

Don't ask us to compromise with BiH's European future

Dnevni Avaz has asked the OHR to respond to a number of demands. These have varied from day to day, but the most comprehensive list was published in Dnevni Avaz on 24 and 25 February 2004. Many of these demands appear to be based on a misunderstanding of the law, or of normal practice elsewhere in Europe, or in some cases, on errors of fact. The OHR has therefore decided to set the record straight in order to prevent any further misunderstanding:

1. A ban on writing falsehoods about someone is not censorship.

In its adjudication of 4 December 2003, the Sarajevo Cantonal Court ruled that Dnevni Avaz was "banned from further distribution and presentation of false claims pertaining to Plaintiff Zlatko Lagumdžija". Dnevni Avaz is therefore not banned from writing about Mr Lagumdžija, as critically as they wish, provided what they write is consistent with the truth. And, in these matters, it is the Courts and no-one else who determine what is the truth and what is not.

If Dnevni Avaz believe they have a case for changing the law, then they should put it: but to Parliament, not to the OHR. In a normal European democracy, which BiH hopes to become, laws can always be changed. But if BiH wants to get to Europe, in principle it should be Parliament that decides whether to change them, not the OHR.

2. There is already a process underway to ensure that only judges and prosecutors who are professionally qualified and uncompromised by their past are reappointed.

That is the job of the High Judicial and Prosecutorial Councils (HJPCs). They consider all the reliable information

available about every single judge and prosecutor, and then take a decision whether they are suitable for reappointment. No process is perfect and individual mistakes will no doubt be made. But this is the process that exists in other European democracies. It is not true that a process of full lustration was carried out in every other post-communist country in Europe. This process is also a considerable improvement on the highly politicized process that existed before. If anyone believes a reappointed judge or prosecutor is unsuitable and has reliable information to prove it, they should submit that information to the HJPC. The Disciplinary Prosecutor will then consider it and take any action that may be appropriate. However, the HJPCs will rightly not respond to unfounded rumours or pressure from anyone.

3. There is no evidence that any of the three constituent people are being systematically discriminated against in appointments to the police, judiciary, prosecutors' offices, intelligence services, or any other state and public service.

Take the position of Bosnjaks in the judiciary as an example. Dnevni Avaz has reported in the past that it is scandalous that there are no Bosnjaks on the RS HJPC. Yet when a Bosnjak judge was appointed to the RS HJPC earlier this month, they made nothing of it. Bosnjaks have been appointed presidents in the basic courts in Srebrenica, Teslic, Mrkonjic Grad, Derventa, and in the two biggest courts in the RS, Bijeljina and Banja Luka – but Dnevni Avaz has chosen not to highlight these facts either. The Chief Prosecutor in Doboje is now a Bosnjak, but again Dnevni Avaz has all but ignored this appointment. In January 2003, before the HJPC appointment process began, there were six Bosnjak judges in Republika Srpska. Today, there are sixty. And the reason for that is because of the very HJPC process that Dnevni Avaz disagrees with. The HJPC process has done more than anything else to rebuild the multiethnic structure of BiH's judiciary, and is not yet complete.

Similar examples could be given for the police, the intelligence services, the civil service, and the public broadcasters.

4. The OHR welcomes and applauds the democratic right to organize peaceful protests in accordance with the law. But the OHR will not compromise on the independence of the judiciary and therefore BiH's European future

If the OHR gave in to these demands, it would seriously undermine if not destroy the process of European integration and therefore the chances of the citizens of this country enjoying a better and more prosperous future. OHR will not interfere in the independent appointment process and the decisions of the courts, whatever the pressure. This would constitute interference in the administration of the legal system and the judiciary. That would violate a basic European standard and could therefore have negative consequences for the process of European integration, as well as damage BiH's progress to statehood.

5. A question for those opposed to the High Judicial and Prosecutorial Councils

The High Representative would also like to ask those opposed to the HJPCs a question: today there are sixty Bosniak judges in the RS. A year ago there were six. How do they think that could have been achieved without the HJPCs?

As the High Representative said on 7 January, he is confident that the HJPC process is this country's best chance of rebuilding the multi-ethnic structure of the BiH judiciary on the basis of modern European standards of independence and professionalism.