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POSITION

of the Coalition of Organizations that Care for Protection of the Rights of Victims of Armed Aggression Against Ukraine, regarding the bill “On Registration of Persons Whose Lives and Health were Damaged as a Result of the Armed Aggression of the Russian Federation Against Ukraine” (# 10256)

In November 2023, the Government of Ukraine registered the bill “On Registration of Persons Whose Lives and Health were Damaged as a Result of the Armed Aggression of the Russian Federation Against Ukraine” (# 10256) (hereinafter - the bill)¹ with the Verkhovna Rada of Ukraine. According to the explanatory note, the bill was developed with the aim of ensuring the creation of the State Register of Victims of the Armed Aggression of the Russian Federation against Ukraine (hereinafter referred to as the Register of Victims), providing for:

- 1) An accounting of citizens whose lives and health were damaged as a result of the armed aggression of the Russian Federation against Ukraine;
- 2) Information exchanges between state information systems in terms of the recording of damage to the life and health of citizens, which was caused as a result of the armed aggression of the Russian Federation against Ukraine;
- 3) Accounting of expenditures of state and local budgets, budgets of social funds, related to the provision of assistance and support to citizens who suffered as a result of the armed aggression of the Russian Federation against Ukraine.

According to the explanatory note, the general purpose of creating the Register of Victims is to record and consolidate information that can serve as an evidential basis for further appeals by citizens and the State of Ukraine to the international compensation mechanism and international judicial bodies for the purpose of reparations and other recovery from the aggressor state.

It is important to note that in accordance with Part 3 of Article 2 of the bill, the criteria for assessing damage to life and health, the extent of such damage and the establishment of its cause-and-effect relationship with the armed aggression of the Russian Federation against Ukraine are determined starting from February 19, 2014, in accordance with methodology

¹ The bill “On Registration of Persons Whose Lives and Health were Damaged as a Result of the Armed Aggression of the Russian Federation Against Ukraine” dated November 13, 2023 #10256. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/43188>

approved by the Cabinet of Ministers of Ukraine. Defining such an approach is very important because it takes into account damage caused during the entire period of ongoing armed aggression against Ukraine. The damage caused to the life and health of citizens of Ukraine, foreigners and stateless persons legally residing in the territory of Ukraine in the period from 2014 to 2022 is taken into account. In order to ensure the functioning of the Register of Victims, information from databases created by non-governmental organizations may be used.

In general, supporting the idea of comprehensive accounting of non-property damage caused by armed aggression against Ukraine, starting from February 19, 2014, we draw attention to the following problematic issues of the bill, which are critical for making a decision on its further support.

1. Despite the declared goal of the bill (creation of the Register of Victims), it is not clear how it is consistent with the process of creation of the Register of Damages caused by the aggression of the Russian Federation against Ukraine (hereinafter - the Register of Damages) at the level of the Council of Europe, which is the first step towards an international compensation mechanism. According to the explanatory note to the bill, the creation of the Register of Victims will make it possible to ensure the accounting of damage and losses caused by the aggressor state to the non-property rights of citizens, with the aim of helping citizens to apply to the international compensation mechanism in the future. However, there are reasonable doubts as to whether the creation of a single Register of Victims at the national level will really contribute to obtaining compensation for damage to life and health in the future within the framework of the compensation mechanism of the Council of Europe.

As you may know, in May 2023, the Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine² was adopted. According thereto, the process of creating the Register of Damages as a separate independent body began at the level of the Council of Europe. According to clause 2.3 of the Statute, which is an appendix to the Resolution CM/Res(2023)3, claims, evidence and related information shall be submitted to the Register of Damages by natural and legal persons concerned, as well as the State of Ukraine (including its regional and local authorities, and State-owned or controlled entities).

The Board, elected in November 2023, is directly responsible for the work of the Register of Damages³. Its powers include the formation of rules and regulations governing its work, their proper implementation, in particular, regarding the definition of categories of applications, procedures for receiving, processing and registering applications, the format of application forms and the requirements for evidence for each category of applications, which shall be approved by the Conference of Participants of the Register of Damages.

Thus, all the necessary conditions for the functioning of the Register of Damages have been created. However, the categories of applicants who can apply to the Register of Damages and information about whom can be provided (confirmed) by the State of Ukraine are uncertain. Methods of proving non-property damage caused by the aggression of the Russian Federation are also uncertain.

