

Supervisory Order on Fining Members of the Brcko District Government and Directing Measures to be taken by the Brcko District Assembly to Facilitate Adoption of a Budget for Fiscal Year 2009

In accordance with the powers vested in me by Paragraphs 8, 10, 11, 13, 36 and 37 of the Final Award, dated March 5, 1999, of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brcko Area ("the Brcko Tribunal");

Noting in particular the powers of the Supervisor provided for in Paragraph 24 of the Supplemental Award of the Brcko Tribunal dated March 15, 1998, that paragraph reading in relevant part that "The Supervisor ... shall enjoy in the Brcko area powers equivalent to those conferred upon the High Representative by the Bonn Conference of December 1997, including the power to remove from office any public official considered by the Supervisor to be inadequately cooperative with his efforts to achieve compliance with the Dayton Accords, to strengthen democratic institutions in the area, and to revitalize the local economy"; and noting paragraph XI.2 of the Conclusions of the Bonn Peace Implementation Conference held on December 9 and 10, 1997, providing that the High Representative (and therefore, pursuant to paragraph 24 of the Supplemental Award, the Supervisor) may issue "binding decisions, as he judges necessary ... [which] may include actions against persons holding public office";

Noting further provisions provided for in Paragraph 8 (b) of the Annex to Final Award of August 18, 1999 on the preparation of an annual District budget;

Emphasizing that timely adoption of the Budget is one of the Government's most important tasks and duties in order to achieve financial and political stability and continuation of economic development;

Emphasizing further that adherence to the requirements of the Statute, which include firm deadlines for adoption of the Budget, must be complied with fully in order for me to have confidence that the Statute will be observed after Supervision is ended;

Commending the work of the Brcko District Finance Directorate for preparing, and the Brcko District Government for adopting, the Framework budget for 2009 to 2011 that provided a good basis for drafting and submitting an agreeable draft budget for fiscal year 2009 in a timely manner;

Recalling that I was compelled, already in 2007, to intervene in the process of timely adoption of the budget for fiscal year 2008 by my Supervisory Order of December 4, 2007 on Temporary Suspension on Payments of Salaries and all Remunerations of the Members of Brcko District Government and Councilors of Brcko District Assembly;

Recalling further that, since January 2008, my Office has been engaged in regular consultations with the Brcko District Finance Directorate, the Brcko District Government and the Brcko District Assembly to advise them on the need for timely preparation and adoption of the budget for fiscal year 2009, and that I have received repeated assurances that the Brcko District Government would meet the deadlines stipulated by the Brcko District Statute;

Disappointed that nevertheless, and in disregard of my letter of September 18, 2008, through which I reiterated again that

the Brcko District Government had to submit the draft budget for fiscal year 2009 to the Brcko District Assembly not later than September 30, 2008, the Brcko District Government failed to adopt a draft budget for fiscal year 2009 and to submit it to the Brcko District Assembly for adoption within the deadlines stipulated by the Brcko District Statute;

Concerned that this delay in submission of the draft budget for fiscal year 2009 has incapacitated the Brcko District Assembly in scheduling the first reading and public hearings during its regular mandate, despite agreement with me by representatives of the Government and the Assembly to make sure such actions would occur before the termination of the outgoing Assembly's mandate;

Noting that Members of the Brcko District Government have a sworn obligation to execute their responsibilities and duties stemming from their respective positions with diligence and dedication and in full respect of the Brcko District Statute and law;

Nothing further that, by failing to adopt the draft budget for fiscal year 2009 on time, the Members of Brcko District Government clearly failed to perform in the public interest of Brcko District and acted in violation of the Brcko District Statute;

Having concluded that all Members of the Brcko District Government share responsibility for this failure;

Not prepared to allow that the Brcko District Government ignore provisions of the Brcko District Statute or law, to disadvantage the Brcko District Assembly in performing its legal obligations, or to call into question the financial stability of Brcko District institutions;

Insisting that the rule of law be preserved and upheld in the District;

I therefore hereby order that:

Financial penalties for misconduct

1. All Members of the Brcko District Government have their salaries, net of taxes and other deductions, and/or any other form of compensation for their work as Members of Brcko District Government, forfeited for the period from September 1, 2008 to September 30, 2008.

2. Financial penalties provided for in Paragraph 1 of this Order do not apply to regular payment of pension and health insurance contributions, taxes and compensations of material costs, incurred as the result of the exercise of their functions and paid from the budget fund for material costs.

3. Neither the Brcko District Finance Directorate nor any other Brcko District institution shall make any payment to the current Members of Brcko District Government of salary and/or other contribution as provided for in Paragraph 1 of this Order.

4. The amount equaling to the sum of all financial penalties shall be transferred to the Department of Health, Subdivision for Social Protection, for purchase of equipment for the sole benefit of the Day Care Centre of Persons with Special Needs of Brcko District.

5. The Department of Health Care shall report on a monthly basis to the Supervisor of Brcko District on the use and expenses of the money transferred for the purpose of this Order until such funds are deemed to have been fully expended.

6. Notwithstanding the financial penalties imposed upon them by Paragraph 1 of this Order, all Members of Brcko District Government shall continue to diligently fulfill their duties as Members of Brcko District Government. In particular, they shall attend all scheduled sessions of the Brcko District

Government, regular and extraordinary, and shall vote on all issues on which a vote is required. Should any of them default in any way on their continuing obligations under this paragraph, I will consider taking additional action.

Procedure for adoption of the budget

7. The Brcko District Government shall submit the draft budget for fiscal year 2009, in the version adopted at the Government session of October 4, 2008, to the Brcko District Assembly.

8. The Budget Committee of the Brcko District Assembly shall, under a technical mandate and based upon this Order, prepare, organize, determine timings and conduct public hearings on the draft budget in the local communities as determined by the Assembly Decision on Holding Public Hearings on the Draft Budget for 2008, No. 0-02-022-124/07 of October 22, 2007, during the period from October 13 to October 28, 2008.

9. Immediately after its constitution, election of Speaker, Deputy Speaker, the Mayor and the Assembly Committees, the incoming Brcko District Assembly shall schedule a regular session and commence discussions on the draft budget for fiscal year 2009 submitted by the Brcko District Government in accordance with this Order.

10. On an exceptional basis and due to circumstances mentioned above, the period for adoption of the District budget by the Brcko District Assembly is extended to December 31, 2008.

Final Provisions

11. All public officials, civil servants and employees in the Brcko District shall take all necessary measures to ensure that this Order be executed in full.

12. This Order has immediate effect without further procedural steps.

13. For the avoidance of doubt, the provisions of this Order override all inconsistent legislation and legal acts to the extent necessary to give this Order full effect.

14. This Supervisory Order shall be published without delay in the Official Gazette of the Brcko District of Bosnia and Herzegovina.

15. This Supervisory Order is published in both English and the official languages of Bosnia and Herzegovina. In the event of any inconsistency, the English language version is authoritative for all purposes.

Dr. Raffi Gregorian
Supervisor of Brcko District
Principal Deputy High Representative