

Remarks by High Representative, Paddy Ashdown at the Press Conference on the Law on Pardon

Ladies and Gentlemen,

I am here today to talk about justice.

And about a great hole that has recently been punched through the justice system by the politicians of this country, through which, the best-connected criminals can escape the law, after being tried or even before they go to trial.

In January this year I removed immunity from corrupt politicians who have stolen from the people. This summer the Council of Ministers found a way to bypass this. The Law on Pardons was produced and Parliament passed it without murmur. Not a single vote against.

On 18 September this year the BiH Law on Pardon came into force.

The BiH government drafted this law.

The BiH Parliament adopted this law.

And then, without pausing to draw breath, the BiH Presidency set about applying this law.

This law sets forth the administrative procedures that must be followed when the Presidency chooses to pardon an individual who is being tried for, or has been convicted of, a crime.

Most countries have legal provisions for the granting of pardon in very exceptional circumstances – pardoning criminals

in some countries is a normal, if statistically extremely uncommon, aspect of democratic government. It is an act of final recourse, after all the statutory judicial mechanisms have been applied to ensure that the higher good is served.

The administrative procedures laid out in the BiH Law on Pardon, are however not normal. They are scandalous. They appear to reflect political expediency rather than concern for the higher good.

- The Law provides for a Commission within the Ministry of Justice to advise on individual pardons, but it doesn't stipulate who should be members of this commission or even how many members there should be;
- It only stipulates that the judiciary shall not be represented. It allows a pardon to be given not just after a court trial, but at any time during the courts' procedures – that is either during the court case or even before the court case has started. Such a procedure exists nowhere.
- It provides for the court which is trying the individual to put its case, but it doesn't define how such a representation should be made.
- It does not provide for any public explanation or justification to be given for pardon decisions; they do not have to be gazetted or announced in public. The Presidency can pardon, but who and how will be hidden from the public.
- And finally, and most incredibly, the law allows the Presidency to grant pardons without even following the procedures that have been laid down

So not only are the procedures inadequate – but they can be ignored by the members of the Presidency where they see fit.

It's a 16-clause law – 15 clauses of procedure and the sixteenth says the Presidency can ignore the previous 15 clauses.

This means that you may be found guilty of a crime, indeed of a very serious crime – but the Presidency, on its own authority, without any procedure, without announcing its decision to the public, can pardon you.

This would be bad enough if the problem was a theoretical one. But it isn't.

Last week a Presidential pardon was granted to Munib Jusufovic.

Mr Jusufovic is a member of the State Parliament. But on 12 October he was suspended from the House of Representatives after being sentenced by Brcko District Court to 10 months in jail for abuse of office and embezzlement.

Mr Jusufovic appealed against his sentence to the Brcko District Appellate Court, but the Court, rather than overturning his conviction, ruled that he should serve a full year in jail.

At this stage, Mr Jusufovic made a wise decision. As well as making an appeal to the Constitutional Court of BiH – his last judicial hope – he also sent a written appeal for pardon to the BiH Presidency. That this option was available to him was of course well known to Mr Jusufovic, even if it wasn't known to any member of the public. Because of course his parliamentary colleagues had voted for the new Pardon law just weeks earlier.

The Presidency, upon receipt of this letter from a member of the governing coalition of which they are a part, sent it to the Ministry of Justice asking them to consider this according to the procedures laid out in the law.

The Ministry of Justice, presumably recognizing the weakness of the claim, advised that, if asked, they would be forced to recommend that no pardon be granted but also advised the Presidency of that clause in the law which allowed the

Presidency not to consult the Ministry of Justice at all.

In other words, if you ask us we will have to say no. So don't ask us at all. Do it yourself.

The Presidency did just that. And, Mr Jusufovic, convicted of abuse of office and the embezzlement of public funds, is a free man again and active in putting together the SDA, HDZ, SDS, SBiH coalition in Brcko.

I leave you to draw your own conclusions as to why the Presidency wanted this law. I am surprised however that the Council of Ministers helped them and even more so that the opposition parties in Parliament raised not a word of objection.

On these matters you can reach your own conclusions.

Here are mine:-

I am both repealing the BiH Law on Pardon and amending the BiH, Entity and Brcko criminal codes.

I am doing this to assert the rule of law, maintain the integrity of the judicial system and to prevent the misuse of discretionary power until the laws on pardon are revised and made compatible with democratic standards and responsibility to the public. This gives us time to do this, if necessary with OHR's assistance.

People who hold power must explain their actions to citizens – especially when those actions have a direct bearing on the judicial process. I hope this will happen sooner rather than later.

It is deeply depressing that at this late stage in the Rule of Law process I have to take this kind of action.

As for Mr Jusufovic, I understand that the Brcko District Prosecutor will shortly be bringing an appeal to the BiH

Constitutional Court against the Presidential Pardon.

I have said many times that no one should be above the law in Bosnia & Herzegovina . That is why we amended the provisions on Immunity, and why we established the Court of BiH and its special panel for Organised Crime to bring to trial those who previously considered themselves above the law.

That some are getting increasingly desperate in their pursuit of escape hatches comes as no surprise. That BiH's democratic institutions should be assisting them is nothing short of scandalous.

Today, that scandal stops.

Thank you.