



Emerika Bluma 1, 71000 Sarajevo
Tel. 28 35 00 Fax. 28 35 01

Department for Legal Affairs



SUPERVISORY ORDER AMENDING THE STATUTE OF THE BRCKO DISTRICT OF BOSNIA AND HERZEGOVINA

**“Official Gazette of the Brcko District of Bosnia and
Herzegovina”, 17/08**

Supervisory Order amending the Statute of Brcko District

May 6, 2008

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 of the Arbitral Tribunal for the Dispute over the Inter-Entity Boundary in the Brcko Area;

Recalling that the Statute of Brcko District was enacted by Supervisory Order dated March 8, 2000, and reflected a plan for the organization of District institutions that has since then been developed by successive Supervisors and Mayors;

Further recalling that since then, the Statute has been amended by Supervisory Orders dated August 23, 2000, March 26, 2004, July 15, 2005 and September 12, 2005, and by Assembly decision dated July 7, 2005;

Noting that the Statute currently in force is now out of date in a number of ways, in that it does not reflect several recent changes to the District administration, including amongst others the following:

- (a) Customs and border administration at the Brcko-Gunja frontier, previously a responsibility of the District, are now undertaken by other State bodies;
- (b) certain functions relating to the District judiciary are no longer exercised by the Brcko District Judicial Commission, and are instead undertaken by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina;
- (c) there has been significant restructuring and reform of public administration, to which all of the following have contributed:
 - (i) the District Government has recently adopted recommendations for public administration reform made by the consulting firm "Oskar Zagreb";
 - (ii) reforms were mandated by Supervisory Orders dated July 7, 2006 (restructuring the District Revenue Agency) and August 16, 2006 (restructuring the Department of Urbanism, Real Estate Affairs and Economic Development); and
 - (iii) three laws, on Civil Service in Administrative Bodies, the Public Attorney's Office, and Public Property, were enacted by Supervisory Orders dated September 15, 2006;

and as a result of these reforms a number of new District public institutions have been or are being created;

- (d) the restriction on retroactive laws, contained in Article 40 of the Statute as it is currently formulated, is too broad, and is hindering some important legislative initiatives;

Further noting that it is important to make changes to the way the District Government functions, so that in future it will make its decisions collectively and with a broader consensus than has hitherto been the case;

Of the opinion that the Statute must therefore be updated, but noting that under Article 34(2) of the Statute, a three-fourths majority of Councilors must approve any change to it; and noting that, due to the complex and extensive nature of the changes necessary, it is unlikely that this majority can be achieved within the remaining time during which Brcko District will be subject to Supervision;

Further of the opinion that some of the changes necessary to the Statute of Brcko District cannot be made by the Assembly, and must be made by the Supervisor, because Article 1(5) of the Statute as it is currently formulated prohibits changes to Article 1 of the Statute;

Having offered to enact changes to the Statute by way of Supervisory Order, in a letter to the Mayor and the President of the Assembly dated December 11, 2006, and having received positive responses to that offer;

Having therefore decided to make the necessary amendments to the Statute by way of Supervisory Order, and believing this course to be appropriate and necessary to create the conditions required for the orderly termination of Supervision, and efficient functioning of the District's institutions after Supervision has terminated;

Having consulted with the Mayor and the Deputy Mayor, and Assembly members representing all three constituent peoples, and members of the Brcko District Judicial Commission, and having carefully considered all comments and proposals received as a result, and having received broad support for the making of this Order and for the enactment of the changes to the Statute contained in the Annex to this Order;

Reserving the right to make further changes to the Statute should that prove necessary or conducive to the efficient functioning of District institutions;

I therefore order that:

1. The Statute of Brcko District is hereby amended, so that the Statute of Brcko District now reads as it appears in the Annex to this Supervisory Order. These amendments to the Statute take effect on the date of this Supervisory Order.
2. Every institution and every public official of Brcko District shall observe the provisions of the amended Statute with effect from the date of this Supervisory Order.
3. The Mayor shall, no later than February 9, 2007, appoint working groups to prepare laws amending (a) the Law on Executive Authority of Brcko District, (b) the Law on Members of Government of Brcko District, (c) the Law on Public

