

Bosnia and Herzegovina 2019



Total: 54.68

Political Freedom

Free and Fair Elections : 5.36

Fairness of electoral process has deteriorated further throughout the observed period in Bosnia and Herzegovina, since October 2018 elections abounded with electoral violations and irregularities, such as fraud on the election-day, misuse of state resources, or unfair coverage in media. Elections were held in environment of strong division in society alongside ethnic lines and inflammatory nationalistic rhetoric by political parties, resulting in dominance of the ethnic nationalist parties – Party of Democratic Action (SDA) and Alliance of Independent Social Democrats (SNSD). Only traditionally Croat party – Croatian Democratic Union didn't manage to have elected candidate for a three-party presidency of Bosnia and Herzegovina, losing to Željko Komšić, candidate of Democratic Front. Also, SDA formed government together with 4 other political parties. While SNSD, led by Milorad Dodik, remained in control of the government of Republic of Srpska. Political system is characterized by large, complicated and asymmetric state apparatus, separated into two entities – Federation of BiH and Republic of Srpska, and numerous other tiers of government. Country's tripartite collective Presidency is represented by one elected representative from the ranks of each of the constitutional – “constituent” - ethnicities: Bosniaks, Serbs and Croats. Strong societal division along ethnic lines is constantly maintained by the established nationalistic parties, alongside of the political system created by Dayton agreement which favors those parties, ensuring their constant dominance at almost all executive levels of power. Another problem remained unaddressed throughout the observed period. Namely, electoral process remains restricted for BiH's citizens who are neither ethnic Serbs nor Croats nor Bosniaks, since only these three constitutional ethnicities are eligible to run for the Presidency of BiH and for the Houses of Peoples (parliamentary upper chambers on various tiers of government). European Court of Human Rights declared this constitutional provision as a violation of human rights, but it nevertheless remained unaddressed during the period under review.

Absence of Unconstitutional Veto Players : 3.33

Bosnia and Herzegovina is the only country covered by Freedom Barometer analysis that has constitutionally empowered veto players. According to Dayton Peace Agreement as of 1995, each constitutional ethnicity has been given power to veto legislation in order to protect its “vital national interests”, which is often abused, so as to benefit narrow interests of political parties or their leaders. Also, veto powers are constitutionally given to the Office of the High Representative, an international institution in charge of overseeing the peace treaty. However, in practice, OHRs have recently ever more restrained from interfering into country's political decision making. This made

the issue of inter-ethnic relations in Bosnia and Herzegovina dominant to citizens, thus sparking inflammatory nationalistic rhetoric in society became a common practice by political parties. Elected officials do not restrain from abusing their power and position for political and economic benefits, maintaining close ties with business elite in the country. Despite being de jure separated from the state, religion and religious institutions play an important role in shaping public opinion and have got significant influence on decision making. Deadlock in BiH is additionally instigated by the lack of independence and impartiality of judiciary, itself proving unable to hold politicians accountable for their actions.

Freedom of Press : 7.1

Despite being granted by the constitution, press freedom is only partly upheld in practice in Bosnia and Herzegovina with numerous problems that remained unaddressed during the observed period. Media market is highly pluralistic and diverse however the reporting is often shaped by strong ethnic and political divisions in society. Lack of media ownership transparency cast serious doubts on independence of reporting of many private outlets. Tools - such as state-sponsored advertising through public companies which have the biggest share in advertising market and are traditionally controlled by the politicians in power - are often used to shape narrative of private media outlets. Also, abuse of legal powers is extensive – frequent, discriminative inspections are used to put additional pressure on their reporting. On the other side, state and entities` public broadcasters are showing clear bias in favor of ruling parties and often serve as their propaganda mouthpieces. Public broadcasters are largely financially dependent from the state, making them prone to censorship by the ruling parties. Journalists are often target of verbal and physical attacks, intimidation and threats. In August 2018, a reporter covering protests in Republic of Srpska was attacked and seriously injured. On top of that, heated atmosphere in society and strong division alongside ethnic and political lines, which surrounded October 2018 elections, made working environment for journalists even more hostile. Bad working conditions for journalists, alongside strong economic and political pressure, made them practice self-censorship and contribute to partisan reporting of the media. Defamation is decriminalized. However, this is often resulting in high financial fines, thus used as another tool to put pressure on journalists.

