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1. Comments and suggestions related to the Bill as a whole or to its part(s).

The comments of the Humanitarian Law Center (HLC) relate to the provisions of the Bill which regulate the status, rights and procedures for exercising the rights of civilian invalids of war, civilian war victims and their families.

The wars in the former Yugoslavia during the nineties were marked by immense suffering of civilians. Mass executions, forced disappearances, torture, imprisonment and abuse in concentration camps, sexual violence, unlawful detentions and other forms of human rights violations left behind tens of thousands of victims who need institutional assistance and support to cope with the physical and psychological consequences of the violence they survived or the loss of their loved ones. A significant number of them live today in Serbia. Serbian institutions have a legal, moral and civilizational obligation to provide them with care and attention and treat them with respect, with the aim of recognizing their suffering and their reintegration into society.

According to modern standards of protection of victims of human rights violations, the institutional and regulatory frameworks that aim to provide victims of violence with mechanisms of support and help must meet the basic universal principles of human rights – equal treatment of all persons who are in the same position and respect for their human dignity. Likewise, a serious approach to the creation of these mechanisms would have to take into account all the characteristics of the particular context and of the end users, which is to say, the victims, and create a system of help that will not exclude people with real needs and experiences that have made them victims, because of complicated administrative requirements or political or ideological interpretation of past events.

a) The Bill does not provide an adequate or systematic solution for the real needs and the diversity of the civilian victims of war and victims who suffered violence in causal connection with the conflicts in the former Yugoslavia during the nineties.

The Bill does not take into account that during the nineties, during the armed conflict in Bosnia and Herzegovina (B&H) and Croatia, on the territory of Serbia there were violations of human rights which were in causal connection with those conflicts, and which have been documented both by international bodies such as the United Nations and domestic and foreign international organizations. These events were the reason why the courts in Serbia have issued legally-binding decisions confirming that these acts of human rights violations occurred. To mention just a few: 1) Forced mobilization of several

thousands of refugees from Croatia and B&H by members of the Serbian Ministry of the Interior, which resulted in the torture, death or forced disappearance of persons forcibly conscripted into the army; 2) unlawful detention and torture of hundreds of citizens of Bosniak ethnicity in the area of Sandžak during the conflict in B&H, on unfounded charges of collaborating with the Bosnian Army and participation in a plot „against the state“; 3) murders, mistreatment and deportations of citizens of Bosniak ethnicity from the border villages in the municipality of Priboj during the war in B&H.

Any possible authors' argument that the *ratio legis* of the Bill is providing protection exclusively to persons who suffered during the periods of formal declaration of a state of war (which were the periods until April 27th and May 19th 1992, and during the period March 24th-June 26th 1999 – Article 4, item 4, items 4, 5 and 6) would be contradictory to other provisions of the law and to providing protection to certain categories of persons who are not civilian victims of *war per se*, but victims of violence committed in different circumstances – terrorist and sabotage activities, etc.

Furthermore, the provisions of the Bill are not consistent with the well-known fact, accepted in a number of judicial and political documents, that the conflicts in the former Yugoslavia had a strong regional character, which, among other things, were reflected in the fact that victims from one country survived acts of violence in another country. The best examples of this were Serbian citizens of Bosniak ethnicity who were abducted and murdered on the territory of B&H by the Army of the Republic of Srpska (the cases of Štrpci and Sjeverin). The only reason why today their families are not recognized as family members of civilian victims of war in Serbia (and this unfair solution has not been rectified by this Bill either), is that the place of their abduction was outside of the territory of Serbia.

The regional character of the conflicts in the former Yugoslavia also led to significant migrations of victims from one country to another. Many of the victims, who at the time of acts of violence had citizenship of one country and survived an act of violence in that country or in another country, now live in Serbia. The administrative requirement that a victim is only a person who at the moment of suffering had citizenship of the Republic of Serbia is nothing but an additional punishment for the victims who, involuntarily, and very often under a serious threat to life or health, had to leave their home country. This requirement is devoid of any sense and it is contrary to the requirements of justice and respect for human integrity and dignity, and in practice virtually denies the very existence of a large number of victims of gross violations of human rights who now live in Serbia and do not exercise rights under any other law in another country. At the same time, the Bill accords the status of a combatant to foreign nationals who fought during the war in Kosovo, or in other peace-time actions described in Article 4, items 5 and 7.

b) The Bill maintains the system of recognizing the status of civilian invalids of war and their families which is currently in effect (The Law on civilian invalids of war, "Official Gazette of the Republic of Serbia", no. 52/96), which abounds in discriminatory provisions and impermissible distinctions or exclusions of certain categories of victims.

