Decision on the Instruction on Application of the Law on Cessation of Application of the Law on Abandoned Apartments 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 Apartments in its amended form, as hereby attached as an integral part of this Decision, shall enter into force as a law of 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 Apartments in its amended form, as published in the FBH Official Gazette, nos. 11/98, 38/98, 12/99, and 27/99.

1. **Status as refugee or displaced person under Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina**
2. A person who left his/her apartment between 30 April

1991 and 4 April 1998 shall be presumed to be a refugee or displaced person with a right to return to the apartment, irrespective of the circumstances in which s/he left the apartment.

3. Where a claim was rejected prior to 4 July 1999 on the basis that the claimant was not considered as a refugee or displaced person under the former Article 3, paragraph 2 of the Law on Cessation of Application of the Law on Abandoned Apartments (FBH Official Gazette no. 11/98; hereinafter the 'Law'), the responsible authority shall reconsider the claim *ex officio* in accordance with Articles 246, 247, 254, paragraph 2 and 255 of the Law on Administrative Procedures.

Proceedings under the former Article 3, paragraph 6 of the Law on Cessation of Application of the Law on Abandoned Apartments.

4. Where a decision has already been issued under the former Article 3, paragraph 6 of the Law, referring the case file to the responsible cantonal administrative authority for a decision on allocation of another apartment to the current occupant or the occupancy right holder, the responsible cantonal administrative authority shall return the case file to the responsible first instance body for a decision under Article 7 of the Law. The responsible authority shall reconsider the claim *ex officio* in accordance with Articles 246, 247, 254, paragraph 2 and 255 of the Law on Administrative Procedures.
5. Where an appeal has been filed against a decision issued under the former Article 3, paragraph 6 of the Law, the second instance body shall allow the appeal, and return the claim to the first instance body for a decision under Article 7 of the Law.

Occupancy rights cancelled under Article 2, paragraph 3 of the Law on Cessation of Application of the Law on Abandoned Apartments

6. All contracts on use of apartment made between 1 April 1992 and 7 February 1998 are cancelled. This provision applies whether the apartment was declared abandoned or not.
7. Individuals whose contract on use of apartment is cancelled according to Article 2, paragraph 3 of the Law on Cessation of Application of the Law on Abandoned Apartments are considered to be temporary users of the apartment, and are not occupancy right holders unless their occupancy right is restored to them in accordance with the Law. Temporary users under this paragraph shall have the right to the use of the apartment until such time as the final legal status of the apartment is determined. If a claim is made to the apartment by the occupancy right holder, the competent authority shall issue a decision in accordance with Article 7 of the Law on repossession of the apartment by the occupancy right holder, and shall determine whether the temporary user has a right to alternative accommodation in accordance with Article 3, paragraph 4, Article 18e and Article 18f of the Law, as explained in paragraphs 28-34 of this Instruction.
8. In respect of apartments referred to in the previous paragraph, where a claim for the apartment is not filed in accordance with the applicable deadline under Article 5 of the Law (O.G. FBH no. 27/99), or where a claim for the apartment is rejected (for material reasons – *odbio*) and all possibilities for appeal against the decision have been exhausted, the current user may make a claim to the responsible authority for revalidation of his/her contract on use of apartment in accordance with Article 2, paragraph 4 and Article 18e and 18f of the Law. The

responsible authority shall also commence a proceeding *ex officio* to determine the status of the current user..

9. In a proceeding under the previous paragraph, if the current user obtained an occupancy right in any of the following circumstances:
   i. the current user obtained the occupancy right through transfer of the occupancy right to him/her as a spouse or as a member of the family household following the death of the previous occupancy right holder, in accordance with the Law on Housing Relations; or
   ii. the current user obtained the occupancy right through transfer following his/her divorce from the previous occupancy right holder; or
   iii. the current user was the first occupancy right holder of the apartment following its construction; or
   iv. the current user obtained the occupancy right through a valid contract on exchange of apartments, in accordance with the Law on Housing Relations; or
   v. the current user obtained the occupancy right through transfer following the death of the previous occupancy right holder, in cases where the previous occupancy right holder had no legal heir who is entitled to inherit the occupancy right;

   the responsible authority shall revalidate his/her contract on use of apartment in accordance with paragraphs 10 and 11 of this Instruction.

