

Overall Score:

63 - Weak

Legal Framework Score:

90 - Strong

Actual Implementation Score:

39 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁶⁵Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country;
Laws on Associations and Foundations of Bosnia and Herzegovina, Official Gazette of BiH, No.32/01, 42/03

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

References:

Laws on Associations and Foundations of Bosnia and Herzegovina, Official Gazette of BiH, No.32/01, 42/03

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

References:

Laws on Associations and Foundations of Bosnia and Herzegovina, Official Gazette of BiH, No.32/01, 42/03

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

58

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

The law allows NGOs to register freely at the Ministry of Civil Affairs and Communications and therefore to operate anywhere in the country; however, some NGOs and NGO associations experienced difficulties registering, including long delays and inconsistent application of the law. Some NGOs, frustrated by bureaucratic delays at the state level, chose instead to register their organizations at the entity level in one or both entities.”

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

References:

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on: Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov 5, 2008
http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | **25** | 0

Comments:

Civil society is still not vibrant and lacks sufficient organizational capacity; many groups are not financially viable. The government did not prove to be receptive to advocacy by different social groups or NGOs.”
Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina

References:

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina
Released on June 30, 2009
http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina
Released on June 30, 2009
http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

67

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina
Released on June 30, 2009
http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | **NO**

Comments:

Pressures and threats targeting TI-BiH continued in 2009, coming largely from the RS government and the media under its control, but also from the government of FBiH and its institutions. However, the problem of pressures and threats is much more present in RS, where government officials and government-controlled media leveled serious and unfounded accusations against TI-BiH, associating its work with organized crime, espionage and threats to national security. The governmental institutions also announced that they would bring charges against TI-BiH for expressing its opinions and views. The libel actions that TI-BiH brought against the government-controlled media in summer 2008 have not yet been solved.

References:

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina
Released on June 30, 2009

http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina
Released on June 30, 2009

http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

Annex VI to the General Framework Agreement for Peace in Bosnia Herzegovina

Laws on Associations and Foundations, Official Gazette of BiH, No.32/01, 42/03

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

References:

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina

Released on June 30, 2009

http://www.freedomhouse.org/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

Released on Feb. 25, 2009

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

BiH Law on Communications, Official Gazette BiH No. 33/02

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Constitution of Bosnia and Herzegovina, Annex IV of the Dayton Peace Agreement

BiH Law on Communications, Official Gazette BiH No. 33/02

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

88

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina

http://www.irex.org/programs/MSI_EUR/2009/bh.asp

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

Released on Feb. 25, 2009

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

References:

No print license is necessary.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No print license is necessary, but process of formal registration could takes more than two months.

References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina
http://www.irex.org/programs/MSI_EUR/2009/bh.asp

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina
http://www.irex.org/programs/MSI_EUR/2009/bh.asp

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

75

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina
http://www.irex.org/programs/MSI_EUR/2009/bh.asp

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

Comments:

The COMMUNICATIONS REGULATORY AGENCY is authorized to license broadcasters and telecommunications operators pursuant to the provisions of the Law on Communications, and monitor their compliance with license condition. In deciding upon appeals against decisions of the director general, the Council of the Agency shall act pursuant to the Law on Administrative Procedures of Bosnia and Herzegovina, and shall make a full review of the appealed decision. Appeals against the decisions of the director general shall not suspend the effectiveness thereof. Decisions of the Council of the Agency shall be final and binding in administrative procedure. Legal review of the decision can be initiated before the State Court of Bosnia and Herzegovina.

References:

Law on Communications, Official Gazette BiH No. 33/02

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina
http://www.irex.org/programs/MSI_EUR/2009/bh.asp

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina
http://www.irex.org/programs/MSI_EUR/2009/bh.asp

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

References:

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

References:

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

50

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

Annex VI to the General Framework Agreement for Peace in BiH

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The most alarming situation with regards to media freedoms is in RS, where almost all the media, including the public broadcasting service, are controlled by the RS government and the ruling party, with the exception of one daily newspaper. What is more, the most blatant form of censorship in RS is imposed against the print and electronic media from FBiH. For instance, it is not possible to watch the FBiH public broadcasting service in RS when news and current affairs programs are aired, while print media from FBiH are very often impossible to buy in RS.

References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina
http://www.irex.org/programs/MSI_EUR/2009/bh.asp

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

Comments:

Political pressures on state-level media institutions continued. Both Bosnia-Herzegovina Radio Television (BHRT) and the CRA were exposed to frequent political attacks, particularly by RS officials, often alleging a lack of impartiality. In the case of the BHRT, the attacks appeared aimed at undermining the state-level public broadcasters and building support for devolving media competencies from the state to the entity level. Other public broadcasters remained vulnerable to political influence as well. Two public broadcasters, Federation Television (FTV) and Radio Television of Republika Srpska (RTRS), remained the largest television broadcasters in the country. RTRS reported predominantly pro-RS ruling party views.”

