

Decisions on Property Laws

The High Representative, Carlos Westendorp, has issued a Decision today cancelling all permanent occupancy rights issued in the Federation and Republika Srpska during and after the war in Bosnia and Herzegovina. This Decision resolves the most substantial injustice in the field of property rights.

The High Representative has taken this step after extensive discussions between his Office and the responsible authorities, and after assessing all possible alternative solutions. The Decision is taken with the advice and support of numerous international and local organisations, including the OSCE, UNHCR and the Federation Ombudsmen. The Decision was also approved by the Steering Board of the Peace Implementation Council at its meeting in Sarajevo on March 17 and 18, 1999.

In both Entities, tens of thousands of socially-owned apartments have been taken away from their original occupants, under the laws and administrative practices concerning abandoned property. In the Federation, provisions of the Law on Abandoned Apartments, which came into effect on December 22, 1995, required all displaced persons to return to their apartments within 6 days, and all refugees to return within 15 days. These time limits were impossible to comply with, as at the time, some 1.2 million citizens of Bosnia and Herzegovina were abroad as refugees, and approximately 1 million were internally displaced. Although this Law was widely condemned by international and local observers as a violation of the Dayton Agreement and international human rights standards, it was nonetheless used by local authorities to cancel permanently the occupancy rights of many thousands of people.

After the rights of the original occupants were cancelled under this Law, the authorities could reallocate the apartments to any person they chose. This took place in an

arbitrary and often illegal fashion. Most of the individuals who received these apartments were not genuine displaced persons, who usually received only temporary permits. Instead the apartments were permanently reallocated to individuals to improve their housing situation. In the major cities, in particular Sarajevo, Mostar and Banja Luka, many original residents of the city moved to better apartments, and obtained a permanent contract on use. In some cases, they also kept possession of their original housing. Later, the decisions on reallocation were back-dated in order to avoid the requirements of the new laws. The result of this practice is the widespread misallocation of housing which now makes the return of displaced persons and refugees so difficult.

It is clear that the permanent reallocation of apartments violates the rights of large numbers of citizens. It represents an attempt to legalise war profiteering. The requirements of the Dayton Agreement are extremely clear: "All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of the hostilities."

The new property laws in both Entities do not deal satisfactorily with this problem. In the Federation, the Law on Cessation of Application of the Law on Abandoned Apartments, which entered into force on April 4, 1998, provides protection to new occupancy right holders. It allows the local authorities to issue returning refugees and displaced persons a different apartment, in accordance with 'Criteria' to be issued by the Federation Government in consultation with OHR. However, this does not sufficiently protect the rights of the original occupants. Neither the local authorities nor the companies have alternative apartments to offer returning refugees and displaced persons. Many months of negotiations between the Federation Government and OHR concerning 'Criteria' were not able to address this

fundamental problem. As a result, the High Representative was forced to suspend Article 3, paragraph 6 of the Law on the Cessation of the Application of the Law on Abandoned Apartments on 5 November 1998.

The provisions from the Federation Law were copied into the Republika Srpska Law on the Cessation of Application of the Law on the Use of Abandoned Property, which was adopted in December 1998.

The High Representative has therefore reached the conclusion that the only solution consistent with the Dayton Peace Agreement and the principle of the Rule of Law is for all permanent rights created during and since the war to be cancelled. This Decision applies both to the Federation Law on the Cessation of the Application of the Law on Abandoned Apartments, as well as to the Republika Srpska Law on the Cessation of the Application of the Law on the Use of Abandoned Property.

Specifically, the High Representative's Decision provides that permanent occupancy rights created between April 1, 1992 and February 7, 1998, in the case of the Federation, and between April 1, 1992 and December 19, 1998, in the case of Republika Srpska, are converted to temporary occupancy rights. If the apartments in question are not claimed by the pre-war occupants, or the claim is not successful, the current users are entitled to receive new permanent contracts on use of the apartments, provided that they have no other accommodation available to them. If the apartments are successfully claimed by the pre-war occupancy right holder, the current users will be treated in the same way as all other temporary users of the apartments. That is, there will be an assessment made as to whether they need humanitarian housing. If so, they have a right to receive alternative accommodation from the authorities. If not, they will be required to leave the apartment immediately.

Those who have spent their own funds on repairing the apartment may bring proceedings for reimbursement for necessary expenses against the original occupancy right holder under the Law on Obligations, but only after the returning occupancy right holder has gained possession of their apartment.

The High Representative has also issued a Decision amending the Law on Housing Relations in the Republika Srpska. The Peace Implementation Council at its meeting in Luxembourg on June 9, 1998, required that these amendments be passed by 31 August 1998, but they have still not been adopted by the National Assembly. The amendments annul all court decisions cancelling the occupancy rights of refugees and displaced persons, and allow those individuals to claim for repossession of their apartments through the administrative process under the Law on the Cessation of Application of the Law on the Use of Abandoned Property. The amendments also cancel decisions on reallocations of apartments made on the grounds of space rationalisation.

In addition, the High Representative expects the RS Government to work with his Office to find resolutions to two other problematic aspects of the Law on the Cessation of the Application of the Law on the Use of Abandoned Property. First, the rules concerning the enforcement of decisions and evictions of current occupants under the Law are extremely weak (Article 6, paragraphs 2 and 3, as well as Article 15, paragraph 4). If not corrected, these provisions are likely to delay the repossession of property until the year 2000, which is not in accordance with the goals set for this year in the Madrid Declaration. The second problem is the poor definition of the rights of the current occupants of property to alternative accommodation (Articles 6 and 18 of the Law). It is not clear who is entitled to alternative accommodation, which authority is obliged to provide it, and of what standard it must be. These questions need to be resolved in the coming

period.

The High Representative believes that these Decisions are essential to safeguard the rights of refugees and displaced persons, and to allow the implementation of Annex 7 of the Dayton Agreement to proceed. The High Representative also believes that his Decisions will receive the support of many ordinary citizens in both Entities, who have lost their rights under the current laws. He expects the Government of both Entities to accept these Decisions, and to implement them as the Law. If they fail to do so, the High Representative may advise the donor community not to proceed with the forthcoming Donors' Conference.

The Federation Law on the Cessation of the Application of the Law on Abandoned Apartments, the RS Law on the Cessation of the Application of the Law on the Use of Abandoned Property and the RS Law on Housing Relations are amended in accordance with the High Representative's Decisions. The Amendments shall be published in the Official Gazettes of the Entities. The High Representative has made these decisions exercising the powers vested in him by Annex 10 to the Dayton Peace Agreement and by Article XI of the Conclusions of the Peace Implementation Council Conference held in Bonn in December 1997.