



BiH Dayton Project



A Judicial Abomination in Bosnia and Herzegovina

📅 August 14, 2025

The text of the Court of Bosnia and Herzegovina's second-instance decision upholding the conviction and sentencing of Republika Srpska President Milorad Dodik further demonstrates that the proceedings in the case were a shameful charade and an insult to the rule of law. The court's decision drips with contempt for the defense and fails to engage with many of its most potent arguments. The decision is most notable for its clumsy attempts to avoid the crucial issue in the case: whether a retired German official named Christian Schmidt had the constitutional authority to decree the criminal prohibition under which President Dodik was convicted.

This question goes to the very core of the prosecution of President Dodik. If Mr. Schmidt did not have authority under the BiH Constitution to impose the law President Dodik was accused of breaking, then the case against him quite obviously falls apart. Yet the Court's decision engages in absurd circumlocutions in an attempt to wave the defense's objection away without ever explaining why it is wrong.

President Dodik's defense rightly pointed out during the appeal that the BiH Constitution does not allow the High Representative (HR), his office (OHR), or anyone else to impose laws on BiH by decree. Indeed the BiH Constitution explicitly requires all

BiH laws to be approved by both houses of the Parliamentary Assembly. This requirement is unequivocal and undeniable. The decreed ersatz “law” President Dodik was convicted of violating, called “*Failure to Comply with Decisions of the High Representative*,” is not a law at all because Mr. Schmidt, acting without any legal authority, imposed it as an edict. The alleged criminal “law” was never even presented to the Parliamentary Assembly.

The decision goes to absurd lengths to avoid this issue. In one particularly astonishing passage, the decision explicitly refuses to examine the issue of whether Mr. Schmidt had the constitutional authority to impose the criminal law at issue:

The High Representative intervened in the legal system of Bosnia and Herzegovina, substituting for the domestic authorities, and in this regard acted as an authority of Bosnia and Herzegovina. The decision to amend the Criminal Code, which he adopted, is by its nature a domestic law and must be regarded as a law of Bosnia and Herzegovina. Accordingly, the Panel emphasizes that *the subject of these criminal proceedings cannot be the examination of the validity of the existing legislative norm enacted pursuant to the authority invoked by the High Representative in the preamble to his decision.*^[1]

The court never explains the obvious and fatal contradiction that if Mr. Schmidt had any valid authority to substitute for a domestic authority, he would not have “intervened in the legal system” of BiH, as he would be part of that legal system. The court makes no effort to explain any legal grounds whatsoever upon which either such alleged substitution or such intervention could be based.

In its desperation to avoid examining the question of whether the HR’s rule by decree is constitutional, the panel writes that it “considers it inappropriate to engage in a debate over functions and powers that have for many years indisputably formed part of the state system” One cannot avoid a dispute simply by labeling one’s position indisputable when that very proposition is indeed in dispute and has been for many years. The panel declines to engage in the debate because it knows the law is not on its side.

The decision goes to almost comical lengths to avoid the issue of Mr. Schmidt’s lack of constitutional authority to impose laws. It asserts that the OHR “constitutes a well-

established component of the constitutional and legal system of Bosnia and Herzegovina,” but never cites any provision of the Constitution, or any provision or principle of domestic or international law, to support this statement. It cannot, of course, because no such provision exists.

The decision makes the absurd, unsupported, and unsupportable claim that the criminal prohibition in question was adopted by the HR “through a specific yet legitimate and legally valid procedure,” but the decision does not explain what that procedure was or how it could have been legally valid under BiH’s democratic constitutional order, which undeniably requires approval of all laws by the Parliamentary Assembly. Such ridiculous assertions, which are patently wrong on their face, are a disgraceful embarrassment to the judiciary of BiH, and to every domestic and international party who pretends this decision should qualify as a legal opinion.

The decision further states that President Dodik “was fully aware that this was not the first intervention by the High Representative in Bosnia and Herzegovina,” but it does not explain how such knowledge by the defendant is relevant to the question of whether the Mr. Schmidt had the constitutional authority to rule by edict.

The decision is full of circular reasoning, embedding the conclusion in the premise. For example, the decision states that President Dodik cannot “claim the right to arbitrarily disregard those elements of the state system which, for reasons known to him, he personally disfavors.” Any high school student with an elemental familiarity with logic can immediately recognize that the statement evades the question at issue by assuming, falsely, that the HR’s rule by decree is a legitimate element of the state system.

The decision even tries to argue, “From the very decision of the High Representative in Bosnia and Herzegovina establishing the criminal offence in question, his powers—established precisely by the Bonn Conclusions—are evident, and in doing so, he clearly explained his authority to intervene in the domestic legal system.” How can a man’s constitutional powers be evident from that man’s very decision? Anyone can announce a “decision,” but that does not mean their decision thereby becomes a BiH law. The Bonn conclusions of the Peace Implementation Council (PIC) did not give the HR any legal authority. The PIC, which is not mentioned in the Dayton Agreement, had no legal authority at all, let alone authority to bestow powers on the HR. And even if the Bonn

conclusions are erroneously considered a legitimate grant of authority, the Bonn conclusions did not recognize a power by the HR to substitute for the legislature.

Another key defense argument was that Mr. Schmidt did not legitimately hold the position of HR when he issued the edict in question because his appointment to the position was not approved by the UN Security Council as required by the Dayton Agreement—a requirement affirmed by the BiH Constitutional Court. Again, the court's decision fails to substantively address this crucial objection.

The decision asserts that “the first-instance court was fully justified in making only a passing reference to the *generally known fact* that Christian Schmidt is the High Representative in BiH.” [2] The trial court's source for this “generally known fact” is a 2021 letter from then-HR Valentin Inzko stating that Mr. Schmidt was appointed by the PIC. But neither the Dayton Agreement nor any other source of law give the PIC authority to appoint an HR or, for that matter, any legal authority at all. Nor do the Dayton Agreement or any other source of law give an HR the authority to confirm the appointment of a new HR. The Dayton Agreement bestows that power solely on the UN Security Council.

As supposed support for the proposition that Mr. Schmidt is a legitimately appointed High Representative, the court points to a letter from Mr. Schmidt's own OHR falsely claiming that “the appointment of the High Representative is not a matter in dispute in the said legal case”—which is quite obviously patently false—and asserting that “it does not represent a subject matter on which the courts in Bosnia and Herzegovina are competent to adjudicate.” So the court confirms that Mr. Schmidt is a legitimate HR by appealing to the authority of a letter from Mr. Schmidt's own office. A more ridiculous, circular, and nonsensical argument could hardly be imagined. The judges writing such a nonsense document are either fools unworthy of the title, or they assume those reading the opinion are fools, or they know their arguments are nonsense, but they just do not have enough self-respect to care.

The decision also states that the trial court reached the “correct conclusion . . . that no special resolution of the United Nations Security Council is required for the appointment of the High Representative, and that the legitimacy of Christian Schmidt's office as High Representative is unquestionable and was confirmed by the Steering Board of the Peace Implementation Council on May 27, 2021.” The court refused to

examine the actual legal requirements for appointment to the position of HR, nor did it address the indisputable fact that the PIC does not have any legal authority at all, let alone authority to appoint the HR.

In sum, the text of the Court of BiH's second-instance decision in the prosecution of President Dodik lays bare the political nature of the panel. Because the panel refused to engage in any serious consideration of sound objections that should have resulted in President Dodik's acquittal, the decision is a travesty of justice. No jurist with any integrity at all could possibly support such a decision as based in law. Rather, it is simply and utterly a power play and should be treated only as such.

[1] Emphasis added.

[2] Emphasis added.

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