



Weekly Briefing

**Bosnia-Herzegovina political briefing:
The “Respirators” affair: the verdict for Prime Minister
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The “Respirators” affair: the verdict for Prime Minister

Summary

The verdict against Federation Prime Minister Fadil Novalić, at least in the first instance, has extremely large political implications. Political opponents of Novalić's Party of Democratic Action (SDA) point out that the verdict shows the way the SDA operates, not only in this case of procuring respirators during the COVID-19 epidemic. On the other hand, the SDA and its top officials believe that the conviction shows that the judiciary is under political pressure, which includes power centers outside BiH. Until the final verdict, there is no obstacle for Novalić to continue to perform the duties of Prime Minister of the Federation of BiH, a position he was elected to after the elections in 2014. Since then, elections have been held twice, but the results have not been implemented in the Federation of BiH. It is the context that must be kept in mind.

Introduction

The Prime Minister of the FBiH, Fadil Novalić, is guilty in the "Respirators" affair. The judgment is of first instance, and has no direct legal consequences, but the political ones are very visible and strong. In addition to Novalić, who was sentenced to four years in prison, the former director of the FBiH Civil Protection (CZ) Fahrudin Solak and the owner of the company "Srebrena malina" (*Silver raspberry*) Fikret Hodžić, who were sentenced to six and five years in prison, respectively. Finance Minister Jelka Miličević was acquitted of the charges¹.

Novalić is a high-ranking official of the SDA (*Stranka demokratske akcije*), which has already characterized the process as political. Significantly, Mr. Novalić did not attend the sentencing. The trio was convicted for abuse of position or authority under Article 383 of the Criminal Code of the Federation of BiH (KZFBiH), and the accused Fahrudin Solak additional for the criminal offense of forgery of an official document under Article 389 of the same Law².

¹ Novalić was sentenced in the first instance to four years in prison, Hodžić to five, and Solak to six years. <https://raport.ba/novalic-prvostepeno-osudjen-na-cetiri-godine-zatvora-hodzic-na-pet-a-solak-na-sest-godina/>

² The Court of Bosnia and Herzegovina has announced what Novalić and others are guilty of. <https://raport.ba/sud-bih-objavio-za-sta-su-novalic-i-drugi-krivi/>

Separated opinion

This is, at least for now, the epilogue of one of the most media-exposed legal cases in the modern history of BiH. Although it is not an unknown practice in BiH for numerous high-ranking officials to appear before the BiH Court or lower courts as defendants, the case known as "Respirators" regularly filled the columns of newspapers, the minutes at the beginning of the TV diaries and prime positions on news portals. It is a long and complicated process that makes the procurement of respirators from China problematic during the COVID 19 epidemic. What is problematic about the procurement? The procedure is problematic. Furthermore, question rise why exactly Fikret Hodžić's company, which was previously engaged in raspberry cultivation, was chosen to procure medical equipment through the Civil Protection of the Federation of BiH? Subsequently, it turned out that the respirators themselves were of questionable quality.

However, the Trial Chamber was not unique in this case. The Chairman of the Judicial Council, Judge Branko Perić, separated his opinion and explained it publicly, which is not a common practice to say the least. Some others say that Perić committed a criminal act. Perić said that he is aware that this is not a practice, but he still read his separate opinion, the essence of which is that every abuse does not have to be a criminal offense. In a separate opinion, he believes that the prosecutors failed to prove that the convicted conspired to obtain ventilators in a criminal manner. Perić added that the prosecutors presented messages from the Viber group as evidence, from which many things are not clear³.

Some experts believe that Perić made a mistake just by reading the dissenting opinion, because according to the Law, the voting of judges in the judicial council is secret and in criminal proceedings there is no such thing as a dissenting opinion that is read⁴.

However, after Perić public appearance, a member of the Judicial Council, Braco Stupar, explained the verdict also. Stupar said that the Prosecutor's Office of BiH partially proved its indictment and that, contrary to the claims of the defense, abuse was committed, which is a criminal offense. Stupar explained that the Federal Administration of Civil Protection did not have the legal authority to carry out the disputed procurement of a hundred ventilators, because

³ Judge Branko Perić separated his opinion, he was against the verdict against Novalić, Hodžić and Solak. <https://www.klix.ba/vijesti/bih/sudija-branko-peric-izdvojio-misljenje-bio-je-protiv-presude-novalicu-hodzicu-i-solaku/230405048>

⁴ Branko Perić committed a criminal offense yesterday? Adamović: This is a serious excess. <https://raport.ba/branko-peric-je-jucer-napravio-krivicno-djelo-adamovic-ovo-je-tezak-ekscs/>

that was the authority of healthcare institutions only. Judge Stupar further said that the Law on Public Procurement was violated and that Article 10, which regulates the urgency of procurement, was misused.