Rule of Law

Independence of the Judiciary : 4.77

The judiciary in Bosnia and Herzegovina (BiH) is formally independent, yet there are many political or other outside influences that mar it. Some important court decisions (including by the Constitutional Court of BiH) are disregarded or even openly rejected by politicians at the state or entity level. Generally, members of political class enjoy not least normal immunity that goes with the function but also impunity for corruption, embezzlements or similar misuse of power, due to political influences on prosecutors or judges. Judicial system lacks efficiency overall, among other also due to unclear division of responsibility between various levels of government. Backlog of cases is considerable. Additionally, according to portal GAN, corruption and bribery risks are high in BiH`s judiciary.

Corruption : 3.8

With the score 38/100, same as in 2017, Bosnia and Herzegovina arrived to shared places 89-92/180 on the Transparency International's Corruption Perception Index 2018. State capture by political parties at all six tiers of government and impunity of the political class due to the lack of independence and efficiency of the judiciary, huge public sector and high public spending, state-dependence mentality among citizens and poor coordination between anti-corruption actors at various tiers of government, are the main factors that facilitate a very high level of corruption. The most expensive manifestations and consequences thereof are misappropriations in public procurement and infrastructure spending coupled with non-transparent and lavish financing of political parties, but also economic and investment losses due to legal uncertainty, itself due to politically dependent, inefficient and often corrupt judiciary and police. Politicians who are blacklisted for entering USA by the State Department as seemingly "seriously corrupted" are not even investigated in their home country, or entity.

Protection of Human Rights : 5.47

War crimes` denial or minimization has remained as the most common form of hate speech in Bosnia and Herzegovina (BiH), spoiling inter-ethnic relations and on a longer run being a powder keg under its security. Leading politicians of (at least) Serbs and Croats in BiH have repeatedly questioned the effective verdicts of international courts or openly praised convicted war criminals. Political rights – and with them majority of opportunities for climbing the social ladder - in BiH are closely tied to ethnicity and adjacent quotas and veto-powers. Even members of the three „constituent“ ethnicities have hard times if living outside their own ethno-religious environment. „Non-constituent“ ethnicities have hard times obtaining political representation or influence regardless of habitat. Among those, Roma are especially deprived. A growing new vulnerable group are migrants, who increasingly use the routes via BiH to get to their desired destinations in the EU. Living in poor conditions and often subject to police brutality, they are also an occasion to raise tensions between various ethnic or political communities in BiH for the benefit of populist or other demagogue politicians. Freedom of assembly especially became endangered in the RS entity, following new restrictive by-laws and adjacent crackdown on the citizens` movement against police brutality (launched after suspicious death of a young man in Banja Luka in March 2018). Human-rights` or similar NGOs, even though rarely suffering open legal action against themselves, are subject to smearing campaign by authorities, especially in the entity RS. Constitution of BiH does not ban same-sex marriages, yet in both entities they are still not legally accepted. The entity FBiH declaratively accepted yet it is still in process of regulating same-sex unions. LGBT Pride March was organized in Sarajevo in 2019, but in Mostar or Banja Luka it is still only dreamed of. On the other hand, human trafficking, domestic violence, discrimination at workplace, or similar misdeeds against women or children have been insufficiently fought against by governments at various levels.

