

MODEL LAW ON THE RIGHTS OF CIVILIAN VICTIMS

OF HUMAN RIGHTS
VIOLATIONS COMMITTED DURING
AND IN CONNECTION WITH ARMED
CONFLICTS IN THE PERIOD 1991-2001

Saša Gajin (ed.)



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1. Model Law on the Rights of Civilian Victims of Human Rights Violations Committed During and in Connection with Armed Conflicts in the Period 1991–2001

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INTRODUCTION

The Model Law on Civilian Victims of Human Rights Violations Committed During and in Connection with Armed Conflicts in the Period 1991 to 2001 has been created with a two-fold aim: to provide assistance, support and protection to persons who, as civilians, suffered harm during and in connection with the wars in the former Yugoslavia, and to recognize their suffering. The provisions proposed in the Model Law are tailored to the needs of victims¹ and based on observation over many years of the shortcomings of the law currently in force and the obstacles that victims face in exercising their rights.

The Model Law has been drafted with the support of Civil Rights Defenders, as a cooperative effort between two partner organizations – the Center for Advanced Legal Studies (CUPS) and the Humanitarian Law Center (HLC). Saša Gajin (CUPS), Tanja Drobnjak as legal consultant, and Sandra Orlović, Milica Kostić and Petar Žmak (HLC) have been involved in the drafting of the Model Law.

The Model Law is based on the expertise of the HLC, which has since 2000 been representing over 1000 victims of war crimes, torture, unlawful detention, forced conscription,

1 The term “victim” denotes a person who has directly suffered impairment of his/her fundamental right or freedom, a member of the immediate family of a person who was killed or disappeared during the armed conflicts or in connection with the armed conflicts, as well as a member of the immediate family of a person who has directly suffered impairment of his/her fundamental rights or freedoms.

and other serious human rights violations committed during and in connection with the wars in Bosnia, Croatia, Serbia and Kosovo, in lawsuits seeking compensation and access to other rights under the Law on the Rights of the Civilian Invalids of War. The HLC has also provided an analysis of the current Law on the Rights of Civilian Invalids of War, a comparative legal analysis, as well as an overview of the factual and legal framework on which the provisions of the Model Law are based.

FACTUAL CONTEXT

The breakup of the Socialist Federal Republic of Yugoslavia (SFRY) following the declaration of independence of Slovenia in June 1991, resulted in a number of international and internal armed conflicts – in Slovenia (June-July 1991), Croatia (1991-1995), Bosnia and Herzegovina (1992-1995), Kosovo (1998-1999) and Macedonia (February-August 2001). The wars in Croatia, BiH and Kosovo were marked by systematic crimes against the civilian population.

Serbia played an active role in almost all the armed conflicts in the former Yugoslavia. With the help of the Serbian leadership, headed by the President of Serbia and later President of the Federal Republic of Yugoslavia (FRY), Slobodan Milošević, the Serbs in Croatia and in Bosnia and Herzegovina (BiH) established their own political-territorial units, with a view of separating them from these states. Following two military-police actions of the Croatian army, dubbed “Flash” and “Storm”, which were carried out in May and August 1995 respectively, the Croatian authorities regained sovereignty over the area that had been controlled by Serbs. The armed conflict in BiH ended in November 1995. The armed conflict in Kosovo began in early 1998 and ended in June 1999, following the NATO air intervention against the FRY.

The armed conflicts waged on the territory of the former Yugoslavia from 1991 to 2001 claimed the lives of more than 130,000 people, with about 4.5 million people fleeing their homes or being displaced, and 12,000 persons still unaccounted for. Nearly 6,000 citizens of Serbia and Montenegro

were killed or disappeared during the wars of the 1990s. Over this period, during and after the conflicts in Croatia and BiH, more than half a million people from Croatia and BiH came to Serbia as refugees. An additional 200,000 internally displaced persons from Kosovo also came to Serbia from 1999 to 2005, which has made Serbia the country hosting the largest number of refugees in Europe and one of the five countries in the world with the longest-running refugee crisis. The wars in Croatia, BiH and Kosovo were characterized by numerous war crimes and large-scale gross human rights violations – killings of civilians, enforced disappearances, detention of civilians in concentration camps, systematic rape and other forms of sexual violence etc.

NORMATIVE FRAMEWORK

I. VICTIMS' RIGHT TO REPARATION

The basic principles and requirements of international human rights law have become an integral part of the legal system of the Republic of Serbia. The right of victims to receive reparations is firmly enshrined in both international and national law. The State's obligation to ensure that victims of human rights violations can exercise their right to reparations emanates from the international human rights conventions that Serbia has ratified and from the fundamental legal principle of accountability for the harm inflicted.

Article 35(2) of the Constitution of the Republic of Serbia stipulates as follows: "Everyone shall have the right to compensation of material or non-material damage inflicted on him/her/them by the unlawful or irregular activity of a state body, entities exercising public powers, bodies of an autonomous province or local self-government".

Article 69(1) of the Constitution of the Republic of Serbia further stipulates that: "Citizens and families that require welfare for the purpose of overcoming social and existential difficulties and creating conditions to provide subsistence, shall have the right to social protection the provision of which is based on social justice, humanity and respect of human dignity."

The obligation to provide compensation for victims of human rights violations is set out in numerous international human rights instruments that Serbia has ratified: the **Inter-**

national Covenant on Civil and Political Rights (Articles 2 and 9), the **International Convention on the Elimination of All Forms of Racial Discrimination** (Article 6), the **Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment** (Article 14), the **Convention on the Rights of the Child** (Article 39). Further, a victim's right to reparation is also guaranteed by the regional mechanisms for the protection of human rights, namely the provisions of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** (Articles 13 and 41) and the **European Convention on the Compensation of Victims of Violent Crimes** (Articles 2 and 4), which Serbia has not yet ratified, even though five years have passed since the signing. These rights are also guaranteed by the case law of the international bodies for the protection of human rights, namely the **European Court of Human Rights**, the **United Nations (UN) Committee Against Torture**, the **UN Human Rights Committee** and the **UN Committee for Elimination of Racial Discrimination**.

Article 91 of the **Protocol I Additional to the Geneva Conventions**, which has been in effect in Serbia since 1978, stipulates as follows: "A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces."

In 2013, the Republic of Serbia signed the **Declaration of Commitment to End Sexual Violence in Conflict** and thus undertook the obligation to, among other things, provide assistance and care for the victims, including health and psycho-social care.

The **UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** of 1985 provides for the following rights for the victims:

- the right to be treated with respect and the right to have their suffering recognised;
- the right to support services, including the necessary material, medical, psychological and social assistance;
- the right to legal assistance;
- the right to have their physical safety and privacy protected;
- the right to restitution, including payment for harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights,
- the right to compensation from the offender and the state, including financial compensation to those who have sustained significant physical injury or impairment of physical or mental health and to their family members, in particular the dependants of persons who have died or whose physical or mental health have been permanently impaired as a result of such victimization.

In its 2006 Resolution on **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**, the UN General Assembly precisely defined the obligation of states to provide effective means for the protection of victims, including the right to various forms of reparation. The Resolution specifies the following five basic forms of reparation: restitution, rehabilitation, compensation, and various forms of satisfaction (cessation of violations, verification and public disclosure of the facts about human rights violations, inclusion of these facts in educational material, search for the disappeared, commemorations, public apologies) and guarantees of non-repetition.

Bearing in mind that the Republic of Serbia is a candidate for EU membership and that it needs to bring its legislation into harmony with the EU *acquis* in order to make progress on this path, it is worth referring here to the **Council Directive Relating to Compensation to Crime Victims** of 2004, and the **Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime** of 2012, which guarantee the right to compensation, free legal aid, health and psycho-social care.

The protection of fundamental human rights and freedoms, which Serbia has undertaken to guarantee under both international and national law, also entails the obligation of the State to prevent violations of these rights. Person who were victims of gross human rights violations and their families have the right to see justice served, to receive support from and be treated with respect by society, to receive just and appropriate compensation for the horrors they have experienced, to receive medical, psychological and legal support, and above all, to have their suffering recognized by society.

