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# Freedom House

## Freedom in the World 2019 - Bosnia and Herzegovina

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### Overview:

Bosnia and Herzegovina (BiH) is a highly decentralized parliamentary republic whose complex constitutional regime is embedded in the Dayton Peace Agreement, which ended the 1992–95 Bosnian War. Political affairs are characterized by severe partisan gridlock among nationalist leaders from the country's Bosniak, Serb, and Croat communities. Corruption remains a serious problem.

### Key Developments:

#### Key Developments in 2018:

- In January, the government of BiH's Serb-majority Republika Srpska (RS) entity was revealed to be recruiting the services of Russian-trained paramilitaries from Serbia. It emerged in February that the RS government was acquiring significant quantities of arms in an effort to militarize the entity's police forces.
- Protests began in late March and continued throughout the year following the unexplained death—and presumed murder—of David Dragičević, a 21-year-old Banja Luka man. Demonstrators accused RS authorities of involvement in the death or a subsequent cover-up amid broader concerns about policing and the rule of law in the entity.
- In October, BiH held its eighth general elections since the conclusion of the war. The balloting was marked by irregularities and mostly confirmed the positions of the entrenched nationalist blocs, though negotiations on a new government were ongoing at year's end.

### Political Rights and Civil Liberties:

POLITICAL RIGHTS: 19 / 40 (–2)

A. ELECTORAL PROCESS: 6 / 12 (–1)

#### **A1. Was the current head of government or other chief national authority elected through free and fair elections? 2 / 4 (–1)**

The 1995 Dayton Accords that ended the civil war in BiH created a loosely knit state composed of two entities—the Federation, whose citizens are mainly Bosniak and Croat, and the Serb-dominated RS—that operate under a weak central government. The position of head of state is held by a three-member

presidency comprising one Bosniak, one Serb, and one Croat; they are each elected to a four-year term, which they serve concurrently.

The chair of the Council of Ministers, or prime minister, is nominated by the presidency and approved by the House of Representatives. The chair in turn nominates other ministers for approval by the House.

The October 2018 elections were once again led by the country's three entrenched nationalist blocs: the Bosniak nationalist Party of Democratic Action (SDA), the Croat nationalist Croatian Democratic Union (HDZ-BiH), and the Serb nationalist Alliance of Independent Social Democrats (SNSD). Milorad Dodik of the SNSD, the longtime president of the RS entity, won the Serb seat in BiH's state presidency, and Šefik Džaferović of the SDA won the Bosniak seat. However, Željko Komšić of the center-left Democratic Front party decisively defeated the HDZ-BiH incumbent for the Croat seat of the presidency. At year's end, the exact shape of the ruling coalitions at the state level and at most other levels of government remained unclear, as negotiations were ongoing. In December, however, five parties from across the political spectrum formed a coalition without the SDA in the Sarajevo Canton, and the SNSD formed another government in the RS, with Radovan Višković replacing Željka Cvijanović, now the entity president, as prime minister.

Serious concerns were raised about the integrity of the elections, with the Organization for Security and Co-operation in Europe (OSCE) noting a "lack of confidence in the impartiality of all levels of the election administration, largely due to suspected commissioners' political and ethnic bias." Prior to the elections, independent media revealed a fraudulent absentee voter registration scheme—allegedly supported by Moscow—that implicated the HDZ of Croatia and its Bosnian sister party, the HDZ-BiH. Over 450,000 ballots, about 7 percent of those cast, were disqualified by the Central Electoral Commission (CIK), raising suspicions of potential voter fraud. The postelection period was marked by growing concerns about the extent of the alleged fraud, with the Social Democratic Party (SDP), whose candidate finished a close second in the race for the state presidency's Bosniak seat, demanding a formal recount.

*Score Change: The score declined from 3 to 2 due to credible reports of large-scale fraud in the 2018 presidential elections.*

## **A2. Were the current national legislative representatives elected through free and fair elections? 2 / 4**

The Parliamentary Assembly, a state-level body, has two chambers. The 15-seat upper house, the House of Peoples, consists of five members from each of the three main ethnic groups, elected by the Federation and RS legislatures for four-year terms. The lower house, the House of Representatives, has 42 popularly elected members serving four-year terms, with 28 seats assigned to representatives from the Federation and 14 to representatives from the RS.

The SDA, HDZ-BiH, and SNSD dominated the 2018 general elections, capturing nine, five, and six seats in the highly fragmented House of Representatives and many other posts at the entity, canton, and municipal levels. However, they faced stiff competition from other parties, particularly the SDP, which took five House of Representatives seats, and the left-wing Democratic Front–Civic Alliance, which won three. Nine smaller parties also won representation at the state level. Election monitors noted significant irregularities and a decline in overall quality as compared with prior polls.