2008 Human Rights Report: Bosnia and Herzegovina
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References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina

http://www.irex.org/programs/MSI_EUR/2009/bh.asp

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

Released on Feb. 25, 2009

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

55

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

References:

Framework law on Single Business Registration in Bosnia and Herzegovina, Official Gazette of BiH No. 42/04

Law on Enterprises, Official Gazette of Republic Srpska, No.24/98, 62/02, 66/02, 38/03, 97/04

Law on Registration of Business Entities, Official Gazette of Republic Srpska, No.42/05

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

References:

BiH Law on Communications, Official Gazette BiH No. 33/02

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | **25** | 0

Comments:

A significant number of media are under the control of criminal groups who use the media for blackmail and extortion. Last year TI-BiH was a target of such media who had close links with the government of RS. The medium featured a series of obscure and libelous articles placing TI-BiH in the context of organized crime. Legal action brought by TI BiH against the said medium has not yet been solved.

References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina
http://www.irex.org/programs/MSI_EUR/2009/bh.asp

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Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina
http://www.irex.org/programs/MSI_EUR/2009/bh.asp

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina
http://www.irex.org/programs/MSI_EUR/2009/bh.asp

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

67

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina
http://www.irex.org/programs/MSI_EUR/2009/bh.asp

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

The number of threats against journalists dramatically increased. During 2008 the Free Media Help Line (a part of the Bosnian Journalists Association) registered 54 cases involving violations of journalists' rights and freedoms and pressure from government and law enforcement officials. There were 17 cases of pressure on and threats to journalists, 13 physical assaults on journalists.

References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina

http://www.irex.org/programs/MSI_EUR/2009/bh.asp

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

Released on Feb. 25, 2009

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

IREX: The Media Sustainability Index (MSI) 2009 Bosnia and Herzegovina

http://www.irex.org/programs/MSI_EUR/2009/bh.asp

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

Released on Feb. 25, 2009

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

12. Do citizens have a legal right of access to information?

67

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH No. 28/00

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH No. 28/00

Law on Administrative Procedure of BiH, Official Gazette of BiH No. 29/02, 12/04

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH No. 28/00

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

38

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The law is applied selectively and mostly in cases where relatively harmless information is concerned. Meanwhile major investment and privatization projects are still carried out without information being available for scrutiny by the public and civil society.

A large number of public bodies, such as educational and health care institutions, still do not recognize themselves as being subject to this law. The application of the law in these institutions is minimal or non-existent. As far as other bodies are concerned, the law is either observed entirely or most of the time, including deadlines and procedures, or else not observed at all (administrative silence).

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2008

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2008

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2008

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Considering the tardiness and political pressures exerted on judiciary bodies, the huge amount of backlogged cases and the undemocratic climate in the country, especially in RS, it is not surprising that the number of charges filed by citizens and NGOs with relevant judicial bodies when public bodies fail to act in accordance with the Freedom of Information Law lies in single digits. This is further aggravated by the legislation in RS, where public bodies who deny access to information notify the applicants with an official letter instead of the decision, as is the case with other Freedom of Information laws. An official letter is not considered an administrative act upon which a complaint can be filed with competent authorities. Furthermore, an amendment that the RS government made to the Freedom of Information Law by virtue of its own decision, in contravention of the law and avoiding the parliamentary procedure, which makes the minutes of governmental meetings exempt from the law, is still in effect in RS.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2008

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There are lot of cases according to TI Bosnia Center for legal advice, where the citizens reporting illegal requests for paying additional taxes in order to get information.

Considering the tardiness and political pressures exerted on judiciary bodies, the huge amount of backlogged cases and the undemocratic climate in the country, especially in RS, it is not surprising that the number of charges filed by citizens and NGOs with relevant judicial bodies when public bodies fail to act in accordance with the Freedom of Information Law lies in single digits. This is further aggravated by the legislation in RS, where public bodies who deny access to information notify the applicants with an official letter instead of the decision, as is the case with other Freedom of Information laws. An official letter is not considered an administrative act upon which a complaint can be filed with competent authorities. Furthermore, an amendment that the RS government made to the Freedom of Information Law by virtue of its own decision, in contravention of the law and avoiding the parliamentary procedure, which makes the minutes of governmental meetings exempt from the law, is still in effect in RS.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | **50** | 25 | 0

Comments:

Considering the tardiness and political pressures exerted on judiciary bodies, the huge amount of backlogged cases and the undemocratic climate in the country, especially in RS, it is not surprising that the number of charges filed by citizens and NGOs with relevant judicial bodies when public bodies fail to act in accordance with the Freedom of Information Law lies in single digits. This is further aggravated by the legislation in RS, where public bodies who deny access to information notify the applicants with an official letter instead of the decision, as is the case with other Freedom of Information laws. An official letter is not considered an administrative act upon which a complaint can be filed with competent authorities. Furthermore, an amendment that the RS government made to the Freedom of Information Law by virtue of its own decision, in contravention of the law and avoiding the parliamentary procedure, which makes the minutes of governmental meetings exempt from the law, is still in effect in RS.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Advocacy and Legal Advice Center Report, Transparency International Bosnia and Herzegovina, 2008

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

II-1. Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06.

