combating trafficking in human beings in Serbia involves a great number of state authorities – starting from the police, public prosecutor's offices and courts, all the way to the Centre for Human Trafficking Victims' Protection which represents the pillar of social protection and holds the greatest responsibility for timely identification and adequate protection of human trafficking victims. For this reason, the following part of the text includes a short overview of the institutional framework of the Centre's operation, and also an analysis of the three aspects of Centre's operation where ASTRA has identified the greatest amount of the problems which have negative impact on realisation of the rights of human trafficking victims.

Centre for Human Trafficking Victims' Protection

In April 2012, in line with the Law on Social Protection, the Government of the Republic of Serbia founded, via a decision, the Centre for Human Trafficking Victims' Protection as the social care institution responsible for identification of human trafficking victims and coordination of the protection thereof.⁹

The Law on Social Protection, inter alia, regulates the activity of social protection, foundation and operation of social protection institution, as well as exercising of founding rights in such institutions. Thus social protection institutions "are founded with the purpose of realisation of rights in the field of social protection and provision of social protection services" and they may be founded by the Republic of Serbia, an autonomous province, local self-government unit, or other legal or natural person.¹⁰ Similarly, the founding rights pertaining to the appointment of directors, and managing and supervisory boards' members of the institutions founded by the Republic of Serbia are exercised by the ministry competent for social protection.¹¹

Thereby, the Centre is an independent social protection institution within the competence of the Ministry for Labour, Employment, Veteran and Social Affairs which was founded with the purpose of performing:

- The tasks of assessment of the condition, needs, and strengths of, as well as risks for human trafficking victims;
- Identification and provision of adequate support and assistance to the victims, so that they could recuperate and reintegrate in the society.¹²

⁹ Official Gazette RS no. 16/2012 of 7 March 2012.

¹⁰ Law on Social Protection ("Official Gazette RS", no. 24/2011), article 10.

¹¹ *Ibid.* article 11.

¹² Statute of the Centre for Human Trafficking Victims' Protection adopted on 24 May 2012.

In the Decision on the establishment of the Centre, it is stated that it:

- Provides accommodation services to human trafficking victims (emergency placement);
- Provides assessment and planning services to human trafficking victims;
- Provides counselling, therapeutic, social and educational services to human trafficking victims;
- Performs other tasks in line with the law and other regulations¹³.

The Statute provides a more comprehensive description of Centre's competences and responsibilities, so, among other things, it prescribes that the Centre is responsible for "the performance of assessment of the condition, needs, and strengths of, as well as risks to human trafficking victims, and, based on the indicators which indicate that a person is a human trafficking victim, also their identification, in line with the legal provisions in the domain of the registered activity, with the purpose of securing adequate assistance and support, as well as assessing other important persons in their environment".¹⁴

In addition to its obligation to identify human trafficking victims, the Centre also has competence over **coordination of the activities of social protection services' provision**, i.e. is obliged to **work on the referral of victims** to CSWs, institutions for placement of beneficiaries, and other social protection institutions, with the purpose of realising the protection measures and providing services.

Consequently, the Centre consists of two organisational units – Coordination Service for the Protection of Human Trafficking Victims and Shelter for Human Trafficking Victims. The Shelter for Human Trafficking Victims started its operation only in February 2019, seven years after the Centre had been founded.¹⁵

In addition to the competences, the Statute also regulates issues concerning activity, management, operation, appointment and dismissal of the director, and other issues relevant for Centre's operation.¹⁶ As regulated by the Statute, the Centre has its Director, Managing Board and Supervisory Board.

The Centre is managed by the Managing Board comprising five members, appointed and dismissed by the minister competent for social protection.¹⁷ Director is appointed by the minister competent for social protection, after a public competition, and upon an opinion provided by the Managing Board, and the director is responsible for Centre's operation and management.¹⁸ Supervision over operation of the Centre

¹³ Decision on the Foundation of the Centre for Human Trafficking Victims' Protection ("Official Gazette RS", 35/2012, available at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/odluka/2012/35/1/reg>

¹⁴ Statute of the Centre for Human Trafficking Victims' Protection, article 9.

¹⁵ Website of the Centre for Human Trafficking Victims' Protection, <http://centarzztlj.rs/o-ustanovi/>, accessed on 18 November 2021.

¹⁶ *Ibid*, article 1.

¹⁷ *Ibid*, articles 18-24.

¹⁸ *Ibid*, articles 25-33.

is performed by the Supervisory Board, consisting of three members appointed by the minister competent for social protection.¹⁹ Members of the Management and Supervisory Board have the right of their real costs being compensated, including per diems and travel expenses.²⁰

In addition to the Statute, the Centre also has the Rulebook on Organisation and Systematisation of the Centre's Affairs (hereinafter: Rulebook) which more closely defines internal organisation, describes the tasks and professional positions, and provides the quotas for work executors. Furthermore, the Rulebook more closely defines the purview of operation of the Service for Coordination organisational unit, as well as the scope of work of the director of the Centre.²¹

In addition to the Statute and Rulebook, the Centre each year at its webpage also publishes financial and work reports, which are subsequently submitted to the ministry responsible for social protection.²²

Another important document that the Centre implements in its work are the **Standard Operating Procedures in Dealing with Human Trafficking Victims (hereinafter: SOPs)**. Namely, the Council for Combating Trafficking in Human Beings at its session held on 25 January 2019, adopted the SOPs²³, the monitoring and implementation of which is realised by: Office for Coordination of Activities in Combating Trafficking in Human Beings within the Directorate of the Police of the Ministry of the Interior of the Republic of Serbia, National Coordinator for Combating Trafficking in Human Beings and the Task Force for implementation and monitoring of the Strategy of the Prevention and Suppression of Trafficking in Human Beings, Especially Women and Children and the Protection of Victims for the Period 2017-2022.²⁴

The SOPs "contain an overview of the activities pertaining to identification, referral, support and protection of human trafficking victims, including the assistance and support to human trafficking victims in criminal proceedings and realisation of property rights' claims, i.e. providing assistance in civil proceedings for compensation for damages, as well as voluntary repatriation of the victims, and the procedures through which these activities are realised".²⁵ The purpose of these procedures' adoption is the improvement in victims' identification, as well as improvement in the assistance and support to human trafficking victims. Even though the Centre implements the SOPs in its operation, such implementation is not obligatory.

