

European Court of Human Rights
Council of Europe
67075 Strasbourg
France

FAO Johan Calleweart, Deputy Grand Chamber Registrar

Application no. 43651/22
Kovačević v. Bosnia and Herzegovina

Dear Sir/Madam,

25th October 2024

We are reaching out to you regarding the testimony of the High Representative, Christian Schmidt, in the case of *Kovačević v. Bosnia and Herzegovina* before the Grand Chamber of the Court. We believe it is essential and important to present the facts regarding the High Representative, Christian Schmidt, which lead us to question his credibility as a witness in this case. *Additionally, from a legal perspective, several rulings of the European Court of Human Rights (ECtHR) highlight the need to ensure impartiality, respect for the right to a fair trial, and the importance of upholding previous judgments. We have outlined these legal concerns below, emphasizing how Schmidt's involvement in this case poses risks to these fundamental principles.*

Before we present some facts that indicate his bias, we would like to inform you that Christian Schmidt does not have the authorization of the Steering Board of the Peace Implementation Council (PIC) to testify in this case and is acting voluntarily and as a private witness. Several PIC members have issued official statements to this effect. For example, the French Embassy, in its statement on October 1, 2024, stated that Christian Schmidt "decided on his own initiative to participate in the court process *Kovačević v. Bosnia and Herzegovina* before the European Court of Human Rights." A similar statement was issued by the Turkish Embassy on October 3, 2024.

Therefore, the claim that he is testifying in the capacity of the High Representative could be seen as a misrepresentation and potentially an abuse of his position for questionable purposes. In this case, he is appearing solely in his private capacity as a German citizen, having hired the private law firm Blackstone Chambers from London. The sources of funding for this legal service are concealed, leading to speculation that a 'third party' with interests in overturning the ruling is funding the legal fees.

Moreover, the role of the High Representative is to oversee the implementation of the civilian aspects of the Dayton Peace Agreement, not to interfere in cases brought by citizens of Bosnia and Herzegovina before the European Court of Human Rights or any other court. This is clearly defined in Annex X of the Dayton Peace Agreement (attachment no. 1 below). Therefore, even if Christian Schmidt had the consent of the PIC to appear as a witness in this case, he would be acting beyond his powers and thus violating Annex X, and by extension, the Dayton Peace Agreement itself. It is worth noting that 'overseeing the implementation of the civilian aspects of the Dayton Peace Agreement' includes enforcing the judgments of the European Court of Human Rights, not obstructing them or attempting to overturn them. It is vital to note that ECtHR rulings, particularly in cases such as *Sovtransavto Holding v. Ukraine*, condemn governmental interference in legal processes, stressing that such involvement undermines the independence of judicial proceedings. By voluntarily participating in the case, Christian Schmidt's testimony could be seen as a political interference, which further compromises the integrity of this trial.

From his testimony in the case of *Kovačević v. Bosnia and Herzegovina*, it is evident that the private individual, Christian Schmidt, is seeking to overturn a ruling that would strengthen the civic aspect of the state and facilitate its path toward Euro-Atlantic integration.

Given his appearance as a private witness (without PIC approval to act as High Representative), we feel it is important to present some facts that suggest he is a biased individual with political motives harmful to the state of Bosnia and Herzegovina:

