

Supervisory Order on the Brcko District Election Commission and Also Mandating the Brcko District Assembly to Appoint New Members of the Brcko District Election Commission

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 9 of August 19, 1999 Annex to the Final Award of the Arbitral Tribunal for Dispute Over Inter-Entity Boundary in Brcko Area;

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, 77/05, 11/06, and 24/06) and the Election Law of Brcko District of Bosnia and Herzegovina (Official Gazette of Brcko District of BiH, No. 20/03) (hereinafter: "Election Law of Brcko District") regulating the procedure of selection and composition of the Brcko District Election Commission;

Noting that the Parliamentary Assembly of Bosnia and Herzegovina on April 16, 2008, adopted the Law on Amendments to the Election Law of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, No. 33/08) amending the current rules concerning the procedure of selection and composition of the Brcko District Election Commission; and the enactment by Supervisory Order dated May 6, 2008, of the new Election Law of Brcko District (Official Gazette of Brcko District of BiH, No. 17/08);

Recalling that the mandate of the Brcko District Election Commission, being appointed in February 2002, expired in February 2007; that the Brcko District Assembly issued the Decision on Dissolution of Members of the Election Commission of Brcko District of BiH, No. 0-02-022-59/07 on May 23, 2007; and that the Brcko District Assembly appointed new members, by Decision on Appointment of Members of the Election Commission of Brcko District of BiH, No. 0-02-022-60/07, of May 23, 2007;

Recalling further that, by a decision of June 14, 2007, the Central Election Commission of Bosnia and Herzegovina (hereinafter: "the Central Election Commission") used its power under Article 2.14, paragraph 2 of the Election Law of Bosnia and Herzegovina and refused to consent to the appointment of the new members of the Brcko District Election Commission because they considered the appointment to be not in compliance with the Election Law of Bosnia and Herzegovina;

Concerned that, since then, neither the Brcko District Assembly nor the Central Election Commission appointed new members as prescribed by the law;

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;

Concerned that these two additional members have not yet been appointed;

Regretting the ongoing delay in resolving the employment status of the current members of the Brcko District Election Commission and in appointing the new members;

Mindful of the fact that the outgoing members of the Brcko District Election Commission continue to perform their legal responsibility until replaced; that such situation is in line with the general principle of continuity in the performance of public duties; and that the appointment of new members in the course of the ongoing electoral process would be disruptive of such process;

Noting that the Central Election Commission in a letter of October 24, 2007, reminded the Brcko District Election Commission of the need to carry out its professional responsibilities until such time that new members of the Brcko District Election Commission are appointed;

Acknowledging, with thanks, the professional commitment and high standards of performance of the current Brcko District Election Commission in the past, and having full confidence in their ability to carry out their duties with the same commitment and standards of performance;

Having carefully reviewed a variety of options for resolving the issue and concluded that under the circumstances the competent bodies will not be able to resolve the issue in a timely manner;

Having consulted with the Central Election Commission, the Brcko District Election Commission, the Speaker, the Deputy Speaker and the Heads of Caucuses in the Brcko District Assembly;

Having therefore decided to resolve the issue by way of a Supervisory Order with the aim of eliminating any legal uncertainty or ambiguity about the status of the Brcko District Election Commission and the proper conduct of upcoming elections.

I therefore hereby order that:

1. The Brcko District Assembly shall without delay initiate the procedure of selecting and appointing two new members of the Brcko District Election Commission in compliance with the procedures and principles stipulated by the Election Laws of Bosnia and Herzegovina and of Brcko District.
2. The Brcko District Assembly shall initiate the procedure of selecting and appointing five members of the Brcko District Election Commission in compliance with the procedures and principles stipulated by the Election Laws of Bosnia and Herzegovina and of the Brcko District, as soon as possible after the adoption by the Brcko District Assembly of the 2008 Work Report and the 2008 Financial Report of the Brcko District Election Commission, and shall finalize the appointment of the members no later than January 1, 2010.
3. The current members of the Brcko District Election Commission shall continue to perform all duties and responsibilities as members of the Brcko District Election Commission, until such time that the Brcko District Assembly appoints the new members pursuant to Paragraph 2 of this Order.
4. Brcko District institutions shall undertake all necessary measures to ensure implementation of this Order.
5. This Order has immediate effect without further procedural steps.
6. 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