

Bosnia and Herzegovina 2017



Total: 51.24

Political Freedom

Free and Fair Elections : 6.07

All recent elections in Bosnia and Herzegovina (BiH) were organized in democratic manner, although certain technical shortcomings and fraudulent activities threatened to endanger freedom and fairness of the process. Political landscape is pluralistic and political parties are able to operate freely. However, only Bosnian Serbs, Bosnian Croats and Bosniaks are entitled to run for the Presidency of BiH and for the House of Peoples (upper chamber) of the Parliamentary Assembly of BiH, due to constitutional provisions contested by the European Court of Human Rights. Local elections took place on the 2nd of October 2016 and were held amid strong ethnic tensions in the country. Seven days prior, an entity Republika Srpska (RS) held an unconstitutional referendum on the establishing of the Day of RS, which sparked harsh rhetoric by nationalists in both entities, the RS and the Federation of BiH (FBiH). In such environment, ruling Party of Democratic Action (SDA) and Alliance of Independent Social Democrats SNSD dominated local elections results in FBiH and RS, respectively.

Absence of Unconstitutional Veto Players : 3.33

Decision making process in Bosnia and Herzegovina is inefficient and often interrupted by politicians themselves. Power to veto legislation, given by the Constitution to each of the three acknowledged "constituent" ethnicities ("nations"), is often used rather for personal, clanship or political party benefit than as a control mechanism and consensus-building tool over the most sensitive (primarily identity) issues in the country. Such situations often spark inter-ethnic tensions and seriously endanger democratic process. System of checks and balances is weak, particularly due to poor ability of judiciary to impose rulings on the executive. This was especially evident after the Constitutional Court had ruled a ban on a referendum on the Day of RS, while the Government of RS ignored it and held the vote. After the referendum go-ahead, it celebrated the Day on 9th of January 2017. Religious institutions in BiH are very influential in shaping public opinion. They often use their position to interfere or navigate country's politics. Also, legislative veto power is given to the Office of the High Representative, which in the name of UN monitors the implementation of the Dayton Peace Agreement.

Freedom of Press : 4.9

Media scene in Bosnia and Herzegovina is highly pluralistic and diverse, while freedom of the media is only partly upheld in practice. Strong informal ethnic-gravitation or political party pressure

reflects on media outlets and journalists, decreasing their objective reporting. Informal political or economic pressure is often used to silence critical journalism and influence editors. Numerous media are dependent on the public sector for advertising or subsidies, whereby government in return receives more favourable treatment. This is especially highlighted among the public broadcasters, who used to favour the government or even serve as its propaganda tool, such as Radio and Television of the Republika Srpska (RTRS). Journalists might face intimidation or violence due to their critical reporting.

Rule of Law

Independence of the Judiciary : 3.34

Constitutional Court (CC) of Bosnia and Herzegovina (BiH) has for several times during 2015 and 2016 ruled that certain laws or regulation in the BiH's entity Republic of Srpska (RS) were unconstitutional, often contradicting the rulings of the entity's CC. The most drastic case was the referendum held in RS on 25 November 2016, over the issue of an RS's public holiday. While the CC BiH's ruling to cancel the referendum was ignored by RS authorities, the vote took place, so far with no subsequent legal consequences for the main perpetrators. In daily practice, bribing out from a court a favorable or at least expedient ruling or sentence, or a delay of the process, is often practiced. Political interference is also present. Backlog of cases is huge. War crimes' trials often produce results in contrast with common wisdom and/or basic sense of justice. Recently, an improvement was noticed in the certain category of war crimes' trials – those for rape, whereby a number of internationally recognized professional standards, good practices and experience of the Hague-based ICTY were applied. Even that is perceived by victims' associations as neglect, as compared to the huge unmet demands of the transitional justice.

Corruption : 3.9

State capture by political parties at all six tiers of government, huge public sector, high public spending and unclear division of responsibilities, plus poor coordination between anti-corruption actors, are the main factors that facilitate a very high level of corruption in Bosnia and Herzegovina (BiH), placing it behind all its neighbors. In its Corruption Perceptions Index 2016, Transparency International has put BiH, with the score 39/100, to the place 83 (of 176 countries), together with Albania, Jamaica and Lesotho. Bribery rate is very high, 27%. The situation has been stagnant for years now. High level corruption and other misuse of power by politicians is normalcy. Politicians' or their families' or proxy's assets are often in visible discrepancy with their long-term declared income. As GAN portal noted in August 2016, in most of the observed fields relevant for doing business, from public procurement and public services to police, customs, tax administration and judiciary, with only land administration as a partial exception, corruption risks were high. FNF has noticed that illicit political party financing, misuse of public office or funds for party activities and partisanship in employment considerably undermined political freedom and pluralism. Freedom House noted that citizens were especially worried about corruption in political parties, in health care and in the police, while being increasingly cynical about the prospects of improvement. As many as 83% citizens find the government performing "badly" when fighting corruption. Especially demoralizing is the fact that politicians often enjoy impunity for corruption, or get away with short prison sentences. Meanwhile, institutions in charge of corruption (APIK) or of conflict of interest

(special commission for it) experience administrative problems and/or lack of authority.