II. SHORTCOMINGS OF THE LAWS CURRENTLY IN FORCE

The main source of law concerning reparations for war victims in Serbia is the **Law on the Rights of Civilian Invalids of War** (*Official Gazette of the RS*, No. 52/96), which lays down the rights of civilian invalids of war and their family members and established the requirements for acquiring the status of civilian invalid of war. The procedure for status recognition and the content of specific rights is laid down in the Law on Basic Rights of War Veterans, Disabled Veterans and

Families of Fallen Combatants (*Official Gazette of the FRY*, No. 24/98, 29/98 - corr. and 25/2000 - decision of the FCC and *Official Gazette of the RS*, No. 101/2005 - other law and 111/2009 - other law) and the Law on the Rights of Veterans, Disabled Veterans and Members of Their Families (*Official Gazette of the FRY*, No. 54/89 and *Official Gazette of the RS*, No. 137/2004).

According to the legal definition, a civilian invalid of war is *a person with a physical impairment of 50% or more, due to wounds or injuries that have left visible traces, as a result of ill-treatment or detention by the enemy during war, military operations, or injuries sustained from leftovers of war materiel or enemy sabotage or terrorist acts* (Article 2). The family of a civilian invalid of war, as defined by the Law, is considered to be *[a member of] the family of the deceased civilian invalid of war, if he/she lived with him/her in the same household before death; member of the family of an individual who died or was killed under the circumstances referred to in Article 2 of the Law; spouse, children (born in or out of wedlock, adopted children or stepchildren) and parents* (Article 3).

The rights provided to civilian victims of war and their family members under this Law can be classified under three categories: (1) the right to monetary reparations; (2) the right to healthcare; and (3) the right to concessionary fares for travel on public transport.

Monetary reparations refer to various cash payments made to victims and to their family members who meet the requirements prescribed for eligibility to receive from the state. They include: (a) disability compensation – a monthly cash benefit paid to civilian invalids of war where the amount of benefit depends on the level of disability; (b) allowance for care and assistance, which is a monthly cash payment made to civilian invalids of war who need assistance from a

caregiver, the amount of which depends on the level of disability; (c) orthopaedic aids – monthly cash benefits paid to civilian invalids of war who had their limbs amputated, or had the functions of their limbs severely impaired, and to persons who have completely lost their sight; (d) monthly cash benefit – a cash benefit paid to civilian invalids of war and to families of deceased civilian invalids of war and persons who died or were killed during the war, provided they are financially needy, that is, that they meet the requirements regarding the property threshold and inability to secure an income; (e) reimbursement of funeral expenses – a one-off cash amount paid to a person who has buried a beneficiary of a monthly cash allowance (these are mostly family members of civilian victims of war).

The victims have access to free healthcare, unless they already have health insurance on other grounds.

The victims and members of their families are entitled to subsidized travel under the provisions of the Law on Basic Rights of War Veterans, Disabled Veterans and Families of Fallen Combatants.

Only nationals of Serbia who cumulatively meet all the requirements set out in the Law are eligible to enjoy the rights provided for in the Law.

- i. The Law on Civilian Invalids of War applies only to those victims who were injured or killed *by the enemy during the war, during the execution of military operations, by leftover war materiel or enemy sabotage or terrorist acts*. The Law thus explicitly excludes from the circle of eligible beneficiaries all victims who endured violence at the hands of formations that the Republic of Serbia does not consider an enemy, such as the Yugoslav People's Army (JNA), the Yugoslav Army (VJ), the Ministry of the Interior (MUP) or the Army of the

Republic of Srpska (VRS), or their subordinate formations. Because of this requirement, several important categories of victims were excluded from the law. They include: (1) victims of forced conscription – several thousands of refugees from Croatia and BiH – carried out by the Serbian MUP, as a result of which conscription victims were subjected to torture, killed or disappeared; (2) hundreds of citizens of Bosnian ethnicity from Sanjak who during the armed conflict in BiH were subjected to unlawful detention and torture on unfounded allegations that they collaborated with the Army of BiH and took part in activities “against the state”; and (3) citizens of Bosnian ethnicity who were killed, or ill-treated or expelled from border areas in the municipality of Priboj during the war in BiH.

- ii. The time period to which the Law applies, as set forth in Article 2, is limited only to the period of time during which the “state of war” was in effect. Since the FRY, the legal predecessor of the Republic of Serbia, formally speaking, participated in the armed conflict only in the period from 24 March to 26 June 1999, this restrictive requirement prevented all those victims who were subjected to violence and other human rights abuses during the 1990s, but at a time outside of the time period specified in the Law, from exercising the rights provided for in this Law, despite having sustained injuries during the war or in connection with the military actions. This requirement runs contrary to international humanitarian law, the Geneva Conventions and their Additional Protocols, which Serbia has ratified, and according to which the existence of an armed conflict is not linked to a declaration of war.
- iii. Even though the Law does not specifically prescribe the territoriality requirement, that is, the requirement

concerning the territory where the injury took place, the Ministry of Labour and Social Policy and the Serbian Supreme Court of Cassation both interpret this Law in a way that only recognizes injuries incurred on the territory of the Republic of Serbia. Because of such an interpretation of the legal provisions, the victims of violence committed on the territories of neighbouring states have been excluded from the circle of eligible beneficiaries of the rights envisaged by this Law. Moreover, this interpretation is in violation of a ratified international treaty, namely the Convention relating to the Status of Refugees, which stipulates (under Article 23) as follows: *The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to its nationals.* Article 24 of the Convention specifies that equal treatment refers to the provision of social security services as well.

- iv. Under this Law, only *persons with a physical impairment of 50% or more, due to wounds or injuries that have left visible traces...*“ are to be considered victims. This requirement excludes all those victims that have suffered serious, often life-long psychological consequences of violence and, consequently, prevents them from exercising the right to reparations. The consequences of violence are most often exclusively psychological. This is specially the case with survivors of sexual violence, torture and inhumane treatment. One of the most common psychological effects found in these victims is Post-Traumatic Stress Disorder (PTSD), which substantially limits the day-to-day life activities of the persons who suffer from this disorder and greatly reduces their chance of leading a normal life.

Making an unjustified distinction between victims with physical injuries and those with mental injuries not only amounts to discrimination, but also contravenes the Law on Prohibition of Discrimination and the international treaties Serbia has ratified – the Convention on the Rights of Persons with Disabilities, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights – and the Constitution of the Republic of Serbia, which states, under Article 3, as follows: *All direct or indirect discrimination based on any grounds, particularly on mental or physical disability, shall be prohibited.*^v With regard to the severity of the consequences for physical health, the Law stipulates that the right to reparation applies to victims who have sustained “*physical impairment of 50% or more, due to a wound or injury that has left visible traces...*” Because of this high threshold, all victims with a less serious physical impairment have been denied any kind of assistance. The discriminatory nature of this provision is particularly evident if one takes into account the fact that the prescribed threshold of physical impairment for war veterans is 20%.

- vi. To qualify for monthly cash benefits, victims must satisfy three cumulative requirements prescribed by the law: the financial vulnerability requirement, the incapacity for work requirement and the means test requirement. As regards the families of civilian victims of war, the monthly cash allowance is the only financial benefit they are entitled to. In requiring that families of civilian victims of war must be financially vulnerable to qualify for this benefit, the legislator has

reduced this right to mere social welfare, which contradicts the state's obligation to provide reparations to individuals who were victims of human rights violations. In other words, the families of civilian victims who are not financially vulnerable cannot exercise the most important right this law provides for families of civilian victims of war.