1. The request to address the European Court in Strasbourg was made by the German citizen Christian Schmidt a day after his meeting with Croatian Prime Minister Andrej Plenković on September 2, 2024. Andrej Plenković belongs to the Croatian HDZ party. As is known, in the ICTY Tribunal case Prlić et.al., Croatian government was found responsible for 'joint criminal enterprise' against Bosnia and Herzegovina. HDZ's policies have not changed, and their goals and territorial aspirations towards Bosnia and Herzegovina remain the same, only pursued through non-military means.
2. Christian Schmidt amended the Election Law, but only for the Federation of Bosnia and Herzegovina, on election night, after the polling stations had closed. He did so to benefit HDZ in the following way: In the next election cycles, HDZ will not need to have a single candidate for the House of Representatives of the Federation or the Parliamentary Assembly of Bosnia and Herzegovina. It will be sufficient for them to achieve good results in the cantonal assemblies. This way, HDZ will control political processes regardless of the election results, undermining the purpose of elections. He also changed the number of delegates by increasing the number of Croatian delegates in cantons with a Croatian majority, making the vote of one Bosnian Croat voter be equivalent up to four Bosniak voters, depending on the canton.
3. By amending the number of delegates who must support candidates for president or vice president of the Federation of Bosnia and Herzegovina, and allowing only candidates from the constituent peoples to be nominated while excluding 'others,' Christian Schmidt imposed the same provisions of the Federation's Constitution that the Constitutional Court of Bosnia and Herzegovina ruled in 2015 as violating the European Charter of Human Rights. This interference is highly problematic in light of the ECtHR's jurisprudence on ethnic discrimination, as outlined in rulings such as *Sejdić and Finci v. Bosnia and Herzegovina*. The ECtHR has been clear in rejecting practices that reinforce ethnic divisions, and Christian Schmidt's actions seem to oppose this precedent.
4. It is worth mentioning that an appeal has been submitted to the European Court of Human Rights against these amendments to the Constitution of the Federation of Bosnia and Herzegovina.
5. Christian Schmidt suspended the Federation's Constitution for one day, taking away Bosniaks' right to vote to benefit HDZ and impose a government with parties that were not election winners. He did this due to alleged 'blockades,' but did nothing against HDZ, which had been blocking the work of the Federation's Parliament for years before that. The government could have been formed without suspension or imposition, but such a formation would not have favored HDZ.
6. Christian Schmidt attempts to intimidate the court by claiming that implementing the Kovačević judgment would lead to the 'destabilization of the state,' reminiscent of threats of 'conflict in the south if the election law is not changed' made by HDZ BiH leader Dragan Čović and HNS president Božo Ljubić in 2022. On February 22, 2022, a group of citizens filed criminal charges against these individuals for 'anti-constitutional activities, undermining the state, and threatening peace and stability,' as well as for violating Bosnia and Herzegovina's Criminal Code, Article 145a, paragraph 3. Schmidt's claim that implementing the Kovačević ruling could lead to 'state destabilization' without specifying who would cause such destabilization points to HDZ, the only party that has threatened conflict in the south to maintain existing ethnic divisions and fulfill convicted UZP goals. Maintaining the status quo leads to ongoing destabilization of the country and the region. Schmidt's attempt to intimidate the European Court of Human Rights with the threat of destabilization if the Kovačević ruling is implemented is pure blackmail. Can you imagine if, during the trial of war criminals before the Hague Tribunal, a defense attorney told the court that a guilty verdict would 'destabilize the country,' so it should not be issued? This attempt to exert political pressure on the court recalls situations where undue governmental interference was condemned by the ECtHR, as in *Sovtransavto Holding v. Ukraine*. The ECtHR has consistently upheld that judicial processes should be free from political coercion, which is crucial to preserving the integrity of the legal system.
7. Croatian Prime Minister Andrej Plenković openly admitted on his Twitter account on September 26, 2024, on the eve of the imposition of amendments to the Federation's election law on election night that Croatia had been negotiating with Christian Schmidt about the amendments: "We had months of thorough and discreet talks with High Representative Schmidt. When the president got involved and insulted Schmidt, it likely dampened his enthusiasm for correcting the injustices against Croats in Bosnia and Herzegovina," reported the official Twitter account of the Croatian government, quoting Prime Minister Plenković.
8. Christian Schmidt was awarded the Order of Ante Starčević, the founder of integral Croatian nationalism, by Croatia in 2012. The award was presented by the current Croatian Prime Minister Andrej Plenković (attachment no. 2). Another recipient of this order is war criminal Jadranko Prlić, convicted by the Hague Tribunal for 'joint criminal enterprise.' During the award ceremony, Andrej Plenković said: "...for his special contribution to the establishment and development of a sovereign Croatian state and the promotion of the

foreign policy interests of the Republic of Croatia in the Federal Republic of Germany and in the world, Mr. Christian Schmidt is decorated.”

