

A Comprehensive Strategy for a Just and Efficient Returns Process in Bosnia and Herzegovina

Today, the High Representative, Wolfgang Petritsch, has issued Decisions that amend in both Entities the laws that deal with property rights, and provide instructions on their application.

These Decisions harmonize the RS legislation with the Federation legislation and thus create equal rights and remedies for all refugees and displaced persons across Bosnia and Herzegovina in accordance with Annex 7 of the Dayton Peace Agreement. The Decisions also provide the authorities in both Entities with detailed instructions on the application of the property and housing legislation, removing ambiguities in the laws and making them workable in practice.

Four years after the Dayton Peace Agreement, hundreds of thousands of refugees and displaced persons still do not have access to their apartments, houses, business premises and land. The implementation of the property and housing laws has not produced the desired results in either Entity. Today's Decisions create a consistent and fully applicable legal framework in the two Entities. It is now the duty of the authorities at all levels to provide their citizens with the service of governance to which they are entitled under every democratic and lawful administration, and to actively implement their rights to their homes and property. These rights are individual, fundamental and universal. They are enshrined in the Dayton Peace Agreement, the Constitution of Bosnia and Herzegovina and many international declarations, such as the European Convention on Human Rights, which applies

in Bosnia and Herzegovina.

Today's legislative reform package will allow both the leaders and the citizens of Bosnia and Herzegovina to take ownership of the democratization process in the field of return and property rights. It provides the authorities – the housing administrations and judiciaries – with clear legal guidelines on how to protect and implement these rights. At the same time, the new legal provisions specify for the refugees and displaced people which rights they have and can demand from their authorities.

The High Representative expects the Governments in both Entities, as well as every Cantonal and municipal government, to devote maximum energy, effort and financial resources to the implementation of the property and housing laws, and to establish efficient housing administrations and independent judiciaries. If necessary, he will take additional measures to achieve this goal. With legislative reform as the first stage, and strong pursuit of implementation thereafter, many of the problems that Bosnia and Herzegovina suffers from in the field of return and property rights will be systematically addressed and effectively removed.

The High Representative has also issued Decisions imposing the Law on the Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) both in the Federation and Republika Srpska. These laws regulate the administrative and court procedures for the recognition and implementation of CRPC decisions. CRPC was created under Annex 7 of the Dayton Peace Agreement to determine occupancy rights and ownership, in cases in which the claimants do not enjoy possession of that property. CRPC decisions are final and binding. The Office of the High Representative submitted draft CRPC laws to the Entity Ministries of Justice last July, and the Council of Europe set a September 1999 deadline for their adoption. Due to the failure of the Entities to adopt the laws, the High

Representative is now compelled to put them in place himself.

The High Representative has issued today's Decisions with the full support of the Steering Board and other international organizations operating in Bosnia and Herzegovina, such as the OSCE, UNMIBH, the European Commission, UNHCR and CRPC. The International Community considers the High Representative's Decisions essential to safeguard the rights of refugees and displaced persons in Bosnia and Herzegovina, speed up the execution of the property and housing laws and allow for the full implementation of Annex 7 of the Dayton Peace Agreement.

The Office of the High Representative pointed to problematic aspects of the RS Law on the Cessation of the Application of the Law on the Use of Abandoned Property immediately after it was adopted last December. Despite repeated calls for the RS Government to correct the areas of concern, the Government has taken no steps in that direction. This has forced the High Representative to impose the necessary amendments, along with the instructions on application, in order to ensure a consistent application of Annex 7 throughout the territory of Bosnia and Herzegovina.

In the Federation, the High Representative last July imposed the most important changes to the property and housing laws, after discussing them with the Government. Today's Decisions provide the application instructions on these changes, as well as minor amendments to the laws, which have become necessary as a result of the instructions or of changed circumstances in the field, or in order to clarify ambiguous wording. Given the urgency of the matter, the High Representative has decided to impose the amendments and instructions.

