

The High Representative Annuls RS Restitution Laws

The High Representative, Ambassador Wolfgang Petritsch, yesterday issued a Decision annulling the RS Law on Return of Confiscated Property and Compensation, the RS Law on Return of Seized Real Property, and the RS Law on the Return of Seized Land.

Under the annulled laws the Republika Srpska assumed financial responsibility for compensating claimants whose property could not be returned. The Republika Srpska has no estimate of how much compensation it may have been obliged to pay. With an expected budget deficit of 200,000,000 KM, being more than a quarter of the entire RS budget, the Republika Srpska has not identified any adequate source of funding for these potential payments.

Furthermore, to carry out the restitution programme the RS Government would set up new administrative bodies. The Government has already stated that its current administrative bodies, such as the housing commissions, are under-funded, understaffed and under-equipped. It is inconceivable that these new administrative bodies would have the funds and personnel to properly carry out their duties in an efficient and timely manner.

The RS restitution programme requires the administrative bodies to decide whether individual claimant received a just compensation following the nationalisation of their property. Unfortunately similar administrative bodies in BiH all-too-often issue decisions based on the claimant's ethnicity, not the relevant facts of the claim itself. The High Representative is not convinced that the RS has taken sufficient action to ensure that these administrative bodies will function in a non-discriminatory manner.

Whilst if they disagree with a decision claimants could apply to the courts, these courts are already overburdened with a backlog of cases. These increases in the courts' caseload will certainly bode ill for each claimant's rights to due process of law.

Finally, to process these cases these administrative bodies must rely on property records to complete their work. In BiH many property records have been lost or destroyed, and moreover, many property transfers were never recorded at all. The High Representative is concerned that the RS Government has not taken sufficient action to ensure that these administrative bodies can properly function in cases in which there are no proper records.

The Declaration of the Peace Implementation Council conference in Brussels on 23rd and 24th of May 2000 highlighted the necessity to remove obstacles that stand in the way of economic reform. The RS's restitution program is unfeasible, ill conceived, and in its current form, will not benefit the citizens of the RS, nor the people whose property was nationalized there.

The Office of the High Representative has discussed the fundamental flaws in the RS's restitution programme with senior officials in the RS Government, officials within the BiH diplomatic community, the international financial organisations present in BiH and the leaders of the religious communities of BiH. It is clear that the Republika Srpska's restitution programme, if allowed to proceed, would cause irreparable damage to the economy of BiH. Entity governments must be financially responsible and cannot pass laws that they cannot pay for.

If jobs are to be created, and BiH is to experience fiscal growth, there must be foreign investment; this can only be attracted through the privatisation of state assets. The reckless restitution legislation in place in the RS up until yesterday would mean that restitution would take decades to complete, if it were completed at all. In the ensuing legal uncertainty, foreign investors would avoid the RS and the privatisation programme would be at a standstill.

The experience of other eastern European countries that have gone through a restitution process is that, even in the best of circumstances, restitution is a complex, expensive endeavour. Had the High Representative not annulled this package of legislation the citizens of the Republika Srpska would have had to carry the costs of this programme. The political leadership of the Republika Srpska should be more forthcoming to its constituents about how such a programme could reek havoc on the Entity's already fragile economy.