The Centre initiates **the procedure of formal identification of a victim** in the event

¹⁹ *Ibid*, articles 38-41.

²⁰ Statute of the Centre for Human Trafficking Victims' Protection, article 24, 41.

²¹ Rulebook on Organisation and Systematisation of the Affairs of the Centre for Human Trafficking Victim's Protection.

²² Website of the Centre for Human Trafficking Victims' Protection <http://centarzztlj.rs/planovi-i-izvestaji-o-radu/>

²³ Conclusion of the Council for Combating Trafficking in Human Beings - adoption of the SOP, <http://www.mup.gov.rs/wps/wcm/connect/008955a6-9887-404e-87fd-bd2e8f3cca40/3+zakljucak+i+preporuke+SOP+1.pdf?MOD=AJPERES&CVID=mBNtGbo>

²⁴ Standard Operating Procedures of the Office for Coordination of Activities in Combating Trafficking in Human Beings, p. 9.

²⁵ *Ibid*, p. 7.

of circumstances which suggest that certain person is a presumed human trafficking victim. This procedure is **urgent** and performed by a professional worker of the Centre, and the general rule is for the worker to go in the field within 24 hours in order to perform **preliminary identification of the victim**. Immediately upon initiation of identification, the Centre informs the Ministry of the Interior and Centre for Social Work about this.²⁶ The Centre also has a significant role in **identifying the foreigners who are victims of human trafficking**, which is going to be further discussed in this text.

According to the publically available data pertaining to Centre's operation, since its establishment, it has had 730 clients and 460 solved cases.²⁷

²⁶ *Ibid*, p. 27.

²⁷ Website of the Centre for Human Trafficking Victims' Protection, <http://centarzztlj.rs/>, accessed on 20 December 2021.

II. Identified Problems

Since Centre's foundation in 2012, ASTRA has monitored its work, identified problems and provided recommendations for the improvement of the processes of victims' identification and coordination of their protection.

In its analyses, ASTRA has identified **three key problems** that human trafficking victims encounter in their interactions with the Centre: (1) adoption of Centre's decisions in the format of findings and opinions; (2) inexistence of a legal remedy to challenge Centre's findings and opinions; and (3) inability to complaint concerning the conduct of Centre's employees by human trafficking victims.

After the analysis of the problems and their impact on realisation of human trafficking victims' rights, recommendations for overcoming these problems were also provided, which in case they are acted on, would lead to a more comprehensive and adequate support by the Centre.

1) Identification of human trafficking victims

As is mentioned earlier in the text, one of the competences of the Centre is identification of human trafficking victims. The very identification is performed in two phases – **preliminary and formal identification**, and the entire process is defined in the SOPs.

a) Preliminary identification

Every person who has knowledge about a person being a presumed human trafficking victim, including the victim her/himself, may report this to the Centre, Public Prosecutor's Office, Ministry of the Interior, Criminal Police Directorate, or Centre for Social Work.²⁸ That is when the first phase of victim identification i.e. preliminary identification is initiated.

Participants in the preliminary identification of human trafficking victims include the police, centre for social work, civil society organisations, public prosecutors, judges, employees of asylum centres, labour inspectorates and consular offices, natural persons, as well as local teams (for combating human trafficking, migrations, security, prevention of domestic violence, etc.).²⁹ In the course of preliminary identification, participants should pay special attention to particularly vulnerable persons and

²⁸ *Ibid*, p. 22

²⁹ *Ibid*, p. 20.

particularly sensitive social groups, while, during the identification, they may use the existing indicators for identification of human trafficking victims.³⁰

Since July 2017, the Centre had applied the national preliminary indicators for identification of human trafficking victims³¹ the application of which has been obligatory under the Guidance of the Minister for Work, Labour, Veteran and Social Affairs.³² However, since 2021, the Centre has used the list of indicators developed with the support by the OSCE Mission to Serbia, which **has remained publicly unavailable** to this very day, and cannot be found at the internet page of the Centre.

The Centre also has the major role **in realisation of foreigners' right to temporary residence** in the Republic of Serbia, when it comes to the foreigners who are presumed human trafficking victims. Namely, should during the process of establishment of the identity of a foreigner, one presume that the foreigner is a human trafficking victim, the Centre reports this to the MoI and informs the foreigner about the conditions for being granted a temporary stay of 90 days in the Republic of Serbia. During this period, the Centre coordinates the protection of the human trafficking victim and, in cooperation with other institutions, secures safe accommodation, psychological and material assistance, access to emergency medical care, education for minors, translation and interpretation services.³³ Therefore, the Centre is **the only institution** which has the possibility of submitting a temporary residence application for a foreigner to the Ministry of the Interior, already during the preliminary identification of human trafficking victims.

b) Formal Identification

In case circumstances in the report indicate that the person is a presumed victim of human trafficking, worker of the Centre initiates the procedure of formal identification of the victim, **with the consent of such person**. The procedure is an **urgent, professional assessment intervention** in which it is determined whether the person is indeed a human trafficking victim.³⁴

Immediately after the report, and obligatorily within 24 hours, a worker from the

³⁰ Human Trafficking Indicators of the UN Office on Drugs and Crime (UNODC); Human trafficking Indicators of the International Labor Organisation (ILO); Indicators for Preliminary Identification of Human Trafficking Victims for the system of social protection for children; Indicators for Preliminary Identification of Human Trafficking Victims for the system of social protection for adults; Indicators for Preliminary Identification of Human Trafficking Victims for the system of education; Indicators for Preliminary Identification of Human Trafficking Victims for the police.

