

**BOSNIA AND HERZEGOVINA
PARLIAMENTARY ASSEMBLY
OF BOSNIA AND HERZEGOVINA**

HOUSE OF REPRESENTATIVES
Nebojsa Radmanovic, First Deputy Speaker

HOUSE OF PEOPLES
Dr Nikola Spiric, Second Deputy Speaker

Sarajevo, 07.11.2023.

To members of the European Parliament

Dear Sir/Madam,

Allow us to first thank you for your kind interest in our country, as well as for the support for Bosnia and Herzegovina (BiH), its institutions, and its citizens.

At this point, we would like to draw your attention to the key issues BiH is facing in these challenging times.

To that regard, we are sharing with you a brief document, a fact sheet regarding the situation in Bosnia and Herzegovina.

The attached fact sheet focuses on the vital importance of adherence to the 1995 Dayton Accords, BiH's road to EU membership, German politician Christian Schmidt's illegal and destabilizing dictatorial rule over BiH, and the danger of radical Islamism in the country.

As elected representatives of the Republic of Srpska (RS) - one of the two Entities that make up BiH - we would like to use this opportunity to reiterate the RS commitment to the Dayton Accords, including BiH's sovereignty, territorial integrity and constitutional order. The RS also fully supports BiH's road toward EU membership and is committed to implementing the reforms necessary for BiH to become an EU member.

We would be pleased to discuss with you any of the issues mentioned, should you have any questions.

Thank you for your kind consideration.

Sincerely,

Nebojsa Radmanovic
First Deputy Speaker of the House of Representatives

Dr Nikola Spiric
Second Deputy Speaker of the House of Peoples

Sanja Vulic
Chair of the Caucus of Alliance of Independent Social Democrats (SNSD)

Cedomir Stojanovic
Chairman of the Caucus of members of the Serbian Caucus

Sredoje Novic
Chairman of the Caucus of Serb people

FACT SHEET: THE CURRENT SITUATION IN BOSNIA AND HERZEGOVINA

November 2023

The importance of adherence to the Dayton Accords

Republika Srpska (RS), one of the two Entities that make up Bosnia and Herzegovina (BiH), is dedicated to the preservation of the 1995 Dayton Accords and insists on their faithful implementation. The Dayton Accords not only secured peace in BiH—a peace now uninterrupted for almost 28 years—but also established an ingenious power-sharing constitutional order to ensure stability and democratic governance in a country with three deeply divided peoples (the predominantly Muslim Bosniaks, the predominantly Orthodox Christian Serbs, and the predominantly Roman Catholic Croats). The BiH Constitution—the core of the Dayton compromise—provides for a decentralized system that gives each of BiH’s constituent peoples confidence that it will not come under the domination of other peoples. The Constitution does this by assigning most governmental competences to the two Entities that make up BiH and by incorporating mechanisms to protect the vital interests of each of BiH’s constituent peoples.

These structures and mechanisms are critical to BiH’s stability because the governing policies and worldviews that predominate among the three constituent peoples vary so widely. For example, the largest Bosniak political party is avowedly Islamist in orientation. Thus, eliminating the Constitution’s power-sharing elements is unthinkable to BiH’s Serbs and Croats.

The RS has consistently demonstrated its dedication to the Dayton Accords, which includes a commitment to peace and to fully respecting BiH’s sovereignty, territorial integrity, and constitutional order. Unfortunately, the heart of the Dayton Accords, the BiH Constitution, has been under attack for many years by the international High Representative (HR) and other foreign actors, who, through their illegal assertion of lawmaking powers, have centralized BiH in defiance of the BiH Constitution. Through exclusively legal and peaceful means, the RS is opposing such illegal actions and defending against the further erosion of the BiH Constitution.

Among those trying to do away with the Dayton compromise are certain politicians representing BiH’s Bosniak ethnic group, who frequently present themselves as post-nationalist reformers advocating what they call a BiH “civic state.” No one should be fooled by this verbal sleight of hand. Because Bosniaks make up a slight majority of BiH’s population, the “civic” BiH these politicians claim to desire would be ruled by Bosniaks for Bosniaks. The stated nationalist policies of the largest Bosniak parties, as well as their ongoing actions seeking to dominate BiH governing institutions, confirm their intent to rule BiH to the exclusion of Serbs and Croats.

Meanwhile, foreign diplomats continue to violate their obligation under the Vienna Convention on Diplomatic Relations not to interfere in the host state’s internal affairs. With their interference in BiH’s internal affairs, foreign diplomats have attempted to rule BiH from foreign

capitals, and have shown contempt for the Dayton Accords, for BiH's sovereignty, and for the rule of law.

BiH's road to EU membership

The RS continues to support BiH's drive for EU membership and implementation of the reforms necessary to achieve it, consistent with the BiH Constitution's division of competences. BiH's significant recent progress on reforms necessary to begin EU membership negotiations demonstrates what BiH's domestic leaders can achieve if it is given room to negotiate.

