

The Lawless Prosecution of Milorad Dodik

The criminal trial of Milorad Dodik, who is president of Republika Srpska (RS), one of the two autonomous entities that make up Bosnia and Herzegovina (BiH), is an utterly lawless attempted coup d'état against a democratic leader and a clear and present danger to BiH's stability.

The facts of the case can scarcely be believed. Mr. Dodik is criminally charged with failing to obey an edict issued by a German politician named Christian Schmidt, who claims to hold an international position called High Representative, even though his appointment to the post was never approved by the UN Security Council, as the 1995 Dayton Agreement requires. Even if Mr. Schmidt were a legitimate High Representative, absolutely nothing in the Dayton Agreement or any other source of law gives the High Representative authority to make law or otherwise issue binding decisions. Such dictatorial powers are anathema to BiH's democratic constitution, which is also part of the Dayton Agreement.

Yet Mr. Schmidt has repeatedly issued edicts claiming to enact statutes, in brazen defiance of BiH's constitutional order. Mr. Schmidt's most audacious and reckless act of repression is a counterfeit law he imposed in July 2023 that establishes prison sentences for officials who refuse to treat the High Representative's illegal edicts as if they were approved by BiH's democratic legislature. The "law" also ousts those convicted from their positions and bans them from all official duties.

In June 2023, in response to Mr. Schmidt's lawless and unconstitutional efforts to rule BiH by edict, the RS National Assembly approved a statute ending the publication of such illegal edicts in the RS's Official Gazette. When Mr. Dodik formalized the statute, as he was required to do by the RS Constitution, the BiH Prosecutor's Office indicted Mr. Dodik based on Mr. Schmidt's fake new "law."

Mr. Dodik is now undergoing a sham trial presided over by a former wartime Bosniak army judge. He stands accused of violating not a democratically enacted criminal statute but, instead, a German politician's whim. The trial is literally lawless, given that it is entirely based on a fictitious law that was never approved by either house of the BiH Parliamentary Assembly. Yet the BiH court and prosecutor's office, under pressure from Mr. Schmidt and certain foreign embassies, are treating Mr. Schmidt's s bogus criminal "law" as if it were duly enacted in accordance with the BiH Constitution.

The trial of Mr. Dodik is an attack on the rule of law and BiH's democratic constitutional order. The effort by Mr. Schmidt and certain embassies to overturn Mr. Dodik's free and fair election is a flagrant violation of international law, EU norms, and the values that Western nations claim to champion.

This material is distributed by McGinnis Lochridge on behalf of Republika Srpska. Additional information is available at the Department of Justice, Washington, DC.

Beyond that, the trial is potentially the most destabilizing event in BiH since the 1992-1995 war. It is unknown what will happen if Mr. Dodik is convicted and sentenced based on a fictitious and totally illegitimate “law.” It is a mystery what Mr. Schmidt even hopes to accomplish. He is clearly trying to oust Mr. Dodik, but he can never oust the people of the RS, who overwhelmingly support Mr. Dodik’s defense of the Dayton Agreement and his rejection of Mr. Schmidt’s dictatorial actions (The party and broader coalition Mr. Dodik leads won a sweeping victory in October’s elections). Indeed, the attempted overthrow of Mr. Dodik is likely to galvanize—or even radicalize—the RS electorate. The blame for whatever instability results from the trial of Mr. Dodik belongs to Mr. Schmidt and the foreign embassies who have supported this attempted coup.