

Decision on the Instruction on Application of the Law on Cessation of Application of the Law on Abandoned Real Property Owned by Citizens in its Amended Form

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 Council held in Bonn on 10 December 1997, I hereby

DECIDE

The Instruction on Application of the Law on Cessation of Application of the Law on Abandoned Real Property Owned by Citizens in its amended form, as hereby attached as an integral part of this Decision, shall take effect in the Federation of Bosnia and Herzegovina on 28 October 1999.

27 October 1999

Wolfgang Petritsch
High Representative
Sarajevo

Instruction on Application of the Law on Cessation of Application of the Law on Abandoned Real Property Owned by Citizens (the 'Law') in its amended form, as published in the FBH Official Gazette, nos. 11/98, 28/98, and 27/99.

1. Entitlement to alternative accommodation

2. When a temporary user of a real property is required to vacate the real property in accordance with the Law on Cessation of Application of the Law on Abandoned Real Property Owned by Citizens (FBH Official Gazette, nos. 11/98, 28/98, and 27/99) in its amended form (the 'Law') , the competent body responsible for housing affairs shall determine whether the temporary user has the right to alternative accommodation in accordance with Article 7, paragraph 1 of the Law.

Procedure for determining the right to alternative accommodation

3. In determining whether a temporary user is entitled to alternative accommodation, the responsible body shall determine in the procedure and within the deadlines for making a decision under Article 12, paragraph 2 of the Law:
 - i. where the temporary occupant lived on 30 April 1991;
 - ii. in what capacity the temporary user occupied the apartment or real property where s/he lived on 30 April 1991;
 - iii. whether it is possible to live in the apartment or real property;
 - iv. whether the temporary occupant or a member of his/her family household from 30 April 1991 currently possesses that apartment or real property;
 - v. whether he/she voluntarily exchanged or sold the apartment in question or real estate in his/her possession;
 - vi. or any other relevant facts which show that the temporary user's housing needs are otherwise met.
4. In accordance with the previous paragraph, a person whose housing needs are otherwise met

and who shall not be entitled to alternative accommodation, includes among others a temporary user who:

i. **Access to pre-conflict home**

- has a legal right to return into possession of the real property or apartment in which s/he was living on 30 April 1991
- (hereinafter '1991 home'); and his/her 1991 home is sufficiently intact to provide for basic living conditions (protection against weather; water installations and sanitary fittings to an appropriate level; electricity; heating; privacy; and security of belongings); and it is possible for him/her to return into possession of the real property or apartment in safety and dignity; or
- a user who is in possession of his/her 1991 home; or where a member of his/her family household is in possession of that 1991 home; in cases where his/her 1991 home is sufficiently intact to provide for basic living conditions; or

ii. **Access to other accommodation**

- a person who has already been provided with alternative accommodation by a responsible body; or
- a person who has a parent or a member of his/her family household of 30 April 1991 has accommodation in the same city, municipality or place; or

iii. **Means to secure other accommodation**

- a person who is not a displaced person or refugee, who has sufficient disposable income to provide for his/her own accommodation; or
- a person who voluntarily exchanged or sold the real property or apartment in question, in cases where the contract on exchange or sale has been fully realised; or
- a person in a case where the occupancy right holder provides him/her with accommodation as a tenant and agrees to pay the rent for at least two years, and where the standard of that accommodation is not less than alternative accommodation under article 7 paragraph 1, as explained in this Explanation (Uputstva); or

iv. **Refusal to accept assistance offered**

- a person who refuses alternative accommodation offered by the responsible authority, or refuses assistance in the reconstruction of his/her 1991 home. At the time of the offer of alternative accommodation and reconstruction assistance, the temporary user shall be informed of the consequence of refusing alternative accommodation or reconstruction assistance.

5. Where it is determined that a temporary user is not entitled to alternative accommodation, the competent body for housing affairs shall make a decision ordering him/her to vacate the real property within 15 days pursuant to Article 12 paragraph 4 of the Law.

Illegal users

6. Where the current user is determined to be a person occupying the real property without legal basis (hereinafter an 'illegal user'), the competent body shall order him/her to vacate the real property within 15 days in accordance with Article 12 paragraph 4 of the Law, and shall not be required to provide him/her with alternative accommodation.
7. If the illegal user referred to in the previous paragraph of this Explanation is a displaced person or refugee, the competent body under Article 7 paragraph 1 of the Law shall notify the responsible municipal or cantonal body in charge of displaced persons and refugees, which is responsible for determining whether such a person is entitled to temporary accommodation under the applicable law on displaced persons and refugees.

8. If the illegal user is not entitled to alternative accommodation under the applicable law on displaced persons and refugees, the responsible body for social protection in the municipality or canton where the real property is located shall determine whether the person is entitled to any form of assistance under the applicable laws on social protection and assistance.
9. Decisions or acts shall be null and void which were issued after 4 April 1998 under the laws and regulations referred to in Article 1 of the Law or otherwise, and by which real property on the territory of the Federation of BiH was declared abandoned, placed under municipal administration, or allocated to legal or natural persons other than the lawful owner, possessor or user. Any person using a real property on the basis of a decision or act referred to in this paragraph shall be considered as an illegal user.