9. In January 2023, British Parliamentarians requested that Christian Schmidt return the Order of Ante Starčević, which he refused to do.
10. Regarding his November 2023 report to the UN, where then-Chairman of the Presidency of Bosnia and Herzegovina, Željko Komšić, also spoke, Christian Schmidt said: "Željko Komšić spoke only for himself, not on behalf of the Presidency of Bosnia and Herzegovina when he criticized Andrej Plenković at the UN in September..." Since Mr. Željko Komšić addressed the UN in his capacity as Chairman of the Presidency of Bosnia and Herzegovina and presented facts, not personal opinions, it can be concluded that Christian Schmidt is extremely sensitive to criticism of Croatian policies toward Bosnia and Herzegovina, despite the fact that these policies have not changed since the time of Croatia's aggression against Bosnia and Herzegovina.
11. It is worth mentioning that the same Christian Schmidt report to the UN includes his insistence on replacing Bosnia and Herzegovina's judge at the European Court of Human Rights in Strasbourg. Although the mandate of Bosnia and Herzegovina's judge at the European Court of Human Rights, Faris Vehabović, had been in place for two years prior, Christian Schmidt only problematizes this now, when the court is set to consider an application challenging his amendments to the Federation's Constitution.
12. The day after the ruling in *Kovačević v. Bosnia and Herzegovina* was published, on August 30, 2023, Christian Schmidt made a public comment, stating that the mentioned ruling is "an encouragement in the fight against discrimination" and that the ruling will "finally remove discrimination" (attachment no. 3). His sudden change in stance coincides irresistibly with Croatia's position and its apparent engagement to have the ruling overturned. This ruling does not suit Croatia because it stands in the way of resolving the so-called 'Croatian issue,' that is, the method of electing the Croatian member of the Presidency of Bosnia and Herzegovina. The same applies to the obstruction of the implementation of the *Sejdić-Finci* ruling. It should be noted that neither the Constitution of Bosnia and Herzegovina nor the Constitution of the Federation of Bosnia and Herzegovina refer to 'Croatian,' 'Bosniak,' or 'Serb' members of the Presidency, but rather to 'members of the Presidency from among those peoples.' Thus, Croatia's insistence on electing a 'Croatian member of the Presidency of Bosnia and Herzegovina' is simply another step toward achieving the goals of the 'joint criminal enterprise,' as determined by the Hague Tribunal, albeit through other means.
13. Although the Constitutional Court is not filled according to ethnic principles, as confirmed by the Venice Commission, HDZ insists that its candidate, Marin Vukoja, fill the vacancy. High Representative Christian Schmidt, during his last address to the UN Security Council in New York, mentioned that the appointment of 'Čović's candidate' is becoming more likely—something entirely unnecessary and inappropriate to mention at the UN. Furthermore, to secure the election of Čović's candidate to the Constitutional Court of Bosnia and Herzegovina, Christian Schmidt reportedly called members of the Parliamentary Assembly's Election and Appointment Committee to the OHR to urge them to appoint Vukoja. Some of the invited committee members admitted this to the Bosnian media (attachment no. 4).
14. In September 2021, Bosnian media published Christian Schmidt's speech at an event in Germany where he made the following statement: "The gentleman, who spoke here, President Komšić, is the Croatian representative in the state Presidency, but he was mostly elected by Bosniaks, not Croats. This shows how complicated it is, so to speak, because the true leader of the Croats, Mr. Čović, lost to him," said Christian Schmidt (recording of the speech in attachment no. 5). Although there are numerous examples of Christian Schmidt's actions as High Representative that indicates his bias towards Croatia and HDZ, we have highlighted only a few. Since the focus of our letter is solely on the work and actions of Christian Schmidt as High Representative for Bosnia and Herzegovina, we do not intend to delve into the scandals related to Christian Schmidt in Germany (such as the attempt to rehabilitate the Nazi pilot Werner Moelders, laying flowers at the cemetery of fallen soldiers of the 'German Mountain Brigade,' his participation in public events commemorating Nazi troops, or the reason he lost his position as Germany's Minister of Agriculture), as it is not our intent to explore these scandals in detail. As far as we understand, the court has allowed the German citizen Christian Schmidt to testify as a 'witness' in the case of *Kovačević v. Bosnia and Herzegovina*, provided that he 'does not delve into the merits of the case.' However, in his letter to the court, Christian Schmidt, aside from offering his opinion without any legal foundation, deeply delved into the merits of the case. Based on everything mentioned in this letter, we believe that Christian Schmidt's credibility as a 'witness' in the case of *Kovačević v. Bosnia and Herzegovina* is highly questionable. Therefore, we call on the court to consider all the facts presented and to exclude Christian Schmidt as a witness, if the court has such a possibility.
15. Lastly, we would like to emphasize that the failure to implement the *Kovačević v. Bosnia and Herzegovina* ruling, as well as other rulings grouped under the '*Sejdić-Finci* case law,' would forever cement apartheid and

close the door to Bosnia and Herzegovina's entry into the EU and, in general, its accession to Euro-Atlantic integrations. We also want to underline the fact that the European Convention on Human Rights is an integral part of the Constitution of Bosnia and Herzegovina (Annex IV of the Dayton Peace Agreement), and the invalidation of rulings by the European Court of Human Rights, including the Kovačević ruling, would represent a violation of the Dayton Peace Agreement as well as the European Charter of Human Rights. Moreover, the ECtHR has repeatedly affirmed, under Article 46 of the ECHR, the binding nature of its judgments, as seen in cases like *Hirst v. the United Kingdom* and *Assanidze v. Georgia*. Christian Schmidt's attempts to overturn a judgment that aligns with established European legal principles not only violates this obligation but also threatens to destabilize the entire European human rights framework.

- Moreover, the annulment or overturning of the Kovačević ruling would call into question all previous rulings ever made by the court (not just those related to the 'Sejdić-Finci case law'). At the same time, it would create a new 'case law' based on which many new applications would arise from countries such as Spain, Italy, France, Britain, and others, requesting the replacement of the civil principle with the ethnic one in those countries.
- Finally, the annulment/overturning of the Kovačević ruling could undermine public trust in the European Court of Human Rights and shake its reputation.

