

Interim Supervisory Order Temporarily Suspending Court Proceedings to evict Pavlovic International Bank from premises in Brcko Town

In accordance with paragraphs 8, 13 and 37 of the Brcko Final Award of March 5, 1999 of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in the Brcko area, that vest within the Brcko Supervisor powers to pursue the mandate prescribed by the Final Award;

Recalling that in a decision dated April 1, 2006 ("the Decision"), the Constitutional Court of Bosnia and Herzegovina, in case AP 214/03 ("the Case"), between Privredna Banka d.d. Sarajevo ("Privredna") as plaintiff, and Pavlovic International Bank Slobomir A.D. Bijeljina ("Pavlovic") and Brcko District as defendants, made an order, the effect of which was to partially annul a contract dated October 24, 2003 ("the Contract") for the purchase by Pavlovic from Brcko District of publicly owned bank premises located in Brcko Town at Kantardzica 2 ("the Property"); to award title to the Property to Privredna; and to require the eviction of Pavlovic from the Property;

Concerned that there was a failure of due process in reaching the Decision, in that no party to the proceedings in their current form had appealed to the Constitutional Court before it issued the Decision; the appellate process in the lower courts was ongoing and unconcluded at the time the Decision was issued; no party to the case had an opportunity to make representations of any kind (oral, in writing or otherwise) to the Constitutional Court before it issued the Decision; and apparently no party to the Case was previously aware that the Decision was to be issued;

Further concerned that the decision contains no reasoning explaining why the Contract should be annulled, why Pavlovic does not have legitimate title to the Property, or why Privredna should have title to the Property;

Mindful that the Contract was expressly approved by the then Brcko Supervisor Henry L. Clarke pursuant to paragraph 12 of the August 18, 1999 Annex to the Final Award, and that under both the aforementioned paragraph 12 and under the terms of the BiH Framework Law on Privatization of Banks and Other Enterprises ("the Framework Law"), enacted by a decision of the then High Representative Carlos Westendorp on July 22, 1998, it is clear that Privredna has no claim to the Property;

Further mindful that a letter from the then President of the Constitutional Court, Mato Tadic, to me, dated June 11, 2006, reads *inter alia* as follows: "... the Constitutional Court reminds that Pavlovic Bank was not a party to the proceeding before the Constitutional Court in this case, there was no dispute over privatization, and the property of Pavlovic Bank was not the subject of deliberation. Therefore, the Constitutional Court did not consider the property rights of Pavlovic Bank in the course of making a decision ...";

It being apparent that the foregoing reveals serious confusion, in that the then President of the Constitutional Court appears to believe that the case does not concern or affect Pavlovic, whereas it is clear from the text of the Decision that it compels deprivation of Pavlovic of its title to the Property and eviction of Pavlovic from the Property; and the Brcko District courts, in the procedure for enforcing the Decision with which they are currently seized, are interpreting the Decision to require deprivation of Pavlovic of its title to the Property, and eviction of Pavlovic from the Property;

Believing that in light of this confusion and the failures of due process previously cited, the Decision fully merits reconsideration by the Constitutional Court after receiving full submissions from all parties to the Case; and Pavlovic and Brcko District have submitted requests for revision of the Decision to the Constitutional Court ("the Revision Requests"), filed with the Constitutional Court on June 19, 2006 and July 12, 2006 respectively, pursuant to the rules of the Constitutional Court;

Aware that in the Revision Requests, Pavlovic and Brcko District have sought extensions of the deadline for enforcement of the Decision until such time as the Constitutional Court makes rulings on the Revision Requests; but so far the Constitutional Court has not responded to these requests;

Further aware that the physical eviction of Pavlovic from the Property, by Court bailiffs, has now been scheduled by the Basic Court of Brcko District for September 1, 2006 at 11:00am;

Concerned that if the eviction goes ahead as currently scheduled, it will cause great and irreparable harm to Pavlovic and to its customers; whereas a delay in enforcing the Decision, pending final resolution of the Revision Requests by the Constitutional Court, will not cause significant or irremediable harm to Privredna;

Mindful of the importance of the Case to the investment climate and economic stability of Brcko District and of Bosnia and Herzegovina as a whole, as the effect of the Decision is to undermine one of the cardinal principles of post-war privatization, established in the Final Award and the Framework Law, that the right of privatization of public property resides with the Entity or District Government of the territory where the property is located, and the Decision therefore threatens to set a precedent for unwinding post-war privatizations throughout Bosnia and Herzegovina;

Believing that it is therefore prudent, fair and just that the eviction of Pavlovic be suspended until the Constitutional Court has finally ruled on the Revision Requests;

I hereby order that:

1. No institution or any public official of Brcko District shall take any steps to execute or enforce any decision, judgment or other order of any court in case AP 214/03, between Privredna Banka d.d. Sarajevoas plaintiff, and Pavlovic International Bank Slobomir A.D. Bijeljina and Brcko District as defendants, until such time as the Constitutional Court has considered and finally ruled upon the Revision Requests.
2. This Supervisory Order has immediate effect and shall be published without delay in the Official Gazette of the Brcko District. All institutions of Brcko District shall be responsible for its implementation, but the courts of Brcko District shall have primary responsibility to implement it and shall issue all necessary decisions and orders to ensure that it is observed.

Susan R. Johnson
Supervisor of Brcko
Deputy High Representative