

Supervisory Order Appointing Ms. Ljiljana Orendi as Member of the Brcko District Election Commission and Also Fining the Councilors of the Brcko District Assembly

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 the Dispute over the Inter-Entity Boundary in Brcko Area ("the Brcko Tribunal");

Noting in particular the powers of the Supervisor provided for in Paragraph 24 of the Supplemental Award of the Brcko Tribunal dated March 15, 1998, that paragraph reading in relevant part that "The Supervisor ... shall enjoy in the Brcko area powers equivalent to those conferred upon the High Representative by the Bonn Conference of December 1997, including the power to remove from office any public official considered by the Supervisor to be inadequately cooperative with his efforts to achieve compliance with the Dayton Accords, to strengthen democratic institutions in the area, and to revitalize the local economy"; and noting Paragraph XI.2 of the Conclusions of the Bonn Peace Implementation Conference held on December 9 and 10, 1997, providing that the High Representative (and therefore, pursuant to paragraph 24 of the Supplemental Award, the Supervisor) may issue "binding decisions, as he judges necessary ... [which] may include actions against persons holding public office";

Noting further the powers of the Supervisor provided for in Paragraph 9 of the Annex to the Final Award of August 18, 1999, that paragraph reading in its relevant part that "For all subsequent District elections the electoral rules ... established in the District Statute shall conform (to the extent deemed appropriate by the Supervisor) to the relevant laws and regulations governing elections, and the supervision of such subsequent elections shall be as determined by the Supervisor";

With reference to the Election Law of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, Nos. 23/01, 7/02, 9/02, 20/02, 25/02, 4/04, 20/04, 25/05, 52/05, 65/05, 77/05, 11/06, 24/06, 32/07 and 33/08) and the Election Law of Brcko District of Bosnia and Herzegovina (Official Gazette of Brcko District of Bosnia and Herzegovina, No. 17/08) (hereinafter: "Election Law of Brcko District") regulating the procedure of selection and composition of the Brcko District Election Commission;

Recalling my Supervisory Order of July 18, 2008 on the Brcko District Election Commission and Also Mandating the Brcko District Assembly to Appoint New Members of the Brcko District Election Commission explicitly noting that both the election laws of Bosnia and Herzegovina and of Brcko District, and the Decision on Criteria for Determining Number of Members of an Election Commission, enacted by the Central Election Commission on May 8, 2008, require that the Brcko District Election Commission be extended by two members to a total of seven members;

Reminding that the continued delay in resolving the employment status of members of the Brcko District Election Commission and in appointing the new members had already forced me to intervene in this process through my Supervisory Order of July 18, 2008 and my letter of August 20, 2008, in which I instructed the Brcko District Assembly Councilors to appoint two new members of the Brcko District Election Commission no later than August 31, 2008;

Acknowledging the efforts of the Brcko District Assembly Mandate and Immunity Commission in interviewing the candidates applying for positions of members of the Brcko District Election Commission, and noting that the above mentioned Commission provided to the Brcko District Assembly a sufficient number of fully qualified candidates from which to choose and appoint two new members of the Brcko District Election Commission who could represent the composition of the population of Brcko District in line with Brcko District Statute and the Constitution of Bosnia and Herzegovina which defines Bosnia and Herzegovina in its preamble as a state comprising "Bosniacs, Croats, and Serbs (...) as constituent peoples along with Others";

Regretting that since the refusal of the Central Election Commission of Bosnia and Herzegovina to consent to the appointment of the proposed members of the Brcko District Election Commission in June 2007, the Councilors of the Brcko District Assembly have manifestly failed to comply with the laws, decisions of the Central Election Commission of Bosnia and Herzegovina, my Supervisory Order of July 18, 2008, and my letter of August 20, 2008;

Notwithstanding my Supervisory Order of July 18, 2008, and despite holding two regular sessions and two extraordinary sessions, the Brcko District Assembly, at the great expense of District taxpayers, could only agree to appoint one member of the Brcko District Election Commission and, contrary to the Law, my Supervisory Order of July 18, 2008, and my letter of August 20, 2008, collectively decided without any dissenting vote to restart the selection process for the second candidate, thereby putting at risk the integrity of the entire election process and the legal composition of the Brcko District Election Commission;

Believing that the highest standards of behavior by all public officials in the District, including but not limited to Brcko District Councilors, are expected to provide the highest standards of service to District residents, and to maintain public confidence and political stability in the District;

