

Mandate of the Special Rapporteur on the independence of judges and lawyers

Ref.: AL BIH 1/2025
(Please use this reference in your reply)

14 April 2025

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 53/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning allegations describing the actions taken by the authorities in the Republika Srpska that reportedly seek to undermine Bosnia and Herzegovina's judicial institutions and their authority, as well as reports of political pressure on those working in these institutions.

I recall that I had already expressed related concerns in August 2023, in AL BIH 2/2023.

According to the information received:

Context

Milorad Dodik is a Bosnian Serb politician currently serving since November 2022 as the 8th president of the Republika Srpska entity of Bosnia and Herzegovina (Republika Srpska), a position he previously held from 2010 to 2018. From 2018 to 2022 he was the Serb member of the tripartite Presidency of Bosnia and Herzegovina.

In September 2023, Mr. Dodik was indicted by the Court of Bosnia and Herzegovina for signing into a decree a law terminating the implementation of the High Representative's decisions in Republika Srpska, which was adopted by the Republika Srpska legislature (RSNA) together with a law prohibiting the implementation of rulings of the Constitutional Court of Bosnia and Herzegovina.

Some month before, in July 2023, using the Bonn Powers vested in his office, the High Representative had annulled these laws and enacted amendments to the criminal code of Bosnia and Herzegovina in response to the RSNA initiatives, introducing non-compliance with the rulings of the Constitutional Court of Bosnia and Herzegovina, the European Court of Human Rights and other bodies, as well as decisions of High Representatives, as a criminal offence. Mr. Dodik nevertheless signed the laws for official publication, which led to his indictment.

The information suggests that, following his first-instance conviction by the Court of Bosnia and Herzegovina on 26 February 2025, Mr. Dodik and other members of the Republika Srpska leadership have been instigating laws,

decisions and other measures which, if implemented, would undermine the authority of State-level institutions, mainly the judiciary, and the constitutional order.

Recent actions

On 26 February 2025, the Court of Bosnia and Herzegovina issued a first-instance verdict sentencing Milorad Dodik, the President of the Republika Srpska entity, to one year in prison and banning him from presidential functions for six years for the criminal offence of “Failure to Implement Decisions of the High Representative.”

Before issuance of the verdict, the Republika Srpska leadership announced that they would impose “radical measures” should Mr. Dodik be convicted. On 26 February, in the immediate aftermath of the verdict, the Republika Srpska entity’s legislature adopted the following laws:

1. The **Law on non-application of laws and ban on operation of extra-constitutional institutions of Bosnia and Herzegovina and the Law amending the Republika Srpska criminal code**, which prohibits the following State-level institutions from operating within the Republika Srpska entity: the Court of Bosnia and Herzegovina, the Prosecutor’s Office of Bosnia and Herzegovina, the Investigation and Protection Agency of Bosnia and Herzegovina, and the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.
2. The **Law on the High Judicial and Prosecutorial Council of Republika Srpska**, which establishes an entity-level High Judicial and Prosecutorial Council, despite the existence of such a judicial oversight body at the State level.
3. The **law on the special registry and publicity of the work of non-profit organizations**, which creates a distinct regime for non-governmental organizations receiving foreign funding and other assistance.¹

On 7 March, at an extraordinary session, the Constitutional Court of Bosnia and Herzegovina issued three decisions temporarily suspending, as interim measures, the above-mentioned laws. The Court noted that “regulations concerning the area of judicial governance represent one of the most important areas of regulation in any country, as they ensure the independence and impartiality of the judicial system, play a crucial role in upholding the rule of law, protecting human rights and freedoms, and preserving citizens’ trust in justice and institutions”. The Court added that “a stable judicial framework is based on the respect for democratic principles and legal certainty, and its undermining could have far-reaching negative consequences on other areas of social life”. It highlighted the **urgency** of measures, assessing that the implementation of two of the above-mentioned laws “could lead to the creation of parallel judicial institutions and a situation where judicial office-holders

¹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28581>

could face instability in their position, while parties to proceedings could be confronted with uncertainty regarding legality in the actions of ordinary courts”.

The information suggests that further to the decisions of the Constitutional Court of Bosnia and Herzegovina, Mr. Dodik stated that the above-mentioned laws would be implemented in Republika Srpska.