## **A3. Are the electoral laws and framework fair, and are they implemented impartially by the**

**relevant election management bodies? 2 / 4**

Under BiH's constitutional regime, the CIK administers elections with the help of municipal election commissions. Both are subject to significant political party interference. The CIK is a largely ineffectual body, unable to act decisively without political support. The election of its president in September 2018 was criticized as illegal by the winner's opponent, who argued that the law did not allow a commissioner to serve as president twice in the same seven-year mandate.

Conflicts over fair ethnic representation continue to surround aspects of the constitution. For example, BiH citizens who do not identify as members of the country's Bosniak, Serb, or Croat "constitutive peoples" remain barred from the presidency and membership in the House of Peoples, despite 2009 and 2016 rulings by the European Court of Human Rights that the exclusion of members of other ethnic groups violated the European Convention on Human Rights.

The Federation's upper house, also known as the House of Peoples, had yet to be formed at the end of 2018 due to an unresolved legal dispute over its system of ethnic seat allocations. A 2017 Constitutional Court ruling had struck down the existing legal provisions, and after Federation lawmakers failed to enact new rules, the CIK attempted to resolve the problem in December. However, the SDA and other Bosniak-led parties appealed the decision to the Constitutional Court. The dispute also held up the formation of the state-level House of Peoples, whose members are appointed by the entity legislatures.

Separately, the city of Mostar has not held municipal elections since 2008 due to an unresolved legal dispute over the allocation of city council seats between Croats and Bosniaks.

**B. POLITICAL PLURALISM AND PARTICIPATION: 9 / 16 (-1)****B1. Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings? 3 / 4**

Political parties typically organize and operate freely, though the political arena in the Federation is generally limited to Bosniaks and Croats, while Serbs dominate politics in the RS. While coalitions at all levels of government shift frequently, incumbent parties maintain their positions with the help of vast patronage networks, making it difficult for smaller reform-oriented forces to achieve meaningful breakthroughs.

**B2. Is there a realistic opportunity for the opposition to increase its support or gain power through elections? 2 / 4 (-1)**

There are no explicit legal barriers preventing opposition parties from entering government, but expansive veto powers granted to the constitutive peoples and their representatives have helped the dominant nationalist parties to manipulate the system and shut out reformist and multiethnic challengers. This pattern was largely reinforced in the 2018 elections, despite the HDZ-BiH's defeat in the contest for the Croat seat of the state presidency.

*Score Change: The score declined from 3 to 2 because a series of elections in recent years have demonstrated that the political system created by the Dayton Accords favors establishment parties.*

**B3. Are the people's political choices free from domination by the military, foreign powers,**

**religious hierarchies, economic oligarchies, or any other powerful group that is not democratically accountable? 2 / 4**

The Office of the High Representative (OHR), which was created by the Dayton Accords, operates under the auspices of the United Nations and has the authority to remove elected officials if they are deemed to be obstructing the peace process. In recent years, the OHR has been reluctant to intervene in the country's politics.

Both Serbia and Croatia wield outsized influence in the Bosnian political sphere through their respective local allies, the SNSD and the HDZ-BiH. Two other foreign states, Russia and Turkey, have offered support to preferred parties and candidates.

**B4. Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? 2 / 4**

Political rights in BiH are in large part contingent on one's ethnic background and place of residence. Ethnic minorities including Jews and Roma are constitutionally barred from the presidency and from membership in the House of Peoples, despite the European Court of Human Rights rulings against those provisions. Serbs who live in the Federation and Croats and Bosniaks who live in the RS are also excluded from the presidency. Some Croats argue that their rights to representation are violated by electoral laws allowing non-Croats a significant voice in the selection of the Croat member of the presidency and Croat members of the House of Peoples, contributing to the ongoing legal dispute over the Federation's House of Peoples. Women are underrepresented in politics and government. Nine women won seats in the House of Representatives in 2018.

**C. FUNCTIONING OF GOVERNMENT: 4 / 12****C1. Do the freely elected head of government and national legislative representatives determine the policies of the government? 2 / 4**

Government formation and policy implementation are seriously impeded by the country's complex system of ethnic representation. Under the Dayton Accords, representatives from each of the three major ethnic groups, at both the state and entity levels, may exercise a veto on legislation deemed harmful to their interests.

The state government is undercut by movements within each of BiH's entities for greater autonomy. In the RS, the hard-line SNSD government has deepened its security ties with Russia. In January 2018, evidence emerged that Dodik had hosted Russian-trained paramilitaries from Serbia—who were said to be establishing a paramilitary unit within the RS—in the entity's presidential palace. In February, follow-up reports found a sharp increase in the RS government's procurement of arms, which the OHR characterized as a push to militarize the entity's police force.

