# Supervisory Order on urban planning

**Supervisory Order on urban planning Annulling certain decisions made by the Appellate Commission and reinforcing certain urban approvalsa and dismissing certain officials from the District Government and mandating certain changes to District urban planning rules and imposing certain legislative amendments relating to the operation of the Appellate Commission**

***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 the Dispute over the Inter-Entity Boundary in the 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"; and noting

paragraph X.4 of the Annex to the Declaration of the Peace Implementation Council issued in Madrid on December 16, 1998, acknowledging that persons whom the High Representative (and therefore also the Supervisor) bans from public office "may also be barred from running in elections and from any other elective or appointive public office and from office within political parties until further notice";

**Emphasizing** that legal certainty is one of the most important goals in promoting the rule of law in the District, as mandated by paragraphs 4, 5 and 6 of the August 18, 1999 Annex to the Final Award;

***Further emphasizing*** that an effective, efficient, fair, impartial and simple urban planning regime is essential for promoting the continuing economic revitalization of the District, to facilitate investment in real estate projects within the District;

***Concerned*** about multiple recent complaints of corruption in the District Government's administration of urban planning, including complaints against senior District public officials, and determined to stamp out corrupt and fraudulent practices by public officials in the District;

**(1) The *Trpkovic* affair**

**Recalling** that my office, in May and June 2006, received a number of complaints from investors about the work of the Department of Urbanism, Real Estate Affairs and Economic Development ("the Department of Urbanism", the relevant legal successor to which from September 1, 2006, has been the Department for Spatial Planning and Property Affairs, pursuant to paragraph 2 of the Supervisory Order dated August 16, 2006), those complaints revealing a pattern of long delays, bureaucratic perplexities and discriminatory behavior by the District Government in its administration of urban development approvals;

**Further recalling** that, in the interests of promoting investment in and economic development of the District, my office invested significant efforts in resolving the complaints made by the dissatisfied investors, including several meetings with those investors and Government representatives, as a result of which it was agreed between my office, the Mayor, and the Department of Urbanism, that the Department of Urbanism should resolve all legal issues relating to the outstanding urban development approvals within agreed deadlines; this was confirmed and reiterated in the letter of my predecessor Supervisor Susan Johnson dated July 26, 2006;

**Further recalling** that Supervisor Johnson, in letters dated August 15, 2006 and August 28, 2006, subsequently asked the Department of Urbanism to issue urban approvals to nine investors, being Astra-Plan d.o.o. Brcko, Gas Petrol d.o.o. Brcko, the Serb Orthodox Church in the Brcko municipality, Mensura Omerbasic, Mitar Zarkic and Indira Adzic, Nevresa Djonlic, Amir Sarajlic and Zidar d.o.o. Brcko ("the Investors"); and as a result the Department of Urbanism issued urban approvals to the Investors, with dates ranging from August 17, 2006 to August 29, 2006 ("the Nine Approvals"), and some of the Investors subsequently obtained construction permits and commenced construction works;

**Noting** that as a result of an apparent application for annulment of the Nine Approvals, purportedly made by a so-called "Mr. Dimitrije Trpkovic", this application having been received by the Appellate Commission of Brcko District on January 19, 2007, the Appellate Commission issued a decision revoking all of the Nine Approvals on January 25, 2007 ("the Decision"); but this process was highly irregular, in at least the following ways:

(a) two applications were made in the name of the so-called "Mr. Trpkovic"; the first application, received by the Appellate Commission on October 16, 2006 ("the First

Application"), gave a correspondence address at which nobody by the name of Dimitrije Trpkovic is known or has ever been known, and gave no telephone number or other contact details, and the actual residents at that address know nothing of the matter at hand; the second application, received by the Appellate Commission on January 19, 2006 ("the Second Application"), gave no contact details of any kind; the name "Mr. Dimitrije Trpkovic" is not registered in CIPS (the database of BiH citizens with identity cards); it is therefore clear that Mr. Dimitrije Trpkovic is not a real person, and the First Application and the Second Application are fraudulent;

