

Decision Enacting the law on amendments to the Law on the Cessation of Application of the Law on Temporary Abandoned Real Property Owned by Citizens (FBiH)

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 need to implement in the most efficient and equitable manner legislation concerning repossession of property throughout Bosnia and Herzegovina, and to ensure that the same is undertaken in a harmonised manner in each Entity;

Conscious that after months of negotiation the Entity officials responsible for refugee and housing issues have been unable to reach agreement on the specific provisions necessary for harmonisation as aforesaid, and that the deadline of 15 November 2001 as set by the Entities at the Teslic Property Conference for full harmonization has passed;

Noting that the Ministry for Human Rights and Refugees of Bosnia and Herzegovina has requested action by the Office of the High Representative to harmonise Entity legislation governing the repossession of property in order to safeguard basic human rights and expedite refugee return.

Having considered and borne in mind all the matters aforesaid, I hereby issue the following:

DECISION

Enacting the law on amendments to the Law on the Cessation of Application of the Law on Temporary Abandoned Real Property Owned by Citizens

The Law which follows shall enter into force as provided for in Article 16 thereof on an interim basis, until such time as the Federation Parliament adopts this Law in due form, without amendment and with no conditions attached.

**THE LAW ON AMENDMENTS TO THE LAW ON THE CESSATION OF
APPLICATION OF THE LAW ON TEMPORARY ABANDONED REAL PROPERTY
OWNED BY CITIZENS**

Article 1 In Article 2, after Paragraph 1 of the Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (Official Gazette of the Federation of Bosnia and Herzegovina 11/98, 29/98, 27/99, 43/99, 37/01) in its amended form, hereinafter referred to as the "Law", a new Paragraph 2 shall be inserted as follows:

"The competent authorities referred to in Paragraph 1 of this Article shall decide about the rights of owners to repossess their real property which has been declared temporarily or permanently abandoned and the rights of temporary occupants of the abandoned real property."

Article 2

In Article 6, after the words "Law on Temporary Abandoned Real Property" the words "Owned by Citizens" shall be inserted.

Article 3

Article 7 shall be amended as follows:

"A temporary user who has been ordered to vacate the property pursuant to the provisions of this Law and who is entitled to alternative accommodation pursuant to this Law, shall be provided with accommodation within the same canton by the competent service of the municipality on the territory of which s/he enjoyed the latest residence within the deadline set by the decision under Article 12 of this Law for his/her vacation of the property. The temporary user shall be obliged

to move out of the property within the deadline set in Article 12 of this Law.

In case that the administrative authority of the territory of which the temporary user has his/her latest residence is unable to provide alternative accommodation, other competent bodies including other municipal organs, state-owned companies or firms, and cantonal and Federation authorities shall be obliged to make available facilities which are at their disposal for the purposes of providing alternative accommodation under this Law.

As an exception, if the temporary user's 30 April 1991 house or apartment is uninhabitable or occupied, on the written request of the temporary user and pending the reconstruction or vacation of the 30 April 1991 house or apartment, the authority responsible for providing temporary accommodation shall be the competent authority responsible for housing affairs in the municipality where the 30 April 1991 house or apartment is located.

The authorities responsible to provide alternative accommodation shall not be obliged to provide alternative accommodation to persons occupying the property without a valid legal title and shall be obliged to evict such persons, ex officio, immediately or at the latest within 15 days.

In all cases in which the current occupant remains in the property, all moveable property of the owner found in the property must be returned to him/her upon his/her request.

In no event shall the failure of the municipality to meet its obligations under Paragraph 1 of this Article operate to delay the ability of the owner to reclaim his property."

Article 4

Article 8 shall be amended as follows:

“For the purposes of this Law, the standard of alternative accommodation provided shall be one or more rooms which provide shelter to the user from adverse weather conditions and protects his or her furniture from damage, with a minimum of 5 square meters/person. Such accommodation may be in the form of business facilities or a co-tenancy.”

Article 5

In Article 12, Paragraph 1, a new second sentence shall be inserted as follows:

“The claim shall be solved (rjesen) in the chronological order in which it was received, unless specified otherwise in law.”

