



Humanitarian Law Center

# **The legal and institutional framework in Serbia regarding the rights and needs of civilian victims of war**

Humanitarian Law Center Report

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## Introduction

Armed conflicts in the territories of the former Yugoslavia lasted from 1991 to 2001. The wars in Croatia (1991-1995), Bosnia and Herzegovina (1992-1995) and Kosovo (1998-1999) resulted in the mass murders of civilians, ethnic cleansing and persecution of hundreds of thousands of people, but also a large number of grave crimes unseen in Europe since World War II. Serbia had an active and involved role in these conflicts. In the context of the armed conflicts, the authorities in Serbia during this entire period were responsible for serious violations of the fundamental rights of its own citizens from the ranks of national minorities, as well as of some members of the majority Serbian population. In Serbia today there are a significant number of citizens who came to Serbia as refugees owing to the wars in other countries of the former Yugoslavia, and most of them have remained in Serbia permanently. Among them are a fair number who survived crimes, whose physical and psychological consequences they suffer to this day, as well as many of those who lost one or more family members in the war.

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Serbia has taken almost no measures to adequately address the rights and needs of past wars' civilian victims and their families, apart from substantial efforts in regards to housing and resolving the status of refugees and internally displaced persons. The number of potentially eligible victims is estimated to be at least 15 000. The legal and institutional framework is inherited from the time of socialist Yugoslavia and is at the same time frozen in the context of social protection. As a result of the shortcomings in the definition of a civilian victim, the largest number of victims are not recognised under the existing law. The rights reserved for civilian victims take the form of financial support exclusively, at levels insufficient for today's living conditions. At the same time, there are no other services of social protection of a rehabilitative, psychological, integrative or inclusive nature which have been specifically designed for this category of vulnerable citizens.

The dissatisfaction of individuals and victims' associations unanimously bears witness to the fact that they, in the second decade after the end of the conflicts, still feel like second-class citizens. This was particularly evident in late 2014, when as part of the proposed changes to the legislative framework, the intention of the authorities to improve the status and rights of the veterans and disabled veterans became apparent, while the civilian victims of wars were completely cast aside. Discrimination and the position of victims of war remains a sideline issue in the process of legal and institutional reform within the framework of the negotiations on accession to the European Union, except in the narrow area of criminal trials for war crimes.

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The Republic of Serbia is obligated by ratified international conventions to provide adequate reparations to all individuals whose human rights are guaranteed by these agreements, when those rights have been violated. These reparations should be applied in all their forms, namely, restitution, compensation, rehabilitation measures, providing satisfaction and the establishment of a guarantee of non-repetition. It is up to the state which mechanisms and measures it will establish in order to better achieve these reparative ends: to return dignity to the victim and compensate what the victim suffered to the greatest extent possible and in the broadest sense.

This report by the Humanitarian Law Center (HLC) provides a brief overview of the existing system in Serbia in terms of the rights and needs of civilian victims, and it seeks to ascertain its key shortcomings and identify recommendations for its amendments and improvements.



# I General legal framework for the civilian victims in Serbia

## I The Constitution of the Republic of Serbia

The Constitution of Serbia of 2006 contains a provision relating to victims of war. In Part II, governing human and minority rights and freedoms, in paragraph 4 of Article 69 of the Constitution, entitled “Social protection”, it is stated that “disabled persons, war veterans and victims of war are offered [...] special protection, in accordance with the law.”

From this provision, and its place in the text of the highest law in the state, it can be concluded that the intended protection of war victims is subsumed under the broader concept of social protection, which refers to a larger circle of beneficiaries.<sup>1</sup> This is not a novelty in the Serbian legal system, because it is similar to the constitutional and legal provisions that existed before. Victims of war, whose definition is not defined in the constitutional text, were included in the category of citizens who have the right to social protection. Furthermore, the authority and obligation to further regulate the law was transferred to the legislative authorities. Given the meaning of the norm, it is clear that the term ‘victim’ is not used in the context of a person injured by some crime or any other offense, but relates to all persons that were injured as a result of the war. Therefore, a right that belongs to this category is not derived from the violation of any other right, but is established by a constitutional norm as autonomous, while it is left to the legislator to further regulate the contents of that right as well as the conditions for its implementation.

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<sup>1</sup> Article 69(1) of the Constitution of the Republic of Serbia (*Official Gazette of the RS* no. 98/06): Citizens and families in need of welfare to overcome their social and existential difficulties and create conditions to meet basic needs, have the right to social protection, whose provision is based on the principles of social justice, humanity and respect for human dignity; Article 69(2) of the Constitution: The rights of employees and their families to social security and insurance are regulated by law.

## 2 The legislation in the field of protection of war veterans

### Law on the Rights of Civilian Invalids of War

**The Law on the Rights of Civilian Invalids of War** is the central law that defines and regulates the rights of war victims in Serbia. It was adopted in 1996 and it replaced the previously existing Law on Protection of Civilian Invalids of War of 1975. The existing beneficiaries under the former law continued to enjoy the rights under the law in force, with a harmonisation of their acquired rights and their procurement under the categories stipulated by this Law.

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The Law provides for the following rights: (1) personal disability allowance, (2) allowance for care and assistance by another person, (3) orthopedic aid allowance, (4) health care and cash benefits related to the exercise of health care, (5) free and privileged transportation, (6) allowance for food and accomodation during travel, and while staying in a different place at the invitation of a competent authority, (7) a monthly cash allowance, and (8) compensation for funeral expenses.<sup>2</sup> All of the above rights are related to cash benefits, whether it is payments in cash (in regular monthly intervals or as a one-time payment) or release from certain costs (in the provision of health or transport services). The Republic of Serbia provides funding for these rights from the state budget, and the amount of individual benefits is determined on a monthly basis with relevant decisions by the Ministry of Labour, Employment, Veteran and Social Affairs, which is responsible for the implementation of the Law. The Law stipulates that, at the level of local government, there can be other rights also, or the scope of existing rights can be increased, or more favourable conditions for the acquisition of rights may be determined, however in such cases all of the burden of increasing

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2 Article 4 of the Law on the Rights of Civilian Invalids of War (*Official Gazette of the RS* no. 52/96).

the scope of rights must be carried by the budget of the local government.<sup>3</sup> It is also stipulated that the rights of the Law can be exercised only if they are not already being used on some other grounds.<sup>4</sup> This primarily refers to the use of health care services and the attainment of personal disability allowance, which illustrates the subsidiary character of this regulation aimed at providing social protection only to those individuals who for some other reasons cannot enjoy social protection rights under other regulations. It does not provide an additional level of protection for this special category of vulnerable citizens.

The greatest shortcoming of the Law on the Rights of Civilian Invalids of War is embodied in the conditions that must be met in order to achieve any prescribed rights – the problem lies in defining the beneficiary of the right. The Law recognises three types of potential users: (1) civilian invalids of war, (2) family members of civilian invalids of war, and (3) family members of civilian victims of war. The definition of two key terms – *civilian invalid of war* and *civilian victim of war* – is done in a very narrow and rigid manner in the Law, and does not meet the international standards regarding the rights of victims of human rights violations, standards that are binding for Serbia too.<sup>5</sup>

A civilian invalid of war, according to Article 2 of the Law, is:

*a person who has suffered physical harm of at least 50% due to a wound or injury that has left visible traces, inflicted by abuse or deprivation of liberty by the enemy in time of war, during war operations, from remaining war material or from enemy sabotage or terrorist activities,*

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3 Article 5 of the Law on the Rights of Civilian Invalids of War (*Official Gazette of the RS* no. 52/96).

4 Article 6 of the Law on the Rights of Civilian Invalids of War (*Official Gazette of the RS* no. 52/96).

5 *The right of victims to reparations in Serbia and the standards of the European Court of Human Rights*, report for 2014/2015, Humanitarian Law Center, Belgrade, January 2016, pp. 19–26.

while a civilian victim of war is:

*[a person] who was killed or died under the circumstances referred to in Article 2 of this Law.*

As will be discussed later, the decision whether an individual meets the requirements for the recognition of a right is made precisely by using these definitions. Conditions prescribed in such a way significantly narrow the circle of eligible civilian victims of armed conflicts.

In this way, a civilian invalid of war can only be a person with visible physical disability of at least 50%, according to the established classification, which also applies to war veterans.<sup>6</sup> Considering that, according to this stipulation, a victim can only be classified as a person with physical damage to the body (organs or body parts), this requirement cannot be fulfilled by any victim who, as a result of the war, suffers from a mental or illness of a psychosomatic nature.<sup>7</sup> Likewise, the right to disability benefits cannot be exercised by a person whose disability is determined to be less than 50% (for example, a person with hearing loss ranging from 70 to 90% by the Fowler-Sabine table has a disability of 40%). Survivors of rape or any other form of sexual abuse also cannot meet the requirements to derive benefit from their rights under this Law, because the consequences of such injuries usually do not result in physical harm to the body to such a serious and lasting degree. On the other hand, the consequences of sexual abuse, although permanent and serious for the mental health of the victim, are not recognised by this Law.

The ambiguity of the basic elements in the aforementioned definitions, including terms such as *enemy*, *war*, *war operations* and the like, leave open the possibility for different interpretations when decisions are made on the recognition of right in individual cases. In the Law itself, there are no clear definitions of these terms, which leads to the fact that authorities

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<sup>6</sup> See pp. 15-16.

<sup>7</sup> This interpretation is confirmed by the practice of authorities that implement and apply the Law. See for example, the Decision of the Provincial Secretariat for Health and Social Policy of Vojvodina, no. 107-585-00016/2004-03 of 1 June 2004.

responsible for making decisions interpret the circumstances under which the injury occurred (in the case of a civilian war invalid) or death (in case of a civilian victim of war) differently.<sup>8</sup>

A particular problem is the matter of interpreting the territorial validity of the Law. When it comes to injuries that civilians, now living in Serbia, suffered while they were on the territory of other countries (primarily the other republics of the former Yugoslavia), or when it comes to the death of a civilian victim whose family members now live in Serbia, whilst the victim died on the territory of another country, there is no provision in the Law that would precisely regulate this issue. The practice until 2012 showed that in such cases the requests for benefits were adopted. Then came a sudden shift in the interpretation of the Law, first in the municipal administration in Priboj, apparently driven by requests submitted by members of families of Bosniaks from this municipality who were kidnapped and killed in war crimes on the territory of Bosnia and Herzegovina, near the border with Serbia. All those requests were rejected on the grounds that the Law on the Rights of Civilian Invalids of War, being the Law of the Republic of Serbia, cannot apply to cases which occurred on the territory of other republics, in accordance with *the principles of sovereignty and territorial validity of the Law*. This new interpretation has, in fact, become the interpretation employed by the relevant Ministry, which, faced with allegations of a different, discriminatory treatment of citizens based on their ethnicity, starting in 2013, conducted an official control of the previously adopted decisions and revoked the rights granted to other users, rights achieved on the basis of events that occurred on the territory of another republic of the former Yugoslavia. According to the Ministry, the process of revocation was started for 14 of these decisions, and by 2015 a total of 13 users lost the previously acquired rights,<sup>9</sup> furthermore a number of requests, for the same reasons, were denied at the municipal level.

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<sup>8</sup> See pp. 36-38.

<sup>9</sup> The reply of the Ministry of Labour, Employment, Veteran and Social Affairs at the request of the HLC for access to information of public importance of 3 February 2016, no. 07-00-00088/2016-15.