(b) neither the First Application nor the Second Application provide any explanation of what interest the so-called "Mr. Trpkovic" had in seeking annulment of the Nine Approvals, the pieces of land to which they relate being disparately located; and in fact the only thing connecting the Nine Approvals that are the subject of Mr. Trpkovic's applications are that they were the subject of Supervisor Johnson's instructions in her letters dated July 26, 2006, August 15, 2006 and August 28, 2006, leading me to conclude that these applications were lodged with the intention of deliberately derailing Supervisor Johnson's initiative to assist investors who had made complaints to her;

(c) a comparison of the content of the First Application and the Second Application makes it clear that there was collusion between the Appellate Commission and the authors of those complaints:

(i) the First Application contains detailed grounds arguing for the invalidity of the Nine Approvals; the decision of the Appellate Commission on the First Application, dated November 30, 2006, rejects the application for want of standing by Mr. Trpkovic under Article 220(1) of the Law on Administrative Procedure of Brcko District; when the decision of November 30, 2006 could not be delivered, because nobody by

the name of Mr. Trpkovic resides at the address the First Application gave, the Appellate Commission should have been put on alert about the legitimacy of the First Application;

(ii) the Second Application asks the Appellate Commission to revoke the Nine Approvals *ex officio*, but this makes no sense; the essence of *ex officio* review is that it occurs without a complaint being raised, and Article 244(2) of the Law on Administrative Procedure of Brcko District provides that the only person with standing to ask the Appellate Commission to make an order for *ex officio* revocation of a decision is the BiH Ombudsman; if the Appellate Commission were going to undertake an *ex officio* review of the Nine Approvals, it could have done so at any time after having received the First Application, for example at the same time as it issued the decision on the First Application on November 30, 2006; but instead it waited some two and a half months until it received an application from a non-existent person writing from a fictitious address without standing to seek *ex officio* review before doing so;

(iii) the Second Application contains no detailed grounds on which revocation is sought, nor even an address of the purported applicant; in these circumstances, and the circumstances described in sub-paragraphs (i) and (ii) above, the Appellate Commission should have been put on alert about the legitimacy of the Second Application;

(iv) in the foregoing circumstances, the Appellate Commission ought not to have accepted the Second Application, and ought not to have acted upon it, and should have informed the Police and/or the Prosecutor and/or the Mayor and/or the Ethics Officer; but instead the Appellate Commission, without raising the matter with any of the foregoing persons, made a positive decision on the Second Application within only six days of receiving it, a speed of operation without precedent for the Appellate Commission, suggesting that the Second Application was anticipated and

that the decision upon it was a foregone conclusion;

(v) the fact that the Second Application used a different provision of the Law on Administrative Procedure in an attempt to avoid the jurisdictional defect in the First Application suggests that the applicant had received a copy of the decision in the First Application in response to which it prepared the Second Application; but given that the address on the First Application was fictitious, the applicant could not have been informed of that decision by service of it upon the given address; therefore the applicant must have been informed by the Appellate Commission by some other method, implying complicity between the Appellate Commission and the applicant;

(vi) the fact that the Second Application contains no detailed statement grounds and no contact details of any kind suggests that the applicant knew that the Decision was a foregone conclusion, implying complicity between the Appellate Commission and the applicant;

(vii) all the foregoing matters taken together suggest that the author of the Second Application had been told by the Appellate Commission simply to resubmit the application under a different provision of the Law on Administrative Procedure after the First Application was rejected;

(viii) in all the circumstances, the Appellate Commission knew, or ought to have known, that the First Application and the Second Application were fraudulent, and therefore in acting upon the Second Application and in failing to raise the fraud with the competent authorities the Appellate Commission was complicit in the fraud;

(d) the Appellate Commission did not even inform the Investors of either the First Application or the Second Application before ruling upon them, still less invite them to make representations of any kind about whether those

applications were well-founded; nor was the so-called "Mr. Trpkovic" called to explain the grounds for the Second Application, or the interest he had in it, or the deficiencies in either application (obviously, because there is no such person); there was therefore a complete failure of due process;