Paragraph 2 shall be amended as follows:

“The decision referred to in paragraph 1 of this Article by which the owner’s claim is accepted shall contain:

1. a decision terminating the municipal administration of the property as of the date of the intended return;
2. a decision on repossession of the property by the owner;
3. a decision terminating the right of the temporary user;
4. a time limit for vacating the property by the temporary user or the person using the property without a valid legal title, or the time limit for returning the land;
5. a decision whether the temporary user is entitled to alternative accommodation in accordance with this Law;
6. an explicit warning that the current user will be subject to prosecution under the Criminal Code if s/he removes objects from, or otherwise damages, the property; and;
7. an explicit warning to a current user who is a multiple occupant that s/he is subject to the fines set out in Article 17c, Paragraph 3 of this Law.

The current Paragraphs 3, 4 and 5 shall be deleted.

Article 6

After Article 12, a new Article 12a shall be inserted as follows:

Article 12a

The deadline for vacating the property, referred to in Article 12, Paragraph 2, Point 4 of this Law shall be 15 days from the date of delivery of the decision and the decision on entitlement to accommodation under Article 12, Paragraph 2, Point 5 of this Law shall be negative, unless the current user is a temporary user as defined in Article 6 of this Law and:

The temporary user is not a multiple occupant, as defined in Articles 16 and 16a of this Law; and:

The temporary user left his/her apartment or residential private property in the territory of Bosnia & Herzegovina between 30 April 1991 and 4 April 1998; and:

In the case that the apartment or residential private property s/he left is occupied, s/he or a member of his/her 1991 family household has applied to the competent administrative authority, court or the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter, CRPC) for repossession of that apartment within all deadlines prescribed by law, or for repossession of that residential private property within 60 days of this provision coming into force and is awaiting a decision on that claim; or;

In the case that a decision on a claim for repossession or CRPC certificate has been issued with respect to the apartment or residential private property s/he left, s/he or a member of his/her 1991 family household has requested enforcement of that decision or CRPC certificate within 60 days of this provision coming into force or within 60 days of being legally entitled to seek enforcement, whichever is later; or

In the case that the apartment or residential private property s/he left is damaged or destroyed, s/he or a member of his/her 1991 family household has applied for return and reconstruction or is awaiting reconstruction assistance.

In case the current user fulfills the criteria set out in Paragraph 1 of this Article, the deadline for vacating the apartment shall be not more than 90 days from the date of the delivery of the decision. If a temporary user ceases to fulfill the conditions in this paragraph and a decision setting out a 90-day deadline to vacate has already been issued, the competent authority *ex officio* shall immediately issue a new decision specifying a deadline to vacate 15 days from the date of its delivery and then a conclusion on enforcement.

In exceptional circumstances, the deadline referred to in Paragraph 2 of this Article may be extended to up to one year if the municipality responsible for providing alternative accommodation in accordance with Article 7, Paragraph 1 of this Law provides detailed documentation regarding its efforts to secure alternative accommodation to the Federation Ministry of Urban Planning and Environment, and upon a finding by the Ministry, which shall be agreed upon by the Office of the High Representative, that there exists a documented absence of available housing in the municipality, which shall be agreed upon by the Office of the High Representative.

The current user shall be required to demonstrate that s/he meets the conditions for entitlement to alternative accommodation under this Law; including providing claim or decision numbers for the repossession of the current user's 1991 home. If the current user cannot demonstrate that s/he meets these conditions, the competent authority shall proceed in accordance with the *Law on Administrative Procedures* (Official Gazette of FBiH, No. 2/98) in order to determine relevant facts.

In case of the return of arable land, the time limit referred to in Article 12, Paragraph 2, Point 4 of this Law may be extended until the harvest is completed.”

Article 7

In Article 13, Paragraph 3, after the first sentence, the new text shall be inserted as follows:

“In the event of an appeal, the competent authority shall retain copies of documents or take any other steps as necessary to ensure that the decision can be executed, notwithstanding the initiation of an appeal. If an appeal against a positive decision is not determined within the time period specified in the *Law on Administrative Procedures*, the decision of the first instance body, and therefore the claimant’s legal right to the real property, shall be deemed to be confirmed.”

After Paragraph 3, a new Paragraph 4 shall be inserted as follows:

“In case the cantonal ministry competent for housing affairs annuls the first instance decision, the annulment shall be considered partial under Article 236, paragraph 3 of the *Law on Administrative Procedures*, in the sense that the annulment shall be related only to the decision on the rights of the current occupant unless there are grounds to annul the decision on the right of the claimant. If the competent authority again confirms the property right of the claimant, the deadline set for vacating the property pursuant to Article 12, paragraph 2, point 4 of this Law shall run from the date of delivery of the original decision that was partially annulled.”

