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REPUBLIC OF SERBIA

MINISTRY OF LABOUR, EMPLOYMENT, VETERANA AND SOCIAL AFFAIRS

SUBJECT: Comments of the Humanitarian Law Center on the Draft Law on the Protection of Veterans and Civilian Invalids of War prepared by the Ministry of Labour, Employment and Veteran and Social Affairs

Introduction

The primary source from which the right to reparation for civilian victims of war in Serbia is derived is the **Law on the Rights of Civilian Invalids of War** (Official Gazette of the RS, No. 52/96). The Humanitarian Law Center (HLC) has repeatedly pointed to the inadequacy and discriminatory nature of some of the provisions of this law as a result of which a large number of victims of human rights violations committed during the 1990 conflicts in the former Yugoslavia are not recognised as civilian victims of war.

The Ministry of Labour, Employment and Veteran and Social Affairs (the Ministry) announced a more comprehensive regulation of the rights of war veterans as the reason behind the drafting of the new law. In spite of that, the HLC notes that civilian victims of war should to be given as much attention in the draft law as war veterans, if Serbia wants to align its legislation with international conventions for the protection of human rights and treaties that monitor the application of the conventions, recommendations and standards of international courts and tribunals, as well as with the European Union *acquis*.

The HLC' position on this issue is that Serbia needs to bring in a separate law which would exclusively deal with the rights of civilians who were left disabled by the wars and civilian victims of war. The law should provide for rehabilitation measures for victims, including financial, psycho-social, medical and legal assistance, and provide some form of satisfaction to victims through



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recognition of their suffering. In a broader sense, the law should reflect social solidarity and acceptance of responsibility for past crimes. Also, it should seek to restore the dignity of victims, to improve their quality of life through material and psycho-social support, and to contribute to non-recurrence of crimes.

In order to contribute to the process of adopting one such law, the HLC in 2015 put forward a Model Law on the Rights of Civilian Victims of Human Rights Violations Committed during and in connection with Armed Conflicts between 1991 and 2001 (Model Law). The Model Law was intended to initiate a broad debate about the need to repeal the presently effective Law on the Rights of Civilian Invalids of War and to regulate this area in accordance with the actual needs of civilian victims of war by moving this matter from the field of social protection to that of human rights. The Model Law can be used a basis for amending the Draft Law and building a more comprehensive approach to this area.

As for the Draft Law, it provides noticeably far less rights and entitlements to war-disabled civilians and survivors of civilian victims of war than to disabled veterans and the family members of fallen combatants. Since Serbia has failed to recognise the need to adopt a separate law which would deal exclusively with the rights of war-disabled civilians and families of civilian victims of war, the general HLC's recommendation to the Ministry in that respect is that the Draft Law should be amended so that war-disabled civilians and family members of civilian victims of war are accorded the same rights as disabled servicemen and family members of fallen combatants.

Similarly, the Draft Law has maintained the discriminatory provisions of the presently effective Law on Civilian Invalids of War concerning the rights of war-disabled civilians and civilian victims of war. The HLC urges that the discriminatory provisions be deleted from the Draft Law so that this category of victims too would have access to the rights provided for under the Draft Law.

In the following pages the HLC will set forth its comments with respect to several articles of the Draft Law and also suggest how they should be amended.



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Comments regarding several articles of the Draft Law that need to be amended

Article 22

This Article defines the term “civilian invalid of war” as follows:

A civilian invalid of war is a civilian, *national of the Republic of Serbia*, who sustained a physical impairment of at least 50% due to a wound or injury sustained

1. as a result of ill-treatment or detention at the hands of *an enemy* during war or during the course of war operations *in the territory of the Republic of Serbia*;
2. from leftovers of war materiel in the territory of the Republic of Serbia;
3. as a result of an attack on a diplomatic or consular mission of the Republic of Serbia or as a result of an attack on the person while he/she was on his/her way to the mission in order to discharge his/her official duties within the competence of the Republic of Serbia as an employee of the mission.

From the above cited article it can be concluded that the following requirements have to be **cumulatively** met for a person to acquire the status of a civilian invalid of war: **Serbian nationality, physical impairment of at least 50% as a result of a an injury/wound sustained at the hands of an enemy during war or during the course of war operations, and that the injury was suffered in the territory of the Republic of Serbia.**

This article is not only discriminatory (the prescribed threshold of physical impairment for war veterans is set at 20%), it is also imprecise because it does not define who is to be considered an “enemy”. If this article were accepted as such, the following large categories of victims would not be able to acquire the status of a civilian invalid or civilian victim of war:

1. Victims who sustained physical impairment lower than 50%;
2. Victims of sexual violence, because this type of violence most often has mental, rather than physical effects;
3. Victims of torture and inhuman treatment, most of whom developed Post-Traumatic Stress Disorder (PTSD) which substantially reduces their daily life activities;
4. Victims who suffered harm at the hands of units that were part of the forces that Serbia does not consider an enemy, such as the Ministry of the Interior of the Republic of Serbia (MUP), Yugoslav Army, and Army of Republika Srpska in the first place. This category includes refugees from Croatia and BiH who were forcibly mobilised by the Serbian MUP to be



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deployed in war zones, Bosniaks from the Sandžak region who were subjected to unlawful detention during the armed conflict in BiH, and Bosniaks who were killed or expelled from border areas in the municipality of Priboj during the war in BiH; and

5. Victims who suffered harm outside the territory of the Republic of Serbia, such as victims who were abducted and subsequently killed in Sjeverin, victims of the abduction and killing in Štrpci, Croatian Serbs who fled to Serbia after Operation Storm and Operation Flash.

The fact that the Draft Law maintains a provision of the current law which discriminates between persons who suffered physical impairment and those who suffered mental impairment deserves particular attention, because it contradicts the Constitution of the Republic of Serbia, which in Article 21 (3) states as follows: *Any discrimination, direct or indirect, on any grounds [...] mental or physical disability shall be prohibited.*

The HLC notes that the proposed Draft Law has legitimised the practice of Serbia's administrative bodies. Namely, the "harm suffered in the territory of Serbia" requirement is not laid down in the presently effective law; in practice however, the HLC has seen situations where victims who did not fulfil this requirement could not exercise their rights provided for in the law. It can therefore be said that by introducing this requirement in the proposed text of the draft law, the Ministry legitimised the practice already established by administrative bodies, thus preventing a large number of victims from applying for and being accorded the status of a civilian invalid of war.

For the reasons stated above, the HLC holds that this discriminatory provision should be deleted from the article and that the article should be re-written to read as follows:

For the purpose of this Law, the act of violation of fundamental human rights and freedoms is an act of violation of the right to life, the right to physical and mental integrity, the right to the inviolability of personal dignity, the right to liberty and security of person, freedom of movement, and the right to private and family life (hereinafter "act of violation") that has occurred during the course or in connection with armed conflicts, particularly referring to murder, enforced disappearance, torture, inhumane or degrading, sexual violence, unlawful deprivation of liberty, forcible mobilisation and forced labour.

Article 23

Article 23 is worded as follows:



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A civilian victim of war is *a national of the Republic of Serbia* who, as a civilian, lost his life *in the circumstances referred to in Article 20 of the present Law*. Persons who *disappeared* in the circumstances referred to in Article 20 of the present Law shall be considered civilian victims of war.

Recognition of missing persons as civilian victims of war is praiseworthy. However, it is important to note that this provision failed to clarify whether the families of missing persons are still required to have declared their missing family members dead through non-adversarial proceedings prior to applying for the status of family members of a civilian victim of war. The HLC's experience indicates that this is the case under the law in force. As many families refuse to have their loved ones declared dead until their mortal remains are found and their fate and the circumstances of their deaths are clarified, they are not eligible for civilian victim of war status.

In this respect, the HLC is of the opinion that **the proposed wording of Article 23 of the Draft Law needs to be amended by adding the text stating that the families of missing persons are not required to have their missing family members declared dead through non-adversarial proceedings in order to acquire the status of civilian victims of war.**

Article 27

Article 27 specifies which family members are to be considered the family members of a civilian invalid of war or civilian victim of war. They include: persons who lived with a civilian invalid of war or civilian victim of war in the same household for a period of at least one year prior to his/her death, including spouse, children (born in or out of wedlock), adopted children or stepchildren who were dependants of the civilian invalid of war or civilian victim of war, parents, stepfather, stepmother, and the adoptive parent who provided for the civilian victim of war or was his/her dependent.

Clearly, the Draft Law defines the family as a mere economic unit of individuals living in the same household without viewing it as an emotional unit as well. This is borne out by the fact that siblings and grandparents are excluded from the circle of family members. This same definition of family members applies to the families of fallen or deceased combatants as well, but without reference to living in the same household for a period of at least one year prior their death.