Since a civilian victim of war is a person who was killed or died under the circumstances specified in Article 2 of the Law, family members of persons who are missing cannot realise the right to an adequate monthly cash allowance until they declare their missing family member as deceased in extrajudicial court proceedings. This requirement is not in accordance with international standards in respect of the rights of families of those who suffered enforced disappearances, and it is explicitly contrary to Article 24 of the Convention on the Protection of All Persons from Enforced Disappearances that Serbia ratified.<sup>10</sup>

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The Law exclusively recognises parents, children and spouses as family members of a civilian invalid of war and civilian victim of war,<sup>11</sup> omitting brothers and sisters of the victim, even in cases when brothers and sisters lived in the same household with the victim. In that way, the connection between close relatives is reduced to the community of common economic interests, while the emotional dimension of family relationships is completely ignored.<sup>12</sup>

Finally, since from the standpoint of the legislator, the Law is indisputably a regulation in the field of social protection, the rights stipulated by the Law are provided exclusively for citizens of Serbia who are resident in Serbia, although the Law does not expressly specify this. According to the position taken by the Supreme Court of Serbia, the status of a civilian invalid of war can be granted to persons who at the moment of bodily harm did not have Serbian citizenship if they subsequently became citizens.<sup>13</sup> This attitude underlines the social point of view on the rights reserved for nationals, which further suppresses the reparative component, in terms of satisfaction for the injury suffered.

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10 Concluding observations of the Committee on Enforced Disappearances on the report submitted by Serbia in accordance with Article 29(1) of the Convention, adopted at the 135<sup>th</sup> meeting on 12 February 2015, paras. 25–26.

11 Article 3(3) of the Law on the Rights of Civilian Invalids of War (*Official Gazette of the RS* no. 52/96).

12 *The rights of victims to reparations in Serbia and standards of the European Court of Human Rights*, report for 2014/2015, the Humanitarian Law Center, Belgrade, January 2016, p. 26.

13 The Judgment of the Supreme Court of Serbia UŽ. 24/04 of 1 July 2004.

The HLC filed an initiative in May 2016 with the Constitutional Court of Serbia for an assessment of constitutionality of the Law on the Rights of Civilian Invalids of War, or its compliance with ratified international treaties, bearing in mind first of all the discriminatory character of the provisions of the Law, and their contradiction of the principles for the provision of social justice, as stipulated in the Constitution. A year later, the Constitutional Court rejected this initiative,<sup>14</sup> taking the view that the Law does not discriminate on any basis, and that it is entirely within the powers of the legislature to prescribe the realisation of social policy in accordance with financial realities. The Constitutional Court did not properly assess the existence of direct and indirect discrimination of certain victims on the basis of their personal characteristics, despite the obligations arising from national legislation, as well as the standards established in the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

### **Regulations for disabled veterans and family members of fallen soldiers and deceased disabled veterans**

**Regulations governing the rights of disabled veterans and family members of fallen soldiers and deceased disabled veterans** are also applied to civilian invalids of war and family members of civilian victims of war, in terms of the scope of the rights and the method and procedure for their realisation,<sup>15</sup> indicating the subsidiary character (and lesser importance) of categories of civilian victims as compared to soldiers and military personnel. In addition, the regulations aimed at soldiers, disabled veterans and their families are much more detailed and elaborate, and include a somewhat larger scope of social protection, putting them in a privileged position compared to civilians.

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14 The Conclusion of the Constitutional Court of Serbia IUz. 128/2016 of 19 April 2017.

15 Articles 7 and 8(1) of the Law on the Rights of Civilian Invalids of War (*Official Gazette of the RS* no. 52/96).

Given the federal structure of the former common state, but also of the Federal Republic of Yugoslavia (which included the Republic of Serbia and Montenegro from 1992 to 2003), the authority in the field of protection of war veterans was divided between the federal and state governments, in such a way that the basic rights of soldiers, families of fallen soldiers, and disabled veterans were regulated federally, while the republics more closely regulated the ways of exercising those rights. With the formation of the State Union of Serbia and Montenegro, all former federal regulations were automatically inherited by the member republics, and so in Serbia today two laws are in effect – the **Law on Basic Rights of Veterans, Disabled Veterans and Families of Fallen Soldiers** (former federal law) and the **Law on the Rights of Veterans, Disabled Veterans and their Family Members** (law of the Republic of Serbia).

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The most obvious extension of the scope of social protection for disabled veterans is reflected in the recognition of the right to personal disability allowance for physical damage to the body that amounts to 20% and higher.<sup>16</sup> Among other rights that disabled veterans can enjoy under certain circumstances are unemployment benefits, spa and climatic treatment, and the right to a passenger motor vehicle. Unlike with the relatives of a civilian victim of war, potential beneficiaries of family disability allowance can also be a brother, sister, stepfather, stepmother or adoptive parent, and in cases when closer relatives do not exercise the right to the allowance, even grandparents of the killed soldier can be eligible.<sup>17</sup>

Both of the laws mentioned regulate somewhat more closely the course of the procedure for deciding on the rights of applicants, including the competent authorities and medical committees for determination of the percentage of disability, which is accordingly applied both to applicants from

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16 Article 25 of the Law on Basic Rights of Veterans, Disabled Veterans and Families of Fallen Soldiers (*Official Journal of the SFRY* nos. 24/98, 29/98 – corr. i 25/00 – FCC decision and *Official Gazette of the RS* nos. 101/05 – other law and 111/09 – other law).

17 Articles 32 and 33 of the Law on Basic Rights of Veterans, Disabled Veterans and Families of Fallen Soldiers (*Official Gazette of the FR Y* nos. 24/98, 29/98 – corr. and 25/00 – FCC Decision and *Official Gazette of the RS* nos. 101/05 – other law and 111/09 – other law).



the category of civilian invalids of war and family members of civilian victims. The requirements in terms of proving injury or death are the same for both military personnel and civilians – proof is based on the medical documentation which must be from the period when the injury/death occurred, and no later than one year after the termination of the circumstances related to it.<sup>18</sup>

While for the persons who were in active military service, thanks to orderly military administration, obtaining such medical documentation does not necessarily pose a problem, however for civilians who suddenly found themselves, against their will, in the midst of the armed conflict, in most cases do not have adequate documentation from the period that the law requires. Very often their documentation is from a period after the injury/death. That as a rule represents a barrier and results in rejection of the request, as evidenced by a number of rejections, according to the data provided by local governments.<sup>19</sup>

### 3 Bylaws

The bylaws necessary for the implementation of the above regulations are issued by the relevant Ministry. Almost all bylaws currently in force were adopted by the Federal Ministry for Social Policy of the FRY back in 1998, and they apply to both military and civilian disabled persons, although civilian disabled persons are nowhere explicitly mentioned in those regulations.

**The Rules of Procedure on the Determination of the Percentage of Military Disability** specify the methodology of assessing the percentage of disability on the basis of the determined visible damage to the body,<sup>20</sup> and the **List of Percentages of Military Disability** is an integral part of these

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18 See Article 12 of the Law on the Rights of Civilian Invalids of War; in the same context - Article 77 of the Law on Basic Rights of Veterans, Disabled Veterans and Families of Fallen Soldiers.

19 See p. 37.

20 A visible damage to the body is considered to be the damage or destruction of the body part visible to the eye, as well as damage or destruction of an internal organ that can be diagnosed by one of the recognised medical methods.

rules. This List contains 307 types of bodily damage, with corresponding percentages attributed to each type of damage.

**The Rules of Procedure on Medical Indications for the Classification of Disabled Veterans in Degrees of Allowance for Care and Assistance** prescribes which more severe forms of damage to the body require the care of another person, for which a corresponding allowance can be obtained.

**The Rules of Procedure on Orthopedic Aids** (adopted in 2009) provide medical indications on the basis of which the right to orthopedic devices and other aids is granted, and their types and duration are determined, as well as the procedure for exercising the right to these aids.

**16 The Rules of Procedure on the Work of Medical Committees** define medical committees whose task is to provide findings and opinions on the percentage of disability, on the right to an orthopedic device and other aids, on the right to allowance for care and assistance, on the inability for work and other facts relevant to the decision-making. According to these rules of procedure, there are medical committees in first instance procedures, medical committees in second instance procedures, and a special medical committee. The rules of procedure also regulate the work of the committees and the forms on which they submit their findings.

In the **Rules of Procedure on the Manner of the Exercise of the Right to Free and Privileged Transportation**, the conditions for the exercise of this right are defined in more detail, as well as the tickets for the beneficiaries, and records of beneficiaries. Although free and privileged transport is provided by the Law on the Rights of Civilian Invalids of War, the Rules of Procedure only apply to disabled veterans, and the HLC did not manage to obtain information as to whether civilian invalids of war are exercising this right.

## **4 Draft Law on the Rights of Veterans, Disabled Veterans, Civilian Invalids of War and Their Family Members**

The intention to codify particular inherited regulations in the field of protection of war veterans has led to the creation of the Draft Law that was supposed to cover all beneficiaries of these kinds of social protection. The Ministry of Labour, Employment, Veteran and Social Affairs published the Draft Law in December 2014. The codification did not achieve the desired result – the Draft Law is extensive (it consists of 249 articles), contains many references to other provisions within the same text, and is not accessible to the legally illiterate or potential beneficiary. Regarding the process of drafting the law, there was a distinct lack of transparency and a lack of public debate, and the civilian victims' associations were not consulted regarding the contents of the Draft or the individual solutions. After receiving the complaints from associations and civil society organisations, to date, the Ministry has not published the results of the public debate, although it is legally bound to do so; and it refuses to disclose to the public all subsequent changes to the Draft Law.

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If we take into account the latest available version of the Draft Law from October 2015, published on the website of the State Secretariat for Public Policy, the authors' attempts to improve the position of disabled veterans and their families is notable as is clear from the introduction of new rights (professional rehabilitation, priority for enrolment in educational institutions, scholarships grants and accomodation in boarding schools, priority in solving legal rights and interests, tax and customs exemptions, etc). On the other hand, the rights of civilian invalids of war and families of civilian victims of war have not been extended in a single aspect; instead, the existing legal regime is retained for them. Discrimination against civilians affected by armed conflict in this way becomes even more apparent, and the Draft Law itself has been the subject of criticism by the relevant international bodies that monitor respect for human rights in Serbia.<sup>21</sup>

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21 Report of Nils Muižnieks, the Commissioner for Human Rights of the Council of Europe following his visit to Serbia from March 16-20 2015, CommDH(2015)14, Strasbourg, July 8 2015, par. 30.

## 5 Law on Social Protection

The Law on Social Protection is an umbrella law regulating the constitutional right of citizens to social protection and defining the goals of state measures applied in this field, among which are: to achieve and maintain the minimum material security of individuals and families; the provision of services and the realisation of rights to social protection; the creation of equal opportunities, and encouragement of social inclusion. The Law recognises social protection services and financial support measures as the two main types of measures.<sup>22</sup> While financial support is in the form of cash benefits (such as disability benefits, monthly allowances and one-time assistance), social protection services include various activities of providing support and assistance to individuals and families in order to improve or maintain the quality of life, and eliminate the risk of adverse life circumstances, as well as to create opportunities to live independently in society.

As explained further down in the text, none of these services that exist in Serbia is specifically aimed at the needs of civilian victims of armed conflicts, nor are they designed with this category of population in mind. Civilian victims can use social services like all other citizens if they meet the requirements (for example, due to age, immobility, inability to live independently, etc.)

The Law establishes a system of social protection in Serbia, and it establishes institutions for providing social protection – social welfare centers at the local government level, and specialised social care institutions, and institutions at the provincial and national levels whose role is the development and improvement of social protection.

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22 Article 5 of the Law on Social Protection (*Official Gazette of the RS* no. 24/11).

