

Supervisory Order Protecting Freedom of Religion with Respect to the Conduct of Religious Education and the Employment Status of Teachers of Religion in Brcko District Public Schools

In accordance with the powers vested in me by paragraphs 8, 10, 11, 13, 36 and 37 of the Final Award of March 5, 1999, and paragraph 11 of the August 19, 1999 Annex to the Final Award of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brcko area;

Recalling that Article II, paragraph (3) (g) of the Constitution of Bosnia and Herzegovina, which is Annex 4 of the General Framework Agreement for Peace, establishes freedom of thought, conscience and religion as Fundamental Rights and establishes no official religion or religions of Bosnia and Herzegovina, which is officially a secular state comprised of three Constituent Peoples and Others;

Concerned that a tendency has emerged in Bosnia and Herzegovina generally, and in Brcko District specifically, whereby the offering of religious instruction classes as a voluntary subject in public schools has, for a variety of reasons, increasingly taken on the character of an obligatory subject, as noted by the near one hundred percent attendance rate in such voluntary classes in Brcko District;

Further concerned that, by providing taxpayer funds and making available free-of-charge District public school premises for the purposes of religious instruction for only certain religious communities, the current arrangements for voluntary religious instruction in fact has the effect of imparting to those certain religious communities characteristics of official religions to the exclusion and detriment of other religious communities or non-believers, in a manner that may be discriminatory and thus subject to legal and constitutional challenges and call into question freedom of religion and conscience in Brcko District;

Additionally concerned that existing arrangements for voluntary religious instruction have the potential to create a financial and political dependency relationship between government and certain religious communities that could then lead to eventual subjugation of one to the other, to the ultimate detriment of both;

Alarmed by credible reports from other school systems in Bosnia and Herzegovina that pupils' choices as to participation in voluntary religious instruction classes has, in terms of enrollment in secondary schools and inclusion of marks in grade point averages of students, become a basis for discrimination against those who do not participate in such classes;

Resolved of the need to prevent such discriminatory practices from being established in Brcko District;

Grateful that the representatives of the three major religious communities in Brcko District have brought to my attention the need to better define the status of religious instructors and education in the District's public schools, and that such definition should lead to improvements in the provision of voluntary religious instruction;

Confident that religious communities and teachers of religion in Brcko District are committed to promoting and fostering the multi-ethnic character of the District and aware of their responsibility to educate pupils to accept and respect all religions and non-believers in the spirit of tolerance and conciliation;

Acknowledging that Bosnia and Herzegovina has accepted obligations to provide for and regulate the provision of voluntary religious instruction in public schools through the Basic Agreement between Bosnia and Herzegovina and the Holy See and its Additional Protocol, and the Basic Agreement between the Serb Orthodox Church and Bosnia and Herzegovina, respectively published in the Official Gazette of Bosnia Herzegovina, Nos.10/07 and 06/08;

Of the opinion that, in the absence of an agreement with the Islamic Community in Bosnia and Herzegovina, and for the purpose of this Supervisory Order, the relevant provisions of the aforementioned Agreements should, by analogy, also apply to teachers and teaching of the Islamic religion as a voluntary subject in Brcko District;

With reference to the Framework Law on Primary and Secondary Education of Bosnia and Herzegovina published in the Official Gazette of Bosnia and Herzegovina No. 18/03 and to the Law on Education in Primary and Secondary

Schools of Brcko District of Bosnia and Herzegovina published in the Official Gazette of the Brcko District of Bosnia and Herzegovina, No. 10/08, which makes no specific provisions for teachers of religion;

With reference also to the Rights and Freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols ratified by Bosnia and Herzegovina on July 12, 2002 that shall apply directly in Bosnia and Herzegovina and have priority over all other law, as per Article II, paragraph (2) of the Constitution of Bosnia and Herzegovina;

Mindful of the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, the Declaration on the Rights of Persons belonging to National or Ethnic Religious and Linguistic Minorities as well as other human rights instruments which are sources of inspiration contained in the preamble to the Constitution of Bosnia and Herzegovina;

Further mindful of the Toledo Guiding Principles in Teaching about Religions and Beliefs in Public Schools prepared by the Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODHIR) Advisory Council of Experts on Freedom of Religion or Belief, as a source of guidance to OSCE participating States such as Bosnia and Herzegovina, in contributing to an improved understanding of the world's increasing religious diversity and the growing presence of religion in the public sphere;