Article 8

In Article 14, Paragraph 1, the words “for Real Property Claims of Displaced Persons and Refugees (GFAP, Annex 7,

hereinafter Property Commission)” shall be deleted.

In Paragraph 2, the word “Property” shall be deleted.

Article 9

In Article 15, after Paragraph 2, new Paragraphs 3 and 4 shall be inserted as follows:

“If minutes are unavailable from the time when the property was abandoned, the competent authority shall conduct an inspection of the property at the time the decision is made pursuant to Article 12 of this Law. The authorities *are obliged*, pursuant to their duties under the Criminal Code, to seek the prosecution of a current user who illegally removes property or fixtures from the property, or who willfully causes damage to the property, when s/he vacates the property either voluntarily or by eviction. The competent authority shall include a notice or warning to a current user about the aforesaid criminal sanctions for such action pursuant to Article 12, paragraph 2, point 6 of this Law.

The competent authority shall record such information in the minutes, and distribute the information recorded therein, as well as other information regarding repossessed or vacant and sealed property, as is defined by instruction of the Federation Ministry of Urban Planning and Environment. Information distributed and received in this manner is to be stored, processed, distributed and used only in a manner consistent with and necessary to the purpose of promoting property law implementation in accordance with the General Framework Agreement for Peace.”

Article 10

In Article 16, Paragraph 4 shall be amended as follows:

“A multiple occupant includes, among others, a current user who uses a real property and who:

1. holds an occupancy right to or is using more than one apartment; or
2. has a house or is using an apartment in cases where the house or apartment is sufficiently intact, or can be made so with minimal repairs, to provide for basic living conditions (protection against weather; access to water and electricity; a heating source; basic privacy; and security of belongings); or
3. is in possession of the house or apartment in which s/he lived on 30 April 1991 (hereinafter "1991 home"); or where a member of his/her family household is in possession of his/her 1991 home; in cases where his/her 1991 home is sufficiently intact, or can be made so with minimal repairs, to provide for basic living conditions; or
4. has already been provided with alternative accommodation by a responsible body; or
5. has a member of his/her family household who has accommodation anywhere on the territory of the Federation of Bosnia and Herzegovina or in the same city or municipality as the 1991 home anywhere else in the territory of Bosnia and Herzegovina; or
6. has a legal right to return into possession of his/her 1991 home; and his/her 1991 home is sufficiently intact, or can be made so with minimal repairs, to provide for basic living conditions, as explained in this paragraph; and it is possible for him/her to return into possession of his/her 1991 home; or
7. whose accommodation needs are otherwise met, as defined in Article 16a of this Law.

After Paragraph 4, a new Paragraph 5 shall be inserted as follows:

"The minimum standard for alternative accommodation set out in Article 8 of this Law shall apply only to Points 3, 4, and 6 of Paragraph 4 of this Article."

The current Paragraph 5 becomes the new Paragraph 6.

After Paragraph 6, a new Paragraph 7 shall be inserted as follows:

“For the purposes of this Article, “family household” shall mean all members of the family household as of 30 April 1991; or, if they were not members of the family household as of 30 April 1991, any spouse, parents, children; or other persons registered together with a temporary user.”

Article 11

After Article 16, a new Article 16a shall be inserted as follows:

Article 16a

A temporary user whose accommodation needs are otherwise met shall include, among others:

1. a temporary user who voluntarily sold the real property in which s/he lived on 30 April 1991; or
2. a temporary user who voluntarily exchanged the real property or apartment in which s/he lived on 30 April 1991 and who is in possession of the apartment or real property or has transferred it to a third party; or
3. a temporary user who refuses alternative accommodation offered in writing by the competent authority, or refuses assistance in the reconstruction of his/her residence of 30 April 1991. The competent authority shall inform the temporary user of the consequence of refusing alternative accommodation or reconstruction assistance; or
4. a temporary user who resides in the same municipality as s/he did in 1991, unless s/he can provide evidence as to why he or she cannot return to his or her 1991 home; or
5. a temporary user who was a sub-tenant in 1991; or
6. a temporary user who has sufficient disposable income,

including assets, to provide for his/her own accommodation. Sufficient disposable income shall be defined as one-fourth of the applicable breadbasket, as calculated by the competent statistical institute, per current family household member, plus 200 KM; or