## 6 Law on Social Housing

The Social Housing Law was passed in 2009 and was valid for a total of six years.<sup>23</sup> The subject of this law was regulating the conditions and methods for the realisation of social housing, in accordance with the National Strategy on Social Housing. Local government bodies were envisaged to be the implementators of the social housing activities, and they were supposed to create a local strategy of social housing in accordance with the National Strategy, and to plan the development of social housing by determining the budget, by managing the appropriate land policy and spatial planning, and by establishing, independently or with other departments of local governments, local non-profit housing agencies.<sup>24</sup> For its part, the Government of the Republic of Serbia was expected to adopt its social housing programmes,<sup>25</sup> and also to establish a National Housing Agency.<sup>26</sup>

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The Law on Social Housing provided for the right to housing needs for homeless persons, or persons without an adequate standard of housing, who could not obtain housing at market conditions from the income they generated. In setting priorities for addressing housing needs, different criteria were taken into account – housing status, the amount of income, health status, disability, number of household members and assets. It was specifically envisaged that priority would be given to persons belonging to vulnerable social groups, among which were enumerated in the following categories: young people, orphans, single parents, families with many children, single-person households, persons over 65 years of age, persons with disabilities, war veterans, **civilian invalids of war**, refugees and internally displaced persons, Roma and other members of socially vulnerable groups.<sup>27</sup> This was,

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23 Ceased to be valid under item 3 of Article 157 of the Law on Housing and Maintenance of Buildings (*Official Gazette of the RS* no. 104/16).

24 Article 4 of the Law on Social Housing (*Official Gazette of the RS* no. 72/09).

25 Article 6 of the Law on Social Housing (*Official Gazette of the RS* no. 72/09).

26 By cessation of the Law on Social Housing, the Republic Agency for Housing also ceased to exist, and its scope and jurisdiction was claimed by the ministry responsible for housing affairs.

27 Article 10 of the Law on Social Housing (*Official Gazette of the RS* no. 72/09).

therefore, the only specific legal provision which recognised civilian victims of war as a group which should be given priority in dealing with one aspect of its social position.

In six years of implementation, the realisation of the social housing programme has been modest. According to data provided by the municipal and city governments in Serbia, there have been only a few dozen cases of housing issues, but none has been related to civilian invalids of war or families of civilian victims of war.

## II Institutional framework for civilian victims in Serbia

As discussed in the previous chapter in which the legal framework was presented, the civilian victims in Serbia are fully included in the regime of social policy, and the institutions that are responsible for these persons are by their nature administrative bodies. They can be divided into two groups:

- **state administration bodies and local governments**, which are responsible for the implementation of the Law on the Rights of Civilian Invalids of War, and decide on the acquisition of user status under this Law. They are also responsible for payment of amounts of money in accordance with recognised rights
- **social welfare centers**, special administrative bodies that provide other services of social protection, and **institutes for social protection**, institutions with a mission to identify priorities in social protection and improve its functioning

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### I The authorities responsible for the implementation of the Law on Civilian Invalids of War

#### Local government authorities

Local government bodies – municipal or city administrations – are responsible for deciding on the acquisition of rights in the first instance. In accordance with the Law, they perform these tasks as devolved.<sup>28</sup> In the 25 city administrations and 135 municipal administrations, that authority is classified as activities of social and health care, for which as a rule there is a separate organisational unit within the administration (with the exception

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28 Article 11(1) and (3) of the Law on the Rights of Civilian Invalids of War (*Official Gazette of the RS* no. 52/96).

of municipal administration in the smallest municipalities, where there is no division into separate organisational units). According to the information available from information booklets on the work of local governments, in jobs systematically dealing with veterans' and disabled veterans' protection in almost all municipalities and cities, there is at most one person, regardless of the number of requests submitted by civilian victims, or the number of existing beneficiaries on the territory of the municipality.

Local government bodies are also responsible for payments to all persons who have been granted the status of a beneficiary of the rights under the Law. The funds for these payments are provided in the budget of the Republic of Serbia. Local government can decide to extend the scope of protection for users of the Law, if it provides funds from its own budget for additional or increased rights. On the territory of Serbia, only the Municipal Assembly of Merošina decided to recognise the right to personal disability allowance for civilian invalids of war with a minimum degree of disability of 20%.

Considering that the administrative authorities no longer perform their functions on the territory of Kosovo, some municipalities in Serbia took over the files of existing beneficiaries whose place of residence is in Kosovo, as well as the competence to decide on new requests.<sup>29</sup>

## **Second instance authorities**

**The Ministry of Labour, Employment, Veteran and Social Affairs** is the body primarily responsible for implementing the Law on the Rights of Civilian War Invalids. The basic functions of the Ministry in terms of law implementation, and overall in the field of protection of civilian invalids of war and families of civilian victims of war, are of a regulatory and supervisory nature.

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<sup>29</sup> For example, following the instructions of the Ministry of Social Affairs no. 021-010036/2003-07 of 27 October 2003, the Municipality of Raška took over the settlement of claims and the payment of recognised benefits for persons from the municipalities of Zubin Potok and Leposavić and from the Serbian enclaves in Kosovo.



The regulatory part of the Ministry's activities is the preparation and drafting of laws and other regulations in the area of protection of veterans and disabled veterans, civilian invalids of war and their families.

The Ministry performs its supervisory activities through revision and appeals on first instance decisions. Revision is the regular procedure of the administrative supervision that the Ministry conducts over every decision taken by the first instance body which recognises the right under the Law. If the first instance decision is appealed, the Ministry decides on both the appeal and revision in one document. The revision procedure postpones the execution of the decision.

Within the organisational structure of the Ministry there is a Department for Veterans' and Disabled Veterans' Protection, which is headed by the assistant of the Minister in charge of the protection of veterans and disabled veterans. Within the Department, there are the Section for Regulatory Affairs and for Preserving the Traditions of Serbian Wars of Liberation, and the Section for Normative and Administrative Affairs. According to the current classification, the entire Department is envisaged to employ 16 civil servants, and currently 13 positions are filled.<sup>30</sup>

The Law assigned special authority to the **Provincial Secretariat for Social Policy, Demography and Gender Equality of the Autonomous Province of Vojvodina** and the **Secretariat for Social Welfare of the City of Belgrade**, to decide on appeals on the first instance decisions of municipal authorities for the territories of the Autonomous Province of Vojvodina and the City of Belgrade.

## 2 Social welfare institutions

**Social welfare centers** are the basic units for the provision of social services provided by the Law on Social Protection. They are established

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30 The Ministry of Labour, Employment, Veteran and Social Affairs, Information Booklet, Belgrade, May 2017, p. 48.

by local governments, and one social welfare center may be established by two or more local governments together.<sup>31</sup> Territorial jurisdiction of a social welfare center is determined on the basis of the place of residence of beneficiaries of social protection.<sup>32</sup> Social welfare centers issue referrals for the use of certain social services, at the request of the user or on their own initiative.

**The Republic Institute for Social Protection** is a special institution founded by the Republic of Serbia, in accordance with the Law on Social Protection.<sup>33</sup> The Institute was founded in 2005 with the mandate to monitor and promote the general concept and practice of social protection, and to encourage the development and conducting of research and other activities in the field of social protection. The main tasks of the Institute are monitoring the quality of professional work and services in the institutions of social protection; providing professional support; researching into the social phenomena and problems, activities and effects of social protection; creation of analyses and reports and proposing measures for the improvement of social protection; development of quality systems; developing, implementing and monitoring strategies and action plans; organising training and scientific meetings, and informing the professional and general public on the implementation of social protection.<sup>34</sup> **The Provincial Institute for Social Protection**, having the same role and activities in the territory of Vojvodina, was established in the Autonomous Province of Vojvodina.

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31 Article 14 of the Law on Social Protection (*Official Gazette of the RS* no. 24/11).

32 Article 68(3) of the Law on Social Protection (*Official Gazette of the RS* no. 24/11).

33 Article 163 of the Law on Social Protection (*Official Gazette of the RS* no. 24/11)

34 Ibid.

### **III Rights, beneficiaries and the procedure for acquiring rights under the Law on the Rights of Civilian Invalids of War**

This chapter will briefly present the main rights that the civilian invalids of war, members of their families and members of families of civilian victims of war may enjoy. The available data on the number of users of those rights will also be presented. Finally, the administrative procedure by which some of these rights are achieved will be described.

#### **I The rights of civilian victims and their families**

**25**

As stated above, all rights for civilian invalids of war and the families of civilian victims of war are of a financial nature. No other social services, such as direct support, rehabilitation, psychological or counseling assistance are provided. Cash benefits to beneficiaries may take the form of direct financial support for basic living needs (disability and monthly cash allowances), or they may be dedicated to obtaining a specific other service (orthopedic device, allowance for care and assistance by another person, exemption from payment of health services). The mentioned benefits differ also according to which groups of users they can be granted to.

The two most important benefits are personal disability allowance and monthly cash allowance. Both aim to improve the financial status of the user, which means that the money paid does not represent a reparation or satisfaction for the suffered injury, but is a typical form of social assistance.

#### **Personal disability allowance**

Personal disability allowance is a regular cash social benefit that is paid once

a month, and a person who has been granted the status of a civilian invalid of war has the right to a personal disability allowance. The same decision which recognises the status of a civilian invalid of war also determines the percentage of physical damage to the body, based on the findings and opinion of the first instance medical committee, which determines the percentage in accordance with the rules of procedure on establishing levels of veterans' disability. On the basis of the established level of disability, a civilian invalid of war is classified into one of the disability groups which correspond to groups of disabled veterans. As the minimum degree of bodily damage in order for a civilian disabled person to obtain disability allowance is 50% – while for the disabled veterans the threshold of 20% of bodily damage is sufficient – for civilian invalids of war there are no groups VIII, IX and X, as shown in the following table.

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Civilian Invalids of War		Disabled Veterans	
Degree of bodily damage	Disability group	Degree of bodily damage	Disability group
100% - CAAP*	Group I	100% - CAAP*	Group I
100%	Group II	100%	Group II
90%	Group III	90%	Group III
80%	Group IV	80%	Group IV
70%	Group V	70%	Group V
60%	Group VI	60%	Group VI
50%	Group VII	50%	Group VII
-	-	40%	Group VIII
-	-	30%	Group IX
-	-	20%	Group X

\* - Disability group I are persons with a 100% disability who require care and assistance from another person to lead a normal life.

The amount of disability allowance is categorised according to groups as set out. The basis for calculating the amount to be paid in a given month represents the average monthly salary (without taxes and contributions) in the Republic of Serbia, increased by 80%. For example, the average monthly salary in Serbia in November 2016 amounted to 45.767,00 Serbian dinars, so the basis for disability allowance in December 2016 stood at 82.381,00 dinars.<sup>35</sup>

Disability group I receives 100% of the basis amount, and the other groups receive the corresponding smaller percentage of the basis,<sup>36</sup> as can be seen in the table below.

Disability group	Percentage of the basis	Amount (RSD) for December 2016
Group I	100%	82.381,00
Group II	73%	60.138,00
Group III	55%	45.309,00
Group IV	41%	33.776,00
Group V	29%	23.890,00
Group VI	18%	14.829,00
Group VII	13%	10.709,00

The precise amount for each month is sent to all services for protection of veterans and disabled veterans in municipal and city administrations by the Ministry of Labour, Employment, Veteran and Social Affairs, in a separate notification. These documents contain only the amounts given to disabled veterans, and a general remark refers to the analogous application for civilian invalids of war.

35 Notification of the Ministry of Labour, Employment, Veteran and Social Affairs, no. 401-00-46/12/2016-18 of 26 December 2016.