He said that the purchased respirators did not meet their purpose, that is, the Court found evidence that the respirators could not be used in intensive care for seriously ill patients. He said that the respirators were overpaid and of limited quality, and that this was actually the result of an illegal procurement that went through a bargain. He said that Solak was guilty of falsifying documents by managing two contracts under the same number for different procurements, that is, for respirators HCV003 and for ACM812A. Stupar clarified that this was done in order to avoid the necessary termination of the contract, all so that Hodžić would keep 10.5 million marks in his account and not have to return it to the budget⁵.

The lawyer of the Mr. Novalić, Ms. Vasvija Vidović, after the first-instance verdict, said that the FBiH Prime Minister was convicted because of politics. As an argument in support of her claim, she said that the accusations during the arrest were supported with their statements by the then president of the FBiH Marinko Čavara (a member of the Croatian Democratic Union – *Hrvatska demokratska zajednica* - HDZ), Dragan Čović (president of the HDZ), as well as the leaders of the “Troika” parties Elmedin Konaković, Edin Forto and Nermin Nikšić. In the end, lawyer Vidović agreed with the Chairman of the Council, Mr. Perić that it is completely inappropriate for the Embassy of the United States of America to comment on a live case⁶.

Politics and corruption

As expected, his party defends Prime Minister Novalić. For the SDA, the verdict is politically motivated, with the aim of removing the SDA from power. They repeated that the verdict was passed under the pressure of politics and foreign ambassadors, that the outcome of the trial was known even before the verdict was pronounced.

That the entire process against Novalić is politically motivated for the SDA is confirmed by the fact that the Prosecutor's Office of BiH has not filed an indictment in any other case with which the public is aware, including those related to Bosnian Serb leader Milorad Dodik and

⁵ Judge Stupar: Hodžić was not chosen by the law, but by a certain Asim and Fadil Novalić. <https://raport.ba/sudija-stupar-hodzica-nije-izabrao-zakon-nego-izvjesni-asim-i-fadil-novalic/>

⁶ Novalić's lawyer Vasvija Vidović claims that he was convicted because of politics. <https://raport.ba/ovaliceva-advokatica-vasvija-vidovic-tvr-di-da-je-on-sudjen-zbog-politike/>

the top of the hit party, Alliance of Independent Social-Democrats (*Savez nezavisnih socijaldemokrata* - SNSD)⁷

Novalić himself on social media said that it was a political showdown, the persecution he was exposed to along with the atmosphere of lynching that accompanied the process from the very beginning: "The fight continues and I am convinced of the final victory of justice. This is only the first half. The first-instance decision only confirms what we said from the beginning - that it was a political showdown, the outcome of which was known, and not a fair process"⁸.

It did not take long for those who were accused of influencing the judiciary to address the public. The political party People nad Justice (*Narod i pravda* – NiP) and its leader, the current BiH Minister of Foreign Affairs Elmedin Konaković, were among the first to announce themselves. NiP reminded that the affair was discovered by the media and that their role was extremely important because they clearly pointed out to the institutions of the state the malfeasance related to the procurement of respirators, and that in the midst of the pandemic. NiP points out that the "Respirators" affair is about something that goes beyond corruption and looting of public goods, because during the global pandemic, people were attached to respirators that were obtained illegally and that did not meet the needs of health institutions that were the bearers of the fight against pandemic⁹.

NiP President Konaković said that this party was founded because of corruption and injustice that they could no longer watch, and because of that they suffered various pressures, including the persecution of party prosecutors and judges, party media and certain journalists in them¹⁰.