- Administration of Brcko District, (d) the Law on Public Property of Brcko District, and (e) other laws as I may in my discretion subsequently direct.
4. The District Judicial Commission shall immediately start preparing laws amending (a) the Law on Courts of Brcko District, (b) the Law on Prosecutor's Office of Brcko District, (c) the Law on Judicial Commission of Brcko District, and (d) other laws as I may in my discretion subsequently direct.
 5. The Mayor shall, no later than February 9, 2007, appoint a working group to prepare a law regulating the operation of the District Finance Directorate.
 6. The Mayor shall, no later than February 9, 2007, appoint working groups to prepare such amendments to by-laws as may be necessary to harmonize them with the amendments to laws set out in paragraph 3 above.
 7. The aforementioned laws and amendments to laws and by-laws referred to in paragraphs 3, 4, 5 and 6 above shall be consistent with the revised Statute and shall also make further changes to the operation of the District Government as I may subsequently require. In particular, the laws regulating the operation of the District Government shall incorporate the following rules on the way the Mayor and the Government make decisions:
 - (a) The annual budget of Brcko District and any amendments thereto shall, before being forwarded by the Mayor to the Assembly, be voted on by the members of the District Government (as defined in Article 45 (1) of the District Statute as amended by this Order) at a scheduled session of the Government, and approved by not less than a simple majority of the members of the Government, including the affirmative votes of all of the following people: the Mayor, the Deputy Mayor, and the heads of the Administrative Support, Education, Health, and Public Works departments.
 - (b) Draft laws in the fields of education, religion, language and culture shall, before being forwarded by the Mayor to the Assembly, be voted on by the members of the District Government (as defined in Article 45 (1) of the District Statute as amended by this Order) at a scheduled session of the Government, and approved by not less than a simple majority of the members of the Government, including the affirmative votes of all of the following people: the Mayor, the Deputy Mayor, and the heads of the Administrative Support, Education, Economic Development, Spatial Planning and Property Affairs, and DEPRET departments.
 - (c) The Mayor shall be responsible, unless this responsibility is delegated by the Mayor to the Deputy Mayor, for issuing decisions to dispose of public property. Such decisions shall be issued only upon the recommendations of the Director of the Office for Public Property. Any such decision shall be signed within fifteen (15) days of it being presented to the Mayor. The Mayor may refuse to sign such a decision only if, within that time scale, he or she issues a written decision that the transaction ought not to be completed for one or more specified reasons stated in legislation. If this has not happened by the expiry of the fifteen (15) day time limit, the decision in question shall thereafter be immediately signed by the Director of the Office for Public Property, and shall thereupon enter into force. Pending adoption of the laws and amendments to laws and by-laws effecting these rules, the rules set out in sub-paragraphs (a), (b) and (c) of this paragraph 7 of this

- Supervisory Order shall take effect immediately and shall be observed by all relevant District institutions with effect from the date of this Supervisory Order. During this interim period, in the event of any ambiguity or uncertainty about how these rules are to be interpreted, any interpretation given by me in writing shall prevail.
8. The Government Legal Service, the working groups referred to in paragraphs 3, 5 and 6 above, the District Judicial Commission, and all other public officials whose assistance is sought, shall fully cooperate with all members of the Legal Section of the Brcko Final Award Office upon request in finalizing these laws. The Mayor and the District Judicial Commission shall provide my office with these laws, by-laws and amendments thereto, referred to in paragraphs 3, 4, 5, 6 and 7 above, for my approval no later than May 1, 2007, whereupon I shall enact those laws as laws of Brcko District by further Supervisory Order.
 9. This Supervisory Order has immediate effect and shall be published without delay in the Official Gazette of the Brcko District of Bosnia and Herzegovina. All public officials in the District shall take all necessary measures to ensure that it is executed in full and on time.
 10. 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.
 11. The Statute hereby enacted and attached to this Supervisory Order as its Annex is published in English and the official languages of Bosnia and Herzegovina. In the event of inconsistency:
 - (a) the English language version is authoritative for all purposes while Supervision continues in the District;
 - (b) the version in the official languages of Bosnia and Herzegovina is authoritative for all purposes after Supervision has terminated.

Raffi Gregorian
Supervisor of Brcko
Deputy High Representative

CHANGES AND AMENDMENTS TO THE STATUTE OF THE BRCKO DISTRICT OF BOSNIA AND HERZEGOVINA

Article 1

In Article 4, the title of Article is changed to reads as follows: “Seal and Oath/Affirmation”.