Protection of Human Rights : 5.18

The heaviest burden on human rights in Bosnia and Herzegovina (BiH) is its recent past, with many unresolved war crimes and divergent interpretations thereof. The denial of the judicially established qualification of the July 1995 crime in Srebrenica as genocide, widespread in the Serb entity RS (as well as in neighboring Serbia), is hindering reconciliation. Ethnocentrism goes beyond the treatment of past events. Hate speech might be found everywhere and extremism is on the rise. Schools are segregated, and so are the curricula. BiH's citizens who do not belong to any of the three "constituent nations", or those who live in an ethno-religious environment different from their own, face hardships. Amnesty International, in its report for 2017, noticed some improvement in access of Roma to IDs or to housing, but it warned that discrimination in education, health care and employment continued, while recent government actions to lessen it were void. Human trafficking remains as a huge problem. In the District of Brko (itself with a special status within BiH), an important transit point for traffickers, several raids and subsequent trials were conducted. In July 2016, a small improvement in the anti-discrimination legislation in BiH was made regarding LGBTI persons, by redefinitions thereof and inclusion of inter-sex persons. Nevertheless, homophobia is very strong and widespread, while the capital Sarajevo is still without its own official annual Pride Parade.

Economic Freedom

Security of Property Rights : 4.44

Private property rights in Bosnia and Herzegovina are not adequately protected. Judiciary is weak and it often succumbs to out of court influences by politicians and powerful private interests; their decisions therefore can be partial and are not necessarily aligned with the existing practice. Corruptive practices within the judiciary are also present. Judicial processes are slow and inefficient, as well as enforcement of their rulings. Courts do not uphold the stipulated time standards, and the number of adjournments is not prescribed. There are also many backlogged cases, which further aggravates the situation. A number of judges in commercial cases also lack specialized knowledge or experience for specific cases, which prolongs court procedures. Although there are specialized commercial courts, commercial cases are not always regarded as those to which priority should be given. 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 also extremely long and lead to very low recovery rates. 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 Republika Srpska. Great proportion of land does not have a clear title, due to an inefficient and slow restitution process and weak administration capacities. The entities have different real property cadastre services. The role of municipality courts in land registry further complicates the situation. The question of property rights of internally displaced persons and refugees remains open, due to inefficient proceedings of the Commission for Real Property Claims of Displaced Persons and Refugees. There are ownership restrictions to foreign citizens, mostly in areas of defense industry, media and

electricity transmission; land ownership is also restricted but on a reciprocal basis.

Size of Government: Expenditures, Taxes, and Enterprises : 5.86

Size of government in Bosnia and Herzegovina is high for a country with such a low level of economic development, with government expenditures reaching 43% of GDP in 2016. Government bureaucracy is omnipresent, with several different layers of government, which is a direct legacy of the war. All of them compete for authority and resources. In September 2016, the IMF approved an Extended Government Facility program, offering more than half a million euro in loans if necessary. The program goals are to lower the blatant wage bill and non-targeted social spending, increase capital expenditures to alleviate infrastructure bottlenecks, and strengthen the common economic structure of the country. These measures are a part of the broader Reform Agenda, whose main aim is increase in competitiveness of the country. Government gross debt is on a downward path, standing at a moderate level of 44% of GDP in 2016. Although a wide scale privatization process was conducted, there are many state owned enterprises (SOE), but most of them are in possession of the two entities, which further lessens their efficiency since it disables the economy of scale. Many of these SOEs are inefficient, heavily relying on government indirect or direct subsidies, and with high arrears. Privatization plans have been drafted in both entities, but were more implemented in the Federation, which sold its full or minority stake in several important companies in pharmaceuticals, insurance, tobacco and petrol retail sectors. Economic growth is sluggish, barely reaching 2% in 2016. Corporate and personal income tax have been harmonized and flat and both set at the low rate of just 10%. However, social security contributions differ among the entities, leading to different labour tax wedge - 40% in Federation (in line with other Western Balkan countries) and 34% in Republika Srpska (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 : 5.56

Business environment in Bosnia and Herzegovina suffers from excessive red tape and prevalent corruptive activities. Starting a business is a very slow procedure, burdened with bureaucracy and includes not only notaries but also municipal courts and other various bodies; it also incurs high costs not only due to high fees but also due to a high minimum capital requirements. This procedure also differs between entities, with Republika Srpska establishing a more efficient one stop shop. Obtaining a construction permit and getting electricity also incur 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 contracts anymore, while their duration was increased to 36 instead of just 24 months. Severance pay still increases with years in tenure, thus protecting more seasoned workers, but notice periods have been significantly shortened. Minimum wage in the country is high relative to the average wage, which encourages activities in the shadow economy. Significant obstacles to a better business environment stem from unstable political situation and overly complex government structures which impede much needed reforms. This is further exacerbated by inefficient government bureaucracy and corruption, while economic space of the country is not unified due to different regulation on both entities` (Republika Srpska and Federation of BiH) and cantonal levels.

Freedom to Trade Internationally : 8.66

Freedom to trade internationally is generally respected in Bosnia and Herzegovina (BiH). Tariffs are mostly low, but somewhat higher than in the region, with the average applied tariff rate of 6.3%. BiH is, alongside Serbia, the only country from the South East Europe that is not a member of the World Trade Organization (WTO). Its accession process has been put to a halt since 2013. The most important foreign market for BiH's goods is the European Union, most notably Croatia and Germany. Therefore, majority of trade is conducted under the Stabilization and Association Agreement (SAA) that in 2015 supplanted the Interim Agreement on Trade. The Protocol on Trade to the SAA was signed in December 2016, which was adapted to take into account the fact that Croatia had joined the EU. Its implementation started in February 2017 and it further liberalized trade in agricultural products. Two countries from the region, Serbia and Montenegro, also play an important role in trade flows, under the Central European Free Trade Agreement (CEFTA). Regulatory trade barriers in the field of certification and quality standardization pose significant burden on international trade. Furthermore, custom service is not well organized, with inefficient or complicated procedures, while corruption and partial treatment are still present. Further EU or WTO accession processes would liberalize trade, both the tariffs and the standardization requirements. However, BiH is still only a potential, and not an official candidate country. The WTO's work group last met 4 years ago. Amendments to the Law on Internal Trade would finally erase the discriminatory measure by which at least 50% of all items in retail chains had to be of domestic origin.