

Klix.ba: Interview with High Representative Christian Schmidt



By Semir Hambo

Klix.ba: The High Representative in Bosnia and Herzegovina, Christian Schmidt, gave a big interview to Klix.ba in the midst of the political crisis and waiting for a solution to the Election Law. Schmidt previously announced that he would impose a decision if the local politicians did not find a solution. Two days ago in Goražde, you said that you would not impose changes to the Election Law, but that you only wanted to unblock the Federation of Bosnia and Herzegovina. How will you unblock the Federation of Bosnia and Herzegovina?

Christian Schmidt: I said and I say today that there is a perception that I will enact all the changes to the Election Law that were discussed. That's not what I'm going to do. It is not about the elections on October 2. For that matter, I think I've done my job. By making the decision on adopting the budget and making the decision on the integrity package. Because I took strict care to ensure that things were passed that concern the avoidance of abuse of voting rights. So that we ensure that no electoral fraud is tolerated. If we are talking about changes, then we are talking about the election, that is, the nomination of the president, the way in which institutions will be formed more quickly than is the case now, and we should also consider the various caucuses of the

peoples. And see how to incorporate the Others better.

Klix.ba: If I understood you correctly, we are talking about the reform of the Constitution of the Federation of Bosnia and Herzegovina?

Christian Schmidt: Yes, we are only talking about the Federation of Bosnia and Herzegovina, considering that we have had a blockade for four long years. And I must honestly say that I am amazed that there has not been any political debate in recent years about this unblocking. I know it was discussed in Neum, but nothing happened. Actually, I think the challenge is how to convince people to vote when they see that there is no president and vice president of FBiH, that there is no government that was formed based on the results of their vote, and I think it is good and important to regulate that.

Klix.ba: Are you thinking in the direction of imposing certain changes to the FBiH Constitution by October 2?

Christian Schmidt: I follow a minimalist approach. We have to consider the FBiH Constitution, but, you will understand, I am thinking about when is the best time to work on it. In any case, if we want to start lifting the blockage, we must consider the Constitution of the Federation of Bosnia and Herzegovina.

Klix.ba: Do you already have a decision ready for the deblocking of the Federation of Bosnia and Herzegovina?

Christian Schmidt: When I say I'm working on it, that means two things. First, I invited the parties to give their proposals, and secondly, Mr. Marinko Čavara (President of FBiH) received my letter. I tried to make it clear that we cannot accept a situation in which the Constitutional Court of FBiH would cease to be able to make decisions. And I appealed to him to end it. If that situation improves, the decision will look different, so I'm working on it. I know that by doing so I do not provide answers to all court judgments that

have been passed so far, whether it is the state Constitutional Court, the Federal Court or the European Court of Human Rights. They asked me why I focus on the "Ljubić" judgement and not on the "Sejdić-Finci". I think this is a reasonable question. I am very determined to implement the decision from the Sejdić-Finci case as well as other decisions concerning the status of the Others and at the same time to review the Constitution itself. But I do not have the authority to change the state Constitution, it is Annex IV of the Dayton Agreement, I am here to interpret the Dayton Agreement, not to change it.

We see that the state constitution has reached a situation where it cannot respond to all challenges. But that's normal. Thirty years after the situation you were in, immediately after the war, the refugee crisis, the great horrors, and when you had to focus on many regulations for that time, now we have come to a situation where we have a new generation, we have completely new challenges, BiH is on the way to the European Union and different answers are needed. However, I would turn here not to the international community, but to the citizens of this country, who would of course take care to integrate European standards into these changes.

Klix.ba: At the beginning of the year, when the negotiations were going on in Neum, you spoke to the public. You said that it would be good if the political leaders agreed, but if they do not agree that Bosnia and Herzegovina has a valid election law according to which the elections can be held. What changed from January to the summer, so now we have an intensified story about the need for political parties to come to an agreement, and we know that we are already in some kind of a pre-election campaign where political nervousness is much greater?

Christian Schmidt: This is a very good question. What was talked about for the last year and a half, and ended in Neum. On the basis of what was achieved in Mostar, an attempt was

made to transfer it to the national level, that is, to reform the Election Law for the entire country. To consider in a new way the issue of the constituent peoples and the Others, to pay attention to the Sjedić-Finci judgment and so on.