10. In cases not mentioned in the previous paragraph, the responsible authority shall determine whether the current user has other accommodation available to him in accordance with Article 2 paragraph 4 and Articles 18e and 18f of the Law.

    If the current user has other accommodation available to

him/her, the responsible authority shall issue a decision terminating the right on temporary use of the apartment, and shall order the current user to vacate the apartment within 15 days. If the current user has no other accommodation available to him/her, then the responsible authority shall revalidate his/her contract on use of the apartment.

11. If the responsible authority makes a decision to revalidate the cancelled contract on use of apartment, the responsible authority shall place a stamp on the contract on use of apartment with a note that the contract has been revalidated in accordance with the Law on Cessation of Application of the Law on Abandoned Apartments. This stamped copy of the contract on use of apartment shall be considered to be a new contract on use under Article 2, paragraph 4 of the Law, and shall constitute a valid contract on use of apartment for the purposes of the Law on Housing Relations and the Law on Sale of Apartment with Occupancy Right.
12. Following a decision to revalidate the contract on use of apartment of a current user who is entitled to a new or revalidated (odnoso obnovu) contract of use under Article 2, paragraph 4 of the Law and this Instruction, the responsible administrative authority shall send notification that the current user has acquired a new permanent residence to:
    i. the competent body in charge of displaced persons and refugees; and
    ii. the administrative body in charge of housing in the municipality in which the current user had his/her 1991 residence.

Management of abandoned apartments

13. After publication of this Instruction, the administrative authority responsible for housing in each municipality shall in the shortest possible time make a

list of all apartments which were declared abandoned and for which no claim for repossession was made by 4 July 1999, or for which a claim for repossession was rejected (*odbio*). A copy of that list shall be delivered to the Federation Ministry for Urban Planning and the Environment.

14. After 4 October 1999, the administrative authority shall in the shortest possible time make a list of all apartments which were not declared abandoned, and where the occupancy right holder has not been in possession of the apartment since before 4 April 1998, and for which no claim for repossession was made by 4 October 1999, or for which a claim for repossession was rejected (odbio) and all possibilities for an appeal against the decision have been exhausted. A copy of that list shall be delivered to the Federation Ministry for Urban Planning and the Environment. In all cases, an apartment referred to in this paragraph or paragraph 12 above shall not be reallocated until all outstanding claims and appeals concerning the apartment have been finally determined in accordance with applicable laws.
15. Under Article 5 of the Law, an occupancy right holder shall be considered to have made a claim for repossession of the apartment in accordance with the applicable deadline if the occupancy right holder has taken any of the following steps to reclaim his apartment:
    i. submitted a claim to the responsible administrative authority, including a claim made prior to the entry into force of the Law on Cessation of Application of the Law on Abandoned Apartments, and claim which was rejected by the responsible administrative authority for lack of competence prior to the entry into force of the Law on Amendments to the Law on Cessation of Application of the Law on Abandoned Apartments on 4 July 1999;

ii. submitted a claim for repossession of the apartment to the competent court;
iii. submitted a claim to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) in accordance with its rules and regulations, namely by 2 September 1999; or exceptionally, for claims referred to in Article 5, paragraph 2 of the Law, by 3 December 1999.