(e) in at least one other case, concerning an investment in competition with one of the investments covered by the Nine Approvals, the Appellate Commission applied a quite different and inconsistent standard in an equivalent application; by a letter dated July 28, 2006, the Assembly caucus of the Serb Democratic Party in Brcko District ("SDS") sought *ex officio* review by the Appellate Commission of the grant by the Department of Urbanism of an urban approval in the Kvadar project (this project being in direct competition with the project being undertaken by the Serb Orthodox Church); the letter of application by SDS set out detailed grounds for its claim that the grant of that urban approval had been unlawful; on November 10, 2006, some three and a half months later, the Appellate Commission (in my view appropriately) rejected the request by SDS, on the ground that SDS had no standing to seek *ex officio* review under Article 244(2) of the Law on Administrative Procedure, and further concluded, without providing any reasoning, that the grant of the urban approval at issue was lawful; the inevitable impression is that the Appellate Commission has in its differential treatment displayed a bias in favor of one investor and against its competitor;

***Regretting*** that in the circumstances, the conduct of the Appellate Commission in accepting and acting upon the Second Application was reprehensible and evinced a lack of professionalism unacceptable in any District institution, and the process as a whole involved multiple and serious violations of Article 6 of the European Convention on Human Rights, Article 13(4) of the District Statute and Articles

II(2) and II(3)(c) of the Constitution of Bosnia and Herzegovina;

**Of the opinion** that the President of the Appellate Commission, Ms. Desanka Jovanovic, must bear principal responsibility for the failures of due process by the Appellate Commission and its complicity in fraud and partiality, and I have therefore decided to dismiss her, and to reverse the decisions the Appellate Commission issued annulling the Nine Approvals;

***Further of the opinion*** that the other members of the Appellate Commission, Ms. Ehlimana Begovic, Ms. Alma Cejvanovic, Mr. Sinisa Ravlic and Ms. Ljubica Kostic, who deliberated upon the Second Application (and who, according to the minutes of the Decision, unanimously supported the Decision) must share responsibility for the Appellate Commission's failures in this matter, and they are deserving of a formal reprimand, and therefore I shall be writing to those individuals to reprimand them and to put them on notice that any subsequent wrongdoing on their part shall render them liable to dismissal by the Supervisor;

***Further of the opinion*** that certain amendments to the way the Appellate Commission operates are necessary, to ensure that the Commission operates independently, and that such severe failures of due process cannot occur again;

***Also noting*** the First Application contains text identical with text contained in a complaint letter about some of the Investors, sent in the name of a "Mr. Spasoje Radanovic" to Mr. Adnan Drapic, then head of the Department of Urbanism, copied *inter alia* to my office and to the Office of the High Representative in Sarajevo and received on or around September 8, 2006 ("the Radanovic Letter"); the Letter gave no address or other contact details, and nobody by the name of Mr. Spasoje Radanovic is registered with CIPS; two copies of the Radanovic Letter – the one sent to my office, and the one sent to OHR Sarajevo – bear completely different

signatures and were clearly not signed by the same person; the First Application also contains text identical with a complaint letter about some of the Investors sent to my predecessor Supervisor Johnson in the names of Messrs Borivoj Zivic and Ferid Mehicand dated September 5, 2006 ("the Zivic-Mehic Letter"); the formatting and style of the First Application, the Second Application, the Radanovic Letter and the Zivic-Mehic Letter are all the same; moreover, the signature on one copy of the Radanovic Letter and one of the signatures on the Zivic-Mehic Letter are extremely similar; and the signatures on the other copy of the Radanovic Letter and on the First Application and the Second Application are also extremely similar; it therefore seems that nobody by the names of Mr. Dimitrije Trpkovic, Mr. Spasoje Radanovic, Mr. Borivoj Zivic or Mr. Ferid Mehic exist, and the Radanovic Letter, the Zivic-Mehic Letter, the First Application and the Second Application were all fraudulent, in that they were all prepared by third person(s) and signed in false names;

***Having subsequently discovered*** from multiple sources that Mr. Ismet Dedeic, employed in the District Government as an advisor to the Mayor on economic issues, was responsible for all these letters being sent, and concerned that such a senior official within the District has been party to a fraud upon the Department of Spatial Planning and Property Affairs, the Appellate Commission, my office and the Office of the High Representative in Sarajevo;