Therefore, if the creation of the National Register of Victims is part of the preparatory work of the State in order to ensure effective accounting, and in the future - compensation for the damage caused by armed aggression against Ukraine, it is appropriate to synchronize the State's position with the requirements of the Register of Damages, in particular, regarding the

² Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, Adopted by the Committee of Ministers on 12 May 2023 at the 1466th meeting of the Ministers' Deputies. URL: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680acc3f9

³ Conference of Participants of the Register of Damage for Ukraine elects its Board. URL: https://www.coe.int/en/web/portal/-/conference-of-participants-of-the-register-of-damage-for-ukraine-elects-its-board?fbclid=IwAR1AMEF2rIR2IEcyHtmj-vmKF-y4V7i3CqHGLMWxEfXKr1gefHjkATp_Xcl

categories of applicants and types of damage. For example, there are reasonable doubts that the Register of Damages will account for persons who have experienced emotional stress or discomfort for further compensation (the bill proposes to account for these types of damage).

As noted above, in accordance with the bill, the criteria for assessing damage to life and health, the extent of such damage and the establishment of its cause-and-effect relationship with the armed aggression of the Russian Federation against Ukraine is determined starting from February 19, 2014, in accordance with the methodology approved by the Cabinet Ministers of Ukraine. However, according to Resolution CM/Res(2023)3, one of the eligibility criteria for an application to be included in the Register of Damages is that the damage must have been caused on or after February 24, 2022. Therefore, while the Register of Victims proposed by the Government is created to assist in obtaining compensation within the framework of the international compensation mechanism, the prospect of compensation for damage caused from 2014 to 2022 is unclear. In general, approving the accounting of the damage caused by the armed aggression of the Russian Federation against Ukraine since the beginning of the aggression in February 2014, it is important to be able to address this damage, that is, to find mechanisms for the compensation. This can probably happen outside the international compensation mechanism, the beginning of which is the creation of the Register of Damages. However, these mechanisms shall be clear before a decision is made to account all non-property damage.

However, if the bill is not solely aimed at synchronizing with the Register of Damages, then questions arise as to what is the purpose of recording the victims, since it cannot be an end in itself.

According to Article 1 of the bill, "compensation for damage to life and health as a result of the armed aggression of the Russian Federation against Ukraine" are measures, in particular payments, aimed at eliminating the consequences of such damage. The Register of Damages of Victims is also created to "facilitate the provision of compensation" and "provide effective legal remedies to victims".

Therefore, the bill, which contains a detailed description of the procedural aspects of maintaining the Register of Victims, defines its language, grounds for access to information, etc., does not even contain a general framework for providing compensation (reparation) for non-property damage. The exception is that victims have the right to compensation from reparations or other charges collected from the Russian Federation, in particular within implementation of the concept of a special compensation mechanism for compensation for damages caused by the armed aggression of the Russian Federation against Ukraine. In addition, the bill does not contain a specific list of ways to compensate for damage (except for payments), there are no clearly defined terms for receiving such compensation.

Instead, the bill provides for immediate interim reparations as a remedy aimed at immediately providing for the most urgent needs of victims after they have suffered gross violations of international human rights law and serious violations of international humanitarian law, with the aim of avoiding irreparable damage or preventing further damage. At the same time, the bill does not contain any grounds for such urgent interim reparations, nor the criteria and procedure for their provision. For example, in another bill "On Status of Victims of Sexual Violence Related to the Armed Aggression of the Russian Federation Against Ukraine, and Urgent Interim Reparations" (# 10132)⁴, a similar method of reparations is defined with a list of cases, in which such reparations would be provided to the affected persons, as well as the procedure for their receipt.

Thus, the impression is created that the bill actually provides for that the State of Ukraine undertakes to account for a non-exhaustive list of non-property damage,

⁴ The bill "On Status of Victims of Sexual Violence Related to the Armed Aggression of the Russian Federation Against Ukraine, and Urgent Interim Reparations" dated October 9, 2023 #10132. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/42862>

while not having a general vision of how to address (compensate) this damage, and who has the right to urgent interim reparations, which, obviously, should be provided to those categories that suffered the most as a result of armed aggression against Ukraine.

Simple collection of data on damage from victims may create excessive expectations for compensation and, as a result, disappointment. Obviously not all of this damage can be compensated through international mechanisms (to which the victims will probably have to apply directly), and such compensations have not been implemented at the national level.

2. The bill proposes to create a Register of Victims without any mention of the fact that at the end of 2023 there already is a number of records (registers) that contain information about individual groups of victims. As for the use of information entered in the Register of Victims, the bill does not contain any mention of how it will take into account the data of other records and registers. Therefore, a false impression is created that such records are not kept, and the Register of Victims will be the first experience of creating such records.

In turn, there is a number of categories of persons who suffered damage as a result of armed aggression against Ukraine, whose records are kept in the relevant registers. In particular, these are persons deprived of personal freedom as a result of armed aggression against Ukraine, and members of their families; persons missing under special circumstances and members of their families; persons with disabilities as a result of injuries or other health damage received from explosives, ammunition and military weapons; children who suffered as a result of hostilities and armed conflicts; internally displaced persons; persons, including children, deported or forcibly displaced in connection with the armed aggression of the Russian Federation against Ukraine. In addition, the Prosecutor General's Office has information on persons recognized as victims of war crimes and crimes of aggression committed on the territory of Ukraine by the Russian Federation or by structures affiliated with the aggressor state.