President of the Social Democratic Party (*Socijaldemokratka partija BiH*) of BiH, Nermin Nikšić, whom lawyer Vidović also called out for the influence on the work of the court, said

⁷ SDA on the Novalić verdict: Politics and parties are to blame. <https://raport.ba/sda-o-presudi-novalicu-krivi-su-politika-i-stranci/>

⁸ Novalić on the verdict: The first-instance decision confirms that it is a political calculation. <https://www.aa.com.tr/ba/balkan/novali%C4%87-o-presudi-prvostepena-odluka-potvr%C4%91uje-da-se-radi-o-politi%C4%8Dkom-obra%C4%8Dunu/2864415>

⁹ NiP on the verdict to Novalić and others: The 'Respirators' affair goes beyond corruption and robbery. <https://raport.ba/nip-o-presudi-novalicu-i-ostalima-afera-respiratori-nadilazi-korupciju-i-pljacku/>

¹⁰ Konaković: If I had had an influence, the penalties would have been higher. My child was under armed escort because of my struggle. <https://raport.ba/konakovic-da-sam-utjecao-kazne-bi-bile-vece-dijete-mi-je-bilo-pod-oruzanom-pratnjom-zbog-moje-borbe/>

that he would not comment on the verdict itself because it is a first-instance case. He said that he would never want even his worst enemy to answer for something he did not do, but he also thinks that no one can be above the law, that is, that everyone must answer for their actions¹¹.

Finally, the US Embassy in BiH also made a public statement. Institutions that work on behalf of the citizens of this country to investigate, prosecute and punish corruption, which plagues the democracy and economy of BiH, and which causes many citizens of this country to want to leave and build lives for themselves and their families elsewhere - they emphasized from this embassies, and added that they always appealed to the judicial institutions in BiH to hold those in power accountable for their actions. They said allegations that the United States Embassy influenced any aspect of these or any other court proceedings are false and misleading¹².

Leaders and experts

Countless articles have been written about the respirator affair, which lasted more than three years. The journalists also recalled the statements of Bakir Izetbegović, the president of the SDA, who defended Novalić, but also spoke about the fact that low-quality goods were purchased and that no one in the FBiH Government consulted the profession¹³.

Among the representatives of the medical profession, who have always been critical of the respirators procurement process, we can single out the distinguished neurosurgeon Dr. Kemal Dizdarević. After the verdict, he said that it is necessary to emphasize three facts: Silver Raspberry should not have been allowed to acquire complex medical equipment, which directly affects the outcome of treatment, during the pandemic; FBiH Civil protection could not legally participate in public procurement in favor of “Srebrena malina”; Portable ventilators (ACM812A) directly endangered the treatment and life of patients, when they were used for prolonged respiratory support in the Intensive Care Unit of KCUS, in cases of severe cases of

¹¹ Nikšić: If the strongest argument is that we influenced the verdict, then the convicted have a much bigger problem. <https://raport.ba/niksic-ako-je-najjaci-argument-da-smo-mi-utjecali-na-presudu-onda-osudjeni-imaju-puno-veci-problem/>

¹² The American Embassy defends itself: The accusations that we influenced the verdict against Novalić and others are false. <https://faktor.ba/vijest/americka-ambasada-se-pravda-lazne-su-optuzbe-da-smo-utjecali-na-presudu-novalicu-i-drugima/195100>

¹³ As Izetbegović talked about respirators: They are not classy, they are overpaid. The profession was not asked... <https://raport.ba/kako-je-izetbegovic-pricao-o-respiratorima-nije-neka-klasa-preplaceni-su-nije-se-pitala-struka/>

Covid-19. This was publicly confirmed by those who understand this problem best and who were directly with the patients - anesthesiologists¹⁴!

Conclusion

The end of the first instance process for the Prime Minister of the FBiH, Fadil Novalić, coincided with the deadline for the formation of a new convocation of the FBiH Government after the 2022 General Elections held in October. Circles close to the SDA consider those two facts to be inextricably linked. In other words, the departure of the SDA into the opposition should be accelerated by the fact that the most prominent personnel in the FBiH entity will be declared criminals. According to this theory, the international factor led by the Office of the High Representative and the Embassy of the United States in BiH affects not only the political processes in BiH, but also the judicial ones.

The other side of the political spectrum strongly denies that they had anything to do with the Novalić verdict, and remind that the fight against corruption is a multi-decade priority that all factors in BiH emphasize. However, without a final verdict, there are no obstacles to Novalić continuing to hold the office of Prime Minister of the Federation, except for the fact that he should not be in that position as of 2018.

¹⁴ Dr. Kemal Dizdarević: Respirators directly endangered the lives of patients in the Intensive Care Unit of the KCUS. <https://avaz.ba/vijesti/bih/820725/dr-kemal-dizdarevic-respiratori-su-direktno-ugrozavali-zivot-pacijenata-na-intensivnoj-jedinici-kcus-a>