36 The percentage of the basis set for each category of disability is regulated by Article 29 of the Law on the Basic Rights of Veterans, Disabled Veterans and Families of Fallen Soldiers (*Official Journal of the SFRY* nos. 24/98, 29/98 – corr. i 25/00 – FCC decision and *Official Gazette of the RS* nos. 101/05 – other law and 111/09 – other law).

## Monthly cash allowance

The monthly cash allowance is also a regular social benefit, which has the purpose of providing for minimum living conditions. Unlike the disability allowance, which is intended for the direct civilian victim survivor, the monthly allowance (cash payment) is given to family members of the deceased civilian victim of war, as well as to family members of a killed civilian victim of war. Family members in this context are parents, children and spouses, while other family members are deprived of the opportunity to exercise this right, even when they lived in the same household with the civilian victim.<sup>37</sup>

The monthly allowance is not unconditional, and to obtain this right the fact of kinship with the deceased civilian invalid of war or killed civilian victim is not sufficient. The potential beneficiary of this right must be **economically disadvantaged**, which means the potential user is *economically unsecured, incapable of earning an income* and meets the *requirement of a means test*.

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To be economically unsecured means that the person has no personal income, is not employed, is not self-employed, does not exercise the right to compensation during temporary unemployment or benefit from some other extraordinary income.<sup>38</sup>

Persons unable to work are considered to be: military and civilian invalids in groups I - VI; men older than 60 and women older than 50; persons with disability category I pursuant to regulations on pension and disability insurance; children up to 15 years old or until they are regular students, but no older than the age of 26.<sup>39</sup>

In assessing property conditions, the regular incomes of all members of the household of the potential user are taken into account: income

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37 Article 3(3) of the Law on the rights of Civilian Invalids of War (*Official Gazette of the RS* no. 52/96).

38 Article 7(2) of the Law on Rights of Veterans, Disabled Veterans and Members of their Families (*Official Gazette of the SRS* no. 54/89 and *Official Gazette of the RS* no. 137/04).

39 Article 8 of the Law on Rights of Veterans, Disabled Veterans and Members of their Families (*Official Gazette of the SRS* no. 54/89 and *Official Gazette of the RS* no. 137/04).

from agricultural activities; income from employment; income from self-employment; amount of pension without protection supplement; income from assets; existing monthly allowances and extraordinary monthly allowances of household members.<sup>40</sup> A means test is determined for each year and it amounts to 60% of the average monthly income realised in Serbia for the previous year (in the case of agricultural households, it is 45%).<sup>41</sup>

The monthly cash allowance, unlike the disability allowance, is not permanent. As it can be obtained when and if the three mentioned requirements of social vulnerability are met. In the same way the right to this social benefit may be terminated when any of these three conditions ceases to exist (for example, if a user younger than 26 finishes schooling and finds a job).

Finally, for users who are still below the means test but generate some income, the amount of monthly cash allowance is proportionally reduced. On the other hand, that amount can be increased for single beneficiaries – persons who do not have immediate family members (spouse and children) and parents incapable of earning an income in their household, and without immediate family members or parents who have a personal income or income from property.<sup>42</sup> Finally, the end amount depends on the age of the user, and it is slightly higher for persons older than 80.

The above solutions are unfair to the relatives of civilian victims, because they restrict the exercise of their rights with a large number of economic conditions which have nothing to do with the fact of the suffering they endure as family members of a civilian victim of war.

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40 Article 9 of the Law on Rights of Veterans, Disabled Veterans and Members of their Families (*Official Gazette of the SRS no. 54/89 and Official Gazette of the RS no. 137/04*).

41 Article 9(3) of the Law on Rights of Veterans, Disabled Veterans and Members of their Families (*Official Gazette of the SRS no. 54/89 and Official Gazette of the RS no. 137/04*).

42 Article 7(6) of the Law on Rights of Veterans, Disabled Veterans and Members of their Families (*Official Gazette of the SRS no. 54/89 and Official Gazette of the RS no. 137/04*).

## **2 Civilian victims who exercise rights under the Law**

### **Exclusion of different categories of victims from the legal framework**

As analysed in the previous chapters, due to deficiencies in the definition of a beneficiary of the right under the Law on the Rights of Civilian Invalids of War, which has created problems in their interpretation, or because of a deliberate and unconstitutional interpretation of these definitions to the detriment of the applicants, the following categories of victims are deprived of any protection under this Law:

- victims who suffer from diseases of a mental or psychosomatic nature, as a result of injuries suffered,
- victims of war-related sexual violence,
- victims whose degree of disability is less than 50% according to current regulations,
- victims of violations for which the forces that the Republic of Serbia does not consider hostile were responsible,
- family members of persons who were forcibly disappeared,
- victims whose injuries or death occurred outside the territory of Serbia, and
- victims whose injuries or death occurred outside the period of formally declared state of war in Serbia.

### **The number and structure of existing users**

According to the established competence, the Ministry of Labour, Employment, Veteran and Social Affairs is responsible for keeping uniform data records on the beneficiaries of rights in the area of protection of



veterans and disabled veterans.<sup>43</sup> According to data from March 2016, **the number of beneficiaries of rights under the Law on the Rights of Civilian Invalids of War is 1,554.**<sup>44</sup> The Ministry does not keep records on the number of claims, nor on the number of claims that were admitted, rejected or dismissed in the first instance. Such records are in the possession of relevant departments of local governments.

Through requests for information of public importance, in May 2017 the HLC attempted to obtain more detailed information on the number of submitted claims and decisions on the claims from the local government bodies in Serbia, as well as the gender and age structure of the existing beneficiaries of the rights under the Law on the Rights of Civilian War Invalids. From a total of **160 sent requests, data was obtained from 120** municipal and city administrations, or **75% of the local governments** in Serbia. Despite the high percentage of responses, the data obtained and processed do not necessarily constitute a fully accurate picture, considering that some of the city governments of major cities in Serbia (Kragujevac, Kruševac and Niš) did not provide the requested information within the legal deadline. On the other hand, the available data show regularities in the actions of local authorities across the country, and therefore the percentage of stated data can be taken to present a fairly credible picture of the real situation.

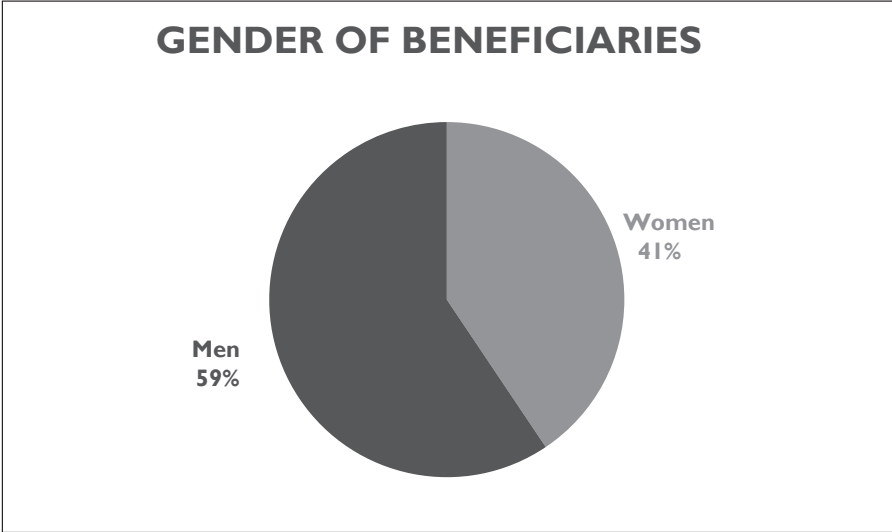
According to the data obtained, in 120 out of 160 municipalities and cities, there are 782 beneficiaries of this right under the Law, in all categories (a civilian invalid of war, a family member of a deceased civilian invalid of war and a family member of a civilian victim of war). Of these, **41% are women** (318 beneficiaries) and **59% are men** (464 beneficiaries). It may be noted that women predominate among the beneficiaries of the monthly cash allowance as family members of a civilian victim of war, which indicates

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43 Ministry of Labour, Employment, Veteran and Social Affairs, Information Booklet, Belgrade, May 2017, p. 26.

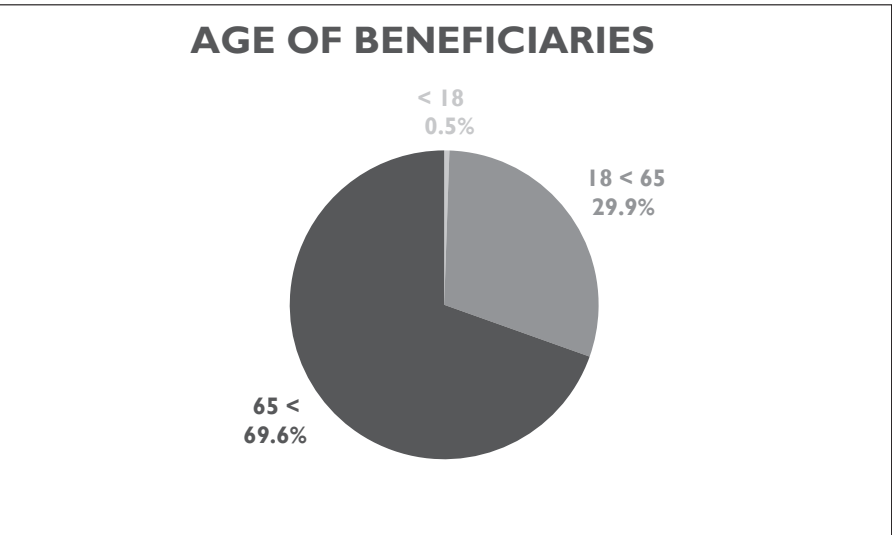
44 The reply of the Ministry of Labour, Employment, Veteran and Social Affairs to the HLC request for access to information of public importance of 3 February 2016, no. 07-00-00088/2016-15.

that often women are economically unsecured, and that they exercise this right on the basis of being the spouse of a civilian victim of war who was at the same time the main source of income in the household.



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According to available data on the age of beneficiaries of the right under the Law, the smallest number of beneficiaries are under the age of 18 – only 0.5% (4 beneficiaries), there are about 30% of beneficiaries between the ages of 18 and 65 (221), while the **most numerous beneficiaries are persons older than 65 – 70% (514 beneficiaries).**



With the age structure of the beneficiaries presented like this, one should bear in mind that it is not only the victims of the wars of the 1990s, but also beneficiaries who obtained this right in accordance with previous regulations and on the basis of bodily damage suffered in World War II, or from leftover war material in the postwar period. In any case, it is evident that this is an ageing population, which indicates that cash benefits should not be the only form of support, but should be complemented with other services of social protection, specialised for older people with disabilities, aimed at maximum reduction of their isolation in society.

### **3 The procedure for obtaining rights**

The procedure for obtaining the status of civilian invalid of war or civilian victim of war is by its legal nature an administrative procedure. As the procedure itself is not specifically regulated by the Law on the Rights of Civilian Invalids of War, the rules of general administrative procedure are applied to it.

**33**

The request is submitted to the municipal first instance department in the applicant's place of residence. There is no particular prescribed form for the request.

One of the key problems for applicants involves issues with the submission of all necessary documentation. The Law's explicit request is that medical documentation on the circumstances of the inflicted injury or wound must be from the time when it occurred. The most comprehensive documentation is, in practice, required for the recognition of the right to a monthly cash allowance. Some municipalities keep a list of at least seven or eight different documents or certificates on their bulletin boards or webpages, such as:

- a photocopy of identity card,
- a photocopy of proof of citizenship,
- a certificate of financial status (from the tax administration office)  
in the place of residence and from the place of residence before 17  
August 1990,

- a certificate from the Republic Geodetic Cadastre – real estate cadastre,
- a certificate from the Pension Fund that the applicant is not receiving pension,
- a certificate of unemployment from the National Employment Service,
- a certificate from the Business Registers Agency, and/or
- other documents, if necessary.