These categories do not include all persons who suffered damage as a result of armed aggression against Ukraine, but such records are kept. Therefore, when working out the issue of creating the new Register of Victims, the question of how to take into account the information contained in the above-mentioned registers (and those are only state registers, without taking into account the databases held by NGOs) shall be resolved. Judging by the text of the bill, the applicant principle (submission of a claim for damage) of entering information about a person into the Register of Victims is envisaged. This looks like an excessive measure, given the possibility of data exchange between different registries. In addition, such a method of collection in the absence of a single agreed methodology will lead to the duplication of information that is already available in various state registers.

3. The list of cases in which damage to life and health occurs is very broad, which raises reasonable doubts about the possibility of their proper accounting and the prospect of compensation. Thus, the bill proposes to account for a very large and not sufficiently clear list of types of non-property damage caused by armed aggression against Ukraine. According to the bill, the source of compensation is via reparations or other charges collected from the Russian Federation, in particular within implementation of the concept of a special compensation mechanism for the compensation for losses caused by the armed aggression of the Russian Federation against Ukraine. At the same time, the bill defines a non-exhaustive list of types of non-property damage; for example, loss of access to health care and treatment services, educational services, loss of income and means of livelihood; physical suffering, emotional stress,

discomfort, or other violations of personal non-property rights that ensure the natural existence of a natural person, or international human rights law and international humanitarian law. Given the large-scale armed aggression against Ukraine, the systematic commission of war crimes by the Russian Federation, in particular indiscriminate shelling and shelling of critical infrastructure objects, it can be assumed that the entire population of Ukraine, including those citizens of Ukraine who live outside its borders, have suffered such damage (probably multiple forms as well as instances of damages), especially if it is calculated from February 19, 2014. Therefore, the issue of complicated administration, difficulties of proof and prospects for compensation of all types of damage, listed in Article 2 of the bill, arises.

At the same time, the name proposed in the bill "State Register of Victims of the Armed Aggression of the Russian Federation against Ukraine" does not correspond to the title of the bill and the subject of its regulation. This can create a wrong idea among ordinary citizens about the nature of the damage caused, which is the basis for including relevant information in the Register of Victims (for example, in the case of causing only property damage to the victim).

In addition, it is not clear how the applicant shall prove the fact of damage in certain cases, for example, physical suffering, emotional stress, discomfort, or other violations of personal non-property rights that ensure the natural existence of a natural person, or international human rights law and international humanitarian law. The bill does not contain information on how damage should be confirmed in these and other cases. It stipulates that the requirements for the list and volume of information entered into the Register of Victims, the form of the relevant application and the list of documents attached to the application shall be approved by the Cabinet of Ministers of Ukraine. However, at the basic level, when determining the cases in which non-property damage occurs and will be accounted for, it should be clear how such damage can be confirmed and recorded in the Register of Victims.

Taking into account the applicant principle, it is difficult to imagine how the Register of Victims can be administered in the event that the types of damage specified in the bill are likely to have been experienced by all residents of Ukraine without exception. At the same time, the prospect of compensation for such damage is unclear, which calls into question the State's intentions to really create conditions for victims to receive compensation in the future.

4. The registration of damage to life and health caused by war crimes in the Register of Victims does not conform with the State's position on the creation of the National Register of Victims and Survivors of War Crimes. Accounting for damage caused by war crimes is a separate issue. A significant number of cases in which there is damage to life and health in accordance with Article 2 of the bill are cases of war crimes or crimes committed in armed conflict. Questions arise regarding "one voice" in Ukraine's position regarding accounting for such damage. Thus, Paragraph 9 of the Riga Principles⁵ commends the work of the Prosecutor General's Office aiming at a victim-centred approach to accountability, including through its initiative to develop a national Register of Victims and Survivors of war crimes.

⁵ DECLARATION OF THE INFORMAL CONFERENCE OF MINISTERS OF JUSTICE OF THE COUNCIL OF EUROPE. On the occasion of the Conference: "On the Path to Justice for Ukraine: Advancing Accountability, Reuniting Children with Their Families, and Supporting the Resilience of its Justice System" (September 11, 2023, Riga, Latvia).
URL: <https://rm.coe.int/moj-declaration-riga-principles-final-en/1680ac8728>

Despite the fact that currently there is no relevant regulation at the national level, the formation of the Register of Victims and Survivors of war crimes is a logical step in the consistent position of the Prosecutor General's Office in support of victims of war crimes. It has at its disposal information on documented facts of war crimes committed on the territory of Ukraine (in particular, from NGOs), as well as information on persons recognized as victims in relevant criminal proceedings. In addition, in April 2023, the Prosecutor General approved the Concept of the Implementation of the Mechanism for the Support of Victims and Witnesses of War and Other International Crimes, according to which the Coordinating Centre for the Support of Victims and Witnesses was created as a separate independent structural unit within the Prosecutor General's Office⁶.