With the aim to insure freedom of religion and conscience in the District; honor the agreements mentioned above in a manner consistent with the Constitution of Bosnia and Herzegovina, the Awards of the Arbitral Tribunal, the Statute of Brcko District, and relevant State and District laws; to regulate the status of teachers of religions in accordance therewith; to improve the arrangements for the provision of voluntary religious instruction in public schools so that they are as truly voluntary as possible;

Noting that on September 1, 1993, Bosnia and Herzegovina ratified the United Nations Convention on the Rights of the Child which in Article 14, paragraph (1) states that "States Parties shall respect the right of the child to freedom of thought, conscience and religion"; and that Brcko District as a multi-ethnic, democratic unit of local self-governance and as an institution of Bosnia and Herzegovina has the same obligation to maintain a posture of neutrality and cultivation of toleration and respect in relation to children that it has in relation to adults;

Underscoring that religious education is strictly voluntary and based on the free will of parents or legal guardians of pupils and that there must not be any coercion, either directly or indirectly, towards parents in exercising their free will;

Concerned by the fact that voluntary classes of religious instruction are held in the middle of regular school hours without a suitable alternative, and that this fact may unduly affect the choice of parents or legal guardians with regard to their choice about voluntary religious instruction;

Recalling that the aforementioned Agreements stipulate that religious teachers are full-fledged members of the teaching staff and should have the same status, rights and obligations as any other teacher employed within Brcko District public schools in accordance with the law, and that this also requires equal professional and educational qualification;

Noting that there is a disparity in the workload of some teachers of religion between the teaching hours set by law and pedagogical standards and norms, and teaching hours actually delivered in average by teachers of religion, and that this may necessitate an adjustment of the number of teachers of religion employed in Brcko District schools;

Having consulted with Brcko District representatives of religious communities and political leaders as well as relevant international organizations;

I therefore hereby order that:

1. Teachers of all religions with the canonical mandate of the competent religious authorities in Bosnia and Herzegovina in Brcko District public schools shall have the same status, rights and obligations as any other teacher under Brcko District laws.
2. The number of teachers of religion to be employed in Brcko District public schools for an indefinite period shall be calculated on the basis of the number of religious classes to be held

and the number of working hours set by law and pedagogical standards and norms as for all teachers.

3. In case there is no sufficient number of teachers of religion with the required university qualification, teachers who otherwise meet the requirements for employment can be considered for employment for an indefinite period if they have been employed for a minimum of three consecutive years as religious teachers in Brcko District. They shall acquire university qualification within a period of five (5) years from the day when this Supervisory Order takes effect otherwise Article 148, paragraph (3) of the Law on Education in Primary and Secondary Schools of Brcko District of Bosnia and Herzegovina shall apply.
4. Teachers of religion who hold a function as a priest or imam within their religious community and who, as a result, cannot serve as full-time teachers, shall be employed on a part-time basis.
5. Teachers of religion shall not be directors or deputy directors of public schools.
6. The Brcko District Pedagogical Institution shall consult with the religious communities to maintain and enhance pedagogical knowledge, skills, and expertise of teachers of religion.
7. There shall be no religious ceremonies in public schools, and religious symbols can be displayed only for the duration of, and in the premises used for, religious classes, except as otherwise provided by law.
8. Teaching religion in public schools shall not exceed one hour per class per week.
9. Unless and until a suitable secular subject is introduced as an elective alternative to voluntary religious instruction, the following restrictions will apply:
 - a. no marks for classes of religious instruction shall be calculated as part of a student's grade point average.
 - b. voluntary religious instruction classes shall only be offered as either the first or last period a shift or a class, and school directors shall take into consideration the preferences of both teachers and parents when determining in which period to schedule such classes.
10. By June 1st of each year, the directors of main schools shall inform in writing the parents or legal guardians of students, that religious classes will be offered during the next school term, that enrolment is voluntary, and that non-enrolment has no negative consequences for the pupils. Parents shall respond in writing, and declare their will for the next school term no later than June 30.
11. Brcko District institutions shall undertake all necessary measures to ensure implementation of this Order.
12. This Order has immediate effect without further procedural steps.
13. This Supervisory Order shall be published in the Official Gazette of the Brcko District of Bosnia and Herzegovina in both English and the official languages of Bosnia and Herzegovina. In the event of inconsistency, the English language version shall be authoritative for all purposes.

Dr. Raffi Gregorian

Supervisor of Brcko District

Principal Deputy High Representative