Procedure after Right to Alternative Accommodation is Determined

10. A temporary user who is determined to have the right to alternative accommodation in accordance with Article 7, paragraph 1 of the Law and this Explanation shall be provided with alternative accommodation in accordance with the Law and the Law on Housing Relations (hereinafter the 'ZOSO') by the competent body responsible for housing affairs. The temporary user shall be required to vacate the real property within the deadline set in the decision under Article 12, paragraph 2 of the Law.
11. Under Article 7, paragraph 1 of the Law, the standard of alternative accommodation shall be not less than:
 - i. for a family referred to in Article 8, paragraph 4 of the Law on Housing Relations - appropriate accommodation as defined in Article 7 of the Law on Housing Relations, with a minimum of 8-10 sq m per person;
 - ii. for all other cases - emergency accommodation (*nuzni smestaj*) as defined in Article 8 of the Law on Housing Relations, with a minimum of 5 - 8 sq m per person.
12. The authority responsible for providing accommodation to temporary users of real property under Article 7 paragraph 1 of the Law shall be the competent body for housing affairs in the municipality or canton in which the temporary user is currently resident.

If it is possible for the temporary user to return to the municipality of his/her 1991 residence and the house or apartment where s/he lived at the time is uninhabitable, the authority responsible for providing temporary accommodation, on the request of the temporary user, pending the reconstruction of the 1991 house or apartment shall be the administrative authority responsible for housing affairs in the municipality or canton in the municipality where the 1991 house or apartment is located.

Claims for real property not declared abandoned

13. In accordance with Article 17a of the Law, the responsible administrative body shall be competent to receive claims for real property which was not declared abandoned under the laws and regulations referred to in Article 1 of the Law, , where the owner or possessor lost possession of the real property before 4 April 1998.
14. Where a claim for real property referred to in the previous paragraph was made to the responsible administrative body before 4 July 1999, and rejected (*odbacio*) for lack of competence, the responsible body shall reconsider the claim *ex officio* in accordance with Articles 246, 247, 254, paragraph 2, and 255 of the Law on General Administrative Procedures, unless a proceeding for repossession of the real property is currently pending before a competent court.

Procedural Aspects

15. In deciding upon any claim made under the Law (on Cessation of Application of the Law on Temporarily Abandoned Real Property Owned by Citizens), if the responsible body is able to establish *ex officio* all material facts relating to the right of the claimant as owner, possessor or user to repossess the real property, and the status of the current user of the claimed real property, the claim shall be decided in a shortened procedure (*skraceni postupak*).
16. In all other cases, the responsible body shall schedule a hearing and the parties, i.e., the claimant and current user, shall be properly notified. Failure to attend the hearing shall not be a reason for postponing the hearing, nor shall it be considered as a founded objection when deciding on an appeal. Given the public interest in this matter, the responsible body shall continue the procedure according to Article 154 of the Law on Administrative Procedures and establish, *ex officio*, (e.g., inspection) or through documents presented with the claim all material facts relating to the legal right of the claimant to the real property or the status of the current user of the claimed real property.
17. When the claimant is a person currently occupying an apartment or private real property in BiH to which another person has a pre-war right, the housing authority is obliged to obtain from the claimant either a written or oral statement which will be officially recorded by the competent authority in the official minutes, that s/he shall, together with all members of his/her family household, unconditionally vacate his/her current accommodation or temporary accommodation allocated to him/her for use in BiH after reinstatement in his/her real property. This statement will contain the correct address of his/her current or temporary accommodation. This statement will be sworn and duly certified. In cases where the claimant after successful reinstatement fails to vacate his/her current or temporary accommodation located in BiH, the housing authority is obliged to submit a report on a committed criminal act (*krivicna prijava*) to the competent body in Bosnia and Herzegovina in accordance with Article 140 of the Law on Criminal Procedures (FBH OG, no. 43/98).
18. A failure by the applicant to specify an intended return date under Article 11, paragraph 2, point 3 of the Law, shall not prevent the competent body from determining the claim.
19. If minutes are unavailable from the time when the real property was declared abandoned, the responsible body shall, with the purpose of implementing Article 15 of the Law, conduct an inspection of the real property at the time a decision is made under Article 12 of the Law. The responsible body shall, pursuant to the Criminal Code, seek the prosecution of a current or temporary user who wrongfully removes personal property or fixtures from the real property, or who wilfully causes damage to the real property, when s/he vacates the real property either voluntarily or by eviction. The responsible body shall include a notice or warning to a current or temporary occupant about the aforesaid criminal sanctions for such action in the decision issued pursuant to Article 12 of the Law.
20. Pursuant to Article 13, paragraph 3, of the Law, an appeal shall not suspend the execution of a decision. The first instance body shall retain documents relating to the case or 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 right to repossession of the real property, shall be deemed to be confirmed.
21. In case the second instance body annuls the decision, the annulment shall be considered partial (under Article 236, paragraph 3 of the Law on Administrative Procedures) and the time limit for vacating the real property which was established in the original decision (under Article 12, paragraph 2 of the Law) shall remain in force if the responsible body again confirms the right to repossession of the real property by the claimant, unless that time limit was wrongly

determined.

22. In cases where a claim has been filed with the Commission for Real Property Claims of Displaced Persons and Refugees ('Property Commission') under Article 14 of the Law, any other proceedings initiated before a competent authority shall not be stayed (*prekinut*) unless those proceedings initiated before the competent authority relate to the same factual and legal situation as the proceedings before the Property Commission. Namely, proceedings shall be stayed only where a claim has been initiated for the same right to the same real property before both organs and where the competent authority rejected the request of the applicant on formal or material grounds, and where suspension has been requested by the Property Commission.
23. This Instruction shall enter into force on 28 October 1999.

Office of the High Representative