Let me clarify two things for the beginning of the year and the meeting in Neum. There were criticisms and so on. I said that the elections would be held in order to make it clear to all those who negotiated at the level of Bosnia and Herzegovina, at the level of political parties, that the elections were not a bargaining chip. Elections are the basic right of every citizen of this country. This means that if the elections are not a bargaining chip, then the institutions are not either so that you can decide whether to block them or not.

I have to correct myself on one thing. To be honest, I had expectations that an agreement would be reached in Neum and that we would not need all that we are talking about now. However, some more experienced people told me, don't be too optimistic, it won't work. I saw several negotiators who were active and trying to reach an agreement. We get to the point. Democracy is a compromise, and if you want to give everyone a full glass, in the end no one will have anything to drink. Sometimes I get the impression that when you talk to people here about compromise, it's a sign of weakness. I was not in Neum, but I talked to the participants. If that doesn't work then what could we save. We can then deal with the integrity package, because that is something that has been agreed upon. And then in the Parliament we saw two attempts to adopt it and it was not adopted. So that not everything will be handed over to Charles Michel during his negotiations, but I think some key things will have to wait until after the elections.

Klix.ba: It is often said here, and it seems you have recently stated that Bosnia and Herzegovina is a country of three communities or three constituent peoples. In that sense, there were a lot of reactions. They criticized you for that because

some believe that citizens of Bosnia and Herzegovina who do not declare themselves as one of the three constitutive peoples are neglected, threatened, etc. In the context of potential amendments to the FBiH Constitution, why don't you deal with the Republika Srpska and the RS Constitution, because we also have many open questions there when it comes to the so-called legitimate representatives? And Bosniaks and Croats there are not legitimately represented in many segments as well?

Christian Schmidt: First of all, I want to underline that the Others are not second-class citizens. They are part of this country and are first class citizens. I think that we must enable non-discrimination of their rights in the future.

It is a good thing that the Constitution of the FBiH provides for a caucus of Others in the House of Peoples of the FBiH. I don't want to start a revolution, I think it would be too much to talk about it now, but I, who come from a federal state, know very well that the voice of the regions needs to be heard. Where is that in the FBiH Constitution? It is at the cantonal level, but not at the level of the parliament and the second chamber. In the "Ljubić" judgment, the Constitutional Court did not see that the House of Peoples also represents the cantons.

I think it should be reconsidered. We cannot focus only on the constituent peoples and the Others, we must look at regions and citizens and their representation more.

There are different interests in the Republika Srpska. We also need to see what can be improved there. If it works – fine, if not, then we need to think about how to improve things. If there is a new Constitution, that is, changes to the existing State Constitution, then it will certainly have to be reflected in the Constitution of the Republika Srpska.

Klix.ba: How come your current views on the "Ljubić" judgment

are in some kind of contradiction with the views of your predecessor Valentin Inzko and the OHR legal team. I am here primarily referring to the OHR's legal interpretation from 2018, at the request of the Constitutional Court of Bosnia and Herzegovina for your opinion regarding Borjana Krišto's appeal? Inzko stated several times in the media that he believes that the "Ljubić" judgment was implemented, not in the Parliament, but that the BiH Central Election Commission identified a way to fill in the House of Peoples of FBiH?

Christian Schmidt: The position taken by the legal team is contradictory. In fact, the Constitutional Court of Bosnia and Herzegovina, with its decision, gave the Parliament the opportunity to follow that decision by deleting one sentence in Article 10.12 of the Election Law.

Klix.ba: But the Constitution of the Federation of Bosnia and Herzegovina has not been changed?

Christian Schmidt: This means that this case is not finished. The Constitutional Court has not yet formally closed the case. Indeed, the Central Election Commission had a reasonable approach.

There is a mechanism we discussed that could guarantee that everyone can vote in those caucuses, but to address the challenges and problems of proportional representation and the legal enforcement of election results. I agree, this is a very complicated question. As a jurist, I do respect the decisions of the Constitutional Court and its decisions (sic!), but I must say that some questions remain open. With all due respect, these are sensitive issues and I do not want to misinterpret the decisions of the Constitutional Court, but I see that some things have not been resolved and that is why we are having intensive discussions.

In reality, it doesn't just come down to the "Ljubić" case. It describes the contradictory approach in the Constitution of

BiH and FBiH in an attempt to combine ethnic and civic representation. There are contradictions there. My job is to keep the Dayton construction in mind. If I were a freelance advisor to citizens of Bosnia and Herzegovina, I would have some different ideas, but ultimately I see that we will have to come up with new ideas.