One step that is incontestably necessary for BiH to become an EU member is the closure of the Office of the High Representative (OHR). The EU has recognized that the OHR is inconsistent with EU membership, and it is widely understood that the presence in BiH of a foreigner claiming dictatorial powers badly undermines EU integration.

Another reform clearly required for BiH to move forward on the road to EU membership is for BiH's Constitutional Court to be composed of BiH citizens instead of having a controlling bloc of seats reserved for foreign judges. The court has significantly corroded its own legitimacy throughout BiH through its domination by its foreign judges (whose positions were supposed to be a temporary five-year transitional measure), the corruption of judicial processes by interference from the OHR and certain foreign powers, and a long series of indefensible decisions defying the BiH Constitution. A former foreign judge on the Constitutional Court even admitted that there is a "tacit consensus between the Court and the High Representative that the Court . . . will always confirm the merits of his legislation."¹ This corruption of the judicial process by outside meddlers has not only severely and understandably caused its decisions to be disrespected, but it has also severely undermined respect for the rule of law in BiH.

When the Constitutional Court once dared to show a measure of independence from the OHR by taking issue with OHR decrees that were clear violations of due process rights, the HR responded lawlessly again, by nullifying the court's decision and decreeing that no OHR action can be subject to any review by any BiH authority.

The EU has rightly listed the replacement of the court's foreign judges among the 14 key priorities for BiH's EU integration, and this reform must be completed without further delay. It was only after decades of refusal by the Bosniak parties to enact a reform replacing the foreign judges that the RS National Assembly voted in June 2023 to temporarily suspend implementation of certain decisions of the Constitutional Court until the issue is addressed by the BiH Parliamentary

¹ Joseph Marko, *Five Years of Constitutional Jurisprudence in Bosnia and Herzegovina*, European Diversity and Autonomy Papers (July 2004) at 17 and 18.

Assembly. The RS is hopeful that with internal dialogue, the issue of foreign judges can be resolved soon, along with the rest of the 14 key priorities for EU integration.

Christian Schmidt's illegal and destabilizing dictatorship over BiH

The Dayton Accords authorized the creation of an HR with a strictly circumscribed mandate to be a coordinator of international activities involved in the civilian aspects of the Dayton Accords and a facilitator of the parties' efforts. The Dayton Accords did not assign any authority to the HR to impose decisions on BiH or its citizens, let alone to decree laws and impose extrajudicial punishments.

Despite this, beginning in 1997, successive HRs claimed for themselves, with no legal justification whatsoever, powers to rule and punish by decree, vastly exceeding the HR's mandate under the Dayton Accords and casting aside the entire democratic system established by the BiH Constitution. These HRs have acted illegally as colonial viceroys and worked aggressively, through issuing anti-democratic and legally preposterous diktats, in an effort to replace the highly decentralized BiH mandated by the BiH Constitution with the unitary "civic" state that was the Bosniak army's wartime goal. Even former HRs have recognized the illegality of such actions.

The last legitimately appointed HR left BiH in 2021, and the UN Security Council—the only body with authority to approve the appointment of an HR—failed to approve a successor. Despite this, a retired German politician named Christian Schmidt arrived in BiH shortly thereafter falsely claiming to be the new HR. Since his arrival, Mr. Schmidt has employed the claimed dictatorial authorities of the HR promiscuously and oppressively, issuing dozens of rash, ill-conceived decrees without any democratic or legal legitimacy whatsoever, and in so doing has severely jeopardized BiH's political stability.

Leaving aside the fact that Mr. Schmidt is not a legitimate HR, his assertion and use of dictatorial authority over BiH and its citizens is a brazen and shocking abuse of the rule of law. No one, including even a legitimately appointed HR, has legal authority to enact laws in BiH by edict. Such claimed authority plainly violates BiH's democratic constitutional system for enacting laws and the HR's narrowly limited mandate under the Dayton Accords, in addition to violating the most basic human rights guaranteed under international law.

Mr. Schmidt has imposed ersatz statutes with reckless abandon, including an oppressive new "law" establishing criminal penalties for those who do not implement his illegal decisions. Namely, deeming his word to be law, Mr. Schmidt imposed on BiH a criminal statute establishing five-year prison sentences for "Failure to Implement Decisions of the High Representative." Although HRs have defied the BiH Constitution and the Dayton Accords to impose many laws on BiH over the years, no HR ever dared to criminalize refusal to collaborate with HRs' make-believe laws. Mr. Schmidt's attempt to criminalize failure to implement his illegal decrees marks a dangerous and despicable escalation in foreign repression of BiH that, in effect, turns BiH into a

police state commanded by an unelected German despot. Mr. Schmidt has also threatened to directly impose extrajudicial punishments on RS officials who displease him. Jurists, journalists, and even former HRs have all recognized that Mr. Schmidt's illegal rule by decree and his threat of extrajudicial punishments are a threat to the future of BiH and plainly violate the rights of BiH citizens guaranteed by international conventions to which BiH is a party.