Going to at least six different institutions in order to obtain the above documents and certificates is really a big obstacle for a legally illiterate person, particularly when bearing in mind that these are people who are already in a very bad financial situation. In addition, in accordance with the Law on General Administrative Procedure, all of the mentioned records are kept ex officio, and the administrative authority that decides in a certain administrative procedure has a duty to obtain them themselves.<sup>45</sup> In practice, the effective networking of various state institutions has yet to be seen functioning at its full capacity.

In order to determine the degree of disability, a check-up performed by the first instance medical committee is necessary. This check-up may also be a burden for the applicant because it requires travel and additional costs.

The first instance authority is required by law to decide on the request within 60 days. The decision can be appealed with the second instance authority. The second instance authority may reject the appeal as unfounded, it can adopt it and revise the first instance decision, it can uphold the appeal and refer the case back to the first instance authority for a new decision, or it can take the case itself to decide on it.

The decision of the second instance authority is final, after which it may only be challenged in an administrative dispute.

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45 Article 103(1) of the Law on General Administrative Procedure (*Official Gazette of the RS* no. 18/16).

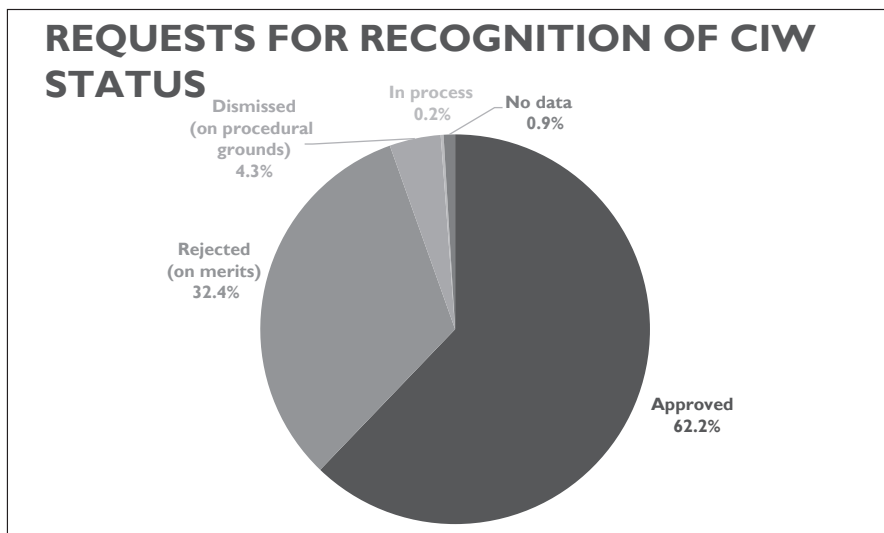


## The results of individual requests

According to the data received from 120 out of 160 local governments, in the twenty-year period from 1 January 1997 (when the implementation of the Law on the Rights of Civilian Invalids of War began<sup>46</sup>) until 31 December 2016, the municipal and city administrations in Serbia received **423 requests for obtaining the status of a civilian invalid of war (CIW)** and the corresponding recognition of the right to personal disability allowance. Of this number, **263 requests were approved, 137 requests were rejected, 18 requests were dismissed**, 1 request is still in process, and in 4 cases the municipal authorities failed to provide information on the outcome of the procedure.

In percentages, 62% requests were approved and 37% were rejected or dismissed.

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In all cases in which requests for recognition of the right to personal disability allowance were rejected on their merits, the first instance bodies explained

46 Article 16 of the Law on the Rights of Civilian Invalids of War (*Official Gazette of the RS* no. 52/96).

the rejections with the failure to meet the legal requirements. When analysing the reasons why the applicant did not meet the legal requirements, a few common reasons tended to reappear, which illustrate how in individual cases poor legal solutions occurred at the expense of civilian victims.

- In most situations the applicant's request to disability allowance was rejected because it was determined that their **degree of bodily damage did not reach the threshold of the required 50%**. Those are therefore the disabled persons of groups VIII, IX and X, whose rights are recognised only if they were military personnel – which constitutes discrimination based on personal characteristics.
- An almost equal number of requests were rejected on the grounds that **the applicant did not submit valid evidence** that would confirm their status as a civilian invalid of war, or that **the submitted medical documentation was not complete, valid or adequate**. These decisions arose from implementing the provision of Article 12 of the Law on the Rights of Civilian Invalids of War, which requires the possession of medical documentation from the time when the injury occurred. It is unfair and unrealistic to expect of civilians caught in the whirlwind of war events to manage, even if they had access to organised and professional medical help, to keep a complete and adequate documentation of the treatment or diagnosis. Therefore, standards in proving injuries should be set much lower, especially bearing in mind that the applicant must pass a medical examination before the medical committee anyway.
- In a few cases, it was found that the person had not suffered physical damage **but psychological and psychosomatic illnesses**, which the Law does not recognise. The legal solution completely ignores the fact that a much larger number of victims suffer from the serious and long-lasting psychological consequences of violence suffered.

- A significant number of requests were rejected because the **injuries were inflicted on the territories of other republics of the former Yugoslavia**. Setting this requirement, which is not prescribed in the Law, is contrary to the constitutional provisions guaranteeing non-discrimination,<sup>47</sup> the interpretation of human rights provisions in favour of their advancement,<sup>48</sup> and guaranteeing the facilitation of social services in accordance with the principles of social justice, humanity and respect for human dignity.<sup>49</sup> In several first instance decisions **the applicant was rejected because they were not a Serbian citizen**, and in one of those cases, because the applicant was **a refugee**. Refusal to accord the right to disability allowance to a person who resides in the Republic of Serbia, but has not acquired citizenship for some reason (because s/he no longer possesses valid documents, does not want to lose refugee status because they hope to return to their homeland, etc.) also constitutes a violation of the principle of non-discrimination and the basic principles of social services facilitation.
- In one case it was found that bodily damage was not related to the events of war. However, we have no information as to whether such an assessment was made on the basis of lack of evidence, as in other cases, or whether the first instance authority correctly assessed all the available factual evidence, before issuing a rejecting decision.

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47 Article 21(3) of the Constitution of the Republic of Serbia (*Official Gazette of the RS* no. 98/06): All discrimination, direct or indirect, on any basis, but particularly race, gender, ethnicity, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability, shall be prohibited.

48 Article 18(3) of the Constitution of the Republic of Serbia (*Official Gazette of the RS* no. 98/06): Provisions on human and minority rights shall be interpreted in favour of promoting the values of a democratic society, pursuant to valid international standards in human and minority rights, and of the international law institutions which supervise their implementation.

49 Article 69(1) of the Constitution of the Republic of Serbia (*Official Gazette of the RS* no. 98/06).



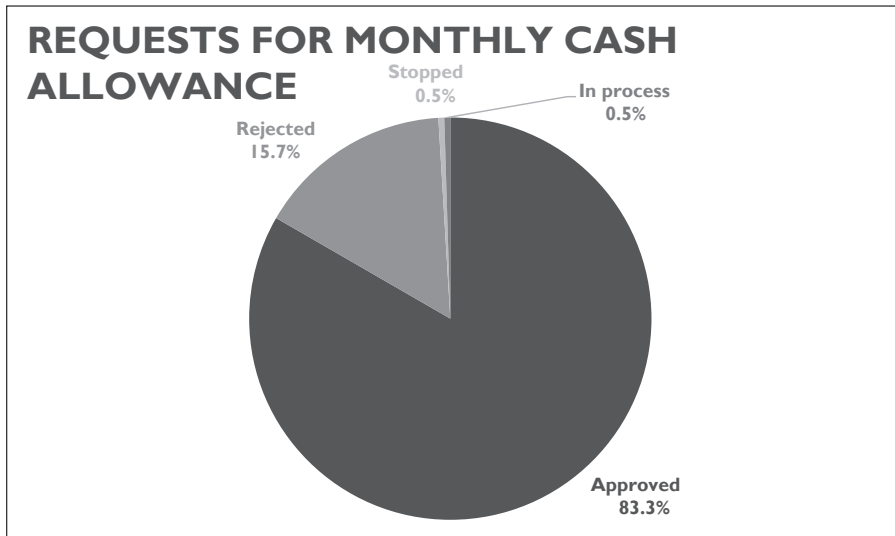
When it comes to requests that were dismissed on procedural grounds, it is interesting that the main reason for dismissing requests was also the lack of documentation that would prove the status of a civilian invalid of war, which indicates that there is a confusion among the first instance authorities whether failure to submit valid documentation is cause for dismissal on procedural grounds, or failure to comply with legal requirements is grounds for denying the request on its merits. One request was dismissed owing to the non-jurisdiction of the authority, while another was dismissed because the first instance authority determined that the injury was not the result of leftover war material (where, according to available data, it should have acted properly and rejected the request on its merits instead of dismissing it procedurally).

In the same period (1997-2016), the first instance authorities received a total of **195 requests for entitlements to a monthly cash allowance**, which covered **210 persons**.<sup>50</sup> This number of people included family members of deceased civilian invalids of war and family members of killed civilian victims of war.

**175 requests were approved, 33 were rejected**, 1 proceeding was stopped at the request of the applicant, and 1 proceeding is still ongoing. Expressed as a percentage, the right to a monthly cash allowance was accorded to more than four-fifths of the applicants.

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50 More family members of a civilian victim of war or a deceased civilian invalid of war can submit one request simultaneously. In that case, they are considered to be co-beneficiaries, and to the basic established amount of the monthly allowance 50% is added for each co-beneficiary.



**40** The right to a monthly allowance is generally not granted to applicants who, according to the set requirements, are not considered to be socially vulnerable or economically unsecured: i.e. if the applicant is employed or has other income, or is not financially unsecured, or if the total household income does not go below the required threshold. In addition, the requests of applicants whose family members were killed as civilians outside the territory of Serbia were rejected; but also, of those who were not able, according to the first instance authority, to provide valid evidence to substantiate their requests.

## **IV Social protection services**

As mentioned above, civilian victims of war in Serbia are not recognised as a separate category for which specialised and adapted services of social protection should be developed, nor have there been any activities in recognising the existence of the special needs or difficulties that these citizens face.

In the period from October 2015 to March 2016, the mapping of social protection services was conducted under the jurisdiction of local governments in the Republic of Serbia, in the implementation of the Team for Social Inclusion of the Government of the Republic of Serbia, the Republic Institute for Social Protection and the Standing Conference of Towns and Municipalities. The report was published in December 2016, and it represents a cross-section of social protection services and capacities in the municipalities of Serbia. The beneficiaries of services were represented according to sex, age, and residence in an urban or rural area. In the report, there is not a single measure or recommendation related to civilian victims of armed conflicts.

## V Housing care for civilian victims of war

In the context of implementation of the Law on Social Housing which was in force from 2009 to 2015, the majority of local governments did not implement the housing programmes in the given period. Some municipal and city administrations did not have information about the decisions on social housing for various reasons.<sup>51</sup>

According to available data, in eight local governments, 47 housing units were assigned to disabled veterans, and 50 housing units were allocated for families of fallen soldiers or the families of deceased disabled veterans.

**According to the information available to the HLC, no social housing unit was assigned to civilian invalids of war or family members of civilian victims of war.**

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51 This particularly refers to the city municipalities of Belgrade, because the jurisdiction for housing care was entrusted to the administration authorities of the City of Belgrade.