The proposed Bill maintains the divisions among victims of gross violations of human rights during the armed conflicts between suitable and unsuitable victims, or to be more precise, between those whose status is recognized and those whose status is not recognized for reasons that represent violations of the constitutional principle of non-discrimination and equality of citizens. The Bill, adopting the existing legal solution, in

fact again affirms a systematic discrimination against entire categories of victims who now live in Serbia - families of missing persons, victims of sexual violence and victims suffering from psychological consequences. For example, the solution which the Bill (Articles 18 and 19) takes over from the existing legal framework (Articles 2 and 3), [denies the right](#) to victims who have suffered from acts of violence committed by members of the armed forces of Serbia to obtain the formal status of a civilian invalid of war, or of a member of family of civilian victim of war. This solution, besides having been subjected to criticism by international bodies for the protection of human rights (which will be discussed below), represents a flagrant violation of the constitutional principle of equal legal protection, without discrimination on any grounds (Article 21 of the Constitution of the Republic of Serbia). This solution is also not in accordance with the established practice of the European Court of Human Rights, which in several cases has taken the stand that generally no limitations are imposed on states as to whether they will or will not prescribe measures of social protection, but if the state decides to provide such measures, then it must be done in a manner which is consistent with the principle of non-discrimination.^[2]

The Bill also preserves the solution from the current Law that the families of civilian victims of war are only those families whose member was murdered or died in the conflict, but not one who disappeared (Article 18). Without any explanation or sense, and at the same time denying the principles of fairness and basic ethics, the authors do not acknowledge the existence of one of the most vulnerable categories of victims in armed conflicts – the families of missing persons. The specifics of their status and the inherent trauma characteristic of this category of victims have led to the adoption of special laws that provide special rights and legal regimes for the families of missing persons in many countries with a post-conflict legacy. In our region, this has been done in B&H. And in Croatia and Kosovo, the families of missing persons are acknowledged as a special category of victims in the laws that regulate the rights of the civilian victims of war. It should be pointed out that Serbia is a signatory of the Convention on the Protection of All Persons from Enforced Disappearance, which obliges Serbia to establish and respect the special rights of the families of missing persons. Contrary to the signed international obligations and standards for the protection of this specific category of victims, the families of missing persons in Serbia under the current legal framework as well as under the Bill are forced, for the sake of exercising rights as families of civilian victims of war, to declare their missing members dead, which in the modern world is a requirement which is considered inappropriate and degrading for families who have been searching for the bodies of their loved ones for years, even decades. In this way, according to the estimates of the HLC, at least a thousand families of missing persons living in Serbia remain without formal recognition and are denied their rights.

Here it should be stressed that, in contrast to its treatment of the families of missing persons, the Bill provides for the recognition of the status of the families of missing combatants as early as the following Article in the proposed text (Article 20, paragraph 1).

In addition to not recognizing the families of missing persons as a globally recognized special category of victims, the Bill also does not recognize the category of victims of sexual violence. Particularly alarming and worrisome is the fact that the authors have not taken into account that the Republic of Serbia has recently [signed](#) the Declaration on

[2] The case of *Stec and others vs United Kingdom*, application no. 65731/01 and 65900/01, judgment dated April 12 2006, § 52; Admissibility decision *Stec and others vs. United Kingdom*, § 54 and 55.

ending Sexual Violence in Conflict, one of the fundamental principles of which is protection and provision of adequate help and care for the victims of sexual violence during a conflict. Thus, the recently stated commitment of Serbia to promote and support the fight against sexual violence and to provide support to the victims of this violence at the global level has been bluntly ignored and voided of meaning.