***Having also discovered*** that, in connection with the Kvadar project and the Nine Approvals, Mr. Ismet Dedeic (a) repeatedly telephoned inspectors within the Department of Public Safety, including on weekends, giving them unlawful instructions, including instructions to demolish allegedly illegal structures; (b) made unlawful threats to officials within that department, including threats that inspectors would receive anonymous letters complaining about the Nine Approvals; and (c) summoned officials in the Department of

Spatial Planning and Property Affairs and gave them unlawful instructions relating to the Nine Approvals;

***Of the opinion that*** such conduct falls far below the standards I expect to observe and require in the behavior of District officials of any rank, still less an official holding one of the highest and most influential positions in the District;

***Noting*** that this office has been compelled to dismiss Mr. Dedeic from senior public office once before, by Supervisory Order dated November 12, 2003, for his indictment in a criminal prosecution for abuse of office, his being subsequently convicted and sentenced, and further noting that the offense of which he was convicted also concerned urban planning issues;

***Concluding*** that Mr. Dedeic is manifestly an unsuitable person to hold any public office, and having therefore decided to dismiss him, and to permanently prohibit him from returning to public office in the District;

***Further concluding*** that the matters referred to above reveal the possibility that one or more public officials in the District have committed criminal offenses, and my having therefore decided to refer this matter to the District Prosecutor, along with the evidence in my possession, so that his office may take such further action that he may consider appropriate in accordance with the law;

***Further noting*** that after the Decision was issued, my office, concerned about the matters referred to above, instructed District institutions to take no further actions concerning the Nine Approvals until further notice, including a specific instruction to Mr. Zeljko Tanasic, Head of the Department for Public Safety, at a meeting on January 29, 2007, not to revoke the construction permits granted pursuant to the Nine Approvals;

***Regretting*** that notwithstanding these instructions, Mr.

Tanasic, on February 6, 2007, issued decisions revoking the construction permits, and those decisions were served (or attempted to be served) on February 12, 2007; Mr. Tanasic was therefore in direct contravention of an instruction given to him by my office;

**Emphasizing** that all instructions from staff of my office on my behalf, whether given orally or in writing, are to be treated as though they were given by me, and in the interests of preserving the integrity and effectiveness of the Supervisor's office, I will not tolerate disregard of any such instruction, and in future cases I shall dismiss any public official failing to comply with an instruction from my office on my behalf; Mr. Tanasic is therefore deserving of a formal reprimand, and I shall be writing to Mr. Tanasic to reprimand him and to put him on notice that any subsequent wrongdoing on his part shall render him liable to dismissal by me;

***Determined*** to free the Investors from this unpleasant situation in which they found themselves without fault on their part, I have decided to reinstate the Nine Approvals, as provided for in Supervisor Johnson's letters of August 15, 2006 and August 28, 2006;

**(2) The Division for Spatial Planning, Urban Development and Environmental Protection**

***Recalling*** that the Division for Spatial Planning, Urban Development and Environmental Protection (being part of the Department of Spatial Planning and Property Affairs), the head of which is Ms. Olivera Lugonjic, has been consistently underperforming, in that:

(a) the office administering applications for legalization of illegal structures under the Law on Legalization of Illegal Structures (published in the Official Gazette of Brcko District, number 21/03), under the management of Ms. Lugonjic, has developed a backlog of hundreds of cases

without satisfactory explanation, and has processed cases at an atrociously slow rate;

(b) the office administering applications for urban approvals, also under the management of Ms. Lugonjic, has also developed a backlog of hundreds of cases without satisfactory explanation, and in many cases that office has taken more than two years to issue a decision after an application was made, notwithstanding the obligation stated in Article 203 of the Law on Administrative Procedure of Brcko District to process such applications and issue a decision upon them within thirty days of receipt;

