

High Representative Acts to Clean Up BiH Politics

The High Representative, Paddy Ashdown, today issued a package of Decisions tightening the regulations governing the provision of immunity granted to public officials and limiting the number of public office-holders who may invoke this privilege. The underlying object of this has been to bring immunity provisions into line with those of the BiH Constitution and clean up politics in BiH.

When he addressed the BiH Parliamentary Assembly on the first day of his mandate, in May 2002, the High Representative highlighted the fact that if BiH is to have a just society that upholds the Rule of Law the systems that scrutinise government and prevent the abuse of power must be strengthened. The Rule of Law must apply equally to all. Indeed, during their election campaigns all the major political parties expressed their commitment to fighting crime and promoting the Rule of Law.

These changes remove the extension of immunity to an exceptionally large number of public office-holders who could previously invoke immunity for all criminal and civil offences. The provision of immunity is maintained only for Parliamentarians at all levels, to ensure that they are able to act and speak independently while performing their duties.

By changing the provisions on immunity the High Representative has made a distinction between two different kinds of immunity. Immunity properly granted to Parliamentarians guarantees their independence and their ability to speak and vote freely in parliament. This type of provision exists in most Western democracies and protects the integrity of governing institutions. The second type of immunity, which in

BiH requires the suspension of legal action against public office-holders for acts committed outside the scope of their duties, is comprehensively abolished.

The role of the courts has been strengthened as a part of these changes. If parliamentarians and ministers wish to invoke immunity they will have to prove that a given criminal or civil offence has been carried out as part of their duties in office. Whether the offence can be categorised as a “duty of office” will be decided by the courts, and ultimately by the Constitutional Courts.

The new provisions remove the suspension placed on criminal or civil suits where an individual accused of an illegal act has forestalled legal action by invoking immunity. These Decisions reflect issues discussed at length and in public at a seminar on immunity chaired in September by Head of the OHR Legal Reform Unit, Prof. Zoran Pajic, and attended by legal experts from across BiH.