In Paragraph 2 of the same Article, the word: “affirmation” was added.

In Article 4, Paragraph 2, the sixth line, after the word: “Government” shall be added a comma and brackets shall be deleted.

Article 2

In Article 6, Paragraph 2, the word: “Government” shall be replaced by the word: “institutions”.

Article 3

In Article 8, Paragraph 2, in the first and the second line, the word: “public” shall be deleted. In the same Paragraph the following sentence shall be deleted: “However, this provision shall not prohibit the establishment of *ad hoc* committees, or sub-units within any District institution, where those committees or sub-units are provided for in District legislation.”

Article 4

In Article 9, Paragraph 3, after the word “Government” shall be added a comma, and the brackets shall be deleted.

Article 5

In Article 20, Paragraph 4, in the last line, the full stop shall be replaced by comma, and the following sentence shall be added: “as well as directors, members of managerial bodies and employees of any other District institutions established by the Law.”

Article 6

In Article 21, Paragraph 1, after the words: “the Heads of the District Government Departments”, the words: “the Government Chief Coordinator” shall be added.

Article 7

In Article 23, Paragraph 1 shall be amended to reads as follows: “(1) The Assembly is composed of thirty-one (31) Councilors, out of which two (2) Councilors represent national minorities in the District.”¹

Article 8

In the titles of Articles 28 and 29 the words: “President and Vice-President” shall be replaced with words: “Speaker and Deputy Speaker”. Accordingly, the words: “President” and “Vice-President”, wherever they appear in the context of the Assembly, shall be replaced throughout the Law with the words” “Speaker” and “Deputy Speaker” in the appropriate grammatical cases (in the local language).

Article 9

In Article 29, Paragraph 1 and 2, after the words: “total number of” shall be added the word: “elected”.

Article 10

In Article 30, in the second line, after the words: “Article 33”, the number (1) shall be replaced by the number (2).

Article 11

In Article 32, Paragraph 1, after the words: “total number of” shall be added the word: “elected”.

Article 12

In Article 33, Paragraph 1, the words: “present and voting” shall be added after the word: “Councilors”.

In the same Article, Paragraph 1, item d. after the word: “Assembly”, the sentence: “subject to the provisions of Articles 29 and 57 of this Statute, which override this Article 33 when they apply” shall be replaced by the following sentence: “in accordance with the Statute and the law, with the exception of Articles 29 and 57 of this Statute.”

In Paragraph 1, item f. shall be amended to reads as follows: “f. the Assembly’s veto of the appointment or removal of officials in accordance with the Statute and the law, with the exception of Articles 46(3) and 47(1) of this Statute”.

¹ In Article 23, Paragraph 2 and Article 24, Paragraph 2, the word: “President” from the Statute, in the Changes and Amendments to the Statute of the Brcko District of Bosnia and Herzegovina was replaced by the word: “Speaker”.

In Paragraph 1, item g. shall be deleted.² Items h. and i. shall become the items g. and h. The new Paragraph (2) shall be added to read as follows:

“(2) The Assembly shall make decisions by a three-fifths majority of the total number of elected Councilors when the decision in question concerns:

- a. the removal from office of the Speaker or Deputy Speaker of the Assembly in accordance with Article 30 of this Statute;
- b. the removal from office of the Mayor in accordance with Article 59(1) of this Statute;
- c. the Assembly’s veto of the Mayor’s appointment or dismissal of the Deputy Mayor, the Government Chief Coordinator, or Heads of Departments in accordance with Article 47(1) of this Statute;
- d. the Assembly’s veto of the appointment of the Mayor’s advisers in accordance with Article 46(3) of this Statute.”

The previous Paragraph (2) shall become the Paragraph (3). In the current Paragraph 3, after the words: “total number of” shall be added the word: “elected”.

