

Decision Enacting the Law on Amendments to the Law on the Cessation of Application of the Law on the Use of Abandoned Property of the RS

In the exercise of the powers vested in me by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on Civilian Implementation of the Peace Settlement; and considering in particular Article II.1.(d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof) “measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities”;

Recalling further Article I:1 of the said Annex 10, referring explicitly to the promotion of respect for human rights and the return of displaced persons and refugees;

Considering the emphasis placed by the Peace Implementation Council on accelerating refugee return and on ensuring full and non-discriminatory implementation of the property laws of Bosnia and Herzegovina;

Considering further the necessity that certain errors and omissions made in 4 December 2001 Decision on amendments to the *Law on the Cessation of Application of the Law on the Use of Abandoned Property* (Official Gazette of the Republika Srpska, Nos. 38/98, 12/99, 31/99, 65/01 and 64/02) should be corrected;

Noting that the proposed amendments of the aforesaid mentioned Law will ensure greater harmonization of the property laws of Bosnia and Herzegovina;

Having taken into account all the matters aforesaid, the High Representative hereby issues the following

DECISION

Enacting the Law on Amendments to the Law on the Cessation of Application of the Law on the Use of Abandoned Property of the Republika Srpska

The Law which follows and which forms an integral part of this Decision, shall enter into force as provided for in Article 12 thereof on an interim basis, until such time as the Parliament of the Republika Srpska adopts this Law in a due form, without amendment and with no conditions attached.

This Decision shall come into effect forthwith and shall be published without delay in the Official Gazette of the Republika Srpska.

Sarajevo, 15 May 2003

*Paddy Ashdown
High Representative*

LAW ON AMENDMENTS TO THE LAW ON THE CESSATION OF THE APPLICATION OF THE LAW ON THE USE OF ABANDONED PROPERTY

Article 1

In Article 2a of the Law on the Cessation of the Application of the Law on the Use of Abandoned Property (Official Gazette of the Republika Srpska, Nos. 38/98, 12/99, 31/99, 65/01 and 64/02) paragraph 6 shall be added to read as follows:

“Exceptionally, in case of a dispute as to the validity of the contract on exchange in which the competent authority issued a decision on repossession prior to December 29, 2001 that has not yet been enforced, the competent authority shall *ex officio* suspend enforcement proceedings pending a final judicial decision on the matter, under the condition that an interested party provides evidence that they have initiated proceedings before the competent court.”

Article 2

Article 16 paragraph 2 shall be amended as follows:

“If the occupancy right holder does not file a claim to the competent administrative authority, to a competent court, or to the CRPC within the appropriate time limit, or a request for enforcement of a decision of the CRPC within the deadline specified in the *Law on Implementation of the Decisions of the CRPC* (Official Gazette of the Republika Srpska, Nos. 31/99, 2/00, 39/00 and 65/01) his/her occupancy right shall be cancelled.”

Article 3

Article 24a paragraph 4 point 5 shall be amended as follows:

“has a member of his/her family household who has accommodation anywhere on the territory of the Republika Srpska or in the same city or municipality as the 1991 home anywhere else in the territory of Bosnia and Herzegovina, insofar as the accommodation accords with the minimum standard specified in Article 1a of this Law; or.”

Article 4

Article 24a paragraph 5 shall be deleted.

Article 5

Article 24b paragraph 3 shall be amended as follows:

“For the purposes of this Article, the term ‘temporary user’ shall include all members of the family household as defined in Article 24a paragraph 6 of this Law.”

Article 6

Article 25 paragraph 2 shall be amended as follows:

“In case of a dispute as the lawfulness of the transferred real property right, the competent authority shall suspend proceedings and refer the parties to the competent court according to the provision of the *Law on General Administrative Procedures* regulating preliminary issues, in order to rule on the allegation. Notwithstanding the provisions of the *Law on Civil Procedures*, the burden of proof shall lie upon the party claiming to have acquired rights to the real property through the transaction to establish that the transaction was conducted voluntarily and in accordance with the law. Where one of the transferred properties is located in the territory of another republic of the former SFRY, the burden of proof shall lie upon the party claiming that the transfer of property was not conducted voluntarily and in accordance with the law to demonstrate that the status of the parties prior to the transfer of property shall be restored.”

Article 7

In Article 25 paragraph 3 shall be added to read as follows:

“Exceptionally, in case of a dispute as to the validity of the transferred real property right in which the competent authority issued a decision on repossession prior to December 29, 2001 that has not yet been enforced, the competent authority shall *ex officio* suspend enforcement proceedings pending a final judicial decision on the matter, under the condition that an interested party provides evidence that they have initiated proceedings before the competent court.”

Article 8

Article 27a shall be amended to read as follows:

A person whose right of temporary occupancy or occupancy right was cancelled under Article 2 of this Law, who spent his/her personal funds on necessary expenses for the real property or apartment, shall be entitled to recover those under the *Law on Obligations* (Official Gazette of the SFRY, Nos. 29/78 and 39/85; Official Gazette of the Republika Srpska, Nos. 17/93 and 3/96). Proceedings under the *Law on Obligations* may be commenced from the date when the previous owner or occupancy right holder regains possession of the real property or apartment.

Where the court has awarded compensation to the person referred to in paragraph 1, the owner or occupancy right holder may recover that sum from the competent authority or, in the case of an apartment, the allocation right holder under the *Law on Obligations*.

The competent authority shall be liable for all damage to the real property or apartment from the time it was abandoned by the owner or occupancy right holder until the time it is returned to the owner or occupancy right holder or a member of his/her 1991 household pursuant to this Law, or, in the case of real property, until the time that the property is vacated and sealed and notification has been delivered to the owner in accordance with the provisions of this Law and the *Law on General Administrative Procedures*. In the case of an apartment, any repairs carried out by the occupancy right holder or a member of his/her 1991 household to restore the apartment to the state it was in prior to its abandonment shall be deemed “funds with which the holder of occupancy rights removed war damage” for the purposes of the *Law on Privatization of State Owned Apartments* (RS OG 11/00, 18/00, 35/01 and 47/02).

Article 9

In Article 31 paragraph 1 the words “issuance of decisions” should be amended by the words “resolved decisions”.

Article 10

Article 35, Paragraph 2 of the Law shall be amended and shall read:

“A temporary user of a real property or an apartment who is required to vacate the real property or an apartment and is entitled to alternative accommodation in accordance with this Law shall be provided with alternative accommodation on the territory of the Republika Srpska in accordance with this Law by the competent authority on the territory of which she/he had his/her latest residence. The temporary user shall be obliged to vacate the real property within the deadline set under Article 11 of this Law; or vacate the apartment within the deadline set under Article 18 of this Law.”

Article 11

In Article 37 paragraph 3 points 1 and 2 the words “the eviction order” shall be amended with words “the deadline to vacate the real property or apartment specified in the decision”.

Article 12

This Law shall enter into force on the eighth day after its publication in the Official Gazette of the Republika Srpska.