In May 2018, canton police units controlled by the HDZ-BiH obstructed a migrant convoy accompanied by state police from Sarajevo. The ensuing hours-long standoff raised fears of a possible shooting incident.

**C2. Are safeguards against official corruption strong and effective? 1 / 4**

Corruption remains widespread and systemic, and legislation designed to combat the problem is

poorly enforced. When corruption probes are actually opened, they rarely result in convictions. In June 2017, Transparency International BiH said it had noted a significant decline in the efficiency of corruption adjudication in the country over the last eight years, and particularly in 2015 and 2016. In September 2018, the US State Department imposed sanctions on a state-level lawmaker and high-ranking member of the SNSD, Nikola Špirić, on the grounds that he had "engaged in and benefited from public corruption."

### **C3. Does the government operate with openness and transparency? 1 / 4**

Government operations remain largely inaccessible to the public. Procurement awards are often made in secret and, according to a 2017 report published by Mediacentar Sarajevo, a local nongovernmental organization (NGO), most public institutions do not comply with BiH's legal requirements related to freedom of information. Candidates for major offices are required to make financial disclosures, but the relevant laws do not meet international standards, and the resulting disclosures are considered unreliable. Debate and decisions on matters of great public interest, including legislation and subjects pertaining to EU accession, routinely occur during interparty negotiations that take place behind closed doors, outside of government institutions.

CIVIL LIBERTIES: 34 / 60

## **D. FREEDOM OF EXPRESSION AND BELIEF: 10 / 16**

### **D1. Are there free and independent media? 2 / 4**

Freedom of expression is legally guaranteed but limited in practice. Journalists face harassment and threats as well as political pressure. In 2017, the Institution of the Human Rights Ombudsman of BiH issued a report recommending that the country build a stronger legal infrastructure for punishing attacks on journalists. In August 2018, a reporter covering ongoing protests over the RS government's response to the presumed murder of David Dragičević in Banja Luka was attacked and beaten with rods by two unknown assailants. Several other assaults and threats against journalists were reported during the year.

### **D2. Are individuals free to practice and express their religious faith or nonbelief in public and private? 3 / 4**

Religious freedom is not subject to formal restrictions, but in practice religious communities face some discrimination in areas where they constitute a minority. Acts of vandalism against religious sites continue to be reported.

### **D3. Is there academic freedom, and is the educational system free from extensive political indoctrination? 2 / 4**

The education system is racked by corruption and clientelism, and the curriculum is politicized at all levels of education. At some schools in the Federation, Bosniak and Croat students are divided into separate classes on the basis of their ethnicity. Some Bosniak returnees in the RS have sent their children to temporary alternative schools to avoid curriculums they call discriminatory, and some Serb families have described discriminatory educational environments in the Federation.

### **D4. Are individuals free to express their personal views on political or other sensitive topics**

**without fear of surveillance or retribution? 3 / 4**

Freedom of expression for individuals in BiH is generally protected from overt government interference. However, peer pressure and the risk of an adverse public reaction remain significant curbs on the discussion of sensitive topics. The news media often report on "controversial" social media posts by members of the public.

**E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 7 / 12****E1. Is there freedom of assembly? 3 / 4**

Freedom of assembly is generally respected in BiH, and peaceful protests are common. However, demonstrators sometimes encounter administrative obstacles or police violence. In 2018, persistent and often large-scale protests followed the unexplained death—and presumed murder—in March of David Dragičević, a 21-year-old Banja Luka resident whose case touched on broader concerns about policing and the rule of law in the RS. Dragičević's father and opposition leaders have accused the RS police, prosecutor's office, and political leadership of either playing a role in or covering up his son's death. In an attempt to clamp down on the movement, police on Christmas Day closed off a Banja Luka square utilized by protesters and arrested some 20 people, allegedly using excessive force in the process.

**E2. Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights- and governance-related work? 2 / 4**

The NGO sector in BiH remains robust but is sometimes exposed to government pressure and interference. There have been reports of prolonged tax investigations of NGOs by the RS government. Many organizations rely on government funding, posing a potential conflict if they seek to criticize the authorities. In 2018, a proposed RS law that would have placed restrictions on foreign donations to NGOs was withdrawn in the face of organized objections from civil society.

**E3. Is there freedom for trade unions and similar professional or labor organizations? 2 / 4**

Labor unions operate freely in the whole of BiH, although workers often have limited bargaining power in practice. The right to strike is legally protected, but labor law in the Federation erects significant barriers to the exercise of this right. Legal protections against antiunion action by employers are weakly enforced. The leading political blocs in the country have significant sway over unions in their respective strongholds.