- vii. The Law specifies which family members are entitled to reparations: spouse, and children (born in or out of wedlock, adopted children or stepchildren), imposing an additional condition, that they *lived with the victim in the same household before his/her death*. This condition excludes siblings, but also children and parents, in cases where they did not live in the same household with the victim. Thus, the relation between close relatives is reduced to a mere economic community, completely ignoring the emotional dimension of family relationships.
- viii. Under the currently applicable law, victims of enforced disappearances are not considered civilian victims of war and their families are therefore not entitled to receive the benefits available to the families of killed persons (civilian war victims). To qualify for these benefits, the families of missing persons are required to have declared their missing family members dead through non-adversarial proceedings. However, many families refuse to have their loved ones declared dead until their mortal remains are found and their fate is clarified (that is, until the circumstances of their enforced disappearance are established). The said provision is in blatant contravention of an international treaty to which Serbia is a signatory – the Convention for the Protection of All Persons from Enforced

Disappearance, which, under Article 24.e, stipulates as follows: *Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.* The same Article further states that: *... each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.*

Because of the flawed legal definition of a civilian victim of war, many victims of war and war-related human rights violations have not been recognised in Serbia as civilian victims of war (according to HLC estimates, as few as 10 percent of victims of war living in Serbia have been recognised as such). The four largest categories of victims that have been excluded from the Law are: the victims of systematic human rights violations which occurred in the 1990s in Serbia, victims of sexual violence, the families of disappeared persons, and the victims suffering from diseases caused by the violence they have sustained.

a. Bill on the Rights of Veterans, Disabled Veterans, Civilian Invalids of War and their Family Members

In 2014, the Serbian Ministry of Labour, Employment, Veteran and Social Policy prepared the Bill on the Rights of Veterans, Disabled Veterans, Civilian Invalids of War and their Family Members (the Bill). The Bill improves, to a significant degree, the legal situation of veterans and military victims, but keeps almost completely unchanged the legal regime prescribed by the current Law on the Rights of Civilian Invalids of War where civilian victims are concerned. The associations of victims and civil society organizations deal-

ing with the rights of victims were neither consulted in the process nor were they even informed about the drafting of the Bill.

The most serious objection raised against the proposed Bill is that it maintains the discriminatory provisions of the law currently in effect. Because of the said provisions, numerous categories of victims have been excluded from the Law and consequently, left without any government assistance. Among the excluded categories of victims are the families of missing persons, victims of sexual violence, victims suffering from mental health consequences and physical injuries whose disability level is below 50%, as well as victims who died or were injured at the hands of members of the Serbian armed forces on the territory of other countries.

Sixteen civil society organizations from Serbia have urged that the Bill be withdrawn for the adoption procedure because of the above-mentioned shortcomings, and that a new text be drafted as soon as possible, which would take into account all the needs and specificities of civilian victims living in Serbia and provide them with protection and institutional support.

III. COMPARATIVE LAW ANALYSIS

a. Practices in other post-Yugoslav countries

All the countries that emerged following the breakup of the former Yugoslavia have incorporated in their laws the mechanisms for awarding reparations. These mechanisms differ in terms of the comprehensiveness, complexity and type of rights they accord to beneficiaries. A comparative review of these legal solutions has shown that all these systems have certain drawbacks. The Serbian system, however, is by

far the worst in the region, in terms of the way in which it treats this legal area.

In **Croatia**, the rights of civilian victims of war are regulated by the **Law on the Protection of Disabled War Veterans and Civilian Invalids of War** (hereinafter referred to as the Croatian Law). The definition of a civilian victim provided by this law is substantially broader than the one contained in the Serbian **Law on the Rights of Civilian Invalids of War**. The Croatian Law defines a civilian invalid of war as someone who has suffered physical impairment of at least 20% as a consequence of wounds or injuries sustained in war-related events, sabotage, terrorist activities, the operations of the Yugoslav Peoples' Army (from 17 August 1990) or in explosion of leftover ordnance. Unlike its Serbian counterpart, the Croatian Law recognizes individuals with at least 60% physical impairment caused by a disease that is a direct result of abuse or deprivation of liberty as civilian victims of war. The phrasing that describes the circumstances under which the injury or violation occurred are broad enough to encompass virtually all cases of human rights violations that the citizens of Croatia might have sustained during the 1990s, regardless of their ethnicity, the individual or group responsible for the violation, or whether or not they were related to military operations. The phrase "*war-related events*" is of particular importance here, because it allows the application of the law in cases where victims were injured by members of the Army of the Republic of Croatia. Also, this wording includes those victims who suffered injury or were killed before or after the "state of war" was officially declared. In contrast to the Serbian laws, this law deems it irrelevant whether or not the government declared a "state of war". Instead, it takes into account the actual situation and the well-known fact that human rights violations during the 1990s in the former Yugoslavia often took place outside of military operations and the "state of war".

The Croatian Law guarantees rights for family members of the killed and for family members of the disappeared. According to this law, family members include children, parents, adoptive parents, adopted children, spouses, and common-law partners, provided they had had children with the victim and lived together with him/her in a long-term relationship at the time of injury. The family members of killed or disappeared civilian victims are entitled to survivors' disability allowance and the allowance for care and assistance provided by another person. The survivors' disability allowance is granted to: a widow or a widower upon reaching 55 or 66 years of age respectively, or earlier if they are incapable of work; and to children (including adopted children or stepchildren) until they reach 15 years of age, or 26 years if they are full-time students. The Croatian Law guarantees the right to survivors' disability allowance to the parents of the killed or missing, regardless of whether another member of the immediate family has already been granted this benefit. Eligibility for these benefits is not linked to the financial and material status of the members of the immediate family. The Croatian Law provides a much wider scope of rights for civilian victims of war than its Serbian counterpart. Civilian victims of war in Croatia are entitled to a personal disability allowance, vocational rehabilitation, spa and climate therapy, assistance for the purchase of medication, etc. In addition to these rights, civilian invalids of war in Croatia and their families are entitled to receive a basic necessities allowance ('op-skrbnina'), an allowance for in-home assistance, textbooks free of cost, a special child allowance, student scholarships, priority in getting a room at student dormitories, priority in employment and priority in placement in social protection institutions.

In addition to this, the **Bill on the Rights of Survivors of Sexual Violence during the Homeland War** was intro-

duced into the Croatian Parliament in 2014, to provide reparation benefits to this category of victims, who were excluded from the **Law on Disabled War Veterans and Civilian Victims of War**.

Reparations in **Bosnia and Herzegovina** (BiH) are regulated by laws passed both at the state and entity levels.

The **Law on Missing Persons** is the only law that regulates the rights of war victims in BiH at **state-wide level**. Passed in 2004, this law regulates the status of missing persons and the rights of their families. It is based on a number of international legal documents in the fields of human rights and humanitarian law. It defines missing persons as those civilians and combatants who went missing during the armed conflicts in BiH in the period from 30 April 1991 to 14 February 1996. The conditions that must be cumulatively fulfilled in order for a person to be considered missing are that the family has no news about him/her, that the disappearance has been reported and that there is no reliable information about his/her fate. The family members of the missing person include children, born in or out of wedlock, adopted children, stepchildren that the missing person supported, spouses or common-law partners, parents (including stepfathers and stepmothers), adoptive parents, and siblings that the missing person supported. The requirements family members must meet in order to qualify for the benefits established by this law is that they lived in the same household with the missing person, that they were economically dependent and that they are in the need of financial support. Under this law, the family members of the missing person are guaranteed the following rights: a cash allowance, the right to temporarily dispose of the property of the missing person, coverage of funeral expenses, priority in employment and schooling, free healthcare, marking of the burial site and the

excavation site, and the right to financial assistance for associations of families of missing persons.

At the level of the **Federation of BiH**, the fundamental rights of civilian victims of war are laid down in the **Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children** (hereinafter referred to as the Federal Law). In terms of the conditions for acquiring the status of a civilian victim of war and the entitlements it carries, this law is more victim-friendly than the law applicable in Serbia. The requirement regarding the level of physical impairment is identical to that set out in the Serbian Law. Thus, under the Federal Law, civilian victims of war are persons who sustained a physical impairment of at least 60% caused by a wound or injury. However, unlike the Serbian Law, this law grants the status of a civilian victim also to those individuals who suffer from a disease caused by abuse, deprivation of liberty, unlawful punishment, unlawful deprivation of liberty, imprisonment, detention in a concentration camp, forced labour during the war or imminent threat of war, on the condition that the disease has led to “a significant deterioration of health”. Civilian victims of war, as defined by the law, also include missing persons and individuals who have sustained subsequent physical impairment due to deterioration of health or a long period of disease incubation. The Federal Law explicitly mentions the victims of rape and sexual assaults as a special category of civilian victims.

