

Options how to fix the issue with the appellate procedure in top corruption cases

29.06.2018

Adopted law on the high anticorruption court (HACC), although establishing fair guarantees for independent selection of anticorruption judges, contains a major loophole. All current high-profile corruption cases will be heard by ordinary appeal courts even after the HACC is launched. The law provides, that every case filed to ordinary first instance court should go to ordinary appeals court even if appeal is due after the HACC establishment.

Below are legal and procedural options on how to resolve this issue.

From the legal perspective, there are two options for amending respective provisions.

1) to address transitional provisions of the law on the HACC, that introduced questionable amendments to the Code of Criminal Procedure. This can be done through a separate draft law on amending the law on the HACC only (the amendments to any other law will not work.)

However, please, note that revision of the law on the HACC will most likely open Pandora's box, as the parliament may try to revise other critical provisions of the law. Therefore, this option might be risky.

2) less risky is to amend the Code of Criminal Procedure directly, circumventing the law on the HACC. It is important to make sure, that these *fresh amendments come in force right after enforcement of provisions from the HACC law.*

With regards to procedure, amendments to the Code of Criminal Procedure may be offered as:

- a separate law, that may be initiated by the President or by any MP. Since it is to address two articles of the Code only, this draft law may easily be adopted through one reading. If the law is submitted before July 3, it may be ready for voting already on July 5.

- as clauses of the draft law #7441, that amends the law On the Judiciary and Status of Judges with regards to the HACC.

Draft law #7441 was adopted in the first reading on June 21 and amendments for its second reading are being collected by July 5. The closest possible date of consideration of this bill in the second reading is July 12, while already next day the parliament goes on summer recess. Therefore, there are quite some chances that the parliament will not be able to vote effectively on these final days of the session.