³¹ Human Trafficking Indicators of the UN Office on Drugs and Crime (UNODC); Human trafficking Indicators of the International Labor Organisation (ILO); Indicators for Preliminary Identification of Human Trafficking Victims for the system of social protection for children; Indicators for Preliminary Identification of Human Trafficking Victims for the system of social protection for adults; Indicators for Preliminary Identification of Human Trafficking Victims for the system of education; Indicators for Preliminary Identification of Human Trafficking Victims for the police.

³² Standard Operating Procedures of the Office for Coordination of Activities in Combating Trafficking in Human Beings, p. 21, footnote 52.

³³ Law on Foreigners ("Official Gazette RS", no. 24/2018 & 31/2019), articles 40, 62.

³⁴ Standard Operating Procedures of the Office for Coordination of Activities in Combating Trafficking in Human Beings, p. 23.

Centre should perform an on-site assessment of the condition, needs and strengths of, as well as of the risks for the presumed victim, and initiate the process of coordination of victim support in the field.

Professional worker of the Centre conducts with the presumed victim, and if the victim demands, also in the presence of a trusted person, the initial conversation in the format of a structured interview, at a safe location and establishing the relationship of trust. During the interview, the Centre worker is obliged to pay attention to the psychological and physical condition of the presumed victim, as well as to inform her/him of all the rights that she/he is entitled to.³⁵

During the identification, the Centre is obliged to inform the Mol – Team for the Suppression of Human Trafficking and the competent public prosecutor's office about the initiated identification procedure, as well as the competent CSW, police administration unit in accordance with the place of residence of the victim, and the organisation which referred the presumed victim to the Centre, about the adoption of the decision on initiation of identification procedure, all within 24 hours of the adoption of the decision.³⁶

Professional worker of the Centre decides on whether the person for whom it has been suspected that she/he is a human trafficking victim and which has been subject to the identification procedure, is indeed a victim of trafficking in human beings. Using the internal form for findings and opinions, in the process of identification the professional worker can reach one of the two following decisions:

1. That the person for whom it has been suspected that she/he is a human trafficking victim and which has been subject to the identification procedure **is not** a human trafficking victim; or
2. That the person for whom it has been suspected that she/he is a human trafficking victim and which has been subject to the identification procedure **is** a human trafficking victim.

Finding and Opinion contains data pertaining to the victim, situation of exploitation, the victim's opinion on her/his status, interpretation of the finding and opinion on whether the person is indeed a human trafficking victim, as well as a proposal for further support.³⁷

In case a participant in the preliminary identification (civil society organisation, public authority, international organisation, etc.), and/or the presumed victim **demand for the decision by the Centre's professional worker to be re-examined**, the Centre would **once again assess the foundations for their decision**. This would be further elaborated later on in the text.

³⁵ *Ibid*, p. 25, 26.

³⁶ *Ibid*, p. 27

³⁷ *Ibid*, p. 29.

The Centre always forwards the finding and opinion pertaining to the results of the realised identification procedure, to the MoI, competent public prosecutor's office and CSW, while it informs other participants, e.g. the civil society organisation which participated in the preliminary identification and referred the victim to the Centre, about the adopted decision.³⁸

Thus the act in which the Centre identifies human trafficking victims is a "Finding and Opinion", rather than a "Decision", and the first problem identified by ASTRA in operation of the Centre is related to this fact.

Namely, the Centre as a social care institution is a holder of public authority and a part of state administration, which is all stipulated by the Law on State Administration – "Certain state administration tasks may be conferred by law to autonomous provinces, municipalities, cities, city of Belgrade, public companies, institutions, public agencies and other organisations (hereinafter: holders of public authorities)".³⁹ The same law stipulates that "while executing conferred state administration tasks, the holders of public authorities shall have same rights and obligations as state administration authorities."⁴⁰

As has already been mentioned, the Law on State Administration stipulates that **holders of public authorities**, in this case the Centre, **have the same rights and obligations as administrative bodies**. The Law on General Administrative Procedure stipulates that holders of public authority apply rules of administrative procedure when dealing with administrative issues⁴¹ and that they use the format of **decision** when deliberating on a right, obligation, or interest of an entity.⁴² Accordingly, the Centre would need to **adopt decisions** in its operation, where, after the identification procedure, they would determine that the person is a human trafficking victim, and the victim would be able, in turn, to realise certain rights based on being awarded such status. Therefore, as stipulated by the SOPs, the Centre determines whether the person is a human trafficking victim and consequently, the decision would need to confirm that the person has been awarded the status of human trafficking victim. The victim would then have certain rights recognised and granted on the basis of thus established status.

However, as already mentioned, the Centre, in line with the SOPs, adopts findings and opinions after the finalisation of the identification procedure. In the event that in the findings and opinions it has been established that a person is a human trafficking victim, then such person may realise some of her/his rights (i.e. adoption

³⁸ *Ibid*, p. 30.