## VI The rights of civilian victims of war in other countries of the former Yugoslavia

The position of civilian victims of war is not satisfactory in other states that emerged from the former Yugoslavia, either. As in Serbia and other former Yugoslav republics, the rights of civilian victims of war have been subsumed under the social protection area, and therefore some of the rights are conditioned by the poor financial situation of the individual. The neglect of civilian victims compared to disabled veterans and families of killed veterans can be identified in the legislation and the degree of rights provided. On the other hand, a somewhat wider scope of rights and services is noticeable, and there are also steps forward towards the recognition of certain special categories of victims. Therefore the numbers and particulars of civilian victims' situations have been taken into account. In this chapter, the legal regimes in the three countries most affected by the wars – Croatia, Bosnia and Herzegovina (at the state and entity levels), and Kosovo, will be presented.

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### Croatia

The rights of civilian victims in Croatia are regulated by the **Law on the Protection of Military and Civilian War Invalids**. This Law recognises the category of a civilian invalid of war, as a person whose body was damaged at least 20% owing to wounds or injuries related to the events of war, sabotage, terrorist activities, activities of the Yugoslav People's Army (from 17 August 1990), or from explosion of left over war material.<sup>52</sup> Unlike the law in Serbia, the status of a civilian invalid of war can be acquired owing

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52 Article 8(1) of the Law on the Protection of Military and Civilian Invalids of War (*Official Gazette* nos. 33/92, 57/92, 77/92, 27/93, 58/93, 02/94, 76/94, 108/95, 108/96, 82/01, 13/03 and 148/13).

to damage to the body of at least 60% due to an illness which is the result of abuse or deprivation of liberty by terrorists or members of the Yugoslav People's Army (from 17 August 1990).<sup>53</sup>

The rights under the Law can be exercised by family members of persons who were killed, died or disappeared under the same circumstances.<sup>54</sup> The Law, therefore, includes missing persons, without the need for declaring a missing family member dead.

44 Considering that injury or death “in relation to the events of war” is cited in the Law as a key factor, without primary determination as to who caused the injury or death, there is no discrimination on grounds of the nationality of the applicant. On the other hand, the Law explicitly prohibits the acquisition of rights to persons who were members, supporters or associates of the enemy military and paramilitary forces, or convicted of endangering the constitutional order and security of the Republic of Croatia.<sup>55</sup> Finally, as these are rights in the field of social protection, they can be exercised only by persons who reside permanently on the territory of Croatia, but not by the refugees from this country.

The scope of available rights for civilian victims is wider than in Serbia and includes personal disability allowance, family disability allowance, living costs (allowance), free textbooks for children of killed civilian victims, orthopedic devices, priority in enrolment into educational institutions, allowance for care and assistance by another person, professional/vocational rehabilitation, spa and climatic treatment, and help with the costs of medical treatment and procurement of orthopedic aids. In practice, a significant number of

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53 Article 8(2) of the Law on the Protection of Military and Civilian Invalids of War (*Official Gazette* nos. 33/92, 57/92, 77/92, 27/93, 58/93, 02/94, 76/94, 108/95, 108/96, 82/01, 13/03 and 148/13).

54 Article 12 of the Law on the Protection of Military and Civilian Invalids of War (*Official Gazette* nos. 33/92, 57/92, 77/92, 27/93, 58/93, 02/94, 76/94, 108/95, 108/96, 82/01, 13/03 and 148/13).

55 Article 9 of the Law on the Protection of Military and Civilian Invalids of War (*Official Gazette* nos. 33/92, 57/92, 77/92, 27/93, 58/93, 02/94, 76/94, 108/95, 108/96, 82/01, 13/03 and 148/13).

applicants under the Croatian law have had to seek some form of legal aid, and absence of a basis on which to exercise the right or the lack of necessary documentation to prove the circumstances of injury or death are given as reasons for failure in acquiring rights in some cases.<sup>56</sup>

### **Law on the rights of victims of sexual abuse**

A special law which recognises the status and rights of persons who are survivors of sexual violence in the period from 5 August 1990 to 30 June 1996, in connection with the war that took place on the territory of Croatia, was passed in Croatia in June 2015.<sup>57</sup>

With the recognition of the status, the victim is entitled to a one-time allowance in the amount of 100,000 kuna (about 12,200 EUR), or to an increased amount of 150,000 kuna (about 18,400 EUR) in cases where sexual violence resulted in forced pregnancy, forced abortion, or birth, or when sexual violence was committed against a minor victim.<sup>58</sup>

In addition to the one-time allowance and independently of it, the victims are also entitled to a monthly allowance that is determined by the Budget Law for each year.<sup>59</sup> The Law provides for psycho-social, legal and medical assistance, medical rehabilitation, medical health examinations, compulsory and supplementary health insurance, and accommodation in institutions specialized in providing support and services to the population of veterans, sufferers of the war and other persons.<sup>60</sup>

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56 Documenta – Center for Dealing with the Past, *Rights of civilian victims of war to reparations in Croatia*, 2014, pp. 37–38.

57 Article 1 of the Law on the Rights of Victims of Sexual Violence During the Armed Aggression Against the Republic of Croatia in the Homeland War (*Official Gazette* no. 64/15).

58 Article 25 of the Law on the Rights of Victims of Sexual Violence During the Armed Aggression Against the Republic of Croatia in the Homeland War (*Official Gazette* no. 64/15).

59 In 2016 the monthly allowance amounted to about 328 EUR.

60 Article 15 of the Law on the Rights of Victims of Sexual Violence During the Armed Aggression Against the Republic of Croatia in the Homeland War (*Official Gazette* no. 64/15).

The Ministry of Veterans is responsible for the implementation of the Law, and a special Commission consisting of seven members and an equal number of deputies has been formed for deciding on individual requests for acquiring the status. The members of the Commission are experts who have experience in the field of human rights,<sup>61</sup> and the first composition of this body consisted of two lawyers, two psychologists, one specialised psychiatrist, one specialist in infectious diseases and one specialist in gynecology. The status and related rights are achieved in an administrative procedure, detailed in Regulations on the conditions and manner of obtaining the status of victim. Documents sufficient to prove suffered sexual violence are final judgments, statements given to the competent authorities (state prosecutor), statements given in previous proceedings, and other secondary evidence (concentration camp certificates, statements given to other persons and organisations, newspaper articles, etc.) to determine the circumstances of the case. The procedure takes an average of two months.

In the first six months of the implementation of the Law, 146 requests were submitted, out of which 90 were resolved – 76 were approved and 13 were rejected, and in one case the procedure was stopped owing to the death of the applicant. About 80% of the requests considered related to cases of repeated rape – either rape by several perpetrators or multiple rape by one perpetrator.<sup>62</sup> The large number of requests received from the very beginning of the application of the Law were the result of the progressive solutions contained in it, but also the result of a procedure that does not impose too great a burden of proof for the victims.

The adoption of this Law has encouraged a number of victims of sexual violence, otherwise stigmatised in society, to file for financial compensation and other forms of support, and at the same time, the number of criminal

61 Article 12 of the Law on the Rights of Victims of Sexual Violence During the Armed Aggression Against the Republic of Croatia in the Homeland War (*Official Gazette* no. 64/15).

62 Data of a Commission Member presented at the regional presentation of the UN Secretary-General Guidelines on reparations for the victims of sexual violence, organised by UNWomen, Jahorina, BiH, 9-11 June 2016.



complaints to competent prosecutors have increased. As the main disadvantage of this Law, should be listed the fact that the Law only covers persons who at the time of the suffered sexual violence had a registered residence on the territory of the Republic of Croatia, and thereby excludes all victims who previously lived in one of the other republics of the former state, and today live in Croatia.

Successful work on the implementation of this Law was potentially jeopardised by the decision of the competent minister in September 2016, by which six members of the Commission, who are normally selected through public calls for a term of four years, were relieved of their duties.<sup>63</sup>

## **Bosnia and Herzegovina**

The complexity of the governmental structure of Bosnia and Herzegovina, as a result of the peace agreement, has meant that the functions of the state at the highest level (BiH) are carried out in very limited areas. Most of the issues are regulated at the level of the two entities (Federation of BiH and the Republic of Srpska) and one district (Brčko); and the division of responsibilities among the cantons in the entity of the Federation of BiH adds to the mentioned complexity.

This situation affects the issue of compensation of victims of the war in 1992–1995, which varies in its availability to certain categories of victims, as well as in the amount, depending on the place of residence. With all the differences, the main feature is that compensations prescribed by law do not belong to all categories of victims; and common to all the legal forms of compensation is that they are subsumed under social benefits, which is usually conditioned by the victims' being economically unsecured.

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63 Statement of the Women's Network of Croatia, Zagreb, 8 September 2016.

## Law on Missing Persons

The Law which relates to families of missing persons is the only legal act that exists at the state level of Bosnia and Herzegovina. As more than 9.000 persons in BiH are still missing<sup>64</sup>, the provision of basic rights provided by the relevant international instruments is essential.

Under this Law, missing persons designate civilians and soldiers who went missing during the armed conflict in BiH in the period from 30 April 1991 until 14 February 1996.<sup>65</sup> The requirements that must be met cumulatively in order for a person to be considered missing under this Law are that the family has no information or news on the person's whereabouts, that the person was reported missing, and that there is no reliable information about the fate of the missing person. Family members of the missing person are children born in and out of wedlock, adopted children, stepchildren that the missing person was supporting, spouses of common-law partners, parents (including step-parents), adopters, and siblings who the missing person supported.<sup>66</sup>

The condition for obtaining the rights for family members of missing persons is that the members of the family lived in the same household with the missing person, that they were economically dependant and that they are now in need of support.<sup>67</sup> The Law guarantees the family members of the missing person the right to financial assistance, the right to temporary management of the property belonging to the missing person, funeral costs, priority in employment and education of children, free health care, marked places of burial and exhumation, and the right to financial assistance for associations of families of missing persons.

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64 The International Commission on Missing Persons, *Bosnia and Herzegovina – Persons missing due to armed conflicts in the 1990s: a review*, Sarajevo, 2014.

65 Article 2(1) of the Law on Missing Persons (*Official gazette of BiH*, year VIII, no. 50).

66 Article 2(2) of the Law on Missing Persons (*Official Gazette of BiH*, year VIII, no. 50).

67 Article 11 of the Law on Missing Persons (*Official Gazette of BiH*, year VIII, no. 50).

The two main institutions whose establishment is provided for are the Institute for Missing Persons BiH and the Fund for Assistance to Families of Missing Persons. The Institute was established in 2008;<sup>68</sup> the Fund, however, has not been established to date.

Adoption of this Law was accompanied by the appropriate manuals with practical information for families, that were published by the Ministry for Human Rights and Refugees and the International Commission for Missing Persons.

### **Federation of BiH**

In the Federation of BiH (FBiH) the basic rights of civilian victims of war are prescribed by the **Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children**. In FBiH, the civilian victims of war are considered to be persons who have sustained physical damage to the body of at least 60% due to wounds or injury, but also due to illnesses caused by abuse, deprivation of liberty, unlawful punishment, unlawful arrest, detention, detention in concentration camp, forced labour during the war or imminent threat of war. A civilian victim is also a person who was killed, died or went missing under those same circumstances.<sup>69</sup>

Civilian victims of war can exercise the following rights: personal disability allowance, allowance for care and assistance of another person, orthopedic aid or device, family disability allowance, child allowance, support for the costs of treatment and procurement of orthopedic aids, training for jobs (professional rehabilitation, pre-qualification and additional trainings and qualification), and priority in employment.<sup>70</sup> The personal disability allowance

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68 The co-founders of the Institute for Missing Persons are the Council of Ministers of BiH and the International Commission for Missing Persons.

69 Article 54 of the Law on Social Protection, Protection of Civilian War Victims and Protection of Families with Children (*Official Gazette of FBiH* nos. 36/99, 54/04, 39/06 and 14/09).

