



There is no law for high-profile politicians in Bosnia and Herzegovina

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A study conducted by the World Bank (2009) ranked the government of BiH as least accountable among countries in the region, including in its judiciary system. Though judicial reforms have created the conditions for an independent judiciary, a number of structural and political problems still hamper its effectiveness (Azinovic, Bassuener, Weber, 2011). One aspect of the work of the BiH judiciary that is recognized as problematic is its prosecution of high-profile politicians (OSCE 2010), a concern that this study examines.

“Despite noteworthy progress, much remains to be done. The goal of a BiH justice system fully capable of upholding the principles of rule of law remains distant.”

Gary D. Robbins (2010), Ambassador and Head of OSCE Mission to BiH

Accused and acquitted¹

Of the 326 total cases seen in front of the Court of BiH - Section II, only 8 were filed against politicians; 6 of them were acquitted, one entered into a plea agreement, and one was convicted, but only for part of the indictment.

Those statistics raise questions, including:

Why have most court proceedings against high-ranking politicians resulted in acquittals? Are these acquittals grounded in sound legal evidence, and to what extent has the politicization of the process played a part?

¹ This policy brief is based on the policy paper, “Prosecution of high profile politicians in Bosnia and Herzegovina” by Marija Lučić-Ćatić. The full paper is available online at: <http://www.soros.org.ba/>

This study examines (through case histories and interviewees) the three most prominent cases against political figures who can be classified as high profile, because they performed the highest of functions in the BiH Presidency’s Council of Ministers or were at some point leaders of three major political parties. They are also representatives of the three constitutional nations in BiH. Those are the cases of: Covic et al., Bičakčić et al., and Ivanić.²

Findings

This research identified a number of irregularities in the BiH judiciary system that enabled the acquittal of these cases:

- The court interprets the laws differently for different cases, which raises suspicion of the independence of the judiciary
- In the middle of a trial, the court has stopped proceedings, claiming it is unauthorized to deal with the case at hand
- There is evidence of both irregular use of evidence and inconsistent procedures regarding the admissibility of evidence
- Limitations on legal proceedings are an issue as well as the question of why there is a delay of up to 10 years in proceeding with cases

² Dragan Čović et al., first degree verdict X-K-05/02, 17 November 2006; second degree verdict X-KŽ-05/02, 02 June 2008.

Edhem Bičakčić and Dragan Čović, first degree verdict X-K-09/702, 8 April 2010; second degree verdict X-KŽ-09/702, 31 January 2011.

Mladen Ivanić, second degree verdict X-KŽ-06/282-1, 16 July 2010.

- Political and media pressures on the judiciary are something that has not yet been seriously addressed by the BiH judicial system
- Four members of the High Judiciary and Prosecutorial Council (HJPC) can be members of political parties, creating an opening for possible political influence

Media statements

This research identified 328 media statements related to these trials. About 26% (85) of those statements contained harsh media indictments of high-ranking politicians with various levels of political power that, according to the OSCE, represented undue political pressure and a politicization of the judiciary.

“...the Mission’s assessment is that these statements, due to their harsh content, unsubstantiated nature, and frequency, overstep the limits of acceptable criticism and constitute undue pressure on these independent institutions.’

OSCE Spot report, “Independence of the Judiciary: Undue Pressure on BiH Judicial Institutions” (2009)

These findings indicate that precise guidelines for the prosecution of high-profile politicians in BiH do not exist. A lack of such policies has led to inconsistent practices in such prosecutions and has created opportunities for politicization of the judiciary system.

Policy options

Current policy is based on trainings and forums organized within Judicial and Prosecutorial Training Centers in the FBiH and RS. It seems these trainings do not take into consideration issues related specifically to the prosecution of high-profile politicians, nor do these trainings critically examine those cases. Education regarding the interpretation of law can be ben-

eficial only if there are appropriate court policies and mechanisms in place to sanction legal malpractice. This study shows that the current approach to improving judicial practices (the trainings of judges and prosecutors) is not functioning well and it does not adequately support the prosecution of these special cases.

A first policy option proposed by this study is to create a set of guidelines that can be used by prosecutors and judges for cases seen in front of the Section II of Court of BiH. In the long term, application of these guidelines can lead to the creation of a common and unified policy for prosecutions in general in BiH, not just for the prosecution of high-profile politicians, and can ultimately contribute to a higher level of internal accountability in the entire judicial system.

A second policy option considered in this study is an Indonesian model for fighting corruption that includes the establishment of an independent body for the prosecution of high-ranking politicians. Such a body should be comprised of investigators, prosecutors, and judges.³

Actions for improvement of the prosecution of high-profile politicians in BiH

Analysis shows that the current policy in place in BiH is inefficient, whilst the second policy option proposed above would require extensive personnel and large financial means. The first policy option is therefore the most realistic for BiH. Its implementation can improve prosecution in general and especially the prosecution of high-ranking politicians without excessive material costs. It does not require any new personnel, and can be easily subsumed under the current policy approach. Guidelines can be introduced to prosecutors and judges in mandatory trainings and should resolve problems that have been identified in previous prosecutions of high-ranking figures, such as:

- issues with witness statements

³ For more about policy options, see the policy paper by Marija Lučić-Čatić, cited above and available online at: <http://www.soros.org.ba/>



- use of uncertified copies of documents (material evidence);
- questions of jurisdiction of the Court of BiH, and
- statutes of limitations.

Apart from calling for the adoption of this first policy option, this study proposes the following recommendations for de-politicization of the process and improvement in prosecutions of high-profile politicians in BiH:

- Changes to article 4, paragraph 1 (i)(m) (n)(o) of the Law on the High Judicial and Prosecutorial Council of BiH, which should be achieved through regular procedures in the form of an amendment to the Law;
- Introduction of the position of a “Preliminary Hearings Judge” who acts to serve that sole function in the Court of BiH; this structural change should be managed through an internal reorganization of the Court of BiH via the Rulebook, without the introduction of new personnel.

Bibliography

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A "Policy Development Fellowship Program" has been launched by the Open Society Fund BiH in early 2004 with the aim to improve BiH policy research and dialogue and to contribute to the development of a sound policy-making culture based on informative and empirically grounded policy options. The program provides an opportunity for selected fellows to collaborate with the Open Society Fund in conducting policy research and writing a policy study with the support of mentors and trainers during the whole process. Eighty one fellowships have been granted since the starting of the Program. All policy studies are available at www.soros.org.ba