

Decision on the Law on the Instruction on the Application of the Law on Further Amendments to the Law on Cessation of Application of the Law on the Use of Abandoned Property and the Law on the Cessation of Application of the Law on the Use of Abandoned Pr

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 the Application of the *Law on Further Amendments to the Law on Cessation of Application of the Law on the Use of Abandoned Property and the Law on the Cessation of Application of the Law on the Use of Abandoned Property* in its amended form (RS Official Gazette no. 38/98 and 12/99), as hereby attached as an integral part of this Decision, shall take effect in the Republika Srpska on 28 October 1999.

27 October 1999

Wolfgang Petritsch
High Representative
Sarajevo

Instruction (*Uputstvo*) on the application of the *Law on Further Amendments to the Law on Cessation of Application of the Law on the Use of Abandoned Property and the Law on the Cessation of Application of the Law on the Use of Abandoned Property* in its amended form (RS Official Gazette no. 38/98 and 12/99)

1. Reporting mechanisms

2. For the purposes of facilitating the determination of claims under the Law on Cessation of Application of the Law on the Use of Abandoned Property in its amended form (RS Official Gazette (Sluzbeni Glasnik) no. 38/98, 12/99 (the "Law"), the responsible body of the Ministry for Refugees and Displaced Persons shall provide updated statistical information to the central Ministry for Refugees and Displaced Persons every fifteen days, which shall include among other information, the following (divided into statistics for private property and apartments with occupancy right respectively):
 1. the number of claims received for return of real property and apartments under the Law
 2. the number of positive decisions made by the responsible body
 3. the number of negative decisions made by the responsible body, divided into the number of -
 1. those rejected for formal reasons and
 2. those rejected for material reasons; and
 4. those returned for re-consideration;
 5. the number of proceedings initiated with the second-instance body concerning claims under the Law
 6. the number of positive decisions made by the second instance body
 7. the number of negative decisions made by the responsible second-instance body, divided into the number of -

1. those rejected for formal reasons and
2. those rejected for material reasons; and
3. those returned for re-consideration at first instance;
8. the number of evictions that are
 1. requested and
 2. executed;
9. the number of reinstatements after a first-instance decision, with names of the reinstated persons, and the addresses of the real properties and apartments which they have
 1. returned to and
 2. vacated; together with names and surnames of evicted current users;
10. the number of reinstatements after a second-instance decision, with names and surnames of the reinstated persons, and the addresses of the real properties and apartments which they have
 1. returned to and
 2. vacated; together with names and surnames of evicted current users
11. as cumulative totals as at the end of the month: the numbers of pending claims before
 1. the first instance and
 2. the second instance body;
12. the number of pending requests for eviction before the first instance body in which the decision was taken by the first instance body, and the number of evictions requests in which the decision was taken by the second instance body.

Information on apartments and apartment use

3. The responsible body shall request, in writing, from all legal entities that have a housing fund, and also to authorized municipal housing bodies, and other organizations on the territory of their respective city or municipality, that had documentation on housing fund (including among others Department for Urbanism, Housing Cooperative, existing or former housing bodies; existing or former commissions dealing with refugees and displaced persons; military housing bodies or other military authorities etc.) to deliver to the responsible body, as soon as possible, all information about apartments for which there was a change of the occupancy right holders between 30 April 30, 1991 and 19 December, 1998 (including the name and family name of the previous occupancy right holder, and name and family name of the current user of the apartment, and on what basis does the current user use the apartment, for example, with a decision on temporary or permanent use, signed contract for the use of the apartment, etc.)
4. Based on that information, in co-operation with representatives of the apartment users (legal entities), to establish working methods (create dynamics) for solving claims for repossession of occupancy rights which will commence immediately, which are in all aspects consistent with Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina and of the Law.
5. If a responsible body encounters obstruction in the work of any of the legal persons referred to in the previous paragraphs during the completion of prescribed tasks, the responsible body shall be obliged immediately to inform the central Ministry for Refugees and Displaced Persons. The responsible body shall provide all relevant details about the nature of the obstruction and claims or cases affected by it (including: the name of the body to which requests were made; the numbers of requests made; information on whether the request was fulfilled in a satisfactory and timely manner, and in the case that requests were not fulfilled in a satisfactory and timely manner, the information shall include details of the non-fulfillment or non-compliance with the request).
6. In case that any external body fails to comply satisfactorily within 30 days of a request from the

responsible body for documentation under this paragraph, the responsible body is obliged to submit a report on a committed criminal act (krivicna prijava) in accordance with the Law on Criminal Procedures. This report will be submitted to the relevant public prosecutor according to the Law on Criminal Procedures.