70 Article 58 of the Law on Social Protection, Protection of Civilian War Victims and Protection of Families with Children (*Official Gazette of FBiH* nos. 36/99, 54/04, 39/06 and 14/09).

is 70% of the prescribed disability benefit given to a disabled veteran.<sup>71</sup> The requirement for family disability allowance is that the immediate family members are unable to work and earn an income.<sup>72</sup> Labour rights (professional rehabilitation and priority in employment), although provisioned by this law, have never been provided in practice, because there were no appropriate amendments to the regulations governing labour and employment.

In the FBiH Law, civilian victims of war are also persons who are survivors of sexual violence and rape. About 800 victims have achieved this status, and receive a special monthly allowance that in 2016 amounted to 540 KM (around 260 EUR); however, this category does not receive any other services of rehabilitation or support from the state.<sup>73</sup>

## The Republic of Srpska

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According to the Law of the Republic of Srpska, civilian victims of war are persons who suffered bodily harm caused by abuse, rape, confinement in a concentration camp, internment, forced labour, wounding or injury, due to which the resulting harm to the body is at least 60%.<sup>74</sup> Missing persons are explicitly recognised under this Law as civilian victims of war.<sup>75</sup> The rights to protection under this Law are: civilian and family disability allowance, allowance for care and assistance by another person, allowance for a family member incapable of work, additional financial assistance, assistance for

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71 Article 59 of the Law on Social Protection, Protection of Civilian War Victims and Protection of Families with Children (*Official Gazette of FBiH* nos. 36/99, 54/04, 39/06 and 14/09).

72 Article 63 of the Law on Social Protection, Protection of Civilian War Victims and Protection of Families with Children (*Official Gazette of FBiH* nos. 36/99, 54/04, 39/06 and 14/09).

73 Data of the FBiH Minister of Labour and Social Policy presented at the regional presentation of UN Secretary-General Guidelines on reparations for victims of sexual violence, organised by UNWomen, Jahorina, BiH, 9–11 June 2016.

74 Article 2 of the Law on the Rights of Civilian Victims of War (*Official Gazette of the Republic of Srpska* nos. 25/93, 32/94, 37/07, 60/07, 111/09 and 118/09).

75 Article 3 of the Law on the Rights of Civilian Victims of War (*Official Gazette of the Republic of Srpska* nos. 25/93, 32/94, 37/07, 60/07, 111/09 and 118/09).

single parents, health care and professional/vocational rehabilitation.<sup>76</sup> As is the case elsewhere in the region, in the Republic of Srpska all cash benefits, with the exception of personal disability allowance and care and assistance by another person, are conditional on lack of income, or a regular income which is below the prescribed threshold.

The Law of the Republic of Srpska applies to all cases of wounding or death that occurred after 9 January 1992, provided that the applicant submitted a request within five years from 7 January 1994 or from the inflicted injury or death of a family member. This deadline was subsequently extended to 31 December 2007, after which there was no extension of the deadline, so that at the moment only persons who submitted requests before this date can exercise their rights. This severe limitation will be remedied possibly, with the announced adoption of a new law on the rights of victims of torture during war.

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## Kosovo

In Kosovo, the rights of civilian victims of war and their families are regulated together with the rights of other categories of the population deriving from the war 1998–1999. **Law No. 04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosova Liberation Army, Civilian Victims of War and Their Families**, came into effect in January 2012.

Law No. 04/L-054 provides certain rights to the “immediate family” of the civilian victim or missing civilian, namely, spouse, children, children born out of wedlock and adopted children, parents, stepmother, stepfather, stepchildren and common-law partner. The Law, however, makes a clear distinction between a civilian victim of war as a person who was killed or died, and a civilian who is still missing. Consequently, **a civilian victim of**

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76 Article 8 of the Law on the Rights of Civilian Victims of War (*Official Gazette of the Republic of Srpska* nos. 25/93, 32/94, 37/07, 60/07, 111/09 and 118/09).

**war is a person who was killed or wounded by hostile forces, and later died in the period from 27 February 1998 to 20 June 1999**, as well as a person who was killed by mines and other explosive remnants of war within three years of the war ending. **A missing civilian is, according to the Law, a person whose whereabouts are unknown to immediate family members, and who went missing, according to reliable information, in the period between 1 January 1998 and 31 December 2000**, as a result of the war in Kosovo. The determination of the different time frames, depending on the simple fact of whether the body of the victim was found or not, is inconsistent and can lead to unfair situations, because a victim's family may, in the event of finding the body of the deceased member, find itself in both legal situations and therefore lose the acquired right.<sup>77</sup>

52 As with the law in Serbia, these definitions of civilian victims also lead to discrimination, primarily on a national basis. The lack of definition to the term “hostile forces” can lead to arbitrary interpretations, and taking into account the context of the conflict, it is not excluded that in practice this primarily refers to the Serbian and Yugoslav forces. In that way, most of the Serbs who were members of the Kosovo Liberation Army (KLA) would not be covered by this Law.

Moreover, setting the time frame to 20 June 1999, as the formal date of cessation of the armed conflict in Kosovo, also has a discriminatory effect against non-Albanian victims, having in mind that over 50% of the civilian victims among the Serbian population suffered after June 1999.<sup>78</sup> On the other hand, the Law does not condition entitlement to financial compensation on pronouncing the missing member of the family dead, so according to available data, dozens of Serbian families living in Kosovo are exercising this right.

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77 Humanitarian Law Center Kosovo, *War reparations for civilian victims: What kind of access do the communities have?*, Prishtina, 2016, p. 50.

78 Ibid.

The general findings of the monitoring of Law No. 04/L-054 are that it is not implemented consistently, and that the application is often arbitrary, due to lack of information and the insufficient competence of employees in state and local government. In addition, there is not enough information available on the implementation of the Law, nor enough coordination between the competent services. There is also a lack of psycho-social support to victims, for which there is a significant need.<sup>79</sup>

Law No. 04/L-054 was amended in 2014 to include the victims of sexual violence committed during the war in Kosovo. Victims of sexual violence are considered to be persons who were sexually abused and raped in the period from 27 February 1998 to 20 June 1999.<sup>80</sup> As in the case of civilian victims, this time frame is discriminatory as well, because it does not include a single case that occurred after June 1999.

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A special nine-member Commission appointed by the Government of Kosovo will decide on the requests for recognition of the status of victim of sexual violence. The requests will be submitted through the Secretariat which provides technical support to the work of the Commission, in Prishtina or in five regional centers in Kosovo. The requests can also be submitted through licenced non-governmental organisations that provide assistance and support to victims of war-related sexual violence. Special attention will be paid to the confidentiality of the proceedings and the protection of identity of the applicant, owing to the very conservative attitudes to be found in Kosovo society and to avoid stigmatisation of this category of victims. Thus, the decision recognizing the status will only state that it refers to a civilian victim. The period for submission of requests is set for five years.<sup>81</sup>

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79 Center for Research, Documentation and Publication, Report on the Law – monitoring of the Law no. 4/L-054, Prishtina, 2014, pp. 140–141.

80 Article 3(2) of the Law no. 04/L-054 on the Status and the Rights of Martyrs, Invalids, Veterans, Members of Kosova Liberation Army, Victims of Sexual Violence, Civilian Victims of War and Their Families (*Official Gazette of the Republic of Kosova* no. 26, 23 April 2014).

81 Data of the representative of the Kosovo Ministry responsible for social affairs given in the regional presentation of the UN Secretary-General's Guidelines on reparations for victims of sexual violence, organised by UNWomen, Jahorina, BiH, June 9–11 2016.

At the time of publication of this report, the Commission for deciding on requests for obtaining the status of a victim of war-related sexual violence has not been established, so in this part the Law has yet to be effectively implemented.



## VII European Union standards regarding the rights of victims

The European Union, as a supranational organisation, regulates with its legal acts the individual rights of victims of crimes, although the primary competence in regulating the procedural position of victims still belongs to individual member states. The main reason for adopting regulations at the EU level is the harmonisation of the rights and positions of victims of serious crimes in all EU countries, since the common area of free movement of people leads to frequent situations of crimes in one member state that affects a victim from another state (so-called cross-border situations). The aim of regulation is to establish *minimum standards* for the victims, which must be applied by all member states; although freedom is given to countries to establish more advanced standards if they wish.<sup>82</sup> These standards were formulated in two directives; which means that they are not applied directly, but the member states are obligated to harmonise their internal legislation so that the directives will be fully implemented. This is of great importance for Serbia, as a country in the EU accession process that has to align its laws and regulations with these directives before the moment it joins the EU. In this regard, certain activities on harmonisation are set out in the Action Plan of the Republic of Serbia for Chapter 23 of the accession negotiations (Judiciary and Fundamental Rights).

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### The concept of the victim in EU law

Under EU regulations in this area, a victim is:

***a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence, and also***

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82 Article 17 of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

***family members of a person whose death was directly caused by a criminal offense and who have suffered harm as a result of that person's death. Among the family members are spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of victims.***<sup>83</sup>

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The definition of a victim under EU law reflects the wider international standards regarding the protection of victims of crimes and human rights violations, encompassing various forms of harm suffered, but also other groups of people who may have suffered damage. On the other hand, in today's Serbian criminal legislation, the term 'victim' does not even appear; instead, in criminal proceedings, there is the more narrowly defined term ***injured party***.<sup>84</sup> The definition of a civilian victim of war contained in the existing legislation in the field of protection of veterans and disabled veterans, with all its shortcomings, has already been presented and analysed in the first part of this report. It is also evident that according to EU law, the circle of family members is significantly wider than the circle provided for by the national law, and that EU law takes into account the variety of emotional and social factors in the interpersonal relationship with the immediate victim.

## **Directive on compensation to victims of crime**

**The Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims** was adopted out of the need to provide the victims of crime in the European Union with a right to fair and adequate

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83 Article 2(1) of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

84 According to item 11 of Article 2(1) of the Criminal Procedure Code (*Official Gazette of the RS* nos. 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14), the "injured party" is a person whose personal or property rights were violated or threatened by a criminal offense.

compensation for injuries they have suffered, regardless of where in the EU the crime was committed.

The compensation referred to in this Directive is not intended for victims of any crime, but is intended for victims of more severe forms of crime that affect the personal, physical and mental integrity of the victim, or crimes that leave the victim with serious physical injury or other serious impairment of their health. The Directive itself uses the term *violent crimes committed with intent*, although it does not individually list the offenses that would be covered by that term, which is left to the member states to specify.<sup>85</sup> However, it is clear that war crimes against the civilian population, as well as all other serious violations of human rights in relation to the armed conflict (torture, sexual violence, enforced disappearance, etc.), fall into this category of violent and intentional crimes.

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The basic obligation under this Directive is to establish a compensation mechanism at the national level, for all those cases where the victim could not achieve fair and adequate compensation from the direct perpetrator of the offense, whether the perpetrator is unidentified, not available to law enforcement officials, or in a poor financial situation. **The European Convention of 1983 on Compensation for Victims of Violent Crimes** also obliges all EU member states to establish such a mechanism. Serbia signed this Convention in 2010, but to date it has not ratified it, and thus in relation to Serbia the Convention has not entered into force.

