

High Representative Supports Strict Application Of Property Laws

The High Representative, Wolfgang Petritsch, has received numerous inquiries and letters of support for a married couple of two professors who under the property and housing laws had to vacate the apartment they occupied in Sarajevo last week. Although the High Representative sympathizes with the family, he considers the strict and equal implementation of the property laws, without any exceptions, essential if the rights of displaced persons and refugees to return are to be protected, and the Rule of Law in Bosnia and Herzegovina is to be established.

All those who occupy accommodation belonging to somebody else argue that they have good reason to continue to do so and should therefore be exempted from the application of the property and housing laws. This is one of the reasons that has hampered their implementation and return. In many cases, the arguments used by people are understandable from a human point of view. However, no exception can be made for any category of people. This would contradict the Rule of Law, and ultimately destroy the idea of return and thereby all hope of rebuilding a multi-ethnic society. As a matter of fact, the High Representative considers it the duty of the intellectual elite of this country, officials and prominent members of society, to set an example by moving out of claimed apartments.

The professors' case highlights the problem. Attached is the reply that the High Representative wrote to a colleague of the couple, who is a professor at a University in a European country. To protect the privacy of the persons involved, all names are omitted.

3 February 2000

Dear Dean ...,

Thank you for your letter of 19 January in which you express concern over the housing situation of Professor ... and his wife, who are both faculty members of the University of Sarajevo. I would like to take this opportunity to explain an issue that is of great importance to the International Community and, most importantly, to the people of Bosnia and Herzegovina. The legislation that allowed the war-time authorities to declare socially owned apartments "abandoned" and subsequently allocate them to somebody else was contrary to the fundamental precepts, as set out in the Convention relating to the Status of Refugees, that displaced persons and refugees do not flee their homes voluntarily but because of a well-founded fear of persecution and that they have a right to return. This legislation was also at variance with Article 1 of the First Protocol to the European Convention on Human Rights, which guarantees the protection of individuals' property.

The application of this legislation led to widespread abuse, including in the allocation of apartments administered by Sarajevo University. While some members of the university staff became displaced persons with no option but to request alternative housing, others simply used the opportunity to upgrade their housing. Currently, former university staff trying to return have been deterred by the fact that their apartments are still occupied, although many submitted claims for repossession long ago.

Since the signing of the Dayton Peace Agreement, new property and housing legislation has been passed in order to uphold Annex 7 of this Agreement, which enshrines universal rights to return and property. These laws, based on internationally-acknowledged human rights, recognize the occupancy right to a socially-owned apartment for exactly what it is the right to

the exclusive and sole use of one's property. The new legislation reverses the war time re-allocation of apartments and houses and protects the rights of the former occupants. But it also takes humanitarian needs into account and make provisions for those who have no housing alternatives open, such as displaced persons who cannot yet return home. While I fully understand your concern for the ... family, the Sarajevo housing authority has established that there is adequate housing available to them in Sarajevo. The home where Mrs ... was registered as resident prior to the war is still in the possession of her mother and is, according to this country's law, sufficiently large to accommodate the family. Even if this were not the case, alternative accommodation would be provided. The legal occupant, Mrs ..., who was welcomed to return by the Sarajevo University Faculty of Philosophy last year, was granted the right to repossess her home by the Sarajevo housing authority. She did so last week.

I have the fullest respect and admiration for those courageous individuals who remained in Sarajevo during the war and continued to work for its multiethnic character. But I cannot allow myself to be blinded by sentiment from protecting an individual's right to return or to property. Quite simply, those who occupy the homes of others must leave. We cannot expect the law to provide exemptions based on our personal judgements of an individual's character or actions.

In fact, it has been these many exemptions – some out of genuine sympathy, some out of simple abuse of authority – which have so greatly delayed the return of this country's citizens. More than four years after Dayton, it is unacceptable that 1.2 million Bosnians continue to live as refugees or displaced persons. To address this problem, I hold the political and intellectual elite of this country responsible for setting an example of obeying the law and vacating the home of another. Certainly, without this leadership, I must question the long-term viability of Bosnia

and Herzegovina.

Given that the return of refugees and displaced persons is the key to rebuilding this country, I urge you to support the efforts of the International Community. I hope you will convey to Professor ... that his commitment to Bosnia-Herzegovina by staying during the war is evident, but that now he has a role to play in building his country's future. Universal implementation of the property and housing legislation is essential for the return of all refugees and displaced persons to their homes and for the long term rebuilding of a multi-ethnic society based on the rule of law.

Yours sincerely,

Wolfgang Petritsch