

Property Rights/ Right to Return

Background:

As a result of the armed conflict in Bosnia and Herzegovina, hundreds of thousands people fled their homes in the country's villages and cities. Local authorities, faced with an influx and outflow of refugees and displaced persons (DPs), introduced a series of laws aimed at declaring these properties abandoned and accommodating the incoming refugees and displaced persons by providing them with legal authority to occupy these abandoned properties. Simultaneously, some displaced persons moved into vacant property without the involvement or authorization of the local authorities.

In Bosnia and Herzegovina, like the other former Republics of the Socialist Federal Republic of Yugoslavia, there were essentially two types of property. Property was either privately-owned, which is the common method of ownership in the free market economies, or it was socially-owned, a form of property entitlement which is stronger than a rental agreement, but not as strong as private property.

Socially-owned property is different in fundamental respects. First, the property is always an apartment and is usually located in an urban area. Employees of state-owned enterprises or organs, such as the municipalities or government ministries, paid a portion of their salary to a housing fund. The managers of the enterprises or state organs used the housing fund to construct apartments for the employees. Employees who were entitled to an apartment, as set out in the Law on Housing Relations, were allocated apartments and, once they actually moved into the apartment, they became occupancy right holders (ORHs). An ORH exercised almost unlimited rights over the apartment, to include passing the apartment on to his/her children. However, and most importantly, the ORH could not sell the apartment and s/he must occupy the apartment. An occupancy right could be cancelled if the ORH failed to occupy the apartment for six months or more.

Both private property and socially-owned property were declared temporarily abandoned by local authorities, who allocated these properties to refugees and DPs, as well as to politically well connected people. Laws were passed establishing how the owner could return and reclaim possession of his/her property. Local authorities invoked the failure to occupy these apartments by those who fled during the conflict to cancel hundreds of thousands of occupancy rights. The authorities then re-allocated these apartments to others, usually DPs and refugees, but again, also to some members of the political class.

After the signing of the General Framework Agreement on Peace in Bosnia and Herzegovina, the international community, citing Annex VII of the Peace Agreement, which provides that DPs and refugees have the right to have restored to them property of which they were deprived in the course of hostilities since 1991, demanded that the two Entities of Bosnia and Herzegovina implement a claims process that would allow displaced persons and refugees to reclaim their homes.

OHR and Property Rights

OHR has been deeply engaged in restructuring the legal regime which governs property rights in Bosnia and Herzegovina. Laws which were invoked during the war, which legalized the occupation by displaced persons and others of property which was not theirs before the war, have been overtaken by new laws which recognize the rights of the pre-war owners/ occupancy right holders.

The role of the Human Rights/ Rule of Law Department has primarily been to direct and oversee these legislative changes, drawing upon the support, knowledge, and assistance of other agencies such as UNHCR, the OSCE, and the Commission for real Property Claims. The Department has been extensively involved on the legislative work which has produced this new legal regime. Both through the drafting of new laws and amendment, and, where necessary, the imposition of those laws, OHR has succeeded in building a legal framework in which property will be restored to pre-war owners. The RRTF Department, has been focused on the implementation of these laws.

There have been two main phases to the legislative work. First, in the Federation, new property laws were passed by the Federation legislatures in April of 1998. Similar, although not identical laws were passed in Republika Srpska

in December of the same year. Then, in October 1999, the High Representative issued several Decisions which completed the legal framework, harmonizing the laws in both entities, closing loopholes, and providing more transparency to the claims process.

Major Laws Passed on Property Issues:

- 6 December 1997, the Law on the Sale of Apartments with Occupancy Rights (this Federation Law allows those who did not flee their socially owned apartments to purchase these apartments. It also serves as the basis for allowing DPs and refugees who reclaim their socially owned apartments to purchase these apartments.) was passed by the Federation government..
- 4 April 1998, the Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (this Federation law outlines the procedure for owners of real property in the Federation, who either fled their homes or their homes were declared abandoned, to claim their real property was passed by the Federation government.
- 4 April 1998, the Law on the Cessation of the Application of the Law on Abandoned Apartments (this Federation Law outlines the procedure for occupancy right holders, who either fled their socially owned apartments or their socially owned apartments were declared abandoned, to claim their socially owned apartments) was passed by the Federation government.
- 2 December 1998, the Law on the Cessation of the Application of the Law on the Use of Abandoned Property (this Republika Srpska law is that Entity's version of the two Federation laws above allowing refugees and DPs to claim their privately owned homes and socially owned apartments) was passed by the republic Srpska National Assembly.
- 27 October 1999, the High Representatives issued various Decisions amending the above Federation and Republika Srpska laws pertaining to property claims. He also issued Decisions in the form of administrative instructions outlining how the laws were to be applied.

A network of housing offices, which have the responsibility of receiving claims from pre-war occupants for the return of their property, have been established throughout the country, in the Federation under the Cantonal Ministries of Urbanism, and in the RS under the Ministry of Refugees and Displaced Persons. Those claiming property are required to submit a request to the housing authorities in the municipality where their homes are located. The housing authorities must then adjudicate the claim, evaluate whether the current occupant of the property is entitled to alternative accommodation and then ensure that the property is vacated so that the owner or occupancy right holder can repossess his/her property.

While some local authorities in Bosnia and Herzegovina have woefully failed in implementing these property laws, usually because of a lack of political will in facilitating refugee and DP return, there has been a marked increase in property repossession since February 2000. Nevertheless, the vast majority of claims filed have not been acted upon and thousands of claims that have been successful have not been implemented.

As at May 2000, rough property implementation statistics are the following:

	Federation	RS	BiH
Number of Claims	115,179	95,875	210,054
Decisions	38,310 (33%)	17,697 (18%)	56,007 (26.6%)
Repossessions	15,565 (14%)	6,696 (7%)	22,261 (10.6%)

The statistics are current until end of March 2000. These numbers do NOT include Brcko. These figures are based on the self-reporting of municipalities, and only provide a general indication of trends.

In addition to the individual's fundamental right to use and possess his/her property, as set out in Article 1, Protocol 1, of the European Convention on Human Rights, OHR views the return of refugee and DP property to be a key element in the reconciliation process.

In addition to the return of private and socially-owned property, the Property Team monitors the authorities' use of socially-owned land, as well as the Entities' work in privatisation and restitution.

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