³⁹ Law on State Administration ("Official Gazette RS", no. 79/2005, 101/2007, 95/2010, 99/2014, 47/2018 & 30/2018 – other law), article 4.

⁴⁰ *Ibid*, article 51. As far as social care institutions are concerned, their work is regulated by the Law on Public Services, Law on Social Protection ("Official Gazette RS", no. 24/2011), article 62; Law on Public Services ("Official Gazette RS", no. 42/91, 71/94, 79/2005 – other law, 81/2005 – corr. of other law, 83/2005 – corr. of other law & 83/2014 – other law), articles 1, 3, 4.

⁴¹ Law on General Administrative procedure ("Official Gazette RS, no. 18/2016 & 95/2018 – authentic interpretation) article 1.

⁴² Law on General Administrative procedure ("Official Gazette RS, no. 18/2016 & 95/2018 – authentic interpretation) article 136.

of adequate protection measures in case the victim's safety is at risk, satisfaction of basic living needs of nutrition, shoes, clothes, urgent healthcare, or appropriate safe accommodation).⁴³ However, in case the Centre **does not identify** a person as a victim of human trafficking, the person cannot realise any of the aforementioned rights, and thus she/he is practically left without any kind of protection, or care.

The situation is identical for foreign human trafficking victims. Namely, when the Centre in the course of formal identification confirms that a foreigner is a human trafficking victim, they also submit their professional opinion to the Mol, and the victim is provided temporary residence in the Republic of Serbia "in case the body competent for the identification of victims and coordination of victims' protection deems such residence to be necessary for the purpose of such victim's protection, recuperation, and provision of security, or in case the court, public prosecutor's office, or the police deem their presence to be necessary for the purpose of cooperation in criminal proceedings".⁴⁴ In such situation, the Centre, either individually, or in cooperation with other state authorities, provides medical and other necessary care and assistance.⁴⁵ Expenses of the medical care provided to foreign victims of human trafficking, are covered by the state budget of the Republic of Serbia.⁴⁶

Here it might be useful to compare this situation with CSWs, founded by LSGUs.⁴⁷ In their operation, when deliberating on some beneficiary's use of certain services, they adopt **decisions** in line with the rules of administrative procedure.⁴⁸

So, when CSWs deliberate on rights and social protection services, e.g. material social assistance, one-time social assistance, another person care and support allowance, increased another person care and support allowance, free meals, or accommodation of adults and elderly persons in social care institutions, they adopt decisions based on which the persons realise these rights.⁴⁹ In case CSW **refuses to determine** that a beneficiary is entitled to certain rights in the domain of social protection, it also adopts a **decision**, and the beneficiary has the **right of appeal within 15 days from the adoption of such decision**,⁵⁰ which would be further elaborated on in this text.

On the other hand, CSWs **submit finding and opinion** when asked to do so by **the court**, when another body or institution requires results of an assessment, or when a beneficiary needs to be referred to another service provider.⁵¹ Therefore, the conclusion is that CSWs adopt decisions when it is deliberated on a right, while when the court demands of them to perform a kind of assessment, they do so in the format of findings and opinions.

⁴³ Standard Operating Procedures of the Office for Coordination of Activities in Combating Trafficking in Human Beings, p. 31.

⁴⁴ Law on Foreigners ("Official Gazette RS", no. 24/2018 & 31/2019), article 63, paragraph 3.

⁴⁵ *Ibid.*

⁴⁶ Law on Healthcare ("Official Gazette RS", no. 25/2019), article 239.

⁴⁷ Law on Social Protection ("Official Gazette RS", no. 24/2011), article 14.

⁴⁸ *Ibid.*, article 69.

⁴⁹ Law on Social Protection ("Official Gazette RS", no. 24/2011), article 79.

⁵⁰ *Ibid.*, article 69.

⁵¹ Rulebook on Organisation, Norms and Standards of Work, article 62.

What is particularly concerning is the fact that at the time of this document's development, the adoption of the new Law on Social Protection is underway, to comprehensively determine the roles and responsibilities of the Centre. Namely, the Draft Law on Social Protection⁵² proposes that "Centre for Human Trafficking Victims' Protection executes the jobs of protection of human trafficking victims' rights and interests, determining their status, assessing their needs and planning their support in line with the Law"⁵³, and defines the scope of jobs and responsibilities of the Centre. Therefore, based on this latest publically available Draft Law, the Centre should perform the following tasks:

1. "Realises the procedure of professional assessment with the purpose of data collection in establishing the facts indicating whether persons are human trafficking victims, hereinafter: **recognition of human trafficking victims**,
2. Performs **assessment of condition, needs and strengths** of victims, as well as of the risks that the victims are exposed to, with the purpose of providing the necessary assistance and support,
3. **Develops individual plans** of services and measures for human trafficking victims,
4. **Keeps envisaged records**, takes care of safekeeping of human trafficking victims' documentation, maintains and develops databases relevant for human trafficking victims' protection.

Recognition of human trafficking victims represents a separate professional procedure of assessment which determines the presence of general and specific indicators which indicate that a person is a victim of trafficking in human beings.

Based on the implemented procedure from the previous paragraph, professional worker **adopts a finding and opinion**.

