

Decision On Instruction On Procedure Of Review Of Concluded And/Or Revalidated Contracts On Use Of Apartments

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 ensure scarce housing resources are allocated by the competent housing authorities pursuant to the relevant property legislation, thus allowing timely implementation of the property laws while providing housing care to those individuals whose housing needs are not otherwise met;

Noting that the Ministry for Physical Planning and Environment of the Federation of BiH has issued the *Instruction on the Procedure of Determination of the Temporary User's Right to Revalidate a Contract on the Use of the Apartment and On the Procedure of Control of the Revalidated Contracts On Use of Apartments (FBiH OG 15/02)*, which establishes the procedures for future revalidations and control of contracts on use of apartments;

Taking into account my Decision on Suspension of Application of the High Representative Decision No. 128 from 4 December 2001 (*Official Gazette of FBiH 56/01*), which lifted the temporary suspension of the procedure for approvals of contracts on purchase of apartments and the process of registering of contracts on purchase of apartments based on contracts on use concluded and/or revalidated after 1 April 1992, and the Decision No. 155/02 on Establishment of the Commissions for Control of Concluded and/or Revalidated Contracts on Use of Apartments imposed by the High Representative on 22 May 2002, which established the authority to establish Commissions for Control of Contracts on Use of Apartments Concluded and/or Revalidated after 1 April 1992;

Having considered and borne in mind all the matters aforesaid, I hereby issue the following:

DECISION

ON INSTRUCTION ON PROCEDURE OF REVIEW OF CONCLUDED AND/OR REVALIDATED CONTRACTS ON USE OF APARTMENTS

I. ESTABLISHMENT OF THE COMMISSIONS

Item 1

This Instruction shall regulate the establishment of the Commissions for Control of Concluded and/or Revalidated Contracts on Use of Apartments (hereinafter: the Commissions) in each municipality of the Federation of BiH, the composition and scope of work of the Commission, as well as reporting mechanisms on revision of the concluded

and/or revalidated contracts on use of apartments.

Item 2

In any case where one housing department is competent for the administration of more than one municipality, the competence of the Commission will reflect that of the housing department.

II. COMPOSITION OF THE COMMISSIONS

Item 3

Within 15 days from the day when this Instruction is published in Official Gazette of FBiH, the competent cantonal ministry responsible for housing affairs shall establish the Commissions. The Commission shall have at least three members. The members shall be appointed by the competent cantonal minister, who shall deliver to them decisions on appointment within 15 days from the date this Instruction is published in the Official Gazette of FBiH.

Item 4

With the aim of protecting the public interest and municipal/cantonal property, the competent municipal or cantonal Public Defender or his/her deputy shall attend Commission meetings. The participation of the Public Defender shall be of an advisory nature.

The competence of the Public Defender shall be determined by the territorial competence of the Commission.

Item 5

Within 15 days from the date of publication of this Instruction in the Official Gazette of FBiH, the Federation Ministry for Defence shall establish a Commission to review concluded and/or revalidated contracts on use of apartments that were at the disposal of this Ministry. The Commission shall have at least 3 members to be appointed by the Minister for Defence, who shall deliver to them decisions on appointment within 15 days from the date this Instruction is published in the Official Gazette of FBiH.

A representative from the State Ministry for Human Rights and Refugees shall also participate and supervise the work of the Commission.

Item 6

The members of the Commissions shall be graduated lawyers with extensive expert experience in housing issues, who are impartial in their work, and therefore have not already been involved in revalidation procedures. The Members shall be employed by the competent cantonal ministry responsible for housing affairs or the Federation Ministry of Defence.

Employees of the FBiH Ombudsmen Office may also supervise a work of the Commissions.

III. SCOPE OF WORK OF THE COMMISSIONS

Item 7

The Commission shall review:

- all contracts on use of apartments concluded in the period of time from 1 April 1992 until 7 February 1998 and/or revalidated by the housing authority in the municipality in accordance with provisions of the *Law on Cessation of Application of the Law on Abandoned Apartments* (Official Gazette of the Federation of BiH, Nos. 11/98, 38/98, 12/99, 18/99, 27/99 and 43/99, herein after: the Law) by which the revalidation procedure has been regulated, including contracts on use of apartments in purchase stage or already purchased;
- all contracts on use concluded after 07.02.98 in contravention of Article 16 of the Law, including contracts on use of apartments in the purchase stage or already purchased.

Item 8

For the purpose of achieving a comprehensive and detailed review of all contracts on use which were concluded and/or revalidated by housing departments, or any other competent authority, competent Public Defenders offices shall transfer all case files which are pending in Public Defenders office for the certification of a contract on purchase that were concluded on the basis of a contract on use signed or revalidated after 1 April 1992 to the Commission for review of revalidation of contract on use.

