

Decision prioritising, as an exception to the chronological order rule, the repossession of property by returning police officers

In the exercise of the powers vested in me by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theatre regarding interpretation of the said Agreement on Civilian Implementation of the Peace Settlement; and considering in particular Article II.1.(d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof) “measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities”;

Recalling further Article I:1 of the said Annex 10, referring explicitly to the promotion of respect for human rights and the return of displaced persons and refugees;

Considering the emphasis placed by the Peace Implementation Council on accelerating refugee return and on ensuring full and non-discriminatory implementation of the property laws of Bosnia and Herzegovina;

Considering further the need to implement in the most efficient and equitable manner legislation concerning the return of property throughout Bosnia and Herzegovina;

Considering further Article 6(1) of the Law on Cessation of the Application of the Law on Abandoned Apartments, (FBiH Official Gazette nos 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, and 56/01), Article 12 (1) of the Law on Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (FBiH Official Gazette nos 11/98, 29/98, 27/99, 43/99, 37/01 and 56/01) and Articles 9 and 17 of the Law on Cessation of the Application of the Law on the Use of Abandoned Property (RS Official Gazette nos 38/98, 12/99, 31/99 and 65/01) which seek to ensure orderly and non-discriminatory implementation, in prescribing that the competent body shall solve each property claim in the order in which it was received, unless specified otherwise in law;

Further conscious of the need to facilitate realization, in accordance with Annex 11 of the General Framework Agreement for Peace, of the Framework Agreement on Police Restructuring, Reform and Democratization in the Republika Srpska, wherein it is said that in order to facilitate the hiring of minority police officers, all necessary measures shall be taken to implement the provisions of Annex 7 Article 1 (1) pertaining to the return of property to such police (Article 9) and the Agreement on Restructuring the Police: Federation of Bosnia and Herzegovina, wherein it is said that the composition of the police shall reflect that of the population, according to the 1991 census, provided that the composition of the police of each municipality shall reflect the composition of the latter (Concrete Steps, Item 5);

Considering Amendment LII of the Constitution of the Federation of Bosnia and Herzegovina of 19 April 2002 and Amendment LXXXV of the Constitution of Republika Srpska in the terms as defined by my Decision of 19 April 2002, pursuant to which proportionate representation in public institutions in the Entities of constituent peoples and members of the group of Others, is guaranteed according to the 1991 census until Annex 7 is fully implemented;

Noting that the police bear a particular responsibility in the implementation of the property laws,

Having considered and borne in mind all the matters aforesaid, I hereby issue with binding effect upon all courts, judges and officials of the Federation of Bosnia and Herzegovina and of the Republika Srpska as a measure in the exercise of my said powers under the said Annex 10 (and not by way of substitution for the legislative authorities of the Federation of Bosnia and Herzegovina and of Republika Srpska respectively) the following:

DECISION

On an Exception made in favour of Minority Police Officers to the Requirement for Chronological Resolution of Property Claims in the Federation of Bosnia and Herzegovina and in the Republika Srpska.

Article 1.

A claim for the repossession of residential private or socially-owned property, filed in full accordance with the aforesaid laws by a returnee police officer or by a member of his/her 1991 family household, shall, as an exception to the legal requirement that a claim shall be solved in the chronological order in which it was received, be solved as a priority by the competent body.

At the time of requesting such an exception, the police officer shall present the following evidence to the competent body:

1. A certificate issued by the United Nations Mission to Bosnia and Herzegovina, as the authority responsible, in accordance with Annex 11 of the GFAP, stating that the holder of the certificate is returning to serve as a police officer in his/her place of residence of 30 April 1991.
2. Evidence that the claim was filed prior to the date of the issuance of this Decision.
3. Evidence of the current place of residence of the police officer, his/her parents, children, and spouse, and all members of his/her family household, registered as such on or since 30 April 1991.
4. Where the claim was not filed by the police officer in person, evidence that s/he resided in the claimed property on 30 April 1991.

In cases where a police officer who holds the certificate specified by point 1 of this Article, and has submitted full evidence as required by points 2 and 3 of this Article, cannot collect the evidence specified under point 4 of this Article, the competent authority shall take into consideration a statement submitted by the police officer concerned, as evidence of his/her residence in the claimed property on the specified date, that is signed by at least two witnesses, provided that such a statement is verified by a competent court under full financial and criminal responsibility.

Article 2.

This Decision shall come into force forthwith, and shall remain in force until December 31, 2002.

Article 3.

This Decision shall be published without delay in the Official Gazette of the Federation of Bosnia and Herzegovina, and the Official Gazette of the Republika Srpska.

Sarajevo, 30 April 2002

Wolfgang Petritsch

High Representative