16. The responsible authority shall determine *ex officio* the status of the current user of each of the apartments identified in accordance with paragraphs 12 and 13 of this Instruction.
17. Except in cases where the current user of the apartment is entitled to a new contract on use or (*odnoso*) revalidation (*revalidation*) of a contract on use in accordance with Article 2, paragraph 4 of the Law and paragraphs 8, 9 and 10 of this Instruction, the apartments referred to in paragraphs 12 and 13 of this Instruction, and the apartments for which the occupancy right is cancelled under Article 12 of the Law, shall remain under the administration of the administrative authority responsible for housing until 4 July 2001.
18. Where the temporary user of the apartment is using the apartment pursuant to a permit on temporary use, and continues to be entitled to alternative accommodation in accordance with Articles 18e and 18f of the Law, as explained in paragraphs 28-34 of this Instruction, the competent authority shall either issue a new permit on temporary use of the apartment to the current user, or else provide other alternative accommodation and issue a temporary permit in accordance with Article 18d of the Law.
19. Where the current user is an illegal user or a temporary user who is not entitled to alternative accommodation, the competent authority shall make a decision ordering him/her to vacate the apartment within 15 days, in accordance with Article 3, paragraphs 3 and 4 of the

Law.

20. In respect of an apartment referred to in the previous paragraph, the competent authority must allocate the apartment in accordance with Article 18d of the Law to the temporary use of a person who is:
    i. entitled to alternative accommodation in accordance with Article 18e and 18f of the Law; and
    ii. currently a temporary user of an apartment or real property; and
    iii. required to vacate that apartment or real property following a decision on a claim for repossession under the Law on Cessation of Application of the Law on Abandoned Apartments or the Law on Cessation of Application of the Law on Temporary Abandoned Real Property Owned by Citizens, or a decision of the Commission for Real Property Claims of Displaced Persons and Refugees.
21. A temporary permit granted under Article 18d of the Law shall be given for a period of not longer than six months.
22. A temporary user may apply for an extension of the temporary permit, for a period of not longer than six months, to expire at the latest by 4 July 2001. In deciding on the claim for extension of the temporary permit, the responsible authority must determine in a procedure whether the temporary user continues to be entitled to alternative accommodation. The responsible authority can either issue a new temporary permit or indicate on the previous permit that the permit has been extended for another six months, including the expiration date of the permit. If the responsible authority decides that the temporary user is not entitled to alternative accommodation, it shall order the temporary user to vacate the apartment within 15 days.
23. If the temporary user at any time ceases to meet the

conditions for entitlement to alternative accommodation in accordance with the Law, the responsible authority shall *ex officio* issue a decision cancelling the temporary permit and ordering the temporary user to vacate the apartment within 15 days.

Management of abandoned military apartments not claimed by the expiration of the deadline or for which claims are finally rejected (*konacno odbija*)

24. The rules and procedures in the Law and this Instruction concerning management of abandoned apartments not claimed in accordance with the applicable deadline shall also apply to apartments at the disposal of the Federation Ministry of Defence, subject to the following variations as explained in paragraph 24 of this Instruction.
25. (i) The temporary user of an apartment at the disposal of the Federation Ministry of Defence may be entitled to a new or (*odnoso*) revalidated (*obnovu*) contract on use if the requirements of Article 2, paragraph 4 of the Law and paragraphs 7 to 9 of this Instruction are met. In such cases, the body which issued the contract shall be authorised to revalidate a cancelled contract on use in accordance with paragraphs 10 and 11 of this Instruction, following any procedures which are necessary to ensure that the requirements of the Law and this Instruction are met, including among others that the housing needs of the temporary user are not otherwise met under paragraph 24(ii) of this Instruction and that the temporary user has no other accommodation available to him/her under paragraph 9 of this Instruction.

    (ii) In other cases, the responsible military housing body may issue a new contract on use of an apartment which is unclaimed or for which a claim is finally

rejected to a temporary user who is currently occupying an apartment at the disposal of the Federation Ministry of Defence, who is required to vacate that apartment pursuant to the provisions of this Law to enable the return of a pre-war occupancy right holder or purchaser of the apartment, provided that his/her housing needs are not otherwise met, as explained by the Law and this Instruction.

(iii) All bodies dealing with apartments at the disposal of the Federation Ministry of Defence shall co-operate with competent international and local bodies to ensure that apartments are not used in violation of the Law by people whose housing needs are otherwise met. This co-operation shall include making available information on past and present use of apartments which are at the disposal of the Federation Ministry of Defence.

