

Supervisory Order Granting Certain Real Estate to the Medzlis Islamic Community of Brcko

In accordance with the powers vested in me by Paragraphs 8, 10, 11, 13, 36 and 37 of the Final Award dated March 5, 1999 of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brcko Area ("the Final Award") and Paragraph 12 of the August 18, 1999 Annex thereto;

Recalling my two previous Supervisory Orders both dated February 2, 2007 ("my Orders") in which I already granted certain real estates to the Medzlis Islamic Community of Brcko and to the Croat Cultural Association "Napredak", trusting that through those restitutions I contributed to the process of building confidence amongst religious communities in Brcko;

In furtherance of my Orders providing that I will not consider any further requests for restitution by Supervisory Order save for certain very limited exceptions for which I had previously been engaged in consultations with relevant interested parties;

Noting as set forth in my Orders, that during the course of Communist rule after 1945 in what was then the Socialist Federal Republic of Yugoslavia, much property within the territory of the now independent state of Bosnia and Herzegovina was nationalized involuntarily and without compensation;

Further noting that nationalizations of this kind occurred throughout the formerly communist Eastern Europe, and, that since the communist governments of Eastern Europe collapsed in the early 1990s, there have been movements throughout the affected countries to restitute property so nationalized, that is to say to return title of such property to its pre-nationalization owners, or to their heirs and, alternatively, to provide compensation when returns was not possible;

Recalling that notwithstanding the absence of a law on restitution at the time, during the period after the 1992-95 war but prior to the issuance of the Final Award, the then Republika Srpska municipality of Brcko restituted to the Serb Orthodox Church ("the Church") most of the property in Brcko Grad that belonged to the Church prior to 1945 but that had been subsequently nationalized during communist rule, thereby granting to the Church legal title to the estates of which it had previously been deprived;

Aware that, notwithstanding the opinion by the Council of Europe that there is no legal obligation to engage in the restitution of property nationalized by the authorities of the former Socialist Federal Republic of Yugoslavia, a State-level working group prepared a draft State law on restitution that was voted down by the BiH Parliamentary Assembly in January 2008, and that it is not known when or if any new draft will be put on the agenda of the BiH Parliamentary Assembly and consequently enacted as a law of Bosnia and Herzegovina, whereupon a systematic, fiscally sound, and non-discriminatory program of restitution of previously nationalized properties will be established throughout the country;

Further recalling that since the issuance of the Final Award, the Brcko District Government, endeavoring to treat equally the three principal religious communities in the District, gave to the local Islamic and Catholic religious communities in the District the use of certain nationalized real properties that had previously belonged to those same communities before nationalization had occurred;

Having reviewed the land books and cadastre in the District, and having concluded that certain real property located in Brcko Grad, known as the "Ruzdija" madrassa, belonged to the Islamic Community of Brcko before it was nationalized in 1959, and is therefore a clear candidate for restitution;

Bearing in mind that the adoption of the State law on restitution is uncertain at this point of time, and that in the meantime the "Ruzdija" madrassa, being centrally located within Brcko Grad, but heavily war-damaged and currently empty, is degrading the ambience of the town and is not being put to any economic or cultural use; and that the Islamic Community, although having been granted usage rights by the District, cannot be expected to renovate the building or to invest it with economic or cultural value until full legal title to the building has been restituted to it;

Having therefore decided to reconstitute the above-mentioned real estate to the Medzlis Islamic Community of Brcko;

Believing that this restitution will build confidence amongst religious communities in Brcko, and will lead to the betterment of Brcko District as a whole;

Having consulted members of the Brcko Islamic Community and property law experts in the District Government, and having carefully considered all the facts related to the real estate in question, and the beneficiary of this Supervisory Order having agreed to the terms of it;

Acknowledging the expressed wish of the Brcko Islamic Community for this restitution;

Emphasizing that, save for certain very limited exceptions, I will not consider any further requests for restitution by Supervisory Order;

I therefore hereby order that:

1. Legal title and ownership over the real estate marked as cadastral unit no. 180/1, cadastral borough Brcko 1 (according to the new land survey), that is the real estate marked as cadastral units nos. 2/90, 2/91, 2/85, and part of 2/92, cadastral borough Brcko (according to the old land survey) ("the Property"), in essence representing the school building known as "Ruzdija" madrasa and other ancillary buildings located at the aforementioned cadastral unit, is hereby conveyed to the Islamic Community in Bosnia and Herzegovina – Medzlis Islamic Community of Brcko.
2. All Brcko District institutions responsible for cadastral and land registry affairs are required by this Order to make all necessary changes in public registers to register the transfer of ownership made by Paragraph 1 of this Order *ex officio* within thirty (30) days of the date of this Order using this Order as the legal basis for doing so.
3. Medzlis Islamic Community of Brcko shall adopt all the legal rights and duties associated with ownership of the Property as of the date of this Order.
4. The restitution of the Property mandated by Paragraph 1 of this Order is final and may not be subsequently revisited. In particular, no third party shall obtain any ancillary rights over the Property in consequence of the enactment, subsequent to this Order, of any State or District law on restitution.
5. However, to the extent that this Order deprives any third party of any rights over the Property that they have as of the date of this Order or would (but for Paragraph 4 of this Order) have acquired in consequence of any law on restitution being enacted subsequent to this Order, Medzlis Islamic Community of Brcko shall be liable to pay financial compensation to any such third party. The amount of the financial compensation so payable shall be the market value of the right(s) so deprived, either at the date of this Order or the date on which the right(s) would (but for Paragraph 4 of this Order) have been acquired, whichever is later. The courts of Brcko District shall have jurisdiction to hear any claim under Paragraph 5 of this Order that such a liability exists and if so the quantum of that liability, subject to the usual Statute of Limitation provisions in District legislation.
6. The restitution mandated by this Supervisory Order extinguishes all claims that may exist or subsequently (in consequence of changes in the law) come to exist against Brcko District as a result of the nationalization of the Property by the Communist authorities.
7. This Supervisory Order shall be published without delay in the Official Gazette of the Brcko District of Bosnia and Herzegovina. All public officials of the District shall take all necessary measures to ensure that it is executed in full.
8. This Supervisory Order is published in both English and the official languages of Bosnia and Herzegovina. In the event of any inconsistency, the English language version is authoritative for all purposes.

Dr. Raffi Gregorian
Supervisor of Brcko District
Principal Deputy High Representative