Centre for Human Trafficking Victims' Protection submits the finding and opinion from the previous paragraph, upon a special request of the court, investigative authorities, and other authorities and institutions, in line with the Law and special legislation."⁵⁴

Thereby, this proposed legal solution contains **a couple of problematic points**. Even though the introductory articles of the Draft Law states that the Centre is **competent for determination of the status of victims**, **this is not mentioned in further text** of the Draft, when the competences of the Centre are referred to in detail. The victim status can be determined only via an **act in the decision format** since the very status involves certain rights that the victim could exercise. As already mentioned in this text, victims can realise certain rights only if they are awarded the victim status in the decision format, rather than as finding and opinion.

⁵² Draft Law on Amendments to the Law on Social Protection – text available at <https://www.paragraf.rs/dnevne-vesti/100718/100718-vest15.html>, accessed on 22 November 2021.

⁵³ *Ibid*, article 6.

⁵⁴ Draft Law on Social Protection, article 53.

On the other hand, when the Draft Law refers to the competences of the Centre, there is no mention of the Centre **identifying the victims and awarding the victim status**, but the text rather refers to **“recognition” of victims**. The proposed solution represents **deviation from all the documents** that the Centre implements in its work, as they all make reference to the procedure of victim identification. Accordingly, the new Law on Social Protection and its section dealing with the competences of the Centre should note that it performs the **procedure of victim identification**, upon which it should **determine her/his victim status** using the **decision** format.

Another problematic solution contained in the new Draft Law refers to the fact that the Centre in its operation would still issue findings and opinions, rather than decisions to determine the victim status of human trafficking victims which would allow them to exercise certain rights.

The third problematic solution is the failure to envisage that findings and opinions should be forwarded to the civil society organisations which informed the Centre of the existence of a presumed victim, as is currently the case. Thus, if such findings and opinions are submitted to the court, investigative authorities and other authorities and institutions, it would be entirely appropriate to also forward them to the civil society organisations which informed the Centre on the existence of presumed victims. Thus the Draft Law needs to be amended so that the civil society organisations could have insight into whether a person whom they had identified as a presumed human trafficking victim and informed competent authorities about it, has indeed received the human trafficking victim status and thus entered the system of protection in the Republic of Serbia.

2) Right of Appeal

The second problem that ASTRA has identified while analysing the Centre’s operation, referring to the inexistence of an effective legal remedy, is in direct relation with the fact that professional workers of the Centre do not adopt decisions in their work, but rather findings and opinions.

As it has already been mentioned in the text, the Centre adopts finding and opinion upon establishing whether a person is a human trafficking victim, since the Centre is the social care institution specialised in identification of human trafficking victims. In this sense, the Centre should have the status of a specialised expert witness, just like CSW in civil proceedings when, for example, providing opinion on the adequacy of a protection measure against family violence.⁵⁵

⁵⁵ Prof. dr Nevena Petrušić and prof. dr Slobodanka Konstantinović Vilić, Vodič kroz sistem porodičnogpravne zaštite od nasilja u porodici (A Guide through the System of the Family Law Protection from Domestic Violence), p. 72.

Thereby, in case a professional worker of the Centre establishes that a person is not a human trafficking victim, then the person has **no legal option whatsoever** to appeal against such conclusion, since for a person believing that the Centre has made a mistake when not recognising her/him as a human trafficking victim, the possibility of appeal is **not envisaged in any of the Centre's acts**. On the other hand, appeals against decisions by CSWs may be submitted in the Belgrade Centre for Social Work and to the ministry competent for social protection.⁵⁶

However, the SOPs implemented by the Centre envisage that if a participant in preliminary identification (civil society organisation, public authority, international organisation, etc.) and/or presumed victim should seek reconsideration of the decision made by professional worker of the Centre, the Centre would reconsider the bases for its decision.⁵⁷ This solution, however, is provided merely in a footnote to the SOPs, yet not in their main text, with the remark that **this is not a formal appeal under the Law on General Administrative Procedure**.⁵⁸ So no possibility of appeal as a legal remedy is envisaged, but only potential “reconsideration” of the decision.

On more than one occasion, ASTRA has emphasised that the persons not identified as victims by the Centre have **no formal legal remedy at their disposal** to make a second instance authority re-examine decisions by the Centre. The possibility of utilising a legal remedy cannot be envisaged in a footnote to the document which comprehensively regulates the procedures of identifying victims, noting that this is not an appeal, but only a possibility of reconsideration of decisions. In case the procedures of appealing against decisions by the Centre are not comprehensively stipulated, this leaves a possibility of their abuse by the Centre, while it also potentially renders victims incapacitated to protect their rights.

Earlier in the text, it has been mentioned that the Draft Law on Social Protection preserves and explicitly envisages that the Centre issues findings and opinions and **does not mention any possibility of appeal** against such decision.

In addition to numerous international documents,⁵⁹ Constitution of the Republic of Serbia, inter alia, guarantees the right to equal protection of rights and to legal remedy, i.e. that “Everyone shall have the right to an appeal or other legal remedy against any decision on his rights, obligations or lawful interests”.⁶⁰

In the cases of persons for whom the Centre has determined, based on the indicators, that they do not fulfil the conditions to be identified as victims, such persons do not

⁵⁶ Stefan Beličević, Centri za socijalni rad (Centres for Social Work), available at https://www.paragraf.rs/100pitanja/socijalna_zastita/centar_zs_socijalni_rad.html, accessed on 27 January 2022.

⁵⁷ However, the footnote to the SOPs notes that reconsideration would not be considered an appeal applicable in general administrative procedure.

⁵⁸ See footnote 76 to the Standard Operating Procedures of the Office for Coordination of Activities in Combating Trafficking in Human Beings.

⁵⁹ See article 8 of the Universal Declaration of Human Rights and article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁶⁰ Constitution of the Republic of Serbia, article 36 paragraph 2.

have a legal possibility to appeal against such decision by the Centre, thereby being deprived of their constitutionally guaranteed right to legal remedy.

