

Article by Larry Butler, Principal Deputy High Representative: "Pardons and the People in Power"

When the people in power abuse the law to help their friends and political allies, the rights of citizens are put in jeopardy. This is the issue that lies at the core of the controversy now surrounding the decision by Federation President Niko Lozancic to grant a Pardon to his former party colleague Miroslav Prce.

The facts of the case are well known. Mr Prce, a former Federation Defence Minister, admitted his collusion in the theft of millions of KM in taxpayer's money. Mr. Prce knew what he had done and chose to admit his guilt to avoid what could have been 15-years in prison. In exchange, his sentence was reduced by two-thirds, to five years. When asked to make a recommendation, the presiding judge wrote that a Pardon in this case would be "totally unjustifiable". President Lozancic went ahead and granted the Pardon anyway, even though the Minister of Justice had also recommended against. The documentation on which the President made this decision, citing "medical grounds", turns out to have been irregular.

Pardons should be granted only in extremely limited, and extraordinary circumstances. When they are not, there needs to be a public outcry. What's happening in BiH is that the system is being flagrantly abused – in several ways.

The first concerns the way in which current legislation deals with Pardons – the Entity Presidents can grant Pardons *secretly, without explanation, and without public criticism.*

If I'm the president and you are a friend of mine who's been

convicted of a crime and sentenced to jail – hey, presto! I can make the sentence go away!

Already this year in the RS 48 Presidential pardons have been granted. The figure in the Federation is 94.

In November last year, after a Pardon was granted to BiH House of Representatives member Munib Jusufovic by the BiH Presidency, the High Representative repealed the BiH Law on Pardon, so as to stop abuses (such as had been seen in the Jusufovic case) until the new BiH Pardon Law could be drafted, discussed and enacted. The High Representative also amended the Entity Criminal Codes as an immediate measure to limit opportunities for abuse of Pardons.

The High Representative's Decision effectively ended the BiH Presidency's power to grant Pardons, and reduced the circumstances in which the Entity Presidents could grant Pardons.

Until the High Representative's Decision, the State and Entity Presidents had the power to grant Pardons *even before an individual was tried for a crime!* The court could go through due process, establish the truth and allocate punishment – and the accused could happily watch, knowing that there was absolutely no chance that they would have to serve a sentence!

The old Law on Pardons meant that in Bosnia and Herzegovina if you have good connections at the top you have no need to fear the Law.

The current system is not the Rule of Law: it's the rule of the powerful. The pardon system must be applied equally to all.

Which is why we need a new Law on Pardons.

Now, the Pardon granted to Mr Prce is within the letter of the existing Law – but it flies in the face of every effort to

free the citizens of BiH from the deep-seated corruption that is a scourge of public life in this country.

The new BiH Law on Pardons will make it impossible for a similar Pardon to be granted. It will oblige State and Entity leaders to make all Pardons public, and they will have to explain the reasons Pardons have been granted.

The new Law, which has been drafted by a working group under the BiH Ministry of Justice, must be considered by the Council of Ministers without delay. The parliamentary timetable would allow this law to be enacted and in force by mid October.

President Lozancic has in effect used his powers as FBiH President to interfere in a BiH State Court case when State-level legislation that would prevent such a Pardon being granted is being prepared.

This says a great deal about Mr Lozancic. The absence of much criticism from the rest of the political establishment speaks volumes about their commitment to protecting citizens' interests.

This kind of Pardon is a scandal. It must stop.