Rights to alternative accommodation

26. The authority responsible for providing accommodation to temporary users of apartments under Article 3, paragraph 5 of the Law shall be the administrative authority responsible 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 30 April 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 30 April 1991 house or apartment, shall be the administrative authority responsible for housing affairs in the municipality or canton where the 30 April 1991 house or apartment is located.

27. In respect of an illegal user of an apartment, the

municipal or cantonal body in charge of displaced persons and refugees is responsible for determining whether such a person is entitled to temporary accommodation under the applicable law on displaced persons and refugees. Upon making a decision under the Law requiring an illegal user who is a displaced person to vacate an apartment, the responsible authority shall notify the responsible municipal/cantonal body in charge of displaced persons and refugees.

28. Under Article 3, paragraph 5 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.
29. In determining whether a temporary user of the apartment is entitled to alternative accommodation under Article 3, paragraph 4 or Article 18e of the Law, the responsible body shall determine in a procedure:
    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 1991 family household 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.

30. The responsible body shall find that it is possible for the temporary user to live in the apartment or real property, and the temporary user shall not be entitled to alternative accommodation, if:
    i. s/he has a legal right to return into possession of his/her home of 30 April 1991; and
    ii. his/her home of 30 April 1991 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
    iii. it is possible for him/her to return into possession of the real property or apartment in safety and dignity.
31. In all cases, the temporary user shall not be entitled to alternative accommodation if his/her home of 30 April 1991 is occupied by a member of his/her 1991 family household; or if a parent or a member of his/her 1991 family household has accommodation in the same city municipality or place.
32. A temporary user shall not be entitled to alternative accommodation if s/he voluntarily sold the real property in which s/he lived on 30 April 1991, or if s/he voluntarily exchanged the real property or apartment in which s/he lived on 30 April 1991, provided that the contract on exchange or sale has been fully realised.
33. If a temporary user refuses alternative accommodation offered by the responsible authority, or refuses assistance in the reconstruction of his/her residence of 30 April 1991, then the temporary user will have no further right to alternative accommodation, and will be required to leave the apartment within 15 days. 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.

34. Notwithstanding Article 7, paragraph 2 of the Law, the deadline for an illegal user, or a temporary user whose accommodation needs are otherwise met, to vacate the apartment shall be 15 days, in accordance with Article 3, paragraphs 3 and 4 of the Law.
35. A temporary user whose accommodation needs are otherwise met shall include, among others:
    i. a temporary user who is provided with alternative accommodation by a competent authority; or
    ii. a person who has access to other accommodation; or
    iii. a person who is not a refugee or displaced person and who has sufficient disposable income to provide for his/her own accommodation; or
    iv. a person to whom article 18f , paragraph 1 of the Law applies; or
    v. a temporary user, 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. The standard of accommodation shall be appropriate accommodation or emergency accommodation as applicable under paragraph 27 of this Instruction.
36. Pursuant to Article 16 of the Law, decisions on allocation of apartments and contracts on use of apartments issued after 7 February 1998 are null and void, except for contracts on use which are issued or revalidated in accordance with the Law and this Instruction, or otherwise in a lawful manner, after publication of this Instruction.

Processing of claims for destroyed and damaged apartments

37. The administrative body responsible for housing shall be competent to receive claims for apartments that were

destroyed or damaged.

38. A decision on a claim under the previous paragraph shall contain:
    i. a decision that the claimant was the occupancy right holder to an apartment in the destroyed building;
    ii. a decision that the claimant has the right to return into possession of the apartment if it is reconstructed.

