

Supervisory Order Appointing Two Members of the Brcko District Judicial Commission and Amending the Law on the Judicial Commission

In accordance with the powers vested in me in Paragraphs 8, 10, 13, 36, 37 of the Brcko Final Award of March 5, 1999, passed by the Arbitral Tribunal for Dispute over Inter-Entity Boundary in the Brcko area;

Recalling Article 5 Paragraph 2 Item 6 of the Law on the Judicial Commission of the Brcko District of Bosnia and Herzegovina ("the Law"), which provides that two members of the Brcko District Judicial Commission shall be "Two residents of high professional and moral standing to be selected by the Ombudsman of Bosnia and Herzegovina from a list of a minimum of 6 candidates proposed by the Mayor and the Assembly of the Brcko District of Bosnia and Herzegovina ..." and that Article 5 Paragraph 5 of the Law provides that "The members of the Commission mentioned in Paragraph 2, Item 6 of this Article shall be elected for a period of four years";

Noting that the mandate of the last two members of the Judicial Commission appointed pursuant to these provisions, Mira Mijatović and Armin Drapić, expired on June 30, 2005;

Further noting that, the responsible parties have failed to make the process currently enshrined in Article 5 Paragraph 2 Item 6 of the Law for appointment of public members to the Judicial Commission produce timely results, over a period of some nine months, and noting disagreement between Ombudsmen about the nationality of the candidates that they should

appoint from the lists with which they have been provided;

Believing it to be constructive for an institution of the District to appoint the public members of the Judicial Commission, to preserve local input into the composition of the body;

Welcoming the role of the Ombudsmen of Bosnia and Herzegovina in overseeing and monitoring the operation of the District Judiciary and Judicial Commission in accordance with their responsibilities provided for in law;

Concerned that the current incomplete constitution of the Brcko District Judicial Commission is holding up important duties that the Commission is charged by law with undertaking, including but not limited to drafting of laws and regulations related to the organization and operation of the courts and the Prosecutor's Office, and recommending such laws to the Assembly for adoption, pursuant to Article 12 Paragraph 1 Item 8 of the Law;

Believing amendment to Article 5 Paragraph 2 Item 6 of the Law to be necessary, to change a mechanism for appointment of Judicial Commission members that is not functioning effectively, and believing that the legal duty to appoint those members would instead be satisfactorily performed by the District Assembly after a public invitation to interested citizens to apply, provided that the Law contains adequate safeguards intended to secure the political independence of the appointees;

Desiring that the two vacancies on the Brcko District Judicial Commission, having been unfilled for far too long, be immediately filled in order that the Commission can fulfill its duties prescribed by law;

Having reviewed a list of candidates provided to me by the Assembly, and having decided that, notwithstanding the competence and expertise of the other candidates, the two

candidates most appropriate for the posts are Ms. Renata Lučić and Mr. Ešef Pamukčić;

I hereby order that:

1. The Mayor's Decision No 01-014-004844/05 of June 2, 2005, the Assembly's Decision No 0-02-022-132/05 of July 6, 2005, and the joint proposal list issued by the Assembly and the Mayor of December 21, 2005, are hereby annulled.

2. Renata Lučić and Ešef Pamukčić are hereby appointed as members of the Judicial Commission, in lieu of the candidates to be selected by the procedure contained in Article 5 Paragraph 2 Item 6 of the Law on the Brcko District Judicial Commission.

3. These appointments shall be effective from the date of this Supervisory Order and shall last until (and including) March 22, 2010.

4. The aforementioned appointees shall exercise all of the powers, duties, responsibilities and functions, and shall enjoy all the privileges (including remuneration and other emoluments of office) that they would have were they appointed pursuant to Article 5 Paragraph 2 Item 6 of the Law.

5. Article 5 Paragraph 2 Item 6 of the Law on the Brcko District Judicial Commission shall be forthwith amended to read as follows:

"Two residents of the District of high professional and moral standing, who are not in the employment of the District government nor the District Assembly nor the full-time employment of either of the District courts, and have not been members of political parties for a period of four (4) years preceding the date of their initial appointment to the Commission. These two persons shall be selected by the District Assembly, using the following procedure. Not later than one month prior to the expiry of the terms of the

incumbent appointees (or in case of departure of an incumbent from office prior to the expiry of his or her term, as soon as practicable once the departure is known of with reasonable certainty), the President of the Assembly shall issue a public invitation to apply for the position, advertised in a way likely to be widely received by members of the public. The advertisement shall state the qualifications for the position required by this Law. The Assembly shall then convene the Assembly's Mandate and Immunity Commission to interview all qualifying applicants, and that committee shall make a recommendation to the Assembly, on which the Assembly shall vote. Appointments of members of the Judicial Commission pursuant to these provisions shall not be renewable."

This Supervisory Order has immediate effect, and shall be published without delay in the Official Gazette of the Brcko District. The Government and Assembly of the Brcko District shall undertake all necessary measures to ensure its implementation.

Susan R. Johnson
Supervisor of Brcko
Deputy High Representative