Summary of the General Comment 1/2022 of the Minority Ombudsman on the war care of persons of German nationality deported to the Soviet Union for forced labour at the end of the Second World War

In the case concerning the war care of a total of 70 persons of German nationality living in Békés County, the complainant, acting on behalf of the persons concerned, complained that *the men and women of German nationality who had been taken to Soviet labour camps when they were young because of their German name or origin* – on the one hand, elderly, sick people over 92 years of age, and on the other hand, the spouses or descendants of the deceased ones – *did not receive the war care benefits they had claimed.* He complained that, in accordance with the practice in Békés County, applications from descendants born after 1 January 1949 were rejected without any substantive examination, having regard to their date of birth.

After presenting the historical and legal background, General Comment 1/2022 of the Minority Ombudsman reviews the complaints relating to the application for war care benefits: war invalid allowance, war widows' benefit and former war invalid dependants' benefit. Then it presents the replies of the bodies contacted in the case, namely the President of the National Self-Government of the Germans in Hungary and the head of the Békés County Government Office, which was the second-instance authority in the war care cases complained of.

Having reviewed the relevant legislation and documents available to me, I have made the following substantive findings:

1. Concerning the examination of war invalidity, I pointed out that during the war care procedure, *the expert rehabilitation body must carefully examine both the physical and mental, social condition of the person concerned* in order to determine the appropriate degree of health impairment (war-related disability), with particular regard to post-traumatic stress syndrome.

The competent authority may not overrule the expert opinion, but at the same time *it is perfectly understandable that the 92-year-old clients concerned would challenge the finding, after 70 years, that two and a half and three and a half years of hard physical labour in a Soviet labour camp caused only minimal (10%) physical and/or mental impairment, trauma*, and therefore they are not entitled to benefits.

I have drawn the attention of the competent authorities to the need to exercise the utmost caution in assessing the war invalidity of the elderly persons concerned who are still alive, taking into account – to maximum extent – the psychological trauma they have suffered.

2. As regards war widows, I pointed out that since the amendment of the Act on War Care, effective from 1 January 2017, *it is sufficient for a war widow to prove by means of a document the war-related disability of her deceased spouse* without having to prove that her spouse was taken into care as a war invalid. Therefore, war widows do not have to prove why they were not taken into war care and, if they provide documentary evidence of the fact of war-

related disability, they can claim benefits even if their spouse was not declared a war invalid. The question arises, however, as to *which document the authorities will accept* as proof of war-related disability.

3.1 With regard to former war invalid dependants, *I have already drawn the attention of the Government Commissioner to the fact that the application of clients cannot be rejected – without a substantive examination – on the grounds that they were born after 1 January 1949 and are therefore not entitled to war care benefits.*

In his reply, the *Government Commissioner maintained his position* that applicants born after 1 January 1949 could not be considered (former) war invalid dependants either under the pre-1949 or the current legislation.

I stated in my general comment that the legislator, with the amendment to the Act on War Care in force from 20 December 2015, did not set a condition for the child of the (war invalid) parent to be child born before 1 January 1949, but that *the loss (the parent's war-related disability) occurred before 1 January 1949*. ***It would be unjustifiable to make a distinction between the children of a war invalid parent*** by regulating that the children born before 1 January 1949 to a parent who returned home in early 1948 or earlier (and who was still classified as war invalid) are entitled to war invalid dependants' benefit while the ones born after 1 January 1949 are not.

In view of the above, I have drawn the attention of the Government Commissioner that they should act exclusively on the basis of the legislation in force and in compliance with the relevant provisions of the Act on War Care when assessing applications for the benefits of former war invalid dependants.

3.2 As regards the proof of the parent's war invalidity, I pointed out that currently, *in order to establish a former war invalid dependant status, the applicant must (should) prove by documentary evidence – if he or she was not taken into war care – that one of his/her parents has become a war invalid*. This assumes that the parent was admitted to war care as a war invalid before 1949 (when there was still state war care), but his/her child was not taken to war care as a war invalid dependant (for example, because he or she was born after 1949, when there was no longer war care). If neither the parent nor the child was taken to war care for any reason – political or other cause – and the parent died in the meantime, *the child cannot prove the fact of war invalidity*, even if he or she has medical documentation of the parent's war injuries or disabilities, *and is not entitled to the former war invalid dependants' benefit.*

The recent decisions of the Curia confirmed this interpretation of the law, stating that "the fact and extent of the war invalid's health impairment are to be established by an expert rehabilitation body, this evidence cannot be replaced by the client's statement."

Therefore, on the basis of the Curia's decision, *the law-applying authorities must reject applications for former war invalid dependants' benefits* if the parent has not previously been classified as a war invalid, which is ***particularly unfair****, given the historical situation, for those who did not (or could not) apply for war care registration before 1949 for political reasons.*

Descendants whose parents spent a longer period of time in the Soviet Union ***are also in an unfair position***. On the basis of the information available to me, it is reasonable to assume that persons who returned from the Soviet Union in early 1948 or earlier could – in principle – still apply to the competent war care commission for war care and (at least) receive a first instance decision on their case, on the basis of which they were classified in an annuity class. However, those who were *released from Soviet camps in the second half of 1948, in 1949 or even later*, could *certainly no longer apply for* (or, if they did apply, were not granted) *a war invalid status* because of the cessation of war care in the meantime.

As regards the persons of German nationality who were deported to the Soviet Union for forced labour in late 1944 and early 1945 because of their mother tongue or origin, and who returned home from 1946 during the period of deportations, it can be reasonably assumed that during the period of total disenfranchisement neither they nor their relatives asked (because they could not ask) for registration in war care.

In my opinion, it can also be stated that ***linking the date of loss (death or war-related disability) to a date before 1 January 1949*** *in the case of the benefits of former war orphans, former war invalid dependants and former war-care family members* ***raises the concern of a violation of equal treatment***, since deportees (including civilians of German origin) who stayed in the Soviet Union even after 1 January 1949 could have clearly died even after this date or could have suffered war-related disability in the camps, but their relatives are thus excluded from the scope of persons entitled to the benefit.

In its decisions on personal compensation, the Constitutional Court has ruled that the Constitution does not impose an obligation on the State to compensate for the harm caused by previous regimes; such compensations are based solely on fairness. However, if the *State* decides to provide a benefit to a certain category of persons, it *cannot discriminate between those who have suffered the same injury*.

In the light of this, I proposed to the Minister of Defence, to review – in cooperation with the Minister of Justice – the existing legislation on war care and, with regard to the reasons and in the light of the historical circumstances set out above, to consider facilitating the enforcement of claims by former war invalid dependants and to eliminate the legal situation that results in the violation of equal treatment.

Budapest, 19 January, 2022.

Prof. Elizabeth Sándor-Szalay
Minority Ombudsman