The status of civilian invalids of war, according to the Bill (as well as to the currently applicable Law), is determined by the degree of physical disability. Only a person with a minimum of 50% of disability can, subject to numerous other conditions, acquire the status of civilian invalid of war. This solution is most unfair and out of harmony with the contemporary understanding of the needs and protection of victims of human rights violations. The authors of the Bill should have borne in mind that the consequences of violence that the victims have survived are very often of an exclusively psychological nature. This is especially characteristic for the victims of sexual violence and the victims of torture and inhuman treatment. One of the most common psychological consequences that occur for victims who survived some sort of violence is Post-Traumatic Stress Disorder (PTSD), which has a strongly negative effect on the chances that that person can have a normal life, making that person practically disabled, with significantly reduced life activity.

That the authors were well aware that PTSD or some other mental disorder is an objective consequence which people who survive a trauma must face is clear from that provision of the Bill which regulates the grounds for acquiring the status of disabled war veteran. In Article 8 of the Bill, the authors provide for *illness* as a ground for disability, while that is not indicated for the acquisition of the status of civilian invalid of war (Article 18, paragraph 1) - only *wounds and injuries*. It remains a mystery why for the authors of the Bill such an important factor is insignificant when it comes to civilians, and why they give it legitimate significance only when it comes to combatants. Whatever the reason, such a distinction is contrary to the constitutional principles of equal protection of citizens by the laws and the generally accepted and binding norms of human rights.

c) The procedure for the exercising of rights is too complicated, and it denies the victims the right of understanding the procedure.

According to international standards, states should adopt measures that will minimize inconvenience for victims and their representatives before, during and after judicial, administrative and other procedures relating to the interests of the victims. Also, the state should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should receive special attention and care in order to avoid repeated traumatization during the legal and administrative procedures designed to provide justice and reparations. Contrary to the standards here outlined, the procedure for exercising the rights provided in this Bill, together with the text of the Bill, which consists of almost 250 Articles, is highly complicated and virtually incomprehensible for potential beneficiaries of the rights. To apply for an exercise of the rights under this Bill, the applicant would necessarily require legal aid, which contradicts the above-mentioned international legal standards that require a simple procedure, with minimal inconvenience for the victims. In this way, the regime provided in this Bill deters potential beneficiaries from getting involved in such a complicated and uncertain procedure; this renders the law meaningless. Such a complicated procedure would undoubtedly expose victims to an inappropriately stressful and uncertain procedure, amounting to a second victimization.

The Bill also does not contain a provision for active informing of the beneficiaries about the rights guaranteed by this Bill through a media campaign or otherwise. The Directive of the European Union 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime, guarantees victims the right to be informed about all elements related to exercising their rights. Under this Directive, the states shall ensure that the victims can exercise their right to being informed from their first contact with a state authority about their rights, including information about their rights to: medical, specialist and psychological support; free legal aid; protection and other benefits. What is more, the Bill does not provide a special training procedure for state officials that are in contact with the victims and the beneficiaries of this law. The European Union Directive 2012/29/EU requires that states ensure specialist training for all civil servants who come into contact with victims, in order to better understand their needs and treat them in a professional manner and with respect.

d) The Bill unjustifiably favours the disabled veterans of war and the families of dead combatants in comparison to civilian invalids of war and the families of civilian victims of war, by providing them with far more rights and easier requirements for exercising of these rights

The obvious favouring of combatants, disabled veterans of war and the families of dead combatants in comparison to the civilian victims of war in this Bill could be understood and accepted as a legitimate commitment of the authors when it comes to some special rights which are anticipated for the first category. However, the authors of the Bill, in their intention to confer on this category, in accordance with the proclaimed principles and values of this Bill, an emphasized importance and recognize their achievements in the past wars, have gone too far, and directly violated the constitutional principle of equal protection of the citizens by the law and the generally accepted and binding principles of the protection of human rights. We have already, in several examples, emphasized the unequal treatment of persons who have the status of civilian in comparison to persons with combatant status, without any lawful and meaningful basis for such a treatment. Thus, the families of missing civilians cannot obtain the status of civilian victims of war, while the families of missing combatants can; the status of disabled veteran will be accorded to a person who suffers from psychological consequences of participating in war, while the civilians who suffered torture, inhuman treatment or sexual abuse are not recognized as civilian invalids of war unless they have physical injuries, despite suffering severe psychological consequences of the violence survived. Furthermore, the percentage or degree of disability which is required for obtaining acknowledgment of the status of civilian invalid of war is significantly higher than the percentage or degree of disability which is required from the veterans of war. For civilian invalids this percentage is 50%, whereas for disabled war veterans it is 20%.