***Further recalling*** that, concerned about the performance of Ms. Lugonjic and the offices under her management, I wrote to Ms. Lugonijc on November 7, 2006 and again on January 19,2007, requiring her to meet certain performance targets, and to file monthly reports on her progress in meeting those targets, failing which I would impose sanctions upon her, up to and including dismissal of her; and noting that her latest such reports were due on February 7, 2007 and March 7, 2007, but she has failed to file those reports either on time or at all, nor provide me with any explanation of why she has not done so, leading me to conclude that she lacks any intention either to cooperate with my office or to improve the performance of the offices under her management responsibility;

***Noting*** that had the Division for Spatial Planning, Urban Development and Environmental Protection functioned properly, the large backlog of unresolved applications for urban approvals would never have occurred, investors' legitimate expectations would not have been disappointed, and my office would never have needed to intervene in the complaints of investors referred to above;

***Believing*** that the performance of the division has been reprehensible; and that as its head, Ms. Lugonjic, must bear principal responsibility for its failures, and I have

therefore decided to dismiss her from her position;

***Also noting*** that two staff members in Ms. Lugonjic's division, Ms. Ljerka Korjenic and Ms. Sladjana Mitrovic, bear significant responsibility for its failures, in that they are to blame for some of the largest case backlogs in the processing of urban approvals; a substantial majority of the urban approval applications outstanding for over one year were the responsibility either of Ms. Korjenic or Ms. Mitrovic, and the records of the division show that delays and backlogs for cases within the responsibility of these two individuals are significantly worse than for the other staff in their office; I have therefore decided to dismiss both of these individuals;

**Also noting** that the Department of Spatial Planning and Property Affairs, headed by Ms. Natasa Djudurovic, requires strong leadership because of the important and sensitive public role it plays; but in failing to control the Division for Spatial Planning, Urban Development and Environmental Protection, she has not so far displayed the necessary leadership; Ms. Djudurovic is therefore deserving of a formal reprimand, and I shall be writing to Ms. Djudurovic to reprimand her and to put her on notice that any subsequent wrongdoing on her part shall render her liable to dismissal by me;

***Also noting*** that significant responsibility for the failures of the Division for Spatial Planning, Urban Development and Environmental Protection must lie with Mr. Adnan Drapic, Head of the Department of Urbanism prior to September 1, 2006, for it was during the period when he was head of that department (and the division was part of his department) that the backlogs arose, and he failed to do anything to prevent those backlogs occurring or to mitigate or reduce them once they had occurred; Mr. Drapic is therefore deserving of a formal reprimand, and I shall be writing to Mr. Drapic to reprimand him and to put him on notice that any subsequent wrongdoing on his part shall render him liable to dismissal by me;

***Regretting*** the need to dismiss certain officials, but seeing no practical alternative in light of their wrongdoing and the gravity of the scandals I have uncovered; and, in order to allow those dismissed due process, (a) I will conduct an *ab initio* review procedure on a case-by-case basis ofthe dismissals made by this Order and the terms of them, if any of the persons so dismissed makes a written application to me within twenty-eight (28) days of the date of this Order, explaining why they are not guilty of the wrongdoings described in this Order, or why they ought not to suffer the penalties imposed upon them by this Order, whereupon I will impartially consider the representations they make in light of the evidence against them referred to in this Order, and I shall give them the right to a fair hearing; and (b) I may, after consultation with the High Representative, subsequently issue an Order making further provision for impartial review of the dismissals provided for in this Order and the terms thereof; provided, however, that no part of this Order shall be mitigated or canceled simply by the filing of a request to initiate any review procedure referred to in this paragraph, and this Order shall remain in force in full unless and until such time as I may notify any such applicant that I have decided to vary the Order insofar as it relates to them;

**(3) The District's urban planning regime**

**Recalling** that ever since the District's inception, its spatial planning regime has never worked well: there are too many types of urban planning documents, too many Government departments involved in the process of preparing those planning documents and issuing permits pursuant thereto, and the legislation is obscure, providing for discretionary and flexible legal tests that are inconsistently applied, thereby creating unnecessary bureaucracy, unfair treatment of applicants, and opportunities for corruption;