Determination of claims for repossession of apartments with occupancy right

7. For the purposes of determination of claims under the Law, persons who have left their apartments between 30 April 1991 and 19 December 1998 shall be considered to be refugees and displaced persons under Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina. A person who left his/her apartment between 30 April 1991 and 19 December 1998 shall be presumed to be a refugee or displaced person with a right to return to the apartment, irrespective of the circumstances under which s/he left the apartment.
8. In cases where a claim has been filed under the Law with the responsible body at first or second instance, but no final decision has been made, the responsible first or second instance body shall proceed to make the decision in accordance with this Instruction.
9. In cases where a claim was rejected prior to the commencement of effect of this Instruction, on the basis that the claimant was not considered as a refugee or displaced person under the Law, the responsible body shall renew proceedings on the claim *ex officio* in accordance with Articles 249, 250, 257 paragraphs 2 and 3 and Article 258 of the Law on General Administrative Procedures.
10. If the claim was finally rejected at second instance on the basis that the claimant was not considered as a refugee or displaced person under the Law, then the second instance body shall be required to renew proceedings on the claim *ex officio* in accordance with the previous paragraph. The second instance body shall issue a final decision on the claim under Article 18 of the Law, which shall be enforced by the responsible body of the Ministry for Refugees and Displaced Persons in the municipality in which the claimed apartment is located.

Hearings and decision making on claims for repossession of apartments and real property

11. In deciding upon any claim made under the Law, if the responsible body is able to establish *ex officio* all material facts relating to the occupancy right or right to real property of the claimant and the status of the current user of the claimed real property or apartment, the claim shall be decided in a shortened procedure (*skraceni postupak*).
12. In all other cases, the responsible body shall schedule a hearing and the parties (namely, the claimant, current user and in case of apartment, 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 156 of the *Law on General Administrative Procedures* (taken over by the Constitutional Law on Implementation of the Constitution of Republika Srpska, RS Official Gazette (Glasnik) no. 21/92, art 12) and establish, *ex officio*, (e.g., through inspection) or through any documents presented with the claim, all material facts relating to the right to the real property or the occupancy right of the claimant or the status of the current user of the claimed real property or apartment.
13. The responsible body is obliged to conduct all necessary hearings and other procedures and to issue a decision on a claim in accordance with this Instruction and the Law, within 30 days of the receipt of the claim under Articles 9 and 17 of the Law, or within thirty days of the

commencement of effect of this Instruction, whichever is the latter.

Unclaimed apartments: New or revalidated contracts on use for temporary users

14. All contracts on use of apartment made between 1 April 1992 and 19 December 1998 are cancelled. This provision applies whether the apartment was declared abandoned or not.
15. Individuals whose contract on use of apartment is cancelled according to Article 2, paragraph 3 of the *Law* 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 for the apartment by the occupancy right holder, the competent authority shall issue a decision in accordance with Article 11 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 34 of the Law, as explained in this Instruction.
16. 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, and where the occupancy right terminates under Article 16 of the Law, 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 3 of the Law. The responsible authority shall also commence a proceeding *ex officio* to determine the status of the current user.
17. 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 18 and 19 of this Instruction.

18. 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.
19. 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 Property. This stamped copy of the contract on use of

apartment shall be considered to be a new contract on use under Article 2, paragraph 3 of the Law, and shall constitute a valid contract on use of apartment for the purposes of the Law on Housing Relations and other applicable laws.

20. Following a decision to revalidate the contract on use of apartment of the current user of an apartment who is entitled to a new or revalidated (odnosno obnovu) contract of use under Article 2, paragraph 3 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.

Alternative accommodation: temporary users whose housing needs are otherwise met

21. In the case of a temporary user who is entitled to alternative accommodation under Article 34 of the Law, the standard of alternative accommodation shall be not less than:
- i. for a family referred to in Article 8, para 4 of the ZOSO – appropriate accommodation (odgovarajuci smestaj) as defined in Article 7 of ZOSO, 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 ZOSO, with a minimum of 5-8 sq m per person. Under this paragraph, accommodation meeting the standard of emergency accommodation may include collective accommodation.
22. The body responsible for providing accommodation to temporary users of real property or apartments under this Law shall be
- i. in the case of a temporary user who is a refugee or displaced persons, the responsible municipal body of the Ministry for Refugees and Displaced Persons in the municipality or place in which the temporary user is currently residing;
 - ii. In all cases, if it is possible for the temporary user to return to the municipality of his/her residence on 30 April 1991 and the real property or apartment where s/he lived at the time is uninhabitable – the body responsible for providing temporary accommodation, on request of the temporary user, pending the reconstruction of the 1991 real property or apartment home shall be the responsible body of the Ministry for Refugees and Displaced Persons in the municipality or place where the 1991 house or apartment is located.