Article 13

After Article 33, a new Article 33a shall be added to reads as follows:

“Article 33 a Prevention of Outvoting

(1) In addition to the required majority prescribed by this Statute, the affirmative votes of at least one-third of Councilors from each constituent people present and voting is required for the Assembly’s decisions related to:

- a. Adoption and amendments to this Statute;
- b. Adoption and amendments to the Rules of Procedure of the Assembly;
- c. Adoption and amendments to Laws or decisions proposed by Councilors on issues that would otherwise be subject to affirmative voting in the Government in accordance with Article 53(2) of this Statute;
- d. Adoption of amendments proposed by Councilors between the two readings of laws or decisions that have been subject to affirmative voting in the Government in accordance with Article 53(2) of this Statute;
- e. Adoption and amendments to District legislation governing the work of the District Government in the part regulating affirmative votes of the members of the District Government pursuant to the Article 53(2) of this Statute;
- f. Decisions taken pursuant to Article 33(1)(d), (e), (f) and (g);
- g. Decisions taken pursuant to Article 33(2)(a) and (b);

² Article 33, Paragraph 1, item g. decisions to dismiss members of the Steering Boards of public companies in accordance with Article 61(1) of this Statute

- h. National holidays and monuments;
- i. Agreements pursuant to Article 9 of this Statute.

(2) The minimum of one-third of affirmative votes required in accordance with Paragraph (1) of this Article in any case shall not be more than three (3) votes.

(3) In case that, for justified reasons, there are no more than two (2) Councilors from one of the constituent people at the Assembly Session at the time of taking a decision on issues from Paragraph (1) of this Article, the discussion and voting on the decision in question will be postponed until at least three (3) Councilors from the constituent people in question are present at the Assembly Session. For such situations, detailed procedures shall be regulated in the Rules of Procedure of the Assembly.

(4) In case that three (3) to five (5) Councilors from one of the constituent people are present at the Assembly Session, one affirmative vote shall be considered as one-third of affirmative votes required in accordance with Paragraph (1) of this Article.

(5) In case that six (6) to eight (8) Councilors from one of the constituent people are present at the Assembly Session, two affirmative votes shall be considered as one-third of affirmative votes required in accordance with Paragraph (1) of this Article.

(6) Abstentions shall be taken into account in establishing the quorum, but shall not be taken into account either in establishing the majority or be counted in the overall amount of votes for adoption of Assembly decisions in accordance with Paragraph (1) of this Article.”

Article 13

In Article 36, Paragraph 2, in the first line, the full stop shall be deleted and replaced by a comma and the following text shall be inserted: “in accordance with Article 53, Paragraphs (1) and (2)”.

In the same Paragraph the second and third line shall be deleted. (“District legislation shall make further provision for the way those meetings are convened and conducted, including quorum and the necessary majorities necessary to approve different kinds of legislation. However, in no case may the Mayor propose a law unless a simple majority of the members of the District Government have voted in favor of it”).

Article 14

In Article 37, after Paragraph 2 a new Paragraph 3 shall be added: “(3) In exceptional circumstances, the Assembly may adopt laws by way of one or more special procedures as regulated in the Rules of Procedure”.

Article 15

In Article 41, Paragraph 4, in items (a), (b) and (h) the word: “Government” shall be deleted. In item (d) the word: “public” shall be deleted.

Article 16

In Article 42 the words: “Neither the District Government nor any part of any agency thereof” shall be replaced by the words: “District institutions”.

Article 17

In Article 44, Paragraph 5, the words: “Assembly, or an officer or commission selected by the Assembly” shall be replaced by the words: “Auditor General”.

In the same Paragraph after the word: “legislation” the words: “and the Rules of Procedure of the Assembly” shall be deleted. The full stop shall be replaced by a comma, and after the word: “Statute”, the words: “shall be complied with for all such appointments” shall be deleted.

Article 18

In Article 45, Paragraph 2, in item (d), the word: “and” shall be deleted. In item (e) the full stop shall be replaced by the semicolon and the word: “and”, and a new item (f) shall be added to reads as follows: “(f) other administrative bodies when provided so in the law”.

Article 19

In Article 46, Paragraph 2, after the words: “District Government”, the word: “departments” shall be added.

In Paragraph 3, in the third line, the word: “resolution” shall be replaced by the word: “decision”. In the fourth line after the words: “number of”, the word: “elected” shall be added. In the fifth line the word: “District” shall be replaced by the word: “public”.

Article 20

In Article 47, Paragraph 1, in the fourth line, the word: “resolution” shall be replaced by the word: “decision”. After the words: “total number of” the word: “elected” shall be added.