As regards the circumstances in which the injury occurred, the Federal Law stipulates that the events that led to death or disappearance, wounding or other forms of health impairment, must have happened during the war, or imminent threat of war, or in connection with war-related events, or, in special cases, even after the end of the war (explosions of landmines and other leftover ordnance etc.), in sabotage and terrorist acts. Thus, unlike the Serbian Law, the Federal

Law takes into account the situations that occurred under imminent threat of war or “in connection with war-related events”. Furthermore, the Federal Law sets no conditions regarding who is responsible for the death or disappearance of a person, or for the injuries and other body harm inflicted on the victims. In addition to monthly allowances for civilian invalids of war (personal disability allowance) and the families of civilian victims (survivors’ allowance), the Federal Law provides for entitlements that are not envisaged by the Serbian. These are, for example: professional training (vocational rehabilitation, retraining and further training), priority in employment and housing allocations, as well as psychological support and legal assistance. To be eligible for family disability allowance, a widow or widower must meet the criterion set by the Federal Law that they have reached 55 or 65 years of age respectively; they can be granted this allowance earlier if they are incapable of work and of providing for themselves. Regardless of these requirements, the spouse of a disabled person who was a recipient of an allowance for the care and assistance of another person on the basis of physical disability is entitled to a survivors’ disability allowance if they were married to the disabled person or living in the same household as that person for five years prior to their death, and if the spouse is not employed, engaged in a business or professional activity, or receiving a pension. The incapacity for work condition also applies to children, adopted children and stepchildren if they became incapacitated for work before reaching 15 years of age. The law does not make this entitlement contingent upon satisfying a means test. The law establishes the right to survivors’ disability allowance also for the family members of a deceased civilian invalid of war who was the recipient of an allowance for the care and assistance of another person, imposing no requirements concerning a means test, incapacity for work or financial insecurity.

The rights of civilian victims in the Republic of Srpska are governed by the **Law on the Protection of Civilian Victims of War** (hereinafter referred to as the Law of the Republic of Srpska). As was the case with the laws applicable in Croatia and the Federation of BiH, this law offers a significantly broader definition of a civilian victim of war and establishes a wider scope of entitlements. The Law of the Republic of Srpska defines civilian victims of war as persons who sustained physical impairment estimated at 60% or more, caused by abuse, rape, imprisonment in a concentration camp, internment, forced labour, wounding or injury. The law specifically recognizes missing persons as civilian victims of war. Unlike the Serbian Law, this law provides for the status of civilian victim of war to be granted to two large categories of victims of serious violations of human rights – missing persons and persons suffering the psychological consequences of a past trauma. As regards the circumstances under which the death, disappearance or physical injury occurred, this law does not require that these events had to take place during the formally declared “state of war”; instead, it determines the time period (after 9 January 1992, the date when the Republic of Srpska was proclaimed).

The members of a civilian victim’s family who can qualify for the entitlements set out in this law are: the spouse, children (born in or out of wedlock, adopted or stepchildren) and the parents. The law does not make satisfying a means test (which is determined by the Government of the Republic of Srpska) an eligibility requirement for survivors’ disability allowance. This does not apply to children who are full-time students, up to 26 years of age. This law offers a much broader definition of the family members who can claim survivors’ disability allowance than the Serbian Law, since family members of missing persons are also included in this category, and the granting of this entitlement is not conditioned

upon incapacity for work or on financial insecurity. The Law of the Republic of Srpska does not impose any requirements regarding who was responsible for the death or disappearance of the person, or the injuries and other damages sustained, except in the case of refugees from enemy forces. This distinction cannot be found in any other law in the region. In addition to the entitlements provided for by the Serbian Law, the Law of the Republic of Srpska establishes the right to receive professional rehabilitation.

In **Montenegro**, the rights to reparations for civilian victims of war are regulated by the **Law on Protection of War Veterans and Disabled Persons** (hereinafter referred to as the Montenegrin Law). As there were no armed conflicts on the territory of Montenegro, with the exception of a brief period during the NATO intervention, Montenegro has by far the lowest number of civilian victims of war in the region of the former Yugoslavia. The Montenegrin Law, like the Serbian, does not envisage support for the families of missing persons. In other words, this law does not recognize missing persons as civilian victims of war. Nor does it provide for granting the status of civilian victims of war to killed civilians, but only to those individuals who have sustained a physical impairment of at least 50% as a result of wounds or injuries sustained during war-related events, or psychosomatic illnesses that have left visible traces. Like the Serbian Law, the Montenegrin Law does not recognize impairments of a psychological nature as grounds for granting the status of a civilian victim of war. The Montenegrin Law considers the same group of persons to be family members as does the Serbian Law. However, in terms of entitlements guaranteed to civilian victims and their family members, the Montenegrin Law provides for some additional entitlements, such as family allowance, financial compensation and a survivors'

disability allowance which is available to the spouse and children of a civilian invalid of war and an augmented survivors' disability allowance, whereas the Serbian Law only provides for a monthly cash allowance, conditional on social vulnerability. The Montenegrin Law does not set the condition of satisfying a means test in order to be eligible for these entitlements, but it does require family members to prove financial insecurity and incapacity for work in order to qualify for these entitlements. This means that only those family members who have no income from employment, pension, or self-employment and are not recipients of some other form of social benefits can access these rights. The means test requirement applies only to two entitlements which the Serbian Law does not provide for: cash welfare benefits (available to civilian invalids of war and members of their families) and survivors' allowance (available to family members of a deceased civilian victim).

The rights of civilian victims in **Kosovo** are regulated by the **Law No. 04/L-054 on the Status and Rights of Fallen Soldiers, Disabled Persons, Veterans, Members of the Kosovo Liberation Army and Civilian Victims and Their Families** (hereinafter referred to as the Kosovo Law). As with the Serbian Law, this Law contains provisions that are unacceptable because they contravene the principle of equality. On the other hand, in the section dealing with civilian invalids of war, the Kosovo Law offers a much broader definition of this category of victim. According to the Kosovo Law, a civilian invalid of war is a person who has sustained a physical impairment (caused by injury or disease) of at least 40% as a result of imprisonment, wounding or blasting of explosive devices, regardless of who was responsible for it (there is no condition of 'enemy forces'). Civilian victims of war, as defined by the Kosovo Law, are those persons who were killed or wounded by enemy forces, and died in the period

between 27 February 1998 and 20 June 1999. All victims who were detained by the enemy for at least 72 hours belong to the category of civilian prisoners of war. Thus, for these two categories of victims the same discriminatory requirement - that of 'enemy forces' being responsible for their injuries - is found in both the Kosovo and the Serbian Law. Unlike the Serbian Law, the Kosovo Law does recognize missing civilians as a special category of victims, and defines them as follows: a missing person is any person whose whereabouts are unknown and who disappeared in the period from 1 January 1998 to 31 December 2000. Family members of missing persons are entitled to a survivors' pension under this law. Concerning the period in which the wounding or injuries occurred, the Kosovo Law recognizes only injuries sustained during the war, specifically from 27 February 1998 to 20 June 1999. This condition discriminates against those victims who sustained war-related injuries after 20 June 1999. In addition to the basic healthcare, the Kosovo Law is the only law in the region that entitles civilian invalids of war to receive medical treatment abroad, if need be, and, if their health has deteriorated, to be exempt from property tax, to receive vocational retraining and rehousing. The conditions civilian victims must meet to qualify for the above entitlements include the financial vulnerability (but without the conditions of means test or incapacity for work) of either the civilian invalid him/herself or their family members. Priority for housing is given to the families of fallen soldiers and missing persons, and to disabled persons who have not solved their housing problems.