The information further suggests that by instigating and pushing for the implementation of laws prohibiting and criminalizing the operation of State-level judicial and law enforcement institutions in Republika Srpska or laws that assume the competencies of such institutions on the territory of the entity, and by deciding to ignore the rulings, including interim measures, of the Constitutional Court of Bosnia and Herzegovina, the Republika Srpska leadership is directly undermining the country’s constitutional order.

Reports suggest that the Republika Srpska leadership has repeatedly sought to weaken the constitutional order, claiming they aim to restore the “original Dayton Peace Agreement”, arguing that many competencies—including those related to the judiciary—were unjustly or illegally transferred away from the entity.

Moreover, on 13 March, the RSNA adopted a draft Republika Srpska Constitution that *inter alia* foresees the right to self-determination of the entity and taking over competencies from the State of Bosnia and Herzegovina.

The information suggests that authorities from Republika Srpska have made public calls to staff in the judicial institutions of the State to leave their posts and join the judicial institutions in the entity. Reports describe threats publicly made by Mr. Dodik, at a press conference on 19 March, suggesting consideration of options to confiscate the property of employees from Republika Srpska who would not resign from State-level judicial institutions. Reports also describe statements that stigmatize civil servants from Republika Srpska, and more specifically Serb civil servants working in State-level judicial institutions.

Without prejudging the accuracy of these allegations, I would like to express my serious concern about what appears to be improper interference with judicial institutions in Bosnia and Herzegovina. I am concerned about the actions, legislation passed, and statements of some senior officials from Republika Srpska that appear to be aimed at undermining judicial institutions of Bosnia and Herzegovina and their judicial decisions. If confirmed, this course of action would constitute a serious breach of international human rights standards and the Basic Principles on the Independence of the Judiciary that entail that all actors should respect the independence of the judiciary.

I am also concerned at the threats of sanctions and verbal attacks against justice operators and the hostile environment these may create. Incitement and threats against justice operators diminish the rule of law, jeopardize the judges’ and lawyers’ personal and professional interests, and undermine judicial independence.

I recall in addition that public officials should not make statements that are likely to promote intolerance, discrimination, or dis/misinformation and should, instead, take advantage of their leadership positions to counter these social harms and to promote intercultural understanding and respect for diversity. We would like to highlight that the exercise of the rights provided for under article 19 of the International Covenant on Civil and Political Rights carries with it special duties and responsibilities. In this instance, we highlight the respect of the rights or reputations of others.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain how the actions taken are compatible with Your Excellency's Government's obligations under International Covenant on Civil and Political Rights and the Basic Principles on the Independence of the Judiciary, and in particular principles 11 and 12.
3. Please describe the measures taken to ensure that all justice officials are able to work free of harassment and threats.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my highest consideration.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw the attention of your Excellency's Government to the Universal Declaration of Human Rights (UDHR) and refer to its article 10, which guarantees "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him"; and to the fundamental norms set forth in article 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Bosnia and Herzegovina in 1993, which enshrines the principle of equality before the law and the right of every person to be heard publicly and with due guarantees by a competent, independent and impartial court, established by law, a right that cannot be subject to any exception.

As affirmed by the Human Rights Committee: "The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them". (General comment No. 32, para. 19).

The Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, establish that all governmental and other institutions must respect and conform to the independence of the judiciary (principle 1) and that judges will decide cases impartially, on the basis of the facts and in accordance with the law, "without any restriction and without undue influence, incitement, pressure, threat or interference, direct or indirect, from any sector or for any reason" (principle 2).

These Basic Principles on the Independence of the Judiciary also provide that: "The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.....Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists (principles 11 and 12)."

In 2009 report to the United Nations Human Rights Council, the mandate on Independence of Judges and Lawyers recalled that "[t]he principle of the separation of powers, together with the rule of law, are key to the administration of justice with a guarantee of independence, impartiality and transparency" (A/HRC/11/41, para. 18). Furthermore, in the 2017 report to the Human Rights Council, the Special Rapporteur

on that mandate highlighted that “respecting the rule of law and fostering the separation of powers and the independence of justice are prerequisites for the protection of human rights and democracy” (A/HRC/35/31, para. 16).