**F. RULE OF LAW: 7 / 16****F1. Is there an independent judiciary? 1 / 4**

The judiciary is formally independent, but weak in practice, and the Constitutional Court continues to face challenges from the SNSD and HDZ-BiH in particular. Dozens of Constitutional Court decisions have been disregarded by political leaders. In August 2017, after the Constitutional Court ruled that all military installations in the RS were BiH state property, RS government figures indicated that they would ignore it. In January of that year, the president of the HDZ-BiH joined Dodik in questioning the inclusion of foreign judges on the Constitutional Court.

The existence of four separate court systems—for the central state, the RS, the Federation, and the self-governing Brčko district—contributes to overall inefficiency.

## **F2. Does due process prevail in civil and criminal matters? 2 / 4**

Guarantees of due process are inconsistently upheld. Access to adequate legal counsel can be contingent on one's financial standing. Police corruption is a problem and sometimes stems from links to organized crime. Public prosecutors are widely reputed to be corrupt and under political control.

The process of prosecuting war crimes in domestic courts has been slow, with political interference and courts' lack of resources and capacity contributing to a large backlog of cases. A push to reinvigorate the process was ongoing at year's end, but impunity for war crimes including killings and sexual violence has persisted.

## **F3. Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? 2 / 4**

Harassment by police remains routine for vulnerable groups, which now includes a significant population of migrants. Many prisons are overcrowded or feature other substandard conditions, and detainees are subject to physical abuse by prison authorities.

Active land mines still in place following the war continue to pose a threat to civilians. The reports of paramilitary activity and rearmament by politically controlled police units during 2018 raised concerns about the possibility of renewed conflict in the country.

## **F4. Do laws, policies, and practices guarantee equal treatment of various segments of the population? 2 / 4**

Discrimination against minorities is illegal but nevertheless widespread, particularly against members of the Romany minority. Bosniaks and Croats in the RS experience difficulties accessing social services. Members of the LGBT (lesbian, gay, bisexual, and transgender) community face discrimination, harassment, and occasional physical attacks, and authorities often fail to investigate and prosecute crimes against LGBT individuals adequately. People who returned to their homes after being displaced during the war face discrimination in employment and housing in regions where their ethnic group constitutes a minority. Women are legally entitled to full equality with men but face discrimination in the workplace in practice.

More than 20,000 migrants and asylum seekers arrived in the country during 2018, marking a sharp increase from previous years. Most lacked accommodation and basic services, as the authorities' limited capacity to provide for them was overwhelmed. The influx resulted in political disputes among different levels of government over responsibility for the newcomers.

## **G. PERSONAL AUTONOMY AND INDIVIDUAL RIGHTS: 10 / 16**

### **G1. Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education? 3 / 4**

The law protects freedom of movement, and this right is generally upheld in practice. Land mines limit

movement in some areas. Corruption and bureaucratic obstacles can hamper people's ability to change their formal residency or place of employment.

**G2. Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors? 2 / 4**

Although the legal framework broadly supports property rights and private business activity, widespread corruption and patronage remain major barriers to free enterprise. There is no comprehensive legislation on restitution of property seized during and after World War II, and individuals who returned to their homes after being displaced by the 1992–95 war have faced attacks on their property. The European Commission has called for further progress on compensating people for property that cannot be returned.

**G3. Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? 3 / 4**

Individual freedom on personal status matters such as marriage and divorce is generally protected. Same-sex marriage is not recognized, though the Federation government agreed in October 2018 to consider legalizing such marriages.

Domestic violence remains a serious concern despite some government efforts to combat it. Incidents of abuse are believed to be considerably underreported, and civic groups have found that law enforcement authorities are often reluctant to intervene or impose strong penalties.

**G4. Do individuals enjoy equality of opportunity and freedom from economic exploitation? 2 / 4**

Legal protections against exploitative working conditions are poorly enforced, and workers in some industries face hazardous conditions. In January 2018, factory workers in Zenica engaged in hunger strikes and protests over unpaid salaries and pension contributions. Patronage and clientelism continue to adversely affect hiring practices and contribute to de facto restrictions on economic opportunity.

According to the US State Department's 2018 *Trafficking in Persons Report*, men, women, and children are subject to trafficking for the purposes of sexual exploitation and forced labor, with Romany children particularly vulnerable to forced begging and forced marriages that amount to domestic servitude. According to the report, the government was making efforts toward prosecuting perpetrators, protecting victims, and preventing trafficking, though its efforts in the first two areas decreased somewhat during the coverage period.

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