The Kosovo Law guarantees the right to a survivors' pension for the civilian victim's immediate family members, as well as free primary and secondary healthcare, exemption from property tax, and access to cheap electricity through a lower electricity tariff. Only the last two entitlements are conditional upon the financial status of the victims, with the

others being granted irrespective of whether or not the applicants are incapable of work or can satisfy the means test. The Kosovo Law guarantees the right to a survivors' pension also for the members of a missing civilian's immediate family, provided they do not already receive a pension under another scheme. Means test, financial vulnerability or incapacity for work do not constitute eligibility criteria for a survivor's pension under this law.

By amendments made to the **Law No. 04/L-054** in 2014, victims of sexual abuse were specifically recognized as civilian victims of war.

Another law was passed in Kosovo in 2011 – the **Law No. 04/L-023 on Missing Persons** – which, among other things, lays down the rights of families of missing persons. One of the most important aspects of this law from the standpoint of families of missing persons is that it establishes their right to dispose of the property of their missing family members without being required to have them declared dead.

b. International practice²

As regards the relevant laws and practice in the world, there are numerous good examples of countries addressing the issue of reparations for victims of war and gross human rights violations.

The Government of the **Republic of South Africa**, on the basis of recommendations developed by the **Reparations and Rehabilitation Committee of the Truth and Reconciliation Commission** and pursuant to the **Truth and Reconciliation Commission Act**, made one-time payments to victims of apartheid to an amount equalling the average annual

2 For more details on the comparative review of legal practices, see Pablo de Greiff, "Justice and Reparations," in Pablo de Greiff, ed., *The Handbook of Reparations* (Oxford: Oxford University Press, 2006).

salary of a five-member household. Higher sums were paid to persons who had more dependants or who lived in rural areas. The benefits were funded by the President's Fund established with the purpose of making reparations for apartheid victims.

In 1984 and 1985, **Argentina** passed a set of laws regulating compensation for the victims of "state terrorism" between 1975 and 1983. The first reparation measure adopted by the Argentinean government was granting a pension to the family members of the disappeared. The beneficiaries, which included children, spouses, parents and siblings of the victims, were paid a pension that was equivalent to the minimum pension received by a retired public servant, and were provided with social services, including health care. The laws specifically stated that reparations were not meant to be a substitute for the obligation of the state to ensure fulfilment of the rights to reparation and justice for victims.

In 1991, the President of Argentina issued the **Decree No. 70/91 on Indemnification of the Victims of Unlawful Detention** who had failed to obtain compensation through judicial proceedings because their cases had been dismissed on statute of limitation grounds. The Decree provided them with two options: either to continue with their ongoing proceedings, or to withdraw their claims and accept the indemnification amount provided by the Decree, amounting to one-thirtieth of the monthly salary of the highest ranking public servant for each day of detention. For the victims who had died or sustained severe injuries while in detention the amount of compensation was increased. For five years of detention, victims received, in addition to the sum paid for each day, a lump sum of USD 49,275. Applications had to be submitted to the Ministry of the Interior, which had 60 days to make a decision; once the application was approved, the Ministry had 60 days to make payment of the compensation awarded.

The **Law No 24.043** of 1991 expanded the circle of beneficiaries and increased the amount of benefit paid for each day of detention from USD 27 to USD 74. The victims who had already been paid reparation benefits under the previous decree, were entitled to be awarded the difference between the USD 27 and USD 74.

The **Law No 24.411** of 1994 envisaged pecuniary reparations for victims of enforced disappearances and the descendants of individuals who were assassinated by the military, members of security forces or paramilitary groups. To claim reparations under this law, the families of the disappeared had to declare that their missing family member(s) had died. This law sparked fear among the victims that the government would give them money in exchange for silence about what had happened. That is why the **Law on Reparations** was preceded by the **Law on Absence by Enforced Disappearance**, which does not presume the death of a disappeared person (therefore the families are not obliged to declare him/her dead) but presumes that a person was illegally kidnapped by state agents. In cases where a disappearance resulted in assassination, the benefit awarded to the family was equivalent to the monthly earnings of so-called A-level civil servants, multiplied by a coefficient of 100, which totalled USD 224,000.

A special law was passed in 2004 to provide redress to persons who were born while their mothers were in illegal detention and to minors who remained in detention due to the detention or disappearance of their parents.

None of the mentioned Argentinean laws categorizes victims by their ethnicity or nationality.

In 1992, **Chile** enacted the **Law Number 19.123**, which awards reparations to victims of the dictatorship in the period from 1973 to 1990. This law established a monthly reparation pension for the families of the victims of human rights violations or political violence. The law also established that

the reparations pension was compatible with other benefits, such as social security benefits. In addition, one-time compensatory bonuses equivalent to twelve months' pension payments were awarded under this law. Moreover, the disappeared persons' children up to thirty-five years of age were allowed to attend any educational institution of their choice and have their tuition and other expenses paid.

The Chilean Ministry of Health was responsible for implementing the so-called PRAIS programme, aimed at providing comprehensive health and psychological care for victims of human rights abuses. Beneficiaries of this programme included former political prisoners, family members of disappeared detainees, family members of victims of political executions, persons fired from their jobs for political reasons, persons who had been exiled and returned to their country and families, victims of torture and their families, victims of human rights abuses committed under the military regime, and human rights workers who had provided assistance to the victims.

Chile later adopted some special reparations programmes which covered exiles and their families, political prisoners, persons dismissed for political reasons, peasants excluded from agrarian reform or expelled from their land, and torture victims.

After World War II, **Germany** set up two important reparations programmes: the Holocaust reparations programme and the forced and slave labour reparations programme.

The first **Compensation Law**, adopted in 1953, established the following compensation programmes, in the form of monthly payments: compensation for loss of life (payable to widows, children and dependants); compensation for health (medical care for those who suffered damage to health or spirit); compensation for damages to freedom (payable to political prisoners); compensation for property and discrimi-

natory taxes; and compensation for damages to career and economic advancement. The law was amended in 1956 and 1965 to streamline the procedure for claimants and to include more beneficiaries.

Under a law passed in 2001, a new programme of reparations for survivors of forced and slave labour was put in place. The programme was financed half by the German Government, half by German companies which had used slave labour during World War II. Victims received one-time payments under this programme. Their heirs – spouses, children, grandchildren, brothers, sisters and testamentary heirs – were also entitled to compensation.

On the basis of the **Rome Statute**, which Serbia ratified in 2001, two independent institutions were created: the **International Criminal Court (ICC)** and the **Trust Fund for Victims (TFV)**. The TFV awards funds to victims of genocide, war crimes, crimes against humanity and the crime of aggression, and it can act regardless of whether there is a conviction by the ICC.

IV. VIEWS AND OPINIONS OF THE INTERNATIONAL INSTITUTIONS REGARDING THE SERBIAN LAW

As part of their regular monitoring of the implementation of international human rights conventions in Serbia, the UN treaty bodies and the Council of Europe have on several occasions pointed out that the existing legal framework governing reparations in Serbia is inconsistent with international standards of human rights.

The Concluding Observations of the **Committee for the Prevention of Torture** on the implementation of the

Convention for the Prevention of Torture in Serbia, issued in November 2008, stated that Serbia lacked specific programmes to implement the rights of victims of torture and ill-treatment to compensation and redress, and the services to deal specifically with trauma and other forms of rehabilitation for torture. Serbia was therefore advised to strengthen its efforts in respect of compensation, redress and rehabilitation, in order to provide victims of torture and other cruel, inhumane or degrading treatment or punishment with redress and fair and adequate compensation, including the means for full and prompt rehabilitation, and to develop a specific programme which would provide assistance to victims of torture and ill-treatment.

The **UN Human Rights Committee**, in its Concluding Observations regarding the implementation of the **International Covenant on Civil and Political Rights** in Serbia, issued in March 2011, recalled the obligation of Serbia to fully investigate all cases of human rights violations, in particular those that occurred during the 1990s, and to ensure that all victims and their families receive adequate compensation for the harm they have suffered.