In addition, this Bill significantly improves the positions of disabled veterans of war, of families of dead combatants, and combatants by introducing a significant number of new rights in comparison with the current legal framework; while the content and scope of the rights of civilian invalids of war and families of civilian victims of war is almost unchanged. The additional rights provided by the Bill for the combatants and disabled veterans of the wars are: medical-technical aids, disability allowance, priority enrolment in educational institutions, priority in the allocation of scholarships and accommodation in student homes, priority in solving legally established rights and interests, the right to economic relief in using utilities, the right to priority in employment, the right to solving

housing needs, the right to a special pension plan, tax and customs exemptions, the right to an identification document and the right to a place of honour in state ceremonies. On the other hand, the only new right provided for civilian invalids of war in this Bill is a one-time help in the event of the user's death.

Article 47 of the Bill stipulates that the right to a family disability allowance is granted to a civilian invalid of war. However, it is not mentioned anywhere in the Bill that the families of a civilian invalid of war can exercise this right. Civilian victims of war are excluded from the right to family disability allowance. Article 62 of the Bill provides for the right to medical-technical aids only for disabled veterans of war, not for civilian invalids of war. Article 98 of the Bill provides for the right to spa-climate recovery only for disabled veterans of war, but not for civilian invalids of war. Article 98 of the Bill provides for the right to priority in enrolment in educational institutions for the children of dead combatants, disabled veterans of war and combatants of the first category, but not for the children of civilian invalids of war or civilian victims of war. Article 99 provides for the right to priority in allocation of the scholarships and accommodation in student homes for the children of dead combatants, disabled veterans of war and the combatants of the first category, but not for the children of civilian invalids of war and civilian victims of war. In this way, the Bill unjustifiably excludes those categories of victims coming from socially vulnerable categories of population, which are anticipated in the Law on pupil and student standards. Article 100 provides for the right to priority in resolving the legally established rights and interests of the combatants of the first category, disabled veterans of war and users of family disability if they are members of the family of a dead combatant, of a combatant killed in combat or deceased disabled veteran of war, but not for civilian invalids and civilian victims of war. Article 102 of the Bill provides for the right to priority in employment for the children of dead combatants, disabled veterans of war and combatants of the first category, but not for civilian invalids and civilian victims of war. Article 105 provides for tax and customs exemptions for disabled veterans of war, but not for civilian invalids and civilian victims of war. Article 120 of the Bill provides for the right to reimbursement of expenses incurred for the exhumation of a dead combatant, but not in the cases of civilian invalids and civilian victims of war. This solution unreasonably discriminates among these categories of victims, especially considering the fact that as a consequence of wars in the former Yugoslavia; almost 12,000 persons are still reported as missing. Article 121 also denies these categories of victim the right to reimbursement of the expenses incurred for funerals, although they are guaranteed that right in the current Law on civilian invalids of war.

e) The proposed Bill is not in accordance with international standards of human rights, which are directly applied in Serbia, nor is it in accordance with the need of harmonization of legal norms with the Acquis of the European Union.

Although some of the drawbacks of the Bill have been discussed in the context of specific questions, here we will once again emphasize that the legal regime that this Bill establishes when it comes to civilian invalids of war and the families of civilian victims of war is in deep and irreconcilable disagreement with the generally accepted and binding standards of protection and improvement of human rights.

The authors of the Bill have not taken into account the serious objections to the current regime of rights of civilian victims of war that were made by the most important international bodies for the protection of human rights. Readers are referred to: 1)

Concluding Observations of the UN Human Rights Committee on the Implementation of the International Covenant on Civil and Political Rights in Serbia, March-April 2011 (items 10 and 19) [[original document](#)]; 2) Concluding Observations of the Committee for the Prevention of Torture on the Implementation of the Convention on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Serbia ([item 18](#)), November 2006 [[original document](#)]; 3) Report by the Commissioner for Human Rights of the Council of Europe after visiting Serbia, June 2011, ([item 2.6.](#)); and [Preliminary Conclusions](#) of the UN Working Group of the UN Commission for Enforced or Involuntary Disappearance after visiting Serbia in June 2014.