***Further recalling*** the failure of the District to ever adopt a spatial plan since the District was created on March 8, 2000,

notwithstanding the obligation in Article 137 of the Law on Spatial Development of Brcko District, adopted by the District Assembly on April 29, 2003 ("the Law on Spatial Development") to adopt a spatial plan by the end of the calendar year 2004, and notwithstanding the Order of November 7, 2005 of my predecessor Supervisor Johnson, aimed at ensuring urban planning is transparent and lawful;

***Believing*** that a series of amendments to the District's spatial planning laws are accordingly necessary, to streamline the spatial planning process and render it more fair and easier for investors to use, in order to facilitate economic growth and creation of jobs in the District;

***Giving notice*** that I am therefore considering imposing changes to the District's urban planning regime by subsequent Supervisory Order;

***In the mean time lamenting*** the use of "expert opinions" as a precondition for the grant of an urban approval, (a) under Article 140 of the Law on Spatial Development, which provides for use of such an opinion upon an application for urban development approval where there is no regulatory plan; and (b) under Article 70(3) of the Law on Spatial Development, which has been repeatedly (but illegitimately) used where a proposed construction is inconsistent with an existing regulatory plan, to opine that the inconsistency does not in fact exist; the conditions under which these "expert opinions" are issued are arbitrary and corrupt, and I have therefore decided to immediately eliminate the use of any such opinion;

***Also lamenting*** the current practice, contained in Articles 26 to 32 of the Law on Agricultural Land of Brcko District of BiH (published in the Official Gazette of Brcko District No. 32/04), of payment of a fee determined by the Department of Agriculture prior to an urban approval being issued where the land is registered in the cadaster as agricultural, as an unnecessary expense and bureaucratic hurdle for investors, and

having accordingly decided to immediately eliminate that fee;

I therefore order that:

## The Nine Approvals

The decisions of the District Appellate Commission with reference numbers 06-364-003014/04-AP-28/07-1, 06-364-000977/06-2-AP-28/07-8, 06-364-002923/06-AP-28/07-7, 06-364-003143/06-AP-28/07-6, 06-364-000929/06-AP-28/07-5, 06-364-000058/06-AP-28/07-4, 06-364-003179/06-AP-28/07-3, 06-364-002830/06-AP-28/07-2, and 06-364-003177/06-AP-28/07, each dated January 25, 2007, are hereby annulled and shall have no further legal effect. The legal validity of all the urban approvals revoked by the abovementioned decisions of the Appellate Commission is hereby reinstated with retroactive effect, as though these urban approvals had never been revoked.

The construction permits numbered 12-361-008287/06 (dated December 12, 2006), 12-360-007444/06, 12-360-007444/06-1 and 12-360-007444/06-2 (dated January 15, 16 and 25, 2007 respectively), 12-361-007798/06 (dated November 14, 2006) and 12-360-007092/06 (dated October 13, 2006)are each hereby reinstated as though they had never been revoked. The decisions purporting to revoke these construction permits, numbered 12-361-008287/06–1, 12-360-007444/06–3, 12-361-007798/06-1, 12-360-007092/06-1, and all dated February 6, 2007, are hereby annulled with retroactive effect, as though they had never been issued.

## Changes to the District urban planning regime

Article 9 of the Law on Amendments and Addenda to the Law on Spatial Development,published in the Official Gazette of Brcko District No. 15/04 (“the Amendments Law”), is repealed with effect from the date of this Order and shall have no further legal effect. Article 140 of the Law on Spatial Development of Brcko District of Bosnia and Herzegovina, published in the

Official Gazette of Brcko District No. 09/03 ("the Law on Spatial Development"), which Article 9 of the Amendments Law amended, shall with effect from the date of this Order revert to the text as Article 140 read immediately prior to passage of the Amendments Law.

The current practice, enshrined in Article 140 (as amended by Article 9 of the Amendments Law), of the Department of Spatial Planning and Property Affairs granting urban development approvals on the basis of an "expert opinion" *inter alia* where no regulatory plan exists, shall immediately cease, and no similar practice shall be subsequently adopted. Where no regulatory plan or urban plan exists, there shall be no requirement for an "expert opinion" as a precondition of the grant of an urban development approval – only a requirement that the proposed construction complies with the spatial plan and any applicable urban plan.