Deciding on compensation is entrusted to one or more bodies within each country; the procedure itself must be as simple and accessible to the victim as possible, and all administrative formalities must be kept to a

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85 For example, the Croatian Law on Compensation of Victims of Crimes (*Official Gazette* nos. 80/08 and 27/11), which transposes the mentioned Directive, lists under these crimes a criminal offense committed with intent to apply force or harm sexual integrity, as well as the criminal offense of endangering life and property by generally dangerous actions or means that cause death, serious bodily injury or serious impairment of health for one or more persons, and it is prescribed by the criminal law as a more severe form of the basic criminal offense committed with intent (Article 5(3)).

minimum.<sup>86</sup> In addition, the States must ensure that all potential applicants for compensation have access to all necessary information in order to be able to file the request;<sup>87</sup> they must also create the appropriate form for submitting requests,<sup>88</sup> but also assist victims in applying for and obtaining the necessary documentation.<sup>89</sup> The Directive provides for the right of the victim to file a request in their country of residence, including in the event that the offense took place in another Member State; and it obliges the Member States to cooperate in forwarding the request.

Member States have transposed<sup>90</sup> this Directive in different ways, usually with amendments to existing laws, while some States have enacted special laws on compensation for victims of crimes precisely to comply with this Directive (Belgium, Bulgaria, the Czech Republic, Croatia, Slovenia and Slovakia).

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### **Directive on the rights, support and protection of victims of crime**

**Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 laying down minimum standards regarding the rights, support and protection of victims of crime**, adopted in 2012, replaced the former Council Framework Decision of 2001, and defined a much wider scope of rights which must be guaranteed to the victim of a crime, from the first contact of the victim with the competent authority, even before the formal initiation of criminal proceedings, and even after the conclusion of criminal proceedings.

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86 Article 3(3) of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

87 Article 4 of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

88 Article 5(1) of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

89 Article 5(2) of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

90 Transposition involves a series of measures, primarily amendments to laws and regulations, which the member state is obliged to undertake to implement the EU Directive.

Besides a number of powers prescribed in the framework of the criminal proceedings (such as the right to be informed on the progress of the case, the right to an interpreter, the right to lodge a complaint, the right to a hearing and to present evidence, the right to complain against the decision on waiver of prosecution), the victim must be provided with legal assistance where necessary,<sup>91</sup> as well as with respect for their privacy and personal integrity.<sup>92</sup>

The States are also obliged to carry out timely and individual assessments for each victim, in order to determine whether specific protective or other measures are necessary, due to a specific vulnerability or exposure to re-victimisation. This assessment must take into consideration the personal characteristics of the victim, and the type or nature of the crime, as well as the special circumstances of the crime. Victims who were exposed to significant injury owing to a criminal offense will be given due attention, or if the offense was committed with discriminatory intent in relation to their personal characteristics. The assessment will be carried out with the participation of the victim and with respect for their wishes.<sup>93</sup>

The Directive provides that all competent officials who may come into contact with victims, primarily police officers and members of the judiciary, must undergo general and specialised training to increase awareness of the needs of victims, in order to communicate with the victims and act impartially, respectfully and professionally.<sup>94</sup>

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91 Article 13 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

92 Article 21 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

93 Article 22 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

94 Article 25 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

The most important obligation of the Directive is to provide victims with information about all their rights from the moment they contact the relevant government authority. Victims must also be given access to free and confidential support services of various forms – information, advice, referral to specialist services, emotional and psychological support, prevention of risk and re-victimisation.<sup>95</sup> These services can be performed by state agencies, but also by non-governmental and other organisations that may be organised on a professional or voluntary basis. It is up to the member states to establish the most appropriate network of these services, including the competent body as the main point of contact available to victims from the moment when the offense occurred, until the completion of the criminal proceedings, and thereafter, if necessary.<sup>96</sup>

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As is the case with the previous directive, this one can also be applied in different ways at the national level, which leaves the States with the option to choose the system that best meets the legal and institutional framework in individual countries. The mechanism of support to victims may consist of a network of state services, but it can also bring together specialised non-governmental organisations, which will be financed from the state budget or from the special fund allocated for this purpose.

## **Harmonisation of Serbia with the EU directives**

The Republic of Serbia has committed itself, until it joins the EU, to developing an environment and all the necessary elements to guarantee all of the aforementioned rights provided by the two EU directives. In the report after the conducted explanatory and bilateral screenings, which preceded the opening of Chapter 23 in the accession negotiations, it is stated that minimum

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95 Article 9 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

96 Article 8 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

standards regarding the rights, support and protection of victims of crimes should be implemented in accordance with Directive 2012/29/EU.<sup>97</sup>

In the Action Plan for Chapter 23, adopted at the session of the Government in April 2016,<sup>98</sup> nine individual measures refer to compliance with the Directive on the rights, support and protection of victims. The activities are summarised below, along with the implementation status, according to information from the report of July 2017 on the implementation of the Action Plan:

Number of activity	Description of activity	Implementation status
<b>1.4.4.5</b>	<b>Legislative changes related to changing identity and protection of witnesses, and drafting the Protocol on mandatory informing of victims</b>	<b>NOT IMPLEMENTED</b> The Republic Public Prosecutor's Office developed a communication guide for witnesses and victims and a new brochure on Services for information and support in the context of public prosecutions. However, there were no legislative changes.
<b>3.7.1.16</b>	<b>Analysis of compliance of the normative framework with the Directive 29/12/EU</b>	<b>PARTIALLY IMPLEMENTED</b> The analysis was made, but it is still not available to the public because of the ongoing technical revision of the text.

<sup>97</sup> Report on screening available at : [http://www.seio.gov.rs/upload/documents/eu\\_dokumenta/Skrining/screening\\_report\\_ch\\_23.pdf](http://www.seio.gov.rs/upload/documents/eu_dokumenta/Skrining/screening_report_ch_23.pdf) (last accessed on 8 August 2017).

<sup>98</sup> Action Plan for Chapter 23, together with the periodic reports on implementation, available at <http://www.mpravde.gov.rs/tekst/2986/pregovori-sa-eu.php> (last accessed on 8 August 2017).

<b>3.7.1.17</b>	<b>Changing of the legislative framework in line with the analysis conducted</b>	<b>NOT IMPLEMENTED</b>
<b>3.7.1.18</b>	<b>Creating and distributing brochures with information on victims' rights (legal aid, psychological support, protection, etc.)</b>	Planned for 3 <sup>rd</sup> quarter of 2017.
<b>3.7.1.19</b>	<b>Training of judges, prosecutors, court guards, attorneys and police officers</b>	<b>NOT IMPLEMENTED</b> The activity will be implemented within the IPA 2016 project.
<b>3.7.1.20</b>	<b>Establishing a network of services across the country to support victims, witnesses and injured parties</b>	<b>NOT IMPLEMENTED</b> Pending drafting of the National strategy for improving the rights of victims and the accompanying action plan. An application has been made for support from IPA funds for the establishment of a network of support services across the country.
<b>3.7.1.21</b>	<b>Stronger procedural guarantees for victims of war crimes</b>	<b>NOT IMPLEMENTED</b> A working group to amend the Code of Criminal Procedure has been formed, and work is in progress.



<b>3.7.1.22</b>	<b>Signing the memorandum of cooperation with civil society organisations in order to improve support services for victims of violent crimes</b>	<b>PARTIALLY IMPLEMENTED</b> A memorandum with the Victimology Society of Serbia has been signed, as a first step in establishing a network of organisations that provide assistance and support to victims.
<b>3.7.1.23</b>	<b>Amendments of the legal framework in order to comply with the concept of victims in international agreements on the protection of human rights</b>	<b>NOT IMPLEMENTED</b> The analysis on the compliance of the legal framework was made, but it is still not available to the public because of the ongoing technical revision of the text.

Although the Directive on the rights, support and protection of victims will apply when Serbia joins the EU for all criminal offenses in the future, its importance is great for the victims of crimes committed in connection with armed conflicts in the 1990s, especially when one takes into consideration that these crimes will be prosecuted in years to come.

In addition, it is immensely important that, during the analysis and mapping of existing capacities of services for support to vulnerable groups of the population, and as part of the process of creating and analysing the design and sustainability of a future national mechanism for victims of crimes, as well as for developing strategies to promote the rights and status of victims, civilian victims of war are taken into consideration, owing to the specific characteristics of the crimes committed against them, the time that has lapsed since the harm was done to them, and their marginalised position in society.

## VIII Conclusions and recommendations

The system of protection and granting the right to reparations for victims of armed conflicts living in Serbia is in need of improvement. This has been pointed out for years by victims' associations and civil society organisations,<sup>99</sup> as well as by the international bodies responsible for monitoring the obligations of respect for human rights that Serbia has as a signatory of the relevant international agreements.<sup>100</sup> Finally, the solution to this problem has been recognised by the institutions of the European Union, as one of the components needed to build the rule of law and respect for the rights of all citizens, necessary for full membership into the EU.<sup>101</sup>

The main conclusions from the analysis conducted by the HLC, but also after many years of activities in representing victims and advocating their rights, can be summarised as follows:

- The legal and institutional framework for civilian war victims contains solutions inherited from the former Yugoslavia, and it has not been adapted to meet the new circumstances which emerged in the 1990s in any single aspect.
- The existing legal framework discriminates against the disproportionately large number of civilian victims. In Serbia there are ten times more civilian victims than the current number of beneficiaries of the rights provided by the Law.

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99 Humanitarian Law Center, *Administrative reparations in Serbia – an analysis of the existing legal framework*, Belgrade, 13 June 2013.

100 The Human Rights Committee, Concluding observations on the third periodic report on Serbia, CCPR/C/SRB/CO/3, 10 April 2017, paras. 22–23; The Letter of the Commissioner for Human Rights of the Council of Europe Nils Muižnieks to Aleksandar Vulin, the Minister of Labour, Employment, Veteran and Social Affairs of Serbia, on the issue of reparations for victims of crimes during the war, CommHR/NM/sf 041-2016, Strasbourg, 12 September 2016; The Committee on Enforced Disappearances, Concluding observations on the report submitted by Serbia in accordance with Article 29(1) of the Convention, adopted at the 135<sup>th</sup> meeting, 12 February 2015, paras. 23–26.

101 European Parliament Resolution of 14 June 2017 on the Commission Report on Serbia (2016/2311(INI)), para. 21.

- The existing rights of civilian victims are wholly within the social welfare system, which excludes any linking of the rights of victims with true reparations for violations of human rights which were committed. The existing rights are almost all in the form of cash benefits, which are insufficient for the normal standards of life and cost of living in Serbia. There are no specialised services of social protection nor institutional support to civilian victims of war in Serbia.
- In the procedures for the exercise of their rights, the victims are not provided with any legal or technical help.
- In the last few years there has been a tendency to reinterpret the facts and events of the recent past, coupled with a repeated glorification of people and ideologies responsible for mass atrocities and suffering. There are attempts to improve the status of war veterans, disabled veterans and families of fallen soldiers, but there is no such will when it comes to civilians affected by the wars of the 1990s.

In accordance with these findings, it is proposed to the relevant authorities that the matter of reform in this area be addressed as soon as possible: by removing the legal regime for civilian victims from the domain of traditional social security; by creating a comprehensive and inclusive solution for all victims without discrimination, based on consultations with victims' associations and invalids of war in regard of their most acute needs, as well as on proposed starting solutions created by civil society organisations,<sup>102</sup> based on many years of work and expertise, as well as on analyses of international standards in the field of respect for human rights.

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102 Saša Gajin (ed), *Model Law on civilian victims of human rights violations in and in connection with the armed conflicts in the period from 1991 to 2001*, The Center for Advancement of Legal Studies and the Humanitarian Law Center, Belgrade, 2015.

Also, the Republic of Serbia should, as soon as possible, join the ratification of the signed European Convention on Compensation for Victims of Violent Crimes, establish an effective system providing free legal aid, as well as develop an effective mechanism for providing support and assistance to victims of serious crimes in accordance with the standards of the European Union, which would include civilian victims of war without discrimination on the basis of personal characteristics or injuries suffered.



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