Therefore, we expect that the court will carefully consider the facts presented in this letter, as well as the credibility of Christian Schmidt as a witness, and make its decision in a professional and impartial manner.

Sincerely,

We the undersigned:

1. Azra Zornic, applicant in the case *Azra Zornic v Bosnia and Herzegovina*, a member of the Association of Independent Intellectuals Circle 99, Sarajevo
2. Dr. Francis A. Boyle, Professor of Law, University of Illinois College of Law, and U.S. Human rights lawyer, U.S.A.
3. Dr. Marion Kraske, political analyst/scientist, Germany
4. Dr. David Pettigrew, Chairperson/ CSU Professor, Genocide studies Programme, Yale University, U. S. A.
5. Dr. Carole Hodge Research Fellow (retired) and Author, UK, also a member of Association of Independent Intellectuals Circle 99, Sarajevo
6. Dr. Marko Attila Hoare, Associate Professor, Department of Political Science and International Relations, Sarajevo School of Science and Technology', and member of Association of Independent Intellectuals Circle 99, Sarajevo, Bosnia and Herzegovina
7. Jakub Beilamowicz, Central and Eastern Europe, Western Balkans Analyst, Institute for New Europe, Krakow, Poland
8. Tarik Delic, Company Director, UK
9. Dzenana Delic, Business studies lecturer (retired), UK, also a member of Association of Independent Intellectuals Circle 99, Sarajevo
10. Dr. Jasmin Mujanović, Senior Non-Resident Fellow, Newlines Institute, Washington, U.S.A.
11. Dr Mirsad Tokaca, Director IDC, Sarajevo, Bosnia and Herzegovina
12. Ibrahim Halilovic freelance journalist, Canada,
13. Bedrudin Gusic freelance journalist, publicist, Boston, USA
14. Reuf Bajrovic, Vice President, US-Europe Alliance, U.S.A.
15. Mead Masic, U.S.A.
16. Dr. Muhamed Duraković, U.S.A.

17. Dr. Kenana Arnautovića, U.S.A.
18. Dr. Emir Ramic, Director of the Institute for Research of Genocide Canada
19. Meho Kapo, Architect Co-owner in 3P Arhitekt co, member of Association of Independent Intellectuals Circle 99, Sarajevo, member of FBiH Associations in Sweden also a member of The World Diaspora Association of Bosnia and Herzegovina, SWEDEN
20. Florence Hartmann, Journalist and Author, former Advisor to the Chief Prosecutor ICTY/ICTR
21. Fikret Alić, survivor of the Keraterm and Trnopolje Concentration Camps
22. Satko Mujagić, Omarska camp survivor, Master of Legal Sciences, Netherlands
23. Emir Hajdarović, President of the Mostar Camp Inmates Association
24. Edin Batlak, dipl.oec. Businessman
25. Azra Muranovic, MP Sweden
26. Lina Strupinskiene, Associate Professor, Institute of International Relations and Political Science, Vilnius University
27. Djenita Pasic, U.S.A.
28. Jasna Čausević, Gesellschaft für bedrohte Völker (GfbV), Germany
29. Azem Dervišević, U.S.A.
30. Dr. Erna Rijdsdijk, Principal Investigator, Facing Srebrenica Project, Netherlands Defense Academy/University of Amsterdam, Netherlands
31. Muhamed Duraković, U.S.A
32. Adem Pobrić, Predsjednik ASBL "ZA BOSNU" Brisel / Belgija, Koordinator RG za EU SSDBIH – Brisel
33. Jordan Sher, activist from the Working Group for BiH, USA

Contact Address;

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Attachments:

1. Annex X of the Dayton Peace Agreement (<https://www.ohr.int/dayton-peace-agreement/annex-10/>)
2. Video of Christian Schmidt receiving the Order of Ante Starčević (<https://youtube.com/shorts/Ou12u3cboCg?si=vztnE5enJxV-Afc9>)
3. Article on Schmidt's comments regarding the *Kovačević* judgment (<https://www.klix.ba/vijesti/bih/schmidt-presuda-evropskog-suda-novo-je-ohrabrenje-da-trazimo-nacin-da-izbjegnemo-diskriminaciju/230830052>)
4. Media reports on Schmidt's actions during the electoral amendments (<https://nap.ba/qpost/315846>)
5. Video of Schmidt's statements in Germany (<https://istraga.ba/video-objavljujemo-snimak-schmidtovog-nastupa-u-njemackoj-dragan-covic-je-istinski-voda-hrvata/>)