Economic Freedom

Security of Property Rights : 4.18

Private property rights in Bosnia and Herzegovina are not adequately protected. Powerful political and private interests can have a significant influence over court decisions, which can therefore be partial. Corruption and nepotism are widespread among the civil service, and the judiciary is not immune to these problems. Judicial processes and enforcement of judicial decisions are slow and inefficient, due to the high number of backlogged cases, but also to lax implementation of the stipulated time standards in legal proceedings. The number of adjournments is not prescribed. The level of expertise of judges in commercial cases could be dubious, especially in specific areas, or could vary between courts, which led to prolonged court procedures and uneven decisions in similar cases. Although there are specialized commercial courts, commercial cases are not always given priority. Bankruptcy procedures do not put sufficient emphasis on rehabilitation or reorganization of companies, so they are mostly sold through a piecemeal sale. Insolvency procedures are extremely long (more than 3 years on average) and lead to very low recovery rates, below 40% of the claim. Registering property is a very long procedure, which could be expensive in some Federation's cantons due to high property transfer taxes. This tax, however, is not applied in the entity of Republika Srpska. The land registry service is also divided, with each entity organizing its own cadastre services. A significant proportion of land does not have a clear title, due to an inefficient and slow restitution process, but also to weak administration capacities. This situation is further aggravated by the unnecessary role of municipality courts in land registration process. An additional problem stems from the population displacements during the war and slow and inefficient proceedings of the Commission for Real Property Claims of Displaced Persons and Refugees, which in effect do not protect property rights of internally displaced persons and refugees although more than two decades have passed since the end of hostilities. Foreign nationals face few ownership restrictions - in areas such as defense industry, media and electricity transmission; land ownership by foreign nationals is restricted through a reciprocity clause, but this is easily circumvented through establishment of a foreign-owned legal entity.

Size of Government: Expenditures, Taxes, and Enterprises :

6.52

With government expenditures reaching 41% of GDP in 2018, the size of government in Bosnia and Herzegovina is moderate as compared to other European countries. However, taken the level of economic development, government expenditures are significantly higher than expected, mostly because of the prematurely developed welfare state system. As a direct legacy of the war, there are several different layers of government, leading to the omnipresence of bureaucracy. The political fragmentation also leads to economic one: the country does not comprise a single economic space, since they are differing regulation and taxation principles or rates, and SOEs that follow administrative divisions. In order to put under control the public debt that was rising, the country took on the IMF backed program conditional on economic reforms. Most of the fiscal goals of the program were reached: the general government recorded surpluses during the last three years, but the reform package accompanying the fiscal measures in order to improve business environment was mostly not implemented. Banking sector reform was partial, as there were no changes in the fiscal mix that would increase competitiveness of the economy (increase in consumption taxes and decrease of taxes on labour). In 2019, the expenditures on wages and social transfers increased, as well as capital expenditures for infrastructure investments, which would probably lead to a budget deficit in 2019. But, it is expected that the fiscal stance will gradually improve. Economic growth recorded in 2018 stood at 3,6%, which was above the projected one, but it is expected to have been moderated to 3,1% in 2019 due to a slow-down in exports. These growth rates are considered as sluggish having in mind the development level of

the economy and regional peers. Growth is mostly propelled by rise of economic activities in the European core (through increase in exports and rising local consumption through higher remittances). Government gross debt has recently been on a downward path, standing at 33% in 2019, down from 44% in 2016. Although a wide scale privatization process was conducted after the war, the SOE sector still makes up a significant part of the economy. There are more than 550 SOEs in the country, which employ more than 10% of the total workforce. The SOEs are transferred to the 2 entities, 10 cantons and 145 municipalities and the special district of Brko. The SOE sector provides high salary bonus compared to the private sector, of approximately 40%, and is considered to be overstaffed. Companies operate inefficiently, mostly with negative return on assets and capital, with high leverage and liquidity problems. SOE management is politicized, since the appointees are often with close political ties to the government and the political party in power. There are also significant arrears to other SOEs or to the revenue service for unpaid taxes and social security contributions. Some of these companies therefore rely heavily on government indirect or direct subsidies. Privatization plans have been drafted in both entities, but no major privatizations took place in the previous several years apart from some minority stake ones in several important companies in pharmaceuticals, insurance, tobacco and petrol retail sectors. Corporate and personal income tax has been harmonized between the entities, both being flat and set at 10% of the taxable income. On the other hand, social security contributions differ between entities since they organize their own healthcare and pension systems. As a consequence, labour tax wedge on the average wage is different on the entity level – approximately 40% in Federation (which is on the upper threshold of the Western Balkans) and 34% in Republika Srpska (which is slightly below the regional average). VAT is low for European standards, and consists only of one standard rate of 17%, without preferential rates.