In this regard, the HLC proposes that **the part of the provision which imposes the condition of living in the same household for a period of at least one year prior to the victim's death should be deleted from Article 27 and that the definition of family members should be widened to include siblings and grandparents.**



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Article 35

Article 35 classifies disabled veterans into 10 groups in a descending order of disability. The last, tenth, group includes veterans with a disability rating of 20%. At the same time, this article classifies war-disabled civilians into five groups, with the fifth group comprising those with a disability rating of 50%. In setting the disability threshold at 20% for disabled veterans and at 50% for war-disabled civilians, this provision clearly discriminates against the latter group and **should therefore be amended so as to lower the disability threshold for war-disabled civilians to 20% to match that set for disabled veterans.**

Articles 40-52

Articles 40-52 deal with disability allowance payable to survivors of fallen combatants and deceased disabled veterans. The lawmakers envisaged this type of benefit only for immediate family members of fallen combatants and deceased disabled veterans classified under groups one to seven, under certain circumstances. At the same time, they excluded immediate family members of war-disabled civilians and civilian victims of war from the circle of survivors' allowance beneficiaries. This legal arrangement is discriminatory and should be modified in order to **provide for survivors' disability allowance for immediate family members of war-disabled civilians and civilian victims of war too.**

Article 61

Under Article 61 of the Draft Law, disabled veterans are entitled to free medical and technical aids, such as upper and lower limb prosthetics, orthoses and wheelchairs. For some obscure reason, this provision does not apply to war-disabled civilians. As it discriminates against war-disabled civilians, this provision should be amended in order to **make also war-disabled civilians eligible for free medical and technical aids.**

Article 62

Under Article 62 of the Draft Law, disabled veterans are entitled to spa and climate air therapies, whereas war-disabled civilians are not, once again for some obscure reason. This provision too is discriminatory and should be changed so as to **include war-disabled civilians in the category of persons entitled to spa and climate air therapies.**



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Articles 72- 73

Under Articles 72-73, both disabled veterans and war-disabled civilians are entitled to a monthly cash benefit. However, payment of the monthly cash benefit is linked to meeting a range of conditions, including: *not having sufficient means to support themselves, not being a recipient of disability allowance or other permanent or lump-sum benefits*. The Draft Law, just like the presently effective law, treats the monthly cash benefit as a benefit intended solely for the most indigent categories of the population. In the HLC's view, the monthly cash benefit or lump-sum benefits should be paid on the sole ground of a person's being a war-disabled civilian and not be made conditional upon his meeting the requirement of financial vulnerability. This provision has to be amended accordingly that war-disabled civilian or the family members of civilian war victim could accomplish a monthly cash benefit or fixed cash amount as a financial compensation.

Article 81

Article 81 of the Draft Law stipulates the right to survivors' allowance but only for the families of disabled veterans. It is not clear why the Draft Law discriminates against war-disabled civilians by excluding their families from the circle of beneficiaries of this allowance. This provision needs to be amended by adding **that the families of war-disabled civilians are also entitled to survivors' allowance**.

Article 87

Under Article 87 of the Draft Law, disabled veterans are entitled to a grant for the purchase of a passenger motor vehicle. War-disabled civilians are not referred to in this provision as eligible for the grant. Hence this discriminatory provision should be modified by adding that **war-disabled civilians too are entitled to a grant for the purchase of a passenger motor vehicle**.

Article 108

Article 108 of the Draft Law prescribes that in the event of the death of a disabled veteran, his family is entitled to one-time cash assistance. For some reason the same does not apply to the families of a war-disabled civilian. As this provision discriminates against war-disabled civilians, it should be amended to **include the survivors of war-disabled civilians in the circle of recipients of one-time cash assistance payable in the event of the death of the war-disabled civilian**.



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Article 110

Under Article 110, the rights provided for under the Draft Law may be exercised by persons as long as they *have permanent residence in Serbia*. In the HLC's opinion, war-disabled civilians and the families of civilian victims of war should be entitled to enjoy these rights regardless of whether or not they are permanent residents of Serbia. In other words, they acquire these rights on the basis of their status, not on the basis of their place of residence. **This provision should therefore be deleted from the Draft Law.**

Article 138

Article 138 stipulates that the circumstances under which a person sustained an injury or wound are to be determined on the basis of the crime scene investigation report and other relevant documents created by the Ministry of the Interior. The HLC points out that the lawmaker cannot expect the persons who were civilian victims of armed conflicts to possess crime scene investigation reports because in the majority of incidents crime scenes were not at all investigated. Additionally, persons affected by wars cannot be expected to possess written documents created at the time they sustained injury, as prescribed by Article 139 of the Draft Law. **Therefore, these provisions should be removed from the Draft Law.**

Article 144

Likewise, paragraph 2 of Article 144, which states that the statements of a witness or other persons cannot be considered as evidence on the basis of which the status of a war-disabled civilian or a civilian victim of war could be claimed is discriminatory. Namely, it is clear that civilian victims of war do not possess judicial or medical documentation to prove their status. First of all, because it is unlikely that in the midst of war someone would gather documentation he/she might eventually need to be able to exercise a certain right. In such circumstances all they can think about is how to save their own life and the lives of their family members. That being the case, the **HLC considers it necessary for the Draft Law to stipulate that statements of witnesses or other persons who can testify that a certain person is a war-disabled civilian or a family member of a civilian victim of war is to be accepted as evidence.**