In Republika Srpska, the amendments to the Law on the Cessation of the Application of the Law on the Use of Abandoned Property correct the inconsistencies that existed between RS and Federation legislation, and create legislative equality between the two Entities. In addition, most articles

of the 1993 Law on Amendments to the Law on Housing Relations are repealed. Both in the Federation and the RS, the amendments to the property laws also include a few new provisions, of which the most important are as follows:

- The deadline until which the claimant of a socially-owned apartment must reoccupy this apartment (unless good cause, which is redefined, prevents him/her from doing so) is changed from one year to 90 days. The 90-day deadline for repossession starts counting from the day the claimant is notified in writing that his/her apartment is vacant.
- The amendments define “multiple occupants” and oblige the authorities to take immediate action to evict them. Multiple occupants who fail to comply with an eviction order shall be fined between 50 and 500 KM.
- The period of time during which multiple occupants as well as illegal users must vacate claimed apartments and property is now a maximum of 15 days.
- The 90-day deadline for vacating apartments and property applicable to all other current users can be extended in cases of documented absence of alternative accommodation for up to one year only with the agreement of the OHR.
- An appeal against a decision of a first-instance body does not suspend the enforcement of this first-instance body’s decision.
- The Federation Ministry of Defense is entitled to continue to administer the apartments at its disposal, in accordance with the law, and issue contracts on use of unclaimed apartments to temporary users who are required to vacate the apartment they currently use.
- An administrative body that acts against the law shall be fined between 1000 and 5000 KM, and an official in the body, who does not define refugees and displaced persons as set out in the law, shall be fined between 200 and 1000 KM.

The instructions on the amended Entity Laws clarify among other things:

- who shall be considered a refugee or displaced person, which claims for the return of occupancy rights and property shall be considered valid, and how they shall be processed;
- the requirement to review and re-issue decisions made in cases of permanent occupancy rights issued between 1 April 1992 and 7 February 1998 in the Federation, and 1 April 1992 and 19 December 1998 in the RS, which were subsequently annulled by the High Representative;
- the circumstances and procedures under which a former permanent now temporary occupancy right holder may regain a permanent contract of use of a socially-owned apartment;
- how socially-owned apartments that have not been claimed, the claims to which have been lawfully rejected or which have not been repossessed by the claimants within 90 days without good cause, shall be managed by the responsible housing authorities until 4 July 2001 in the Federation and 19 December 2001 in the RS in order to be used as alternative accommodation;
- entitlement to alternative accommodation, to include the type of accommodation and the length of entitlement;
- the requirements for appropriate and emergency accommodation;
- the procedures for the processing and hearing of claims;
- that the responsible housing authority is obliged to obtain from a temporary user who has submitted a claim for the repossession of his/her original apartment or house, a written or oral statement that s/he will vacate his/her current accommodation after reinstatement in his/her original home, and to initiate criminal proceedings if the claimants fails to do so. The housing authority is also obliged to seek the criminal prosecution of current occupants who illegally remove

property or fixtures from the apartments they vacate, or willfully damage the apartments;

- in which cases CRPC proceedings can suspend decisions and proceedings before the competent local housing authority;
- in the RS, that a reporting mechanism be established between the municipal offices of the Ministry of Refugees and Displaced Persons and the central Ministry, providing the Ministry with detailed statistical information on the housing fund and the processing of the claims.

The amendments, instructions and CRPC laws shall enter into force on 28 October 1999 and be published in the Official Gazettes of the Federation and Republika Srpska without delay. The amendments shall be forwarded by the Entity Governments to the Entity Parliaments for adoption in accordance with the normal procedures. The High Representative has issued these Decisions exercising the powers vested in him under Annex 10 of the Dayton Peace Agreement, and by Article XI of the Conclusions of the Peace Implementation Council Conference held in Bonn in December 1997.

Copies of the Decisions are available at the OHR Press Offices in Sarajevo, Banja Luka, Mostar and Brcko, and on the OHR web site: <https://ohr.demo.ba>.