Reparations for victims of human rights violations that occurred during the 1990s were discussed also in the **Report of the Council of Europe Human Rights Commissioner**, Thomas Hammarberg, of April 2011. The Report emphasized the lack of a reparation mechanism available to all victims, as the **Law on Civilian Victims of War** provides for the compensation of only a limited number of victims, and excludes those whose injuries or loss resulted from the actions of Serbian state agencies. The Report also notes that, according to the Serbian Law, former camp detainees, victims of sexual violence, and victims of torture cannot benefit from administrative compensation unless they sustained physical impairment above a certain threshold. The Commissioner

urges the Serbian authorities to take all necessary measures to ensure reparation to victims of war-related crimes and to their families, in accordance with the established principles of international law as defined in the **UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**.

The latest **European Commission's Progress Report on Serbia** (2014) also criticised the **Law on the Rights of Civilian Invalids of War** currently in force, stating that "*only a few victims of war crimes have access to effective compensation under the current legal framework*", and that "*there has been no improvement of assistance to victims*."

The **UN Committee on Enforced Disappearances**, in its Concluding Observations of 2015, stressed the obligation of Serbia to safeguard the rights of families of missing persons, and recommended that Serbia establish a comprehensive, gender-sensitive system of reparation and ensure that all persons who suffered direct harm as a result of an enforced disappearance have access to medical and psychological rehabilitation. The Concluding Observation further stated as follows: *[the Committee] notes with concern that the administrative compensation system set up for victims of the past armed conflicts [under the Law on the Rights of Civilian Invalids of War] to victims of enforced disappearances for as long as the disappeared person is not declared dead*. One of the measures that Serbia should take includes ensuring that the rights of families of victims of enforced disappearances be included in and guaranteed by the/a new law on the rights of war veterans, disabled war veterans, civilian victims of war and their family members.

V. AIMS OF THE MODEL LAW

The aim of the Model Law is to launch a broader debate about the need to repeal the currently applicable **Law on the Rights of Civilian War Invalids** and the need to regulate this area in accordance with the actual needs of civilian victims of war, by transferring this legal area from the field of social protection to that of human rights.

By ensuring access to rights for civilian victims of war, the Republic of Serbia will bring its legislation into line with international conventions on the protection of human rights, the recommendations and standards of international courts and treaty bodies that monitor the implementation of these conventions, as well as with the EU *acquis*, the Serbian Constitution and other laws prohibiting discrimination.

The Model Law provides rehabilitation to victims through material, psycho-social, medical and legal assistance, and provides some sort of satisfaction to victims through recognition of their suffering. In a broader sense, it reflects social solidarity and acceptance of responsibility for the crimes that were committed. The Model Law aims to restore the dignity of victims, to improve their quality of life through material and psycho-social support, and to contribute to non-repetition of crimes.

In keeping with the principle according to which the state is responsible for ensuring the respect and protection of fundamental human rights and freedoms, and the principle of social solidarity, the Model Law, in addition to providing monetary compensation to victims, provides also other important rights, such as the right of a victim to be treated with respect, the right to healthcare and social welfare, the right to education, employment and legal assistance. The Model Law sets out the rules of procedure and evidence, with a view to

simplifying the procedure as much as possible, and respecting the dignity of victims. The rules are tailored to the specific situations and needs of victims. In order to protect victims from re-traumatisation in the course of reparations procedures, the Model Law envisages training for the civil servants responsible for applying this law on how to treat victims and their needs. By imposing obligations on the Government of the Republic of Serbia to promote this law, to inform victims about it, and to regularly report on its implementation, the Model Law makes the Government responsible for ensuring the unhindered implementation of the law and for enabling all persons to which this law applies to benefit from its implementation.

The Model Law, whose key feature is a comprehensive approach to the implementation of the rights of all categories of victims, taking account of their specific needs and the circumstances under which they lost their lives or suffered injuries, is a powerful impetus to the process of dealing with the legacy of systemic violence in the region of the former Yugoslavia. In adopting the Model Law, the Republic of Serbia will be demonstrating that it respects all victims of human rights violations, and, at the symbolic and political level, taking a firm stance in relation to a period of history marked by mass crimes.

MODEL OF THE LAW ON THE RIGHTS OF CIVILIAN VICTIMS OF HUMAN RIGHTS VIOLATIONS COMMITTED DURING AND IN CONNECTION WITH ARMED CONFLICTS IN THE PERIOD 1991-2001

I BASIC PROVISIONS

The Objective of the Law

Article 1

The objective of this Law is the realization and protection of individual rights of the persons whose fundamental human rights and freedoms guaranteed by the Constitution of the Republic of Serbia, ratified international treaties and by generally accepted rules of international law, were violated during the armed conflicts or in connection with the armed conflicts on the territory of the former Socialist Federal Republic Yugoslavia (hereinafter “SFRY”) in the period from January 1, 1991 until December 31, 2001.

The Subject Matter of the Law

Article 2

This Law stipulates the basic principles and terms, and specifies the rights of the victims, the substantive conditions for the realization of those rights, the procedure for realizing and protecting those rights, and special responsibilities in the application of this Law.

The Application of the Law

Article 3

(1) This Law is applicable regardless of whether the act of violation of fundamental human rights and freedoms represents a criminal act or some other form of violation of the provisions of domestic or international laws.

(2) The rights referred to in this Law are realized and protected regardless of whether the criminal or other responsibility of the perpetrator of the act of violation of fundamental human rights and freedoms has been established.

(3) This Law is applicable regardless of the personal characteristics of the perpetrator of the act of violation, such as their membership to a certain side in the armed conflict or being part of an armed formation or organized armed group, or their ethnic or religious identity or their citizenship, etc.

(4) This Law is not applicable to persons who have suffered violations as combatants participating in combat actions in armed conflicts on the territory of the former SFRY (members of state armed forces, paramilitary and other organized armed groups).

Basic Terms

Article 4

(1) The act of violation of fundamental human rights and freedoms as defined by this Law is an act of violation of the right to life, the right to physical and mental integrity, the right to the inviolability of personal dignity, the right to personal liberty and security, freedom of movement, and the right to private and family life (hereinafter “act of violation”) that has occurred during armed conflicts or in connection with armed conflicts, and it particularly refers to murder, enforced disappearance, torture, inhumane or degrading treat-

ment, sexual violence, illegal deprivation of liberty, forced mobilization, or forced labour.

(2) Aggravated act of violation referred to in paragraph 1 of this Article is an act that:

- was committed in a particularly cruel, ruthless, or degrading manner; or
- had extremely harsh consequences for the victim; or
- lasted for an extended period of time or was recurrent; or
- was committed by representatives of government bodies or by public officials.

(3) Victim of an act of violation (hereinafter “victim”) as defined by this Law is a person who personally survived an act of violation, a family member of a person who was murdered or forcibly disappeared during armed conflicts or in connection with armed conflicts, as well as a family member of a person who personally survived an act of violation.

(4) Family member of a person who personally survived an act of violation or a family member of a person who was murdered or forcibly disappeared during armed conflicts or in connection with armed conflicts as defined by this Law is a spouse, domestic partner, child, brother, sister, parent, adopted child and adoptive parent.

(5) Armed conflict as defined by this Law is recourse to armed force between states or protracted armed violence between government authorities and organised armed groups or between such groups.

(6) Act of violation in connection with an armed conflict is an act of violation referred to in paragraph 1 of this Article which is in a causal relation with the armed conflict or the committing of which was significantly affected by the existence of the armed conflict, especially in terms of the manner,

motive, and objective of the committing of the act of violation.

(7) Financial compensation is an amount of money paid by the Republic of Serbia to victims based on the principle of responsibility for the violation of fundamental human rights and freedoms, i.e. for failure of the obligation to prevent violations of fundamental human rights and freedoms, based on the principle of social solidarity with victims, as well as on the principle of equal treatment.

Principles Underlying the Realization of the Rights

Article 5

The rights referred to in this Law are realized in accordance with the principle of responsibility of the state to respect and protect the fundamental human rights and freedoms, the principle of social solidarity with the victims, the principle of inviolability of personal dignity and equality of the victims regardless of their personal characteristics.