Article 70(3) of the Law on Spatial Development is repealed with effect from the date of this Order and shall have no further legal effect.

The current practice of the Department of Spatial Planning and Property Affairs, of seeking an opinion, purportedly pursuant to Article 70(3) of the Law on Spatial Development, from the consultant responsible for authorship of a spatial planning document, where there is a question as to whether a proposed development is consistent with that planning document, or a *prima facie* inconsistency between the proposed development and the spatial planning document, shall immediately cease, and no similar practice shall be subsequently adopted. Henceforth the Department of Spatial Planning and Property Affairs shall itself determine whether any proposed project in respect of which an urban development approval is sought conforms to the spatial plan and any applicable urban plan, regulatory plan or other planning document, as provided for in Article 59 of the Law on Spatial Development. If it concludes that the proposed development is inconsistent with any applicable planning

document, it shall reject the request. If it concludes that the proposed development is consistent with all applicable planning documents, it shall accept the request and issue an urban development approval in accordance with the provisions of the Law on Spatial Development and the Law on Administrative Procedure.

Articles 26 to 32 of the Law on Agricultural Land of Brcko District of Bosnia and Herzegovina (published in the Official Gazette of Brcko District No. 32/04) are repealed with effect from the date of this Order and shall have no further legal effect. The legal regime set out in these articles, providing that construction upon land registered as agricultural land in the cadaster requires prior payment of a fee determined by the Department of Agriculture for conversion of the land to construction land, shall immediately cease. Henceforth, wherever an application for urban development approval is made to the Department of Spatial Planning and Property Affairs, the Department of Spatial Planning and Property Affairs shall check the cadaster as part of its ordinary due diligence. Where the Department of Spatial Planning and Property Affairs finds that the cadaster describes land subject to the application as agricultural, the Department of Spatial Planning and Property Affairs shall forthwith provide the Department of Agriculture with a copy of any urban development approval issued for that land, which the Department of Agriculture shall use to update its own records.

In no case shall a construction permit for a construction of a religious, national or ethnic character be granted without an urban plan, covering the location of the proposed construction and adopted after the date of adoption of the spatial plan currently being considered by the District Government, explicitly providing for the construction in question. (In exceptional circumstances, while Supervision remains in Brcko District, the Supervisor may grant a written dispensation from this requirement in any individual case.) This paragraph shall

not apply to the reconstruction of religious, national or ethnic buildings damaged or destroyed during the 1992 to 1995 conflict.

**Dismissals**

Mr. Ismet Dedeic is hereby immediately dismissed from his position as a Mayor's adviser within the District Government. All entitlement to receive remuneration, privileges or status arising out of this position ceases forthwith. Mr. Dedeic is permanently barred from holding any position in any District public institution, whether the position be official or unofficial, elected, appointed or otherwise. Mr. Dedeic is also prohibited from entering non-public areas of buildings housing District public institutions.

Ms. Olivera Lugonjic is hereby immediately dismissed from her position as head of the Division for Spatial Planning, Urban Development and Environmental Protection within the Department of Spatial Planning and Property Affairs within the District Government. All entitlement to receive remuneration, privileges or status arising out of this position ceases forthwith. Ms. Lugonjic shall hold no position in any District public institution for a period of five (5) years from the date of this Supervisory Order, whether the position be official or unofficial, elected, appointed or otherwise. Not later than seven days after the date of this Supervisory Order, the Mayor shall issue a vacancy notice for the position from which Ms. Lugonjic is hereby dismissed, in accordance with the relevant provisions of the Law on Civil Service in Administrative Bodies and the District Statute.

Ms. Desanka Jovanovic is hereby immediately dismissed from her position of President of the Appellate Commission of the District Government. All entitlement to receive remuneration, privileges or status arising out of this position ceases forthwith. Ms. Jovanovic shall hold no position in any District public institution for a period of five (5) years

from the date of this Supervisory Order, whether the position be official or unofficial, elected, appointed or otherwise.