Responding to Mr. Schmidt's lawlessness and the need to uphold the rule of law, the RS National Assembly in June approved a law ending the publication of the OHR's illegal decrees in the RS's Official Gazette. After the President of the RS took a legally mandated procedural step formalizing the National Assembly's law, the BiH Prosecutor's Office indicted him based on Mr. Schmidt's phony new criminal "statute." In short, the RS officials are being prosecuted under a fictitious law by an unconstitutional prosecutor's office, in an unconstitutional court, acting to enforce a tyrannical, anti-democratic, illegal degree of a foreigner unlawfully claiming unrestricted power to rule BiH by decree, against legally elected and appointed officials who simply carried out formal procedures they were legally required to execute. The indictments are an intolerable attack against BiH's sovereignty and democratic constitutional order and a rejection of rule of law in favor of rule by one man backed by foreign political and military power. The exercise of such unrestrained, tyrannical power must stop.

Radical Islamic Movements in BiH

BiH has long been a haven for radical Islamists. A former mujahidin fighter told the BBC that BiH was "the cradle" of the modern jihadist movement, and that title is unfortunately well-deserved. In the 1990s, hundreds of jihadists, including Osama bin Laden and two of the 9/11 hijackers, came to BiH to aid the Bosniak army in its fight against Serbs and Croats. The Bosniak army incorporated foreign jihadists into its El Mujahid Detachment, notorious for terrorizing combatants and civilians alike with serial beheadings. Although most of the foreign jihadists left BiH after the war, their local followers stayed and spread radical Islamist ideology throughout BiH, with the acquiescence of sympathetic Bosniak officials in Sarajevo.

The fertile ground that Salafist ideology has found in BiH is demonstrated by the fact that, out of all European countries, BiH had the highest per-capita rate of citizens who left to fight for ISIS. ISIS recruits returning to BiH, unfortunately, have received little more than a slap on the wrist from BiH courts. As the US State Department wrote in its BiH country report on terrorism in 2018, "Foreign terrorist fighters frequently received sentences below the minimum prescribed by the BiH criminal code."

Moreover, the perpetrators of many of the worst terrorist attacks of the past 25 years had connections to BiH; among these are the 1998 attacks on the U.S. embassies in Nairobi and Dar es Salaam, the 9/11 attacks, the 2004 Madrid Train bombing, and the 2015 Paris attacks.

The largest party representing BiH's Bosniaks is explicitly Islamist in its ideology; the party's revered founder wrote in 1990, the year the party was founded, that "the Islamic movement should and can start to take over power as soon as it is morally and numerically strong enough to be able to overturn not only the existing non-Islamic government, but also to build up a new Islamic one."²

There are villages in the Federation of BiH where residents enforce Sharia law. Bosniak-populated regions of BiH remain home to numerous Al Qaeda and ISIS sleeper cells that could be potentially activated if and when an order is given. In a travel advisory published in July 2023, the US State Department wrote, "Terrorist groups continue plotting possible attacks in Bosnia and Herzegovina. Terrorists may attack with little or no warning" In May 2023 France's Interior Minister Gérald Darmanin said that the primary risk for Europe and France is "Sunni Islamist terrorism."³ As of October 2023, Italian intelligence reports suggest that up to 20 Islamist terror groups are operating in BiH.⁴

While the security situation appears stable in Croat- and Serb-populated parts of BiH, unfortunately, most of the Sarajevo political and media establishments appear unwilling to confront this problem, preferring instead to pander to the latent antisemitic undercurrents in Bosniak society. Given these realities, the ongoing war between Hamas and Israel will exacerbate yet another cleavage in BiH and present yet another layer of diplomatic and security problems.

In light of these facts, it is inexplicable that the OHR, backed by many Western States, is attempting to centralize BiH, thus concentrating all power in Bosniaks' hands and strengthening the Islamist toehold in Europe. Western states should instead act in accordance with their own security interests and uphold international law by supporting the long-overdue closure of the OHR and respect for BiH's decentralized constitutional structure.

Despite BiH's current turbulence, and the RS is confident that BiH can succeed and become a prosperous EU member once the Dayton Accords and the BiH Constitution are faithfully implemented, including through respect for BiH's constitutional structure and the restoration of democratic self-rule.

² Alija Izetbegovic, Islamic Declaration (1990) at 56.

³ Politico, French minister warns of resumption of 'Islamist terrorist' threat in Europe; May 20, 2023

⁴ See Francesco Musacchio, Allarme attentati, informativa degli 007: il pericolo Jihad arriva dai Balcani – Il Tempo, 21 October 2023.