General Conditions for the Recognition of Rights

Article 6

(1) The rights referred to in this Law can be realized by a person who personally survived the act of violation, or who was killed or forcibly disappeared during armed conflicts or in connection with armed conflicts, and who:

1. is a citizen of the Republic of Serbia or was a citizen of the Republic of Serbia at the time of the committing of the act of violation regardless of the territory of the state where the act of violation occurred;
2. suffered the act of violation on the territory of the Republic of Serbia, regardless of citizenship; or

3. obtained a refugee or internally displaced person status on the basis of the decision of the competent authority and resides on the territory of the Republic of Serbia.

(2) The rights referred to in this Law can only be realized if they have not been previously realized in another state or in accordance with other provisions regulating the rights of victims.

(3) If the rights referred to in paragraph 2 of this Article were realized in a lower scope than provided by this Law, the victim shall be reserved the right to obtain the difference to the full extent of the realization of the right in accordance with the provisions of this Law.

(4) The realization of the right to financial compensation as provided by this Law precludes the victim of its right to seek from the Republic of Serbia compensation for non-material damages that occurred during the armed conflict or in connection with the armed conflict.

Interpretation of the Law

Article 7

(1) The provisions of this Law shall be interpreted in compliance with the UN General Assembly Resolution 60/147 (“Basic Principles And Guidelines On The Right To A Remedy And Reparation For Victims Of Gross Violations Of International Human Rights Law And Serious Violations Of International Humanitarian Law”), as well as with other provisions of international law in the area of protection of the rights of victims of human rights violations.

(2) The provisions of this Law shall be interpreted in a manner that facilitates the realization of the rights of the victims.

II THE RIGHT TO FINANCIAL COMPENSATION

Persons Eligible for Financial Compensation

Article 8

- (1) Persons eligible for financial compensation are;
1. persons who personally survived the act of violation;
 2. family member of the person who was murdered or forcibly disappeared;
 3. family member of the person referred to in point 1 of this paragraph who died after submitting the claim for recognizing the right and before their right was recognized.

(2) Each family member of the person who was murdered or forcibly disappeared realizes the right to financial compensation referred to in paragraph 1 of this Article independently.

(3) Family members referred to in point 3 of paragraph 1 of this Article realize their right to financial compensation jointly, and the amount of financial compensation is divided equally between them.

The Forms of Financial Compensation

Article 9

(1) Financial compensation referred to in Article 8 of this Law shall be paid either in the form of basic or supplemented financial compensation.

(2) Basic financial compensation shall be paid to persons referred to in points 1 and 3 of Article 8(1) of this Law.

(3) Instead of basic financial compensation, supplemented financial compensation shall be paid to:

1. the person referred to in point 1 of Article 8(1) of this Law who personally survived an aggravated act of violation;
2. the person referred to in point 2 of Article 8(1) of this Law;
3. the family member of the person referred to in point 1 of Article 8(1) of this Law who survived an aggravated act of violation and who died after submitting the claim for recognizing the right and before that right was recognized.

The Amount of Financial Compensation

Article 10

(1) The amount of basic financial compensation referred to in Article 9(2) of this Law is 10,000 Euros, in Dinar countervalue established for the date of the adoption of the decision recognizing the right.

(2) The amount of supplemented financial compensation referred to in Article 9(3) of this Law is 20,000 Euros, in Dinar countervalue established for the date of the adoption of the decision recognizing the right.

Financial Compensation Payment Methods

Article 11

(1) Financial compensation referred to in Article 9(1) of this Law shall be made as a lump sum payment (hereinafter “lump sum payment”).

(2) The person who survived an aggravated act of violation can request that the financial compensation referred to in point 1 of Article 9(3) of this Law be paid in monthly installments amounting to one half of the average monthly

income in the Republic of Serbia calculated for the previous month (hereinafter “monthly payment”).

Financial Compensation Exemption

Article 12

The amount of financial compensation shall not be included in the amount of income based on which the status of a social welfare beneficiary or income tax is determined.

The Inheritance of the Right to Financial Compensation

Article 13

(1) The right to a lump sum payment recognized in accordance with this Law shall be inheritable if the payment was not made before the death of the claimant.

(2) The right to a monthly payment recognized in accordance with this Law is inheritable if no payments were made before the death of the claimant, and automatically becomes a lump sum payment.

*Termination of the Right to Financial Compensation
due to Death*

Article 14

(1) Upon the death of the victim who has no heirs, the right to financial compensation recognized in accordance with this Law and which has not been paid, ceases to exist.

(2) Upon the death of the victim, the right to a monthly payment recognized in accordance with this Law and the payment of which has begun, ceases to exist at the moment of the victim’s death.

III OTHER RIGHTS OF VICTIMS

Special Rights of Victims

Article 15

(1) Victims have the following rights:

1. The right to respect for their victim status, including the right to protection from a denial of their victim status;
2. The right to health care and other rights related to obtaining health care to the extent available to the most preferred category of health care beneficiaries, in accordance with the provisions governing health care services;
3. The rights concerning social protection to the extent available to the most preferred category of social protection beneficiaries, in accordance with the provisions governing social protection and financial support for families with children;
4. The rights concerning subsidized housing to the extent available to the most preferred category of beneficiaries within the housing subsidy system, in accordance with the provisions governing subsidized housing;
5. The rights to professional rehabilitation, retraining, and other rights concerning the field of employment, in accordance with the provisions governing the realization of such rights, regardless of whether the victim is employed and regardless of the legal nature of that employment;
6. The rights in the area of education, to the extent available to the most preferred category of beneficiaries in the education system, in accordance with the provisions governing the bases of the education system in-

cluding pre-school, elementary, high school, and college education, as well as pupils and students' living standards;

7. The right to free legal aid in the procedure for realizing the rights referred to in this Law, in compliance with the law regulating free legal aid;
8. The right to free city and intercity public transportation;
9. The right to compensation of necessary expenses for funeral, exhumation, and transfer of mortal remains on the territory of the Republic of Serbia or the territory of the former SFRY.

(2) The ministries competent for the realization of the rights referred to in points 2-9 of paragraph 1 of this Article shall, by means of by-laws, determine the manner for their realization.

The Prohibition of Denial of the Status of Victim

Article 16

Denying the status of victim to a group of persons who share the same personal characteristics, done at a public gathering, or by making a public statement, especially in the media and especially by persons who are public or political officials, shall constitute hate speech.

IV PROCEDURE FOR THE REALIZATION AND PROTECTION OF RIGHTS

Initiating the procedure

Article 17

(1) The rights referred to in this Law can be realized by submitting a written claim by the victim (hereinafter "claimant"), their legal representative or plenipotentiary.

(2) The claim can also be submitted orally and entered in relevant records or by filling out the prescribed form.

The Competence to Evaluate Claims

Article 18.

(1) The Office of the Government of the Republic of Serbia for the realization of the rights of victims of human rights violations in and in connection with armed conflicts in the period 1991-2001 (hereinafter “Office”) shall have competence to decide on claims referred to in Article 17(1) of this Law.

(2) The Office shall be managed by its Director and the headquarters of the Office shall be in Belgrade.

The Commission of the Office

Article 19

(1) The decision on each individual claim referred to in Article 17(1) of this Law shall be made by the Commission of the Office (hereinafter “Commission”).

(2) The Commission shall consist of three members appointed by the Director, who are civil servants and appointed for their superior moral and professional authority and experience which must include at least 10 years of relevant experience in the domain of the respect and protection of human rights.

Local Divisions of the Office

Article 20

(1) Local divisions of the Office shall be established in Niš, Novi Pazar, Kraljevo, Novi Sad, and Belgrade.

(2) The local division in Belgrade shall be established within the Offices’ headquarters.

(3) The local division referred to in paragraph 1 of this Article shall consist of three authorized persons, each with at least five years of work experience in the public administration.

(4) The local division referred to in paragraph 1 of this Article shall receive claims referred to in Article 17(1) of this Law, regardless of the place of residence of the claimant.

(5) The local division shall collect claims and deliver them to the Commission without delay, no later than 15 days from the date of receipt.