Ms. Ljerka Korjenic is hereby immediately dismissed from her position as officer within the Division for Spatial Planning, Urban Development and Environmental Protection within the Department of Spatial Planning and Property Affairs within the District Government. All entitlement to receive remuneration, privileges or status arising out of this position ceases forthwith. Ms. Korjenic shall hold no position in any District public institution for a period of three (3) years from the date of this Supervisory Order, whether the position be official or unofficial, elected, appointed or otherwise.

Ms. Sladjana Mitrovic is hereby immediately dismissed from her position as officer within the Division for Spatial Planning, Urban Development and Environmental Protection within the Department of Spatial Planning and Property Affairs within the District Government. All entitlement to receive remuneration, privileges or status arising out of this position ceases forthwith. Ms. Mitrovic shall hold no position in any District public institution for a period of three (3) years from the date of this Supervisory Order, whether the position be official or unofficial, elected, appointed or otherwise.

**The Law on Administrative Procedure**

The Law Amending the Law on Administrative Procedure, attached to this Order as an Annex, is hereby enacted as a law of Brcko District. It shall be published in the Official Gazette of Brcko District, at the same time as is this Order, and shall come into force eight (8) days after its publication. Thereupon, the Mayor shall immediately take all necessary measures pursuant to the Law on Administrative Procedure as amended, to ensure that a new Appellate Commission is appointed forthwith.

Not later than seven days after the date of this Order, the

Mayor shall issue vacancy notices necessary for appointment of a new Appellate Commission pursuant to the Law on Administrative Procedure, and shall take all further measures necessary to ensure that a new Appellate Commission is appointed forthwith.

**Unlawful instructions to District officials**

No person shall give any kind of instruction, express or implied, to any District official in connection with urban planning, urban development approvals or construction permits, other than:

(a) a lawful and proper instruction as their manager or supervisor;

(b) pursuant to a valid law explicitly authorizing them to give that instruction;

(c) as part of or pursuant to the order of a Court; or

(d) an instruction from the office of the Supervisor.

Any person violating this proscription shall be liable upon conviction by the courts of Brcko District to a fine not exceeding 20,000 KM and/or a sentence of imprisonment not exceeding two years. This provision shall be enforced by the District Police, the District Prosecutor and the District Courts in the same way as it would be were it an article in the Criminal Code of Brcko District. In addition, any person violating this proscription who is an official of any District public institution shall be liable to dismissal from office by the Supervisor on the terms provided for dismissal of officials in this Order. The provisions of this paragraph 15 shall be without prejudice to Article 377 of the Criminal Code of Brcko District, which remains fully in force and applicable to acts of the kind proscribed by this paragraph.

## Final provisions

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.

This Order has immediate effect without further procedural steps.

Nothing in this Order has any effect upon Supervisor Johnson's Order of November 7, 2005, which remains fully in force.

This Supervisory Order 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.

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.

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

**Annex to the Supervisory Order dated March 23, 2007**

**Being the Law Amending the Law on Administrative Procedure**

**Enacted as a law of Brcko District**

**By paragraph 14 of this Supervisory Order**

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**LAW ON AMENDMENTS TO THE LAW ON ADMINISTRATIVE PROCEDURE OF**

**BRCKO DISTRICT OF BOSNIA AND HERZEGOVINA**

***Article 1***

In Article 243 of the Law on Administrative Procedure of Brcko District of Bosnia and Herzegovina (Official Gazette of Brcko District of BiH No. 3/00, 5/00, 9/02, 8/03, 8/04 and 25/05), after Paragraph 2, a new Paragraph 3 shall be added and shall read:

"(3) In case there is a reason to annul decisions under the terms of Paragraph 2 of this Article, the Appellate Commission shall be obligated, before it enacts a decision on annulment of a decision, to take into consideration the opinion and interpretation of the substantive law of the administrative body the decision of which is being annulled as well as the allegations of a party if the annulment of decisions puts the party in an unfavorable position or potentially damages the party. The Appellate Commission shall be obligated to provide detailed reasoning of its decision even if it concludes there are no reasons to annul the decision mentioned in Paragraph 2 of this Article."

***Article 2***

This Law shall enter into force eight (8) days after being published in the Official Gazette of Brcko District of BiH.