Processing of claims for repossession of military apartments

39. The municipal or cantonal administrative authority responsible for housing shall be competent to receive and decide claims for return to apartments at the disposal of the Federation Ministry of Defence, in accordance with Articles 3 and 3a of the Law.
40. Any case files on claims for military apartments which are in the possession of the responsible military housing body, together with all records or documents required for a decision upon the claim, shall be sent by the responsible service of the Federation Ministry of Defence to the responsible cantonal or administrative housing authority.
41. The Federation Ministry of Defence or the claimant may present written evidence relevant to the determination of any of the matters referred to in Article 3a, paragraphs 1 and 2 of the Law. Otherwise, the competent administrative body shall make a decision based on all of the available evidence in accordance with the Law on Administrative Procedures.
    If the claimant provides evidence disproving one of the matters in to Article 3a, paragraph 1 of the Law, namely evidence that on 30 April 1991:

    i. that s/he was not in active service in the SSNO – JNA (e.g., retired); or

ii. that s/he was a citizen of the Socialist Republic of Bosnia and Herzegovina according to the citizenship records; or

iii. that s/he had residence approved to him/her in the capacity of a refugee, or other equivalent protective status, in a country outside the former SFRJ before 14 December 1995, then the competent authority shall not require the claimant to produce further evidence, but shall find that s/he is not excluded from the category of refugees under Article 3a, paragraph 1.

42. If the Ministry of Defence alleges that the claimant is not a refugee in accordance with Article 3a, paragraph 2 of the Law, the burden of proof shall be on the Ministry of Defence to establish by means of written or other evidence that the claimant is not a refugee.

Processing of claims for apartments which were not declared abandoned

43. In accordance with Article 18b of the Law, the responsible administrative authority shall be competent to receive claims for apartments which were not declared abandoned in accordance with the laws and regulations referred to in Article 1 of the Law, including damaged and destroyed apartments, where the occupancy right holder lost possession of the apartment before 4 April 1998.

44. Where a claim for an apartment referred to in the previous paragraph was made to the competent administrative authority before 4 July 1999, and rejected (*odbacio*) for lack of competence, the responsible authority 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 apartment is currently pending

before a competent court.

Procedural Aspects

45. In deciding upon any claim made under the Law on Cessation of Application of the Law on Abandoned Apartments, if the responsible authority is able to establish ex officio all material facts relating to the occupancy right of the claimant and the status of the current occupant of the claimed apartment, the claim shall be decided in a shortened procedure (*skraceni postupak*).
46. In all other cases, the competent authority shall schedule a hearing and the parties, i.e., the claimant, current occupant and allocation right holder, 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 occupancy right of the claimant or the status of the current occupant of the claimed apartment.
47. When the claimant is a person currently occupying an apartment or private 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 apartment. This statement will contain the correct address of his/her current or temporary accommodation.

The 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). /.

48. A failure by the applicant to specify an intended return date under Article 4, paragraph 4, point 3 of the Law, shall not prevent the administrative authority from determining the claim. The administrative authority shall inform the applicant in writing of the consequences under Article 12 of the Law if s/he does not return. Prior to the initiation of the procedure for cancelling the occupancy right before the competent court, the administrative authority shall inquire whether the applicant has good cause not to return to the apartment, as set out in Article 12 of the Law.
49. If minutes are unavailable from the time when the apartment was declared abandoned, the competent authorities shall, with the purpose to implement Article 9 of the Law, conduct an inspection of the apartment at the time a decision is made under Article 7 of the Law. The authorities shall, pursuant to their duties under the Criminal Code, seek the prosecution of a current occupant who wrongfully removes property or fixtures from the apartment, or who wilfully causes damage to the apartment, when s/he vacates the apartment either voluntarily or by eviction. The administrative authority shall include a notice or warning to a current occupant about the aforesaid criminal sanctions for such action in the decision issued pursuant to Article 7 of the Law.
50. Pursuant to Article 8, 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 occupancy right to the apartment shall be deemed to be confirmed.

51. 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 apartment which was established in the original decision (under Article 7, paragraph 1, point 4 of the Law) shall remain in force if the administrative authority again confirms the occupancy right of the claimant, unless that time limit was wrongly determined.
52. 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 property or apartment 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.
53. This Instruction shall enter into force on 28 October 1999.

Office of the High Representative