On the other hand, if the Centre for Social Work determines that a person does not fulfil the conditions for using social care services – against such decision, just like to an opinion, the person has the right of appeal within 15 days of the reception of such decision, to the Belgrade CSW, or to the ministry competent for social protection.⁶¹ If the person, however, is not satisfied with the decision made by the ministry competent for social protection either, she/he has the possibility to initiate an administrative proceedings before the Administrative Court.⁶² As the final instance of the protection of rights, the person has at her/his disposal a constitutional appeal that can be submitted to the Constitutional Court of Serbia, in case she/he believes that the decisions by the competent authorities represent an infringement of the guaranteed human rights.⁶³ However, the Human trafficking victims that are not identified as such by the Centre, **do not have such legal option.**

For this reason, it is highly important that the Draft Law on Social Protection should **determine that the Centre in its operation adopts acts envisaged by the general administrative procedure (decisions)** and that in case a professional worker of the Centre should determine that a person does not fulfil the conditions necessary to be recognised as a human trafficking victim by the Centre, the person **should be enabled to lodge an appeal with the ministry competent for social protection**, after which the person would also have **the possibility to initiate an administrative proceedings**, as well as to finally lodge an **appeal with the Constitutional Court of Serbia.**

3) Disciplinary Actions against Workers of the Centre

Another problem that ASTRA has identified in its work, when analysing operation of the Centre, is the incapacity of the persons in the process of identification by the Centre **to express their complaint against the work by a professional worker** of the Centre.

Namely, during their identification, victims may encounter discrimination, or unprofessional conduct by their case managers. In case they wish to **change their case manager**, i.e. to **file complaint concerning the case manager's work**, there is **no formally envisaged procedure** to do such thing.

⁶¹ Law on Social Protection ("Official Gazette RS", no. 24/2011), article 73.

⁶² "In an administrative dispute, the court also decides on the legality of the individual final acts which deliberate on a right, obligation, or lawful interest, in relation to which, in the particular case, the law does not envisage other kind of judicial protection". Administrative Dispute Act ("Official Gazette RS", no. 111/2009), article 3.

⁶³ "A constitutional appeal may be lodged against individual general acts or actions performed by state bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been applied or not specified". Constitution of the Republic of Serbia ("Official Gazette RS", no. 98/2006), article 170.

The provisions that pertain to the competences of the Centre's director in the Statute of the Centre envisage that the director "decides on employment/professional engagement, discontinuation of employment/professional engagement and professional deployment of the employees of the Centre, in line with the law".⁶⁴ Similarly, the Rulebook on Organisation and Systematisation of the Affairs and Positions within the Centre for Human Trafficking Victims' Protection stipulates that the director "decides on engagement, working hours, absence from work and discontinuation of employment".⁶⁵ The aforementioned provisions make it clear that all the rights and responsibilities concerning employment and work **are decided on by the director of the Centre**.

Yet another act that concerns internal organisation of the Centre is the Rulebook on Professional Discipline and Conduct of Employees in the Centre for Human Trafficking Victims' Protection which prescribes in detail **what behaviours are forbidden** during one's professional engagement in the Centre, as well as what behaviours are deemed to be infringements of professional discipline.⁶⁶ Thus, in the Centre "forbidden are the activities which jeopardise, belittle, or discriminate against groups and individuals based on their race, nation, language, gender, physical or psychological constitution, age, social or cultural background, material condition, political position, etc., as well as incitement of such activities."⁶⁷

Employees of the Centre are obliged to "behave decently, pleasantly and with due attention towards services' beneficiaries, as well as relatives, guests and visitors thereof"⁶⁸, while they are forbidden "to behave rudely, inappropriately, obscenely, insultingly, or in other way inappropriately".⁶⁹ Breach of this obligation and prohibition, according to the Rulebook, represents **disrespect of professional discipline** and may result in **termination of the employment contract**. Similarly, the Rulebook in quite a few details stipulates other situations that are deemed to be breaches of professional discipline, such as unworthy, insulting, or in another way inappropriate behaviour towards beneficiaries, unprofessional communication with beneficiaries, blackmailing of beneficiaries, disrespect for beneficiaries' privacy and sexual harassment of beneficiaries.⁷⁰

The Rulebook stipulates that, that in the event of professional discipline being breached, every employee of the Centre is obliged to report this to the director.⁷¹

So, **only employees of the Centre** are able to report inappropriate behaviour of

⁶⁴ Statute of the Centre for Human Trafficking Victims' Protection, article 32, item 10.

⁶⁵ Rulebook on Organisation and Systematisation of the Affairs and Positions within the Centre for Human Trafficking Victims' Protection in Belgrade, article 9, paragraph 2, item 8.

⁶⁶ Rulebook on Professional Discipline and Conduct of Employees in the Centre for Human Trafficking Victims' Protection, articles 5, 6, 9, 10.

⁶⁷ *Ibid*, article 5, paragraph 1.

⁶⁸ *Ibid*, article 6, paragraph 1, item 2.

⁶⁹ *Ibid*, article 7, paragraph 1, item 2.

⁷⁰ *Ibid*, article 10, paragraph 1, items 12, 17, 40, 49, 50.

⁷¹ *Ibid*, article 12.

another employee to the director, while there is no option for a breach of professional discipline by an employee of the Centre to be reported by a beneficiary. Accordingly, beneficiaries whose rights are potentially infringed through an unwarranted or prohibited behaviour of an employee, lack legal provision to report such infringement to the director of the Centre and to demand engagement of another case manager until the potential breach of professional obligation has been examined.