Management of abandoned apartments

23. After publication of this Instruction, the responsible body of the Ministry for Refugees and Displaced Persons 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 19 December 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 central Ministry for Refugees and Displaced Persons.
24. In all cases, an apartment referred to in the previous paragraph shall not be reallocated under Article 2, paragraph 3, or Article 31 of the Law until all outstanding claims and appeals concerning the apartment have been finally determined in accordance with applicable laws.
25. Under Article 16 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 body, including a claim made prior to the entry into force of the Law on Cessation of Application of the Law on the use of Abandoned Property, and a claim which was rejected by the responsible administrative body for lack of competence;
 - 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.
26. The responsible body shall determine *ex officio* the status of the current user of each of the unclaimed apartments identified in accordance with paragraph 22 of this Instruction.
27. 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 3 of the Law and paragraphs 15 to 19 of this Instruction, the unclaimed apartments referred to in paragraph 22 of this Instruction, as well as apartments for which the occupancy right is cancelled under Article 21 of the Law, shall remain under the administration of the administrative authority responsible for housing until 19 December 2001.
28. 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 Article 34 of the Law, 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 31 of the Law.
29. Where the current occupant 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 Articles 33 and 35 of the Law.
30. In respect of an apartment referred to in the previous paragraph, the competent authority must allocate the apartment in accordance with Article 31 of the Law to the temporary use of a person who is:
 - i. entitled to alternative accommodation in accordance with Article 34 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 the Use of Abandoned Property, or a decision of the Commission for Real Property Claims of Displaced Persons and Refugees.
31. 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 19 December 2001. In deciding on the claim for extension of the temporary permit, the responsible body must determine in a procedure whether the temporary user continues to be entitled to alternative accommodation. The responsible body 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 body decides that the temporary user is not entitled to alternative accommodation, it shall order the temporary user to vacate the apartment within 15 days.
32. 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.

Processing of claims for destroyed and damaged apartments

33. The administrative body responsible for refugees and displaced persons shall be competent to receive claims for apartments that were destroyed or damaged.
34. 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 apartments that were not declared abandoned

35. Where a claim for an apartment that which was not registered as abandoned was made to the competent administrative authority before 19 December 1999, and rejected (*odbacio*) for lack of competence, the responsible body shall reconsider the claim *ex officio* in accordance with Articles 249, 250, 257, paragraphs 2 and 3 and Article 258 of the Law on General Administrative Procedures.

Procedural Aspects

36. 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 or private property. 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 148 of the Law on Criminal Procedures (SFRY Official Gazette, Nos. 26/86, 74/87, 57/89, 3/90; RS Official Gazette, Nos. 26/93, 14/94, 6/97).
37. A failure by the applicant to specify an intended return date under Article 8, paragraph 3 or Article 15, paragraph 3 of the Law, shall not prevent the responsible body from determining the claim. In case of a claim for an apartment, the responsible body shall inform the applicant in writing of the consequences under Article 21 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 responsible party shall inquire whether the applicant has good cause not to return to the apartment, as set out in Article 21 of the Law.
38. If minutes are unavailable from the time when the real property or apartment was registered as abandoned, the competent authorities shall, with the purpose to implement Article 24 of the Law, conduct an inspection of the real property or apartment at the time a decision is made under Article 11 or Article 18 of the Law. The responsible bodies shall, pursuant to their duties under the Criminal Code, seek the prosecution of a current occupant who wrongfully removes property or fixtures from the real property or apartment, or who wilfully causes damage to the apartment, when s/he vacates the apartment either voluntarily or by eviction. The responsible body 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 11 or Article 18 of the Law.
39. Pursuant to Articles 12 and 19 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 the 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 General Administrative Procedures, the decision of the first instance body, and therefore the claimant's legal right to the real property or occupancy right to the apartment shall be deemed to be confirmed.

40. In case the second instance body annuls the decision, the annulment shall be considered partial under Article 239, paragraph 3 of the Law on General Administrative Procedures and the time limit for vacating the apartment which was established in the original decision (under Article 11 , paragraph 1, or Article 18, paragraph 1 of the Law) shall remain in force if the administrative authority again confirms the right to the real property or occupancy right of the claimant, unless that time limit was wrongly determined.
41. In cases where a claim has been filed with the Commission for Real Property Claims of Displaced Persons and Refugees ('Property Commission') under Articles 13 and 23 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.
42. This Instruction replaces any other Instruction or Order in relation to the subject and matter referred to in this Instruction..
43. This Instruction shall enter into force on 28 October 1999.

Office of the High Representative