I apologize, but I must note, that during some conversations I often feel that people say I am the one advocating the ethnic side of the issue. It is not about that, the point is that it is the basis of Dayton – the three constituent peoples and the Others – and that is the reason why we always must keep that in mind.

Klix.ba: The Bundestag resolution recently adopted by the Bundestag on Bosnia and Herzegovina emphasizes that the principle of legitimate representation, on which, first of all, the HDZ insists upon, should be rejected. According to the opinion of the Bundestag, this hinders the equal participation of all citizens in the political process. When the proposal to amend the Electoral Law and the Constitution of the Federation of Bosnia and Herzegovina leaked to the media, many interpreted it as being the proposal that goes towards meeting the HDZ's demands, that is, some kind of the demanded ethnic principle. How do you comment the position of the Bundestag and its adopted resolution?

Christian Schmidt: Now you see how complicated my job is. We have different resolutions going in the same direction. I would not look back at the HDZ or the SDA or anyone else, but I would look at the Washington Agreement, which was an agreement between Croats and Bosniaks, and we know why it came about. There was a lot of pressure to reach that agreement and end the conflict.

The resolution of the Bundestag is correct. My former colleagues say in this resolution to open up towards citizens more. The place where this can happen is the House of the

People. I think we have to think about more rights for the Others, and review a fairly wide field of so-called vital national interest, reduce it. In addition, it is necessary to speed up the decision-making process and redistribute vital national interest to the Council for Vital National Interest of the Constitutional Court of FBiH, which does not actually exist.

Today, whoever invokes the vital national interest clause, he has "won", because there is no one to interpret the case. So, my approach is to first of all make things functional and then create opportunities for them to change. I think that in this sense it is not clear what we are talking about when we talk about smaller ethnic communities. In the Washington Agreement, for example, there is a half and half representation of Croats and Bosniaks, in that case it is positive discrimination against Croats because if we look at the numbers, it is far from the situation we have on the ground. I must say that we need to sit down again and talk in a deeper sense about what we want to achieve. I will be a part of it, but I have to take things into account. So, I have to say that when I make some direct and immediate decisions I am talking about one thing, but to be more comprehensive we have to sit down again and think carefully about what exactly we want to achieve. I will certainly participate in everything, but for now I have to take care that the constituent peoples are represented; we have already done that when it comes to the representation of Serbs in the Federation.

However, when they say that I do not take the Others into account, that is absolutely not true, we are really talking about the Others, and I have a lot of ideas on how to improve things. The fact is that they are discriminated against, the focus is always on the constituent peoples and ethnic groups, and they must be in a position to make decisions. Why not?

Klix.ba: Should a compromise and solution be sought in the reduction of the House of Peoples, and whether your future

decision on imposition can go in that direction? Do you think it would be fair to deprive some Cantons of the right or the possibility to elect delegates from each constituent peoples, if they were elected as such to the Cantonal Assemblies?

Christian Schmidt: I am against disenfranchisement of anyone, however, we must be prepared to look at the real numbers. I was in the Bosnian-Podrinje Canton two days ago and I witnessed exactly that. Therefore, it is not only a matter of their representation when we start discussing the interpretation of this 3 percent proposal. Let's say you have 400,000 people in Sarajevo and 24,000 in Goražde, but again, you must have Goražde represented as well. It is unquestionable, we have to find new ways, but not today. Will it be a reduction, that is, a reduction of the FBiH House of Peoples, I would say that it should be an adjustment. We used to have 30-30 in the FBiH House of Peoples, now we have 17. And in the BiH House of Peoples we have 5+5+5 and not a single delegate from the Others. I must note that the FBiH Constitution is in some sense more modern than the State Constitution. In Neum, there were some considerations about an increase in the number of delegates in the House of Peoples in order to enable greater representation. That number can go up and can go down, but that is not up to me. I am working on the functionality now; that issue should be left open. That issue should be returned to the citizens, to the people, for them to decide about it. We must to be flexible, if we were to increase the number, it would cost more and the citizens do not like that, if we were to reduce it, then we are reducing the possibility for proportional representation. And there we will have to sit down and consider things.

Klix.ba: Why did you react so violently in Goražde? Many people are writing about it today, commenting about it, including even some media in Germany. Who are you mad at?

Christian Schmidt: Well, you know, sometimes everyone gets into a situation where they have to be loud to be heard. My

message remains. I must say that I am also quite pleased that I have had so many reactions about it from ordinary citizens.