It is unclear why the legislators opted for such a solution, bearing in mind that the most of the prohibited conducts by the Centre's employees are primarily directed against beneficiaries, rather than against other employees, or third parties. It would therefore be appropriate that, in addition to other employees, **beneficiaries of the centre also have the possibility to report behaviour by an employee** to the director of the Centre, and to be informed about the outcome of such report. In that way, prohibited conduct towards beneficiaries by the employees would decrease, but the beneficiaries would also get a legal option to protect themselves and their rights from illegal conduct of the employees.

On the other hand, CSWs in their work apply the Rulebook on Organisation, Norms and Standards of Operation of the Centre for Social Work, which stipulates the supervision of case manager's professional work is performed by a supervisor which has the obligation to "report to the director in cases of unprofessional, illegal and incompetent conduct of a case manager".⁷² The very control of the work by employees is in the competence of the director of the Centre for Social Work.⁷³ However, this Rulebook does not envisage the procedure for the cases when beneficiaries believe that a worker of CSW does not act in line with professional standards. In other words, the Rulebook does not envisage the procedure of acting on complaints and appeals.

The Law on State Administration, on the other hand, envisages the obligation by state administration bodies to "provide an adequate way for everyone to submit complaints about their work and irregular conduct by the employees." The state administration body is obliged to respond to the submitted complaint within 15 days of its reception, in case the complainant has demanded response.⁷⁴ However, the Law does not specify what is deemed to be "an adequate way" of submitting complaints about the work of a state authority, or what actions by the employees are deemed "irregular".

When we talk about the Centre, earlier in the text has been stated that **human trafficking victims have no possibility of submitting complaints concerning actions by the employees of the Centre**. Therefore, it is necessary when a potential victim of human trafficking during the identification procedure believes that an employee of the centre breaches her/his rights, or treats her/him inadequately, has the possibility to inform the director of the Centre about it, who in turn decides on justification

⁷² Rulebook on Organisation, Norms and Standards of Operation of the Centre for Social Work, articles 29 & 30.

⁷³ *Ibid*, article 27.

⁷⁴ Law on State Administration ("Official Gazette RS", no. 79/2005, 101/2007, 95/2010, 99/2014, 47/2018 & 30/2018 – other law), article 81.

of the complaint made by the person in the process of identification. Until the final decision by the Centre's director on justification of the complaint, the case should be reassigned to another employee of the Centre, so as not to prolong the identification procedure.

In this sense, it would be the best for the section of the Rulebook which concerns the possibility of informing the director about inappropriate and unprofessional conduct by the Centre's employees, to be amended so as, in addition to the employees, to also allow beneficiaries and third parties (e.g. trusted persons, or civil society organisation who reported the existence of the presumed victim of human trafficking to the Centre) to submit their complaints concerning unprofessional conduct by employees of the Centre.⁷⁵

⁷⁵ In cases of unprofessional conduct by employees of the Centre against a victim, a complaint may be submitted by third parties in the victim's name (trusted persons, or civil society organisations) after obtaining the victim's consent.

III. Draft Law on Social Protection

As has already been mentioned in the text, a new Law on Social Protection is currently being prepared, including some questionable solutions pertaining to the Centre for Human Trafficking Victims' Protection.

Firstly, the introductory remarks contain reference to **establishment of the status of human trafficking victim** as one of Centre's professional tasks, while the subsequent article which more closely defines the tasks performed by the Centre **does not mention that the Centre establishes the status of human trafficking victim** after the finalisation of the identification procedure. Also, the same article stipulates that the Centre "recognises" the victims, rather than performing their identification as human trafficking victims.

Establishment of victim status after performance of identification is important, since based on this status, which should be **confirmed in Centre's decision**, the victim **would be able to realise certain rights**. Without such status being established via a decision, rather than via findings and opinions as the Draft Law proposes, the victim would not be able to realise any of her/his rights. In case the Draft Law would stipulate that, after the identification process, the Centre should adopt a decision, then the Centre would be able to also adopt the decision that the person is not a human trafficking victim. In such cases, the person would have the **right to appeal** against such decision to the ministry competent for social protection, and also the right to initiate administrative proceedings, and finally to lodge a constitutional appeal to the Constitutional Court.

In case the current Draft is adopted, in which it is stipulated that the Centre adopts findings and opinions, a person which is not identified as a human trafficking victims would be denied all these rights, since **finding and opinion is not an act which could be contested via an appeal in administrative procedure, or a complaint in administrative proceedings**.

Similarly, one of the problematic solutions in the Draft Law involves the Centre, in addition to assessing the condition, needs, strengths of and risks to a person in the process of identification, "provides services of assessment and planning, the service of emergency accommodation of human trafficking victims and other services that may be provided within a separate organisational unit, in line with the law".⁷⁶ Should this legal draft be adopted, the Centre would also provide social protection services. Namely, the Centre's Statute stipulates that it "**coordinates** the activities of social

⁷⁶ Draft Law on Social Protection, article 52.

protection services' provision"⁷⁷ and thus cooperates with CSWs and other agencies on voluntary reintegration of victims. Accordingly, the Centre, after identification of a person as a human trafficking victim, **should refer the person to other social protection service providers** who would provide the services in his/her best interest. The proposed legal solution is in direct contradiction to the Centre's Statute, and it would give the Centre much wider competences than it currently has.

Namely, **the body realising identification of victims should not at the same time provide services, coordinate social protection services' providers and assess the effects of the services provided** since all this could in practice lead to conflicting interests and the lack of monitoring and evaluation of work.

