



Oslobođenje: Interview with HR Valentin Inzko

By Zinaida Delilović

Oslobođenje: BiH institutions are supposed to discuss an entire package of judicial reform laws. To what extent can these reforms help improve BiH's judiciary?

Valentin Inzko: BiH started seriously reforming its judiciary in 2003, and as in every society, this is a work in progress. It has been proven time and again that a society starts to advance truly when the judiciary starts to function and the rule of law, one law for everyone, is established. For me it is vital that the institutions have the tools to efficiently combat crime and corruption.

Unfortunately, there is currently an issue with regard changes to the BiH Criminal Procedure Code. A six-month deadline to harmonize provisions of the law with the BiH Constitution set by the Constitutional Court in June has passed and the Parliamentary Assembly has not yet adopted the required amendments.

If provisions of the BiH Criminal Procedure Code affected by the Constitutional Court's decision are repealed by the court through a decision on non-enforcement of its earlier decision, the BiH judiciary will be seriously crippled. It will not be able to process serious crime and corruption in BiH. There will be a legal void. The President of the BiH Court, the Acting Chief Prosecutor and the President of the HJPC have repeatedly cautioned about the negative impact of a possible decision repealing the affected provisions of the BiH Criminal Procedure Code.

I hope the authorities in BiH will acknowledge the seriousness of this situation. Above all, the BiH institutions have a responsibility to amend the Criminal Procedure Code to implement the Constitutional Court's decision.

At the same time, it is important that the court recognize the ongoing efforts of the institutions to resolve this issue. So far the BiH Council of Ministers has not deliberated on possible amendments to the Criminal Procedure Code, but there are amendments in the parliamentary procedure that would, from a substance point of view, resolve the problem. In other words, the BiH authorities are undoubtedly working to resolve the issue and we hope this will be taken into account by the Constitutional Court.

It is also important that the amendments to the BiH Criminal Procedure Code which are adopted continue to enable the full exercise of the state's criminal jurisdiction, and ensure compliance with international standards in the fight against corruption and organised crime. BiH needs to be enabled to fulfil its obligations prescribed by the Constitution.

The entire International Community, not only the OHR, is following this matter closely and is alarmed about the potential consequences. We want BiH's criminal legislation to strengthen the fight against crime and corruption and not disable the state in exercising its jurisdiction and its obligation to preserve the legal order.

Oslobođenje: Proving corruption is difficult enough already. Will the changes to the CPC make it even more difficult to prove criminal acts of corruption through special investigative tools (legal defenders usually claim this evidence is illegal in court proceedings)?

Valentin Inzko: I do not think it is an exaggeration on my part if I say that such a scenario would be a very serious blow to fighting crime and corruption.

Unfortunately, the parliament has so far lacked the political will to support urgent procedure for proposed amendments to the BiH Criminal Procedure Code in the BiH House of Representatives. The swift adoption of adequate amendments would remove the threat of the BiH judicial institutions losing a huge capacity in the battle against corruption. This failure is a grim indication of what certain political parties and politicians think when it comes to the rule of law and the fight against crime and corruption.

If adequate amendments are not adopted and the provisions that were found unconstitutional by the decision of the BiH Constitutional Court are put out of force, it is hard to foresee all the consequences for the affected ongoing cases, and whether these cases will ever be properly tried (sudjeni). On the one hand, special measures taken to collect evidence in a majority of cases will become illegal, and on the other hand the special investigative measures will not be allowed in future for investigating certain cases.

In addition, the provision that is the legal basis for filing indictments is also affected, so it might even become questionable if the state Prosecutor's Office will be in a legal position to file indictments.

The bottom line is that the state judiciary will be severely paralyzed in performing its criminal jurisdiction. This would essentially be the same as not having the Prosecutor's Office at all.

Oslobođenje: Last year the BiH Constitutional Court concluded that certain aspects of the CPC are not in line with the Constitution. What will happen if these provisions are put out of force? To what extent will it impact the collecting of evidence for corruption cases?

Valentin Inzko: Precisely. This is what I am talking about all this time. A serious risk exists that the Constitutional Court of BiH will very soon decide to pass a ruling on non-enforcement of its decision on the Criminal Procedure Code, and put the above mentioned provisions out of force.

Those provisions regulate when the special investigative measures, such as interception or control delivery, are allowed. These measures are especially significant in investigating cases of organized crime and corruption. Also, provisions regulating when immunity may be granted in exchange for testimony are also affected, as well as certain aspects of the duration of investigations and a general provision which serves as a legal base for raising an indictment in all cases.

If these provisions are put out of force by the Constitutional Court, all cases in which those measures were used will be affected. It is being assessed that between 50 and 100 cases might be affected, depending on at what stage in the procedure they are. And possible future cases will definitely be affected, as special investigative measures would not be allowed for a huge number of offences, corruption and abuse of office above all.

Oslobođenje: Given these provisions, does this mean that someone who has been convicted will be able to demand a review of their verdict?

Valentin Inzko: Final and binding convictions are final and binding convictions. The Criminal Procedure Code, and of course the Constitution, prescribe which legal remedies may be taken, in which cases and in which deadlines.

We can speculate about lots of things, but that does not bring us closer to solving the situation and providing a proper legal framework for the system to be able to function. That should be the urgent priority of the authorities: to adopt adequate amendments that implement the Constitutional Court decision and enable the full exercise of the state level criminal jurisdiction while meeting international standards, especially in the fight against corruption and organised crime.