Departments of the competent courts which are tasked with registration of ownership rights to the apartments (registries of deposited contracts) shall also submit all cases to the competent Public Defender which are received for the purpose of registration of a contract on purchase, but for which the registration has not yet been finalised, if the contract on purchase of the apartment is concluded on the basis of a contract on use signed or revalidated after 1 April 1992.

All former Self-Managed Interested Communities (hereinafter: SIZs) authorised to conclude contracts on use of apartments with occupancy right holders are obliged to provide to the Commissions and competent Public Defender lists containing the names of persons and information on the apartments in all cases where contracts were concluded after 1 April 1992.

All allocation right holders, including the FBiH Ministry of Defence and all housing cooperatives that have not authorised former SIZs to conclude contracts on use of apartments, are also obliged to provide such lists to the Commissions and competent Public Defender.

All cases and other information to be provided pursuant to this Item shall be delivered within 30 days from publishing of this Instruction in the Official Gazette of FBiH.

IV. TIMEFRAME FOR REVIEW

Item 9

All concluded and/or revalidated contracts from Item 7 of this Instruction shall be reviewed within six months of the date of the Commission being established in each municipality.

V. IMPLICATIONS OF REVIEWED CONTRACTS

Item 10

In the course of the review process which is conducted in accordance with the *Law on Administrative Procedure*, should the Commission determine that the contract on use of apartment was concluded and/or revalidated contrary to the provisions of the Law, it shall proceed in following way:

- the Commission shall issue a decision determining whether the contract on use of apartment was concluded and/or revalidated contrary to the provisions of the Law which were in effect at the time the contract was concluded and/or revalidated;
- the decision of the Commission shall be sent to the competent housing authority/Ministry of Defence adjudicator who will act in accordance with the *Law on Administrative Procedure*.

Item 11

A) Proceedings for Non-purchased Apartments

Upon receipt of a decision of the Commission determining that a contract on use was concluded and/or revalidated in contravention of the relevant provisions of the Law, the competent housing authority/Ministry of Defence adjudicator shall issue a decision suspending or declaring null and void the previous decision on conclusion or revalidation, and shall simultaneously determine whether the temporary occupant has the right to alternative accommodation in accordance with the Law.

Should the temporary occupant not be entitled to alternative accommodation the eviction order shall be immediately issued *ex officio* upon the expiration of the 15 day deadline set out in the decision from the previous paragraph, in accordance with the Law.

The temporary occupant shall have the right to appeal, but the appeal shall not postpone the eviction.

B) Proceedings for Purchased Apartments

After the Commission has established that a contract on the purchase of apartment was concluded on the basis of contract concluded and/or revalidated in contravention of the relevant provisions of the Law, it will immediately notify the competent Public Defender who will then initiate proceedings before the competent court for the annulment of the contract on purchase pursuant to the proceedings of the competent housing body suspending or annulling such concluded and/or revalidated contracts on use by final decision.

Item 12

If in the course of the revision procedure there is a difference of opinion between the Commission and the representative of the Public Defender participating in the Commission, the Commission shall forward the case to the Office of the Federal Attorney, which shall, pursuant to the *Law on the Office of the Federal Public Defender*, provide the Public Defender and Commission with an obligatory instruction.

VI. REPORTING MECHANISMS

Item 13

Each Commission shall report on a weekly basis to the cantonal ministry which supervises the work of the Commission and the Ministry for Physical Planning and Environment, as well as to the International Community, the following data, including details on names and figures as provided:

- Total figures and data of reviewed contracts,
- Figures on contracts which were concluded and/or revalidated in accordance with specific provisions of the Law,
- Figures about contracts which the Commission determined were concluded and/or revalidated in contravention of the provisions of the Law,
- Number of decisions issued by Housing Authorities by which concluded and/or revalidated contracts on use are declared null and void,
- Number of conclusions for evictions from the apartments which shall be used then for alternative accommodation,
- Number of reviewed cases in which the apartments were purchased, but subsequently concluded and/or revalidated contracts on use were annulled,
- Number of suits submitted to the competent court for cancellation of contract on purchase of apartment,
- The above mentioned data shall be submitted in separate tables for military apartments.

Item 14

The public defender shall in accordance with his/her obligation under the *Law on Criminal Procedure* report on any activity with a criminal nature which are automatically prosecuted of which they have been informed or of which they learned in the course of the work of the Commissions.

Item 15

This Instruction shall apply in its entire form to the Commissions that were established in some federation municipalities prior to its entry into force.

The Commissions established prior to the entry into force of this Instruction shall adjust their composition and scope of work to this Instruction, and shall perform additional review of the cases reviewed before the Instruction entered into force.

Previously established Commissions that are properly composed may be relieved of this duty if the procedural and substantive provisions of this Instruction were respected during the conducted review performed prior to this Instruction.

Item 16

This Decision shall be published without delay in the Official Gazette of the FBiH and shall enter into force on the date of such publication.

Sarajevo, 22 May 2002

Wolfgang Petritsch

High Representative