

Decision extending until 30 June 2000 the Decision on certain types of socially-owned land of 26 May 1999

In accordance with my authority under Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina, and Article XI of the Conclusions of the Peace Implementation Conference held in Bonn on 10 December 1997, I hereby

DECIDE

that the Decision of the High Representative of May 26, 1999, prohibiting disposal of state property in certain categories, shall be extended until June 30, 2000.

Sarajevo, 30 December, 1999

Wolfgang Petritsch
High Representative

MEMORANDUM

EXTENSION OF THE HIGH REPRESENTATIVE'S DECISION ON SOCIALLY OWNED LAND

In May 1999, the High Representative imposed a temporary prohibition on any transactions with socially owned property in certain categories affecting the rights of refugees and displaced persons. This Decision was valid until 31 December 1999.

RRTF recommends that the prohibition be extended for a further 6 months, pending certain necessary reforms in the socially owned property system.

1. Original rationale for the Decision

There is at present an extremely weak legal framework governing rights of use of socially owned land. This caused two serious problems in the field.

First, municipalities were reallocating property that had been used by refugees and displaced persons for residential, business or agricultural purposes, inhibiting their chance of successful return and reintegration. The most prominent example was the construction of new housing settlements (around 1,500 units) in the Stolac/Capljina areas, much of it on agricultural land formerly used by DPs.

Second, municipalities were disposing of business premises outside of the proper privatisation procedures, with considerable opportunity for corruption. Reallocations were also being used to avoid the requirements of the forthcoming restitution law.

Under local law, even if the municipalities fail to follow the proper procedures for reallocating property, there are no effective remedies available to injured parties.

The Decision therefore prohibited any transactions with socially owned properties in certain categories, pending a review and reform of the legal framework. It also annulled any such transactions made after 30 April 1992 which interfered with the rights of displaced persons, unless a third party had already commenced construction work on the land.

The Decision does not prohibit either privatisation or restitution of nationalised property, if done according to the proper laws and procedures.

2. Effectiveness of the Decision

RRTF officers report that the Decision has been effective in reducing the number of reallocations of socially owned land occurring in the field, and has strengthened their negotiating position in dealing with municipal authorities in this area.

Certain high profile problem cases – such as the Napredak Centre in Bugojno – have not been resolved.

There have been some reports of violations of the Decision. The authorities have usually denied the violation on factual or legal grounds that have been impossible to verify. OHR-RRTF has not attempted to investigate individual cases in any detail.

Although there is no enforcement mechanism to deal with violations of the Decision, there is sufficient compliance in the field for RRTF to conclude that an extension to the Decision is justified.

3. Effect on investment projects

OHR has received a large number of letters from local authorities asking for interpretations of the Decision. Some of these have claimed that the Decision is interfering with commercial development projects.

The High Representative may need to consider granting exemptions to the Decision in certain cases. For example, if the proposed widening of the Sarajevo-Zenica road proceeds, then an exemption for that project may be appropriate. These can be dealt with on a case-by-case basis.

4. Reform of the legal framework

There has been no reform of legislation on socially owned property. Although OHR is monitoring the issue, we have not yet developed our own proposals for legislative reform.

In June 1999, RRTF commissioned external consultants to undertake a study of the real estate market in Bosnia. The report has only just been finished. It confirms RRTF's view that considerable reform is needed in the socially owned property sector. Amongst other things, it advocates:

- modernisation of the property title system, to convert remaining rights of use over socially owned land to full ownership;
- a rationalised land use and management scheme, with new zoning and planning systems, and a rational management scheme for land allocation;
- modernised and improved property registration systems;
- reform of property and transaction taxes.

These are highly technical matters. RRTF plans to commission a second study in the coming months to develop detailed reform proposals in these areas.

5. Conclusion

Extend the May Decision for a further six months.

The original decision and a proposed extension Decision are attached.

Office of the High Representative