7. a temporary user, in a case where the owner provides him/her with a different accommodation as a tenant within the same canton, unless the temporary user agrees in writing to another municipality elsewhere, for at least six months. The standard of accommodation shall be that set out in Article 8 of this Law; or
8. a temporary user who left his/her apartment or residential private property in the territory of Bosnia & Herzegovina between 30 April 1991 and 4 April 1998 and there was a claim for repossession of that apartment or residential private property filed, if the claim for repossession is subsequently withdrawn; or
9. a temporary user who has been allocated any state-owned, including formerly socially-owned, land since 6 April 1992, more than 150 days from the date the allocation issued pursuant to a waiver granted by the Office of the High Representative, unless s/he cancels the allocation within 60 days of the date of the confirmation or of the date this provision comes into force, whichever date is the later.; or
10. a temporary user who, unless a waiver application is pending before the Office of the High Representative, has been allocated any state-owned, including formerly socially-owned, land since 6 April 1992, unless s/he cancels the allocation within 60 days of the date this provision comes into force; or
11. a temporary user who has received housing credits, building materials, or any other form of housing construction/purchase assistance, more than 150 days from the date of receipt of the assistance or the date of receipt of the first installment of the assistance, unless s/he cancels the assistance within 60 days of

receipt of the assistance, or the first installment of the assistance, or within 60 days of the date this provision comes into force, whichever date is the later.

For the purposes of Points 9 to 11 of Paragraph 1 of this Article, the competent authority shall inform the temporary user of the consequences of not canceling the land allocation or housing construction/purchase assistance, whichever is applicable.

For the purpose of this Article, the term 'temporary user' shall include persons as defined in Article 16, Paragraph 7 of this Law."

Article 12

In Article 17, after the phrase "Law on Administrative Procedure" delete the phrase "(Official Gazette RBiH 2/92 and 13/94) which is applicable in the territory of the Federation until the competent authorities decide otherwise, based on Article 1X.5(1) of the Federation Constitution."

Article 13

In Article 17b, Paragraph 2 shall be amended as follows:

"In case of a dispute as to the lawfulness of the transferred real property right, the competent body shall refer the matter to the competent court according to the provisions of the *Law on Administrative Procedures* regulating preliminary issues, in order to rule on the allegation. Notwithstanding the provisions of the *Law on Civil Procedures* (FBH O.G. 42/98), 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 14

Article 17c shall be amended as follows:

“The competent administrative body shall be fined 1000 to 5000 KM for the following minor offences:

1. if it does not order the vacation of the real property within 15 days in accordance with Article 12, Paragraph 2, Point 4 of the Law;
2. if it fails to process an eviction request because one of the parties filed an appeal against the prior decision, as set out in Article 13, Paragraph 3 of the Law;
3. if it fails to hand over the real property in accordance with Article 15 of the Law;
4. if it is required to take action against a multiple occupant, as set out in Article 16, Paragraph 3, or if it fails to issue a decision according to Article 16, Paragraph 6 of the Law;

The responsible person in the competent administrative body shall also be fined 200 to 1000 KM for violation of Paragraph 1 of this Article.

In addition to the above, a person who is a multiple occupant as defined:

1. in Article 16, paragraph 4, Points 1, 2 or 7 of this Law and who fails to comply with the deadline to vacate specified in a decision issued pursuant to Article 12 of this Law shall be fined 500 to 5000 KM;
2. in Article 16, Paragraph 4, Points 3 to 6 of the Law and who fails to comply with the deadline to vacate specified in a decision issued pursuant to Article 12 of

this Law shall be fined 250 to 1000 KM.

Article 15

After Article 17c, a new Article 17d shall be inserted as follows:

Article 17d

A person whose right of temporary use was terminated under Article 12, Paragraph 2, Point 3 of this Law, who spent his/her personal funds on necessary expenses for the real property, shall be entitled to recover those funds under the *Law on Obligations* (Official Gazette Official Gazette RBiH 2/92, 13/93 and 13/94). Proceedings under the Law on Obligations may be commenced from the date when the previous owner regains possession of the real property.

Where the court has awarded compensation to the person referred to in Paragraph 1, the owner may recover that sum from the competent authority under the *Law on Obligations*.

The competent authority shall be liable for all damage to the property from the time it was abandoned by the owner until the time it is returned to the owner or a member of his/her 1991 household pursuant to this law."

Article 16

This Law shall be published without delay in the Official Gazette of the Federation of Bosnia and Herzegovina and shall come into force eight days after the date of such publication.

Sarajevo, 4 December 2001

Wolfgang Petritsch

High Representative

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