Article 21

In Article 50, Paragraph 2, the last line shall reads as follows: “Staffing, functions and operation of the Office shall be regulated by law”.³

³ Previously: “District law shall make provision for its staffing, functions and operation”.

Article 22

In Article 51, the title shall be amended to reads as follows: “**Performance of District Institutions**”.⁴

The first Paragraph shall be amended to reads as follows: “(1) Every official and public employee of any District institution is expected to perform their functions with diligence and dedication on behalf of all people of the District. In the delivery of services and performance of their tasks, any official and public employee of any District institution shall endeavor to perform at the highest levels of achievement, including efficiency, accessibility, accountability, quality of work, use of technologically advanced methods and responsiveness to public concerns within budgetary limitations”.⁵

In the same Article, Paragraph 2, the word: “District” shall be replaced by the word: “official”. The word: “public” shall be added after the word: “and”.

Article 23

In Article 52, the title shall be amended to reads as follows: “**Responsibilities of the Mayor**”.⁶

In Article 52, Paragraph 4, the words: “District Government and” shall be replaced by the words: “in the public administration”.

In Paragraph 7, after the word: “Statute” in the last line, the semicolon shall be replaced by the full stop and the rest of the text shall be deleted.⁷

Article 24

Article 53 shall be amended to reads as follows:

⁴ Previously: “Performance of the District Government”.

⁵ Previously: “(1) Every District Office and Department, and every District official and employee, is expected to perform their functions with diligence and dedication on behalf of all people of the District. In the delivery of District services and performance of its tasks, the District Government shall endeavor to perform at the highest levels of achievement, including efficiency, accessibility, accountability, quality of work, use of technologically advanced methods and responsiveness to public concerns within budgetary limitations”.

⁶ Previously: “Responsibilities of the Heads of Departments”.

⁷ Previously: “;and if so, the legislation shall provide for the necessary quorum and majority for such votes.

“Article 53⁸
Responsibilities of the Government and Affirmative Votes

(1) The District Government shall meet at least once a week at a regularly scheduled session. The members of the District Government shall discuss all the responsibilities of the District Government and decisions shall be enacted by voting with a simple or qualified majority of present members of the District Government.

(2) District legislation shall regulate qualified majority and affirmative votes by specific members of the District Government required for taking decisions on:

- a) the annual budget and amendments thereto;
- b) spatial planning documents and changes thereto; and
- c) draft laws and amendments to laws in the fields of education, religion, language and culture.

(3) Adoption or amendments to regulations governing the affirmative votes by specific members of the District Government, as prescribed in Paragraph (2) of this Article, shall be subject to voting pursuant to Article 33a of this Statute.

(4) The Heads of Departments shall have executive authorities provided for in District legislation.”

Article 25

In Article 54, Paragraph 1, in the last line, the full stop shall be replaced by a comma and a new sentence shall be added to read as follows: “, except otherwise provided for in District legislation”.

Article 26

In Article 57, Paragraphs 2 and 3, after the words: “total number of”, the word: “elected” shall be added.

⁸ Previously:

“Article 53
Responsibilities of the Heads of Departments

(1) The District Government shall meet at least once a week at a regularly scheduled session. The members of the District Government shall discuss all the responsibilities of the District Government and decisions shall be enacted by voting with a simple majority of present members of the District Government. District legislation may provide that certain decisions shall be enacted only upon a qualified majority further defined in District legislation.

(2) The Heads of Departments shall have executive authorities provided for in District legislation.”

Article 27

In Article 59, Paragraph 1 shall be amended to read as follows: “(1) The Mayor may resign or be removed from office before the expiration of his or her term in accordance with Article 33(2) of this Statute. The Mayor may be removed by the Assembly only for cause, following a motion of at least five (5) Councilors”.

Article 28

In Article 71, the words: “District Courts” shall be deleted and the words: “the Legal Aid Agency” shall be added.

Article 29

In Article 72, Paragraph 2 and 3, after the word: “Prosecutor” the words: “Legal Aid Agency attorneys” shall be added.

Article 30

In Article 73, Paragraph 2, after the word: “Prosecutors” the words: “Legal Aid Agency attorneys” shall be added.

Article 31

In Article 74 after the word: “Judges” the words: “Legal Aid Agency attorneys” shall be added.

Article 32

In Article 75 after the words: “the Legal Aid Agency”, the words: “the Judicial Commission” shall be added.