

Decisions on Federation Property Laws

Today, the High Representative, Carlos Westendorp, has issued Decisions amending three Federation laws that deal with property rights:

- Law on the Cessation of the Application of the Law on Abandoned Apartments
- Law on the Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens
- Law on the Sale of Apartments with Occupancy Right.

These changes to the Laws have all been agreed with the responsible Federation Ministries and will form part of a package of legislative reforms designed to improve the implementation of Annex 7 of the Dayton Peace Agreement.

The major changes to the Laws are as follows:

Unclaimed apartments are reserved for humanitarian accommodation

Abandoned apartments that are not claimed at the expiry of the deadline, will be placed under municipal administration for a period of two years in order to be used as humanitarian accommodation for displaced persons. Local authorities will be authorised to grant temporary permits on use of these apartments of up to six months, which may be extended after a review whether the housing situation of the temporary occupant has changed. Temporary permits must be given to displaced persons that will be required to vacate apartments or houses that they currently occupy, but which have been reclaimed by the original occupant or owner and must be returned to them.

This will create a stock of apartments that can be used as alternative accommodation for those displaced persons who are not yet able to return to their pre-war homes. This will make the implementation of the return process much easier, while at the same time ensuring that displaced persons in genuine humanitarian need are provided with shelter.

Rights to alternative accommodation are made clearer

The right to alternative accommodation under the property laws will be restricted to those who are in genuine humanitarian need. When assessing whether a family is entitled to alternative accommodation, the local authorities will be obliged to determine where the family lived in 1991, and whether it is possible for them to return to that accommodation. If it is possible for them to return to their 1991 home, or if they have voluntarily disposed of their 1991 home, then they will no longer be entitled to alternative accommodation.

These changes will help eliminate multiple occupancy, while at the same time ensuring that those who continue to need humanitarian accommodation are protected.

The right to claim for property which was not declared abandoned

At present, the administrative authorities are competent to receive claims only for apartments and houses that were formally declared abandoned. However, many houses and apartments were never declared abandoned, but are now occupied by someone else. Refugees and displaced persons in this category are obliged to commence a court proceeding, which in many cases is a slow and difficult process.

The legislation is now changed so that all refugees and displaced persons who lost possession of their apartment or house before 4 April 1998 may make their claim to the administrative authorities, in the usual ways. These people should make their claim to the competent municipal or cantonal authority by 4 October 1999.

Occupancy right holders may also make a claim for apartments which have been damaged or destroyed. As soon as the apartment is reconstructed, they will have a right to immediate possession of the apartment.

The right to reclaim occupancy rights that were annulled by court decisions

The deadline for submitting claims has also been extended by six months for refugees and displaced people whose pre-war occupancy rights had been canceled by court decisions. The Federation passed legislation annulling such court decisions in April, which has not given the claimants enough time to present their claims. The new deadline is 4 October 1999.

Military apartments

The changes to the law define which among the former occupants of JNA apartments may be considered genuine refugees and displaced persons. Those who were in the service of the JNA on 30 April 1991 (i.e. were not retired at that date), who were not citizens of Bosnia and Herzegovina, and who are now living in another part of the former Yugoslavia, are not considered to be refugees. Also, those people who chose to remain in the service of a foreign army after the Dayton Agreement came into force are not considered to be refugees.

Contracts on sale of military apartments concluded with the JNA in 1991 and 1992 are now recognised as legally binding, and will be implemented by the Federation Ministry of Defence. There have been more than 100 decisions of the Human Rights Chamber, ruling that the cancellation of these contracts on sale was contrary to the European Convention on Human Rights. The Federation Ministry of Defence has agreed to implement the Decisions of the Human Rights Chamber and recognize the contracts concluded with the JNA in 1991/2, at the original price. It will issue the necessary orders for the purchasers to be registered as owners of the apartment. Where the full purchase price under the 1991/2 contract on sale has not yet been paid, the balance of that price shall be paid to the Ministry of Defence.

This agreement on military apartments satisfies one of the major conditions for Bosnia and Herzegovina's membership in the Council of Europe.

Returnees must occupy their apartments for two years before purchase

Refugees and displaced persons whose apartments were declared abandoned must now wait for two years (instead of six months) after they return to the apartment before they can purchase the apartment under the Law on Sale of Apartments with Occupancy Right. However, the rule preventing returnees from selling the apartment for five years after buying it is now repealed, which means that they can sell immediately after the purchase.

As privatization vouchers will be valid for two years only, special arrangements will be made for those people who wish to use their vouchers to purchase their apartment, but have to wait for two years before they can do so.

This amendment to the Law will prevent refugees and displaced persons from participating in the privatisation of apartments until they demonstrate they are genuinely committed to return. The OHR and the Federation Government have agreed that the practice of some displaced persons of buying and selling their apartments without returning, and therefore without vacating their current accommodation, is inhibiting the return process. This change to the Law will help to prevent double occupancy, and encourage the permanent return of refugees and displaced persons.

Definition of refugees and displaced persons

In the Law on Cessation of Application of the Law on Abandoned Apartments, the definition of refugees and displaced persons will be changed, so that all people who left their apartments between 30 April 1991 and 4 April 1998 will be presumed to be refugees and displaced persons, regardless of their current citizenship and place of residence. This will bring the current law into compliance with the Dayton Peace Agreement, and prevent municipal authorities from denying individuals the right to return based upon untested assumptions about their motivation for leaving the apartment or returning.

The High Representative considers that each of these changes will provide a very positive contribution to the implementation of Annex 7 on the territory of the Federation of Bosnia and Herzegovina. He will require similar changes to the property laws in the Republika Srpska, so that the provisions of Annex 7 will apply consistently throughout the territory of Bosnia and Herzegovina.

The amendments will be forwarded by the Federation Government to the Parliament for adoption in accordance with the normal procedures. However, it is essential that certain of these amendments be made before the expiry of the deadline for claiming socially owned apartments in the Federation, which is 4 July 1999. In order to avoid the

need to extend that deadline any further, the High Representative has decided to impose these amendments on an interim basis, until such time as they can be adopted by the Federation Parliament.

The amendments shall be published in the Official Gazette of the Federation. The High Representative has made these Decisions exercising the powers vested in him by Annex 10 to the Dayton Peace Agreement and by Article XI of the Conclusions of the Peace Implementation Council Conference held in Bonn in December 1997.