Also, the authors of the Bill have not taken into account the following international standards in the field of the rights of victims of human rights violations: 1) United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law from 2005 [[original document](#)]; 2) The European Convention on the Compensation of Victims of Violent Crimes [[original document](#)]; 3) the UN Declaration of basic principles of justice for victims of crime and abuse of power [[original document](#)]; 4) the European Union Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crimes [[original document](#)]; 5) the EU Directive 2004/80/EC relating to compensation to crime victims [[original document](#)]; 6) the European Convention on Human Rights [[original document](#)]; 7) the Charter of Fundamental Rights of the European Union [[original document](#)]; 8) International Covenant on Civil and Political Rights [[original document](#)]; 9) Convention against Torture [[original document](#)]; 10) General Comment no.3 on the implementation of Article 14 of this Convention [[original document](#)]; 11) Convention on the Protection of All Persons from Enforced Disappearance [[original document](#)]; 12) Convention on the Rights of Persons with Disabilities [[original document](#)]. Furthermore, the Bill is not in accordance with the findings of the European Commission stated in the report on the progress of Serbia for 2014, where it was asserted that, „Only few victims of war crime have access to effective compensation under the current legal framework“, and that „assistance to victims has not improved“.

f) The principles of the Bill clearly show that the authors did not intend at all to improve the position of the category of civilian invalids of war and the families of civilian victims of war, nor to remedy the indicated illegalities of the current legal framework.

The principles of the Bill (presented in the Explanatory Report of the Bill) are formulated in a manner unacceptable for a law that regulates such delicate and sensitive matters. In the proclaimed principles there is no mention of the values and goals of the Bill, but only of the formal characteristics of the rights and some general, unquestionable legally-technical characteristics of the law and of the matter the law regulates. In the part dedicated to explanations concerning the reasons for the creation of this law it is pointed out that the adoption of this law will „affirm the permanent value of the struggle for the defence of the independence, sovereignty and constitutional order of the country.“ Unfortunately, among the reasons for the creation and adoption of this law, and among the proclaimed values and principles, there is not a single word about the importance of the law for the promotion of universal values such as social solidarity, recognition of the suffering of victims, accountability, human dignity of the victims and other civilizational principles inherent in democratic societies that respect and promote human rights.

2. Number of the Article in the Bill and your suggestion for amendments

The HLC proposes the withdrawal of the Bill from the legislative process and the creation of a new draft that would take into account all of the above-mentioned objections. The numerous, serious and essential shortcomings of this Bill do not leave room or possibility for an improvement of the current Bill; on the contrary, they point to the need for the drafting of a completely new document, with the participation of a wide array of professionals and experts, especially from the field of protection of civilian victims of war.

Furthermore, the HLC believes that the status of civilian victims of war and their families, their rights and the procedure for the realization of these rights, should be regulated by a special law, because of all the specific characteristics of this category of victims.

3. The explanation of the sent proposals for amendments

The Bill takes over the regime from the Law on Civilian Invalids of War and does not do anything to improve it or harmonize it with the real needs of victims living in Serbia, or with international standards and fundamental principles of human rights.

The rigid definition of the concept of civilian victims of war, the exclusion of some of the most vulnerable categories of victims of war (families of missing persons and victims of sexual abuse) and giving a far more favourable status to disabled war veterans and the families of dead combatants, are just some illustrative examples of a deep misunderstanding of or simple failure to accept civilizational principles and binding norms in the field of protection of victims of human rights violations.

In addition, the HLC points out that the adoption of this Bill is irrational taking into account the commitment of Serbia to join the European Union, because it is obvious that such a law would not pass the test of compliance with the EU Acquis, in particular with the European Charter of Fundamental Rights, the European Convention on Human Rights, the EU Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crimes, the EU Directive 2004/80/EC on compensation for victims of crimes, and other applicable standards in the field of human rights in the EU.

If this Bill is adopted, according to the estimates of the HLC it will fail to apply to at least 15,000 persons who, in accordance with the principles of equality and protection of rights of victims of human rights violations, should enjoy such protection in the Republic of Serbia.