For this reason, it is important that the new Law on Social Protection precisely defines the competences of the Centre which should involve – identification of human trafficking victims, development of the plan and assessment of the services provided by other social care institutions, as well as coordination of the social protection services' providers.

Case Study – A Filipino National

In the following text we provide a short overview of a case involving a citizen of the Philippines who was involved in the identification process by the centre as a presumed human trafficking victim. This is one of the most blatant examples of the rights guaranteed to human trafficking victims being breached before the Centre because stipulated procedures are not respected, or procedures do not exist at all, which leads to legal insecurity, as well as to arbitrariness in the decision-making process of the state institution competent for human trafficking victims' identification, resulting in the rights of human trafficking victims being breached.

The Republic of Serbia issued a valid D type visa in October 2021 to a Filipino citizen for her stay on the territory of the Republic of Serbia. She was issued the visa on the basis of her prospective employment as a house help to a Serbian family. She received assistance in obtaining the visa and contacting the family by a Serbian law office. During her employment in the family, the ASTRA beneficiary was exposed to overwork, for as much as 16 hours a day; her passport was seized and her movement limited, while her contact with the family was mediated by another employee of the same employer.

She escaped her employer in December 2021, helped by another employee of the same employer. It was in late December 2021 that, through our associates in Belgrade's Human Rights Centre, she contacted ASTRA. With the consent of the

⁷⁷ Statute of the Centre for Human Trafficking Victims' Protection, Article 9, Item 4.

beneficiary, ASTRA informed the Centre for Human Trafficking Victims' Protection about this case, so that the process of formal identification of a human trafficking victim could start.

Contrary to the procedure, the first interview with the presumed victim was conducted by a professional worker of the Centre in a police station, where six persons in total were in attendance. As noted by the Centre, the reason for this was an attempt to avoid secondary victimisation of the victim through repeated hearings – once before the police and the second time before the Centre. The professional worker of the Centre did not inform the victim, either orally, or in writing, about the rights that she had during the identification procedure as a human trafficking victim.

The second conversation with the victim was held in the Centre's offices in February 2022. On that occasion, even though the victim came accompanied by a proxy, the professional worker of the Centre did not allow the proxy to be present at the victim's interview, stating that presence of a proxy is not in line with the internal procedure of the Centre. During the interview, the professional worker of the Centre diverted questions towards private circumstances of the victim, the information on which she could have obtained from the police, and data collected from other citizens, rather than attempting to obtain additional information concerning the circumstances of the exploitation.

Furthermore, the Centre did not submit the application to the Ministry of the Interior of the Republic of Serbia, for a temporary residence on the territory of the Republic of Serbia to be granted to the presumed victim of human trafficking.

A couple of days after the interview in the Centre, an anonymous male voice informed the victim over the phone that she had not been identified as a human trafficking victim. The finding and opinion, or justification for the decision were not delivered by the Centre to either the victim, or her proxy.

This example makes it clear that the Centre for Human Trafficking Victims' Protection made a series of omission in their work. First, the professional worker of the Centre failed to inform the presumed victim of human trafficking about her rights in the process of identification; the first interview was conducted in the police station instead in Centre's offices; during the interview in the Centre, the professional worker removed the victim's proxy, even though according to the SOPs, victims have the right to have a trusted person present during such interviews, in this case the proxy; it is unknown whether the Centre has made the finding and opinion. Finally, the Centre did not submit a temporary residence permit application to the Ministry of the Interior, in order to facilitate the victim's stay on the territory of the Republic of Serbia.

The neglect of the procedures by the professional worker of the Centre led to the Filipino citizen being left without the status of human trafficking victim, thereby also being denied the rights she would exercise based on this status. Also, she faces potential deportation from Serbia, since the Centre, as the only body having such legal possibility, did not submit an application to the MoI for her temporary residence on the territory of Serbia.

The case of the Filipino citizen has been filed in ASTRA database under the record number ID 6664

RECOMMENDATIONS

1. Draft Law on Social Protection to be amended so that Article 53 should stipulate that the Centre “performs **identification** procedure to collect data **with the purpose of establishing the status of human trafficking victim** for the person, hereinafter, identification of human trafficking victims”.
2. The same article of the Draft Law should specify that the Centre “performs assessment of the condition, needs, strengths of, and risks for the victim of a human trafficking, as well as **coordination** of the provision of the necessary assistance and support”.
3. **Identification** of human trafficking victims represents a special professional procedure of assessment which determines presence of general and specific indicators of the person being a human trafficking victim, upon which the person **receives the status of human trafficking victim**.
4. “Based on the performed procedure from the previous paragraph, **professional worker adopts the decision, that the beneficiary may appeal against within 15 days of the decision’s adoption, to the ministry competent for social protection, according to the rules of general administrative procedures**”
5. The Centre for Human Trafficking Victims’ Protection provides the finding and opinion, upon a special demand by the court, investigation authorities, other authorities and institutions, **civil society organisations**, pursuant to this Law and special regulations.”
6. It is necessary to amend article 15 of the Rulebook on Professional Discipline and Conduct of the Employees of the Centre for Human Trafficking Victims’ Protection so that, in addition to any employee of the Centre, **both the person in the process of identification and civil society organisations** who reported the existence of a potential victim to the Centre, may report prohibited or unprofessional behaviour of an employee of the Centre.
7. Amend Article 63 of the Law on Foreigners so that **civil society organisations** are **also** given option to file application for temporary residence of foreign nationals who are victims of trafficking in human beings on the territory of the Republic of Serbia.

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