Having concluded that by their actions the Councilors of the Brcko District Assembly demonstrated a shameful disregard for the Brcko District Statute, Brcko District Law, and my Orders, as well as for the integrity of the election process and for the District's taxpayers, whose hard-earned money was wasted by holding four Assembly sessions which ended with an unlawful act;

Seized of the need to make up for the failure of the Councilors and resolve the issue of appointment to the Brcko District Election Commission in a manner that permits the proper and lawful conduct of District elections on October 5, 2008;

Mindful of the responsibility of the Brcko District Election Commission in preparing and conducting the organization of the election process and believing that only by participating in the coming election, the two additional members will acquire the relevant experience to ensure the minimum continuity of the future Brcko District Election Commission;

Noting that Ms. Ljiljana Orendi, who applied for the position of member of the Brcko District Election Commission, meets the stated requirements and successfully passed the selection process conducted by the Brcko District Assembly Mandate and Immunity Commission, and ranked third on the final list of successful interviewed candidates and first in the capacity of Others;

Having therefore decided to resolve the issue by way of a Supervisory Order with the aim of enabling the Brcko District Election Commission to properly prepare and conduct the upcoming elections in its full composition;

Not prepared that, in a democratic society governed by rule of law, residents and institutions of Brcko District suffer any damage caused by a willful failure to fulfill the requirements of the Law;

Having therefore further decided that it is necessary to hold the Councilors of the Brcko District Assembly accountable for their actions;

I hereby order that:

Appointment of the seventh member of the Brcko District Election Commission

1. Ms. Ljiljana Orendi is hereby appointed as a member of the Brcko District Election Commission.
2. This appointment is effective from the date of this Supervisory Order, as of 12 noon.
3. Ms. Ljiljana Orendi shall take up her appointment under the terms and conditions, and with all rights, duties and responsibilities as if she had been appointed in accordance with Article 2.2 of the Election Law of Brcko District. All prevailing laws and regulations applicable to members of the Brcko District Election Commission shall apply to Ms. Ljiljana Orendi during the term of her appointment.

Fine for misconduct

4. Each currently serving Councilor of the Brcko District Assembly is hereby fined a total amount of 800 (eight hundred) BAM net of tax and other deductions, the amount reflecting the approximate financial harm caused to the District by their actions.
5. The Brcko District Finance Directorate shall deduct the amount in Paragraph 4 above from each Councilor's remunerations due for September 2008.
6. The provisions of the Paragraphs 4, 5 and 7 of this Supervisor Order do not affect the remuneration of any Councilor who on a regular and recurring basis provides a minimum of 800 BAM of his or her remuneration to a charity fund. Any Councilor who meets this criterion shall, upon providing verified information, evidences or statements of the charity fund or recipients to the OHR Brcko Final Award Office within the next eight (8) days of the issuance of this Order, shall be exempted from the fine set forth in paragraph 4 of this Order.
7. The amount equaling the sum of all deductions shall be transferred to Department of Health, Subdivision for Social Protection, for purchase of equipment for the sole benefit of the Day Care Centre for Persons with Special Needs of Brcko District.
8. The Department of Health shall regularly report to the Supervisor of Brcko on the use and expenses of the money transferred for the purpose of this Order.
9. In addition, currently serving Councilors of Brcko are to be prohibited to use any money from the Assembly hospitality or representation funds, i.e., funds for gifts, meals, drinks or any other type of representation expenses until the end of the current mandate.
10. Notwithstanding the fine imposed upon the members of the Brcko District Assembly by paragraphs 4 and 5 of this Order, Councilors shall continue to diligently fulfill the entirety of their duties as members of the Brcko District Assembly. Should any of the Brcko District Assembly Councilors fined by the way of this Order, in any way, default on their continuing obligations under this paragraph, the President of the Brcko District Assembly shall inform me in writing whereupon further action may be taken.

Final provisions

11. This Supervisory Order has immediate effect without further procedural steps.
12. For the avoidance of doubt, the provisions of this Order supersede all inconsistent legislation and legal acts to the extent necessary to give this Order full effect.
13. 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 undertake all necessary measures to ensure its full and faithful implementation. Any person who fails to do everything necessary to this end shall be held personally responsible for that failure.
14. This Supervisory Order is published in both English and the official languages of Bosnia and Herzegovina. In the event of inconsistency, the English language version is authoritative for all purposes.

Dr. Raffi Gregorian

Supervisor of Brcko District

Principal Deputy High Representative