Regulation of Credit, Labour, and Business : 5.89

Business environment in Bosnia and Herzegovina is overall not business-friendly. It suffers from excessive red tape, high bureaucracy costs and high regulatory uncertainty. Legislation is often ambiguous or contradictory. Business activities are overly regulated. Corruption thrives in this kind of environment, both petty corruption and centralized high corruption that stems from political influence of high officials. Inspection reform in Republika Srpska entity gave good results in this area, cutting uncertainty among entrepreneurs, but this is yet to be introduced in the Federation. Inspection fees are non-transparent and high, with an ineffective appeal process. Because each of the multilayered executive government (with the national, entity, cantonal and municipality government) establishes its own regulatory framework regarding conduct of business activities, regulatory environment is very complex, with conflicting jurisdictions or unclear authority borders. Unstable political situation and divisions across ethnic and entity lines stifle much needed reforms of the business environment. Thus the economic space of the country remains effectively fractured, as was evident recently with the political stalemate regarding the building of the government at state level, which had taken more than one year after elections, having had deep impact on the business climate. The procedure of starting a business differs between the entities: while Republika Srpska introduced a one-stop shop in 2013, whereby a new company can be registered within two weeks, in the capital of Sarajevo this process takes more than 2.5 months on average, burdened with bureaucracy and including not only notaries but also municipal courts and other various bodies, and including the high minimum capital requirement. Obtaining a construction permit and getting electricity also incur very high costs due to high fees involved, as well numerous and slow procedures. Compliance with tax regulation involves a high number of payments, with complicated and inconsistent procedures, of which VAT regulations are considered the most burdensome. Both entities introduced labour code changes in 2016 in order to make

labour market more flexible, easing the process of hiring and firing. Fixed-term contracts are not prohibited for permanent tasks, and their duration is 36 months. On the other hand, severance pay still increases with years in tenure, thus protecting more seasoned workers, but notice periods have been significantly shortened. Recent changes decreased wage premiums for overtime, weekly holiday and night work. Minimum wage in the country is high relative to the average wage, which encourages activities in the shadow economy. It was recently increased again.

Freedom to Trade Internationally : 8.26

Freedom to trade internationally in Bosnia and Herzegovina (BiH) is generally respected. However, the country still remains outside the World Trade Organization (WTO), being among few European countries in this status, alongside Serbia and Belarus. Although this lengthy accession process progressed steadily until 2013, it was then effectively put on hold due to unwillingness of the BiH's side to alter its domestic policies that went against WTO rules. The last meeting of the working group was in February 2018, after five years, to assess the situation after the meanwhile implemented reforms. BiH is considered as being no closer to fulfilling the WTO criteria, but the necessary bilateral negotiations have not yet been concluded. Since this process could be lengthy, and there is a lack of clear political will to finish with the remaining reforms, the BiH's WTO accession is not likely in near future, and it will probably be resolved only within the further EU integration, since WTO membership is a prerequisite for EU accession. Tariffs are on average higher than in the region, especially as compared to the EU countries, with the average applied MFN tariff rate standing at 6.3%. Also, tariffs on agriculture products are on average significantly higher than on industrial goods. Furthermore, there are also regulatory trade barriers in the field of certification and quality standardization, which pose significant burden on international trade. Custom service is not well organized, with inefficient or complicated procedures and with outdated electronic systems. Corruption and partial treatment of different companies by the administration also remain present. The most important trade partners for BiH are EU countries, most notably Germany and Croatia, followed by countries from the region, most notably Serbia. Therefore, the majority of trade is conducted under the Stabilization and Association Agreement (SAA) that supplanted the Interim Agreement on Trade in 2015, and the CEFTA agreement signed in 2006. However, trade dispute mechanism within CEFTA is malfunctioning, making trade dispute settlement very difficult in practice, mainly through bilateral negotiations. Following political reasons, since they had not recognized its proclaimed independence, Kosovo* declared 100% import tariffs on all goods from BiH and Serbia in November 2018. These tariffs are still in place.