Thus, the provisions of the government bill, which provides for the creation of a Register of Victims of the Armed Aggression of the Russian Federation against Ukraine, including war crimes, are not consistent with the international position of Ukraine regarding the formation of the Register of Victims and Survivors of war crimes.

5. The proposal to designate the Pension Fund of Ukraine (hereinafter - PFU) as the administrator of the Register of Victims appears to be doubtful and insufficiently substantiated. According to Part 2 of Article 3 of the bill, the holder of the Register of Victims is the central body of executive power, which ensures the formation of state policy in the field of social protection of the population. At the same time, the administrator of the Register of Victims is the PFU. In the explanatory note to the bill, there is no justification for the expediency of determining the PFU as the entity authorized to maintain the Register of Victims. However, the bill specifies that the public registrar is an official of the PFU and he/she enters data into the Register of Victims.

In accordance with the first and third parts of Article 58 of the Law of Ukraine "On Mandatory State Pension Insurance", the Pension Fund is a body that manages the solidarity system, the mandatory state social insurance against accidents, in connection with temporary loss of working capacity and medical insurance, ensures the collection, accumulation and accounting of insurance contributions, appoints pensions and prepares documents for their payment, ensures timely and full funding of pension payments, burial benefits, payments according to the types of mandatory state social insurance, supervises the targeted use of the funds of the Pension Fund, resolves issues related to keeping records of pension assets of insured persons in accumulative pension accounts, performs administrative management of the Accumulation Fund, social and other payments provided for by the legislation of Ukraine, and other functions provided for by this Law, the Law of Ukraine "On Mandatory State Social Insurance" and the Charter of the Pension Fund.

The Pension Fund **cannot carry out any other activity**, except for the one specified in the first part of this article, and use the funds of the mandatory state pension insurance and the mandatory state social insurance for purposes unrelated to the specified activity.

At the same time, the Government recently adopted a number of decisions that will contribute to the high-quality functioning of the Register of Damages. For this, the Ministry of Digital Transformation of Ukraine and the Ministry of Justice of Ukraine should prepare and submit the relevant technical requirements.

⁶ On Organization of Work of the Prosecutor's Office in Support of Victims and Witnesses of War and Other International Crimes: order of the Prosecutor General dated April 11, 2023 #103. URL: <https://zakon.rada.gov.ua/laws/show/v0103905-23#Text>

The Government emphasizes that Ukraine should systematically approach the transfer of all information about damages caused by the Russian Federation to the State of Ukraine, every citizen and Ukrainian legal entities. The Ministry of Justice of Ukraine being the coordinator of the creation of the International Register, will conduct informational and explanatory work for the public on how to fill out an application, what evidence base shall be collected and how to submit the documents⁷.

6. The bill contradicts the norms of the current legislation in some parts. Thus, the provision of Part 3 of Article 5 regarding the conclusion by the recipient of compensation for damage to life and health from the state or local budgets of an agreement on the cession to the state/territorial community of the right to demand from the Russian Federation for appropriate compensation in the amount of compensation received directly contradicts the requirements of Article 515 of the Civil Code of Ukraine, according to which the replacement of the creditor is not allowed in obligations inextricably linked to the person of the creditor, ***in particular in obligations concerning compensation for damage*** caused by mutilation, other health damage or death.

Thus, the bill “On Registration of Persons Whose Lives and Health were Damaged as a Result of the Armed Aggression of the Russian Federation Against Ukraine” (# 10256) contains shortcomings that require systematic revision and the development of a comprehensive vision of both accounting for non-property damage (damage to life and health) caused by armed aggression against Ukraine and further actions of the State aimed at compensating this damage based on the Victim-Centred Approach, taking into account the records of various categories of victims already available to the State. The organizations of the Coalition are ready to participate in the finalization of the bill.

December 4, 2023

Human Rights Centre ZMINA
NGO “Crimea SOS”
NGO “Donbas SOS”
CO CF “Stabilization Support Services”
NGO “Civil holding “GROUP OF INFLUENCE”
CF “Right to Protection”
CF “East-SOS”
Crimean Human Rights Group

⁷ The Cabinet of Ministers approved a number of decisions for the functioning of the Register of Damages caused by Russia — Shmyhal. URL: <https://www.ukrinform.ua/amp/rubric-vidbudova/3794606-kabmin-shvaliv-nizku-risen-dla-funkcionuvan-na-reestru-zbitkiv-zavdanih-rosieu-smigal.html>