(6) The claimant can request the authorized person from the local division to come to his home in order to formulate and submit the claim, if that request is justified by health or other legitimate reasons.

(7) If there is knowledge that health or other legitimate reasons hinder the claimant's ability to formulate and submit the claim without assistance from an authorized person, the authorized person from the local division is under ex officio obligation to go to the home of the claimant.

(8) The local divisions shall provide legal aid to the claimant in formulating and submitting the claim, ensuring that the statements of the claimant and the witnesses are orderly and comprehensive, without assessing the grounds of the claim.

Content of the Claim

Article 21

The claim referred to in Article 17(1) of this Law must contain the following information:

- First and last name and other personal information of the claimant (permanent residence, temporary residence, citizenship, etc.);

- A description of the act of violation;
- All available evidence regarding the act of violation, family member status, and fulfillment of the general conditions for realizing the rights.

Establishing Critical Facts

Article 22

(1) In establishing critical facts, the Commission shall use evidence, especially the statement of the claimant and the statements of witnesses, medical documentation, decisions and reports made by international organizations or bodies, documentation created during or in relation to proceedings conducted before the authorities, media reports, reports made by non-governmental organizations, etc.

(2) The statements of the claimant and the witnesses referred to in paragraph 1 of this Article can be given orally, in proceedings conducted by the authorized person from the Office or from local divisions, or in writing.

(3) The Commission shall collect information *ex officio* on personal data and evidence corroborating the facts of direct importance for making a decision, which is officially recorded by public authorities of the Republic of Serbia or of another state (police, judiciary, health institutions, etc.).

(4) Information and evidence referred to in paragraph 3 of this Article, which are in possession of public authorities of the Republic of Serbia, shall be made available without delay, no later than 15 days from the date they were requested.

(5) A decision on the claim referred to in Article 17(1) of this Law can be made based on facts or circumstances which have not been entirely established or were established only indirectly, i.e. if the facts or circumstances were made probable and all circumstances suggest that the claim is justified, in accordance with the law governing general administrative proceedings.

(6) The decision to reject the claim referred to in Article 17(1) of this Law cannot be founded on facts that have been established solely on the basis of the documentation generated during proceedings or in connection with proceedings before public authorities, or solely from testimonies of the representatives of public authorities.

Deadline for the Submission of the Claim

Article 23

(1) The deadline for submitting a claim for realizing the rights under this Law shall be three years from the date of its entry into force.

(2) If, for viable reasons, the claimant omitted to submit the claim within the deadline laid down in paragraph 1 of this Article, the claim may be submitted within six months following the cessation of the reason that caused the omission, and no later than five years from the date this Law entered into force.

The Decision on Recognizing the Rights of the Victim

Article 24

(1) The claim referred to in Article 17(1) of this Law shall be decided on by the Commission in the form of a written decision, no later than three months from the date the claim was received.

(2) The decision recognizing the rights referred to in this Law must establish the status of victim, and the act of violation must be detailed in the written justification of the decision, in accordance with the evidence presented.

(3) If the claimant is a family member of a person who was murdered or forcibly disappeared, the decision establishing the status of victim for the claimant at the same time shall

establish the status of victim for the murdered or forcibly disappeared person.

Legal Effects of the Decision Establishing the Status of Victim

Article 25

(1) If the claimant is a person who has personally survived an act of violation, a final decision establishing the status of victim for that individual shall form a legal foundation for establishing the status of victim to that person's family member in the proceedings initiated at a later date by that family member.

(2) The provision contained in paragraph 1 of this Article shall be applicable accordingly in cases where the status of victim for a family member had been established before the victim who personally survived the act of violation, or another family member submitted the claim for realizing the rights.

Realizing the Rights

Article 26

(1) The rights provided for in this Law are realized on the basis of a decision referred to in Article 24(1) of this Law.

(2) The procedure for realizing the rights from paragraph 1 of this Article shall be laid down in a bylaw adopted by the Government of the Republic of Serbia, i.e. by the competent ministries.

Judicial Protection

Article 27

The decision from Article 24(1) of this Law shall be final and the claimant can appeal against it by initiating administrative proceedings.

The Expense of the Proceedings

Article 28

The claim referred to in Article 17(1) is exempt from fees.

Repetition of Proceedings

Article 29

(1) The proceedings that ended in a decision on the realization of the rights can be repeated if new facts come to light or if it becomes possible to consider new evidence that could independently or combined with the previously presented evidence result in a different outcome, had those facts or evidence been presented or demonstrated at the original proceedings, especially if the decision was made on the basis of a counterfeit document, a false statement of a witness or an expert, false stipulations of a party in the proceedings that mislead the Commission, or on the basis of an act that is punishable by criminal law.

(2) Proceedings can be repeated on the basis of a request by a person with a legal interest, or on the basis of an ex officio decision of the Commission, within 30 days from the date new circumstances referred to in paragraph 1 of this Article have come to light and no later than five years from the date this Law entered into force.

Application of Other Laws

Article 30

In matters regarding the realization of those rights which are not regulated by this Law, the provisions of the law governing general administrative proceedings shall apply.

V SPECIAL OBLIGATIONS

Obligations of the Government

Article 31

The Government of the Republic of Serbia shall be responsible to take action to facilitate the proper application of this Law and to publicly promote the application of this Law.

Staff Training

Article 32

Before acting on individual cases, the Office shall organize training for its staff, including the staff in local divisions, on how to work with victims and take account of their needs, based on the principles of respect for their personal dignity and prohibition of discrimination, especially in order to prevent their traumatization and secondary victimization.

Informing the Victims of their Rights

Article 33

(1) The Office shall be responsible to use the media and particularly public media services to keep informing the victims of their rights deriving from this Law and of the requirements and proceedings for the realization of their rights.

(2) The Office shall be responsible, in cooperation with associations dealing with the rights of victims, to develop a brochure containing information referred to in paragraph 1 of this Article in the Serbian, Bosnian, Croatian, Roma, Albanian, Turkish and English languages, and publish it on its web site.

(3) The brochure referred to in paragraph 2 of this Article is to be published on the web sites of units of local self-

government and of diplomatic and consular offices of the Republic of Serbia abroad.

(4) The Office shall distribute printed copies of the brochure to associations of victims, social and primary health care institutions, and associations dealing with human rights i.e. the rights of victims.

(5) The expenses of informing the public as set out in paragraphs 1-4 of this Article will be allocated from the budget of the Republic of Serbia.

Access to Documents

Article 34

(1) Decisions made with respect to the application of this Law shall be published on the web site of the Office.

(2) Upon requested by the victim, the decision referred to in paragraph 1 of this Article shall be translated into the victim's native language and the translation shall also be published.

(3) The victim can request the anonymization of the decision that relates to them.

(4) The name of a murdered or forcibly disappeared person shall be published in the decision referred to in paragraph 1 of this Article.

(5) Other documents in the possession of the Office can be accessed in accordance with the Law on Free Access to Information of Public Importance.

The Report on the Application of the Law

Article 35

(1) The Office shall make and publish annual activity reports, as well as a final report on the application of the Law no later than six months after the termination of proceedings upon individual claims.

(2) The reports referred to in paragraph 1 of this Article must contain information about the number of victims and their ethnic, national, religious, sexual and other personal characteristics, as well as information about the location of the act of violation.

(3) The reports referred to in paragraph 1 of this Article shall be presented at a session of the Board for Human and Minority Rights of the National Assembly and in the presence of representatives of associations dealing with the rights of victims.

(4) The reports referred to in paragraph 1 of this Article shall be published in the Official Gazette of the Republic of Serbia and on the web sites of the Office and the Government of the Republic of Serbia.

VI TRANSITIONAL AND FINAL PROVISIONS

The Deadline for the Adoption of Bylaws

Article 36

The bylaws necessary for the realization of the rights provided for by this Law shall be adopted no later than three months from the date the Law entered into force.

The Entry into Force of the Law and its Expiration

Article 37

The Law shall enter into force on the eighth day following its publication in the Official Gazette of the Republic of Serbia, and shall expire upon six years from the date of entry into force.