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

92

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

Election monitoring was conducted by NGO workers and roughly 20 Council of Europe observers invited by the BiH Central Election Commission (CEC). The Organization for Security and Cooperation in Europe (OSCE) sent only a modest monitoring team, stating that BiH had made sufficient progress on elections and should now be regarded as a well-organized democratic country.”

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina

References:

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina

Released on June 30, 2009

http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

There were not any objections by political parties, media or citizens on procedure of protection ballots.

References:

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina
Released on June 30, 2009

http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

References:

Official website of the Election Commission Bosnia and Herzegovina:
<http://www.izbori.ba>

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

75

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

Law on Political Organizations of BiH, Official Gazette of BiH No.27/91

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

References:

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina
Released on June 30, 2009

http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | **25** | 0

References:

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina
Released on June 30, 2009

http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Opposition parties are represented with 13 MPs out of 42 MPs in the House of Representatives of Parliamentary assembly of BiH. Opposition parties have very limited influence in advancing legislation or forcing a debate on sensitive topics (for example, privatization or corruption).

References:

Official website of the Parliamentary Assembly of Bosnia and Herzegovina:

<http://www.parlament.ba>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

60

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

According to the law, appointments to the Central Election Commission (CEC) should be based on professional qualifications, but the majority of CEC members have clear party loyalties.

References:

Interview with several civil society organization representatives and experts, June 2009

Central Election Commission legalized the conflict of interests; TI BiH filed a new lawsuit.
Press release Transparency International Bosnia and Herzegovina, Sarajevo, Sept. 19, 2008

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The BiH Central Election Commission (CEC) still lacks the capacity to properly implement the Laws. Also, the integrity of CEC was compromised after it decided to suspend the implementation of the Law on Conflict of Interest at the entity and Brcko District administrative levels, for which CEC was legally in charge of at the time. This decision, coupled with delays and a selective approach in applying the law, only confirmed that the CEC has been under huge political pressure after the withdrawal of the

international members from its ranks and considering that only politically suitable persons could be appointed as members by the BiH Parliamentary Assembly.

References:

Website of the BiH Election Commission: <http://www.izbori.ba>

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

Central election commission issues regular reports, publicly available on a relatively predictable schedule. Some delays sometimes occur.

References:

Official website of the Central Election Commission

<http://www.izbori.ba>

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

CEC can impose penalties itself. CEC imposed several penalties during local election 2008. In some of these cases, investigations were politically motivated. In some other cases CEC did not act even when there was a court decision to act.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina

Released on June 30, 2009

http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

92

19a. In practice, there is a clear and transparent system of voter registration.

100 | **75** | 50 | 25 | 0

References:

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina

Released on June 30, 2009

http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

Released on Feb. 25, 2009

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters

may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | **75** | 50 | 25 | 0

Comments:

During the local election there were a lot of appeals on elections result. Courts solved all appeals within a reasonable time.

References:

2008 Human Rights Report: Bosnia and Herzegovina BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

References:

Association of Election Officials BiH Conference: Local elections 2008 – lessons learned conference
Opening Remarks by Ambassador Gary D. Robbins, Head of OSCE Mission in Bosnia and Herzegovina
April 23, 2009
<http://www.oscebih.org/public/default.asp?d=6&article=show&id=2332>

OSCE Needs assessment report ahead of municipal elections in Bosnia and Herzegovina from Oct. 5, 2008
Released July 29, 2008
<http://www.osce.org/odihr-elections/32441.html>

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

Election monitoring was conducted by NGO workers and roughly 20 Council of Europe observers invited by the BiH Central Election Commission (CEC). The Organization for Security and Cooperation in Europe (OSCE) sent only a modest monitoring team, stating that BiH had made sufficient progress on elections and should now be regarded as a well-organized democratic country.”

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina

References:

Association of Election Officials BiH Conference: Local elections 2008 – lessons learned conference

Opening Remarks by Ambassador Gary D. Robbins, Head of OSCE Mission in Bosnia and Herzegovina 23.4.2009

<http://www.oscebih.org/public/default.asp?d=6&article=show&id=2332>

OSCE Needs assessment report ahead of municipal elections in Bosnia and Herzegovina, 5 October 2008

Date: 29 July 2008

<http://www.osce.org/odihr-elections/32441.html>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers’ activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers’ movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

It is the Central Election Commission (CEC).

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

84
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

100

20a. In law, there are limits on individual donations to political parties.

YES | NO

References:

Law on Party Financing, Official Gazette of BiH, No.49/00

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | NO

References:

Law on Party Financing, Official Gazette of BiH, No.49/00

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

NO: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES | NO

References:

Law on Party Financing

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

References:

Law on Party Financing, Official Gazette of BiH, No.49/00

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

100

21a. In law, there are limits on individual donations to political candidates.

YES | NO

References:

Law on Party Financing, Official Gazette of BiH, No.49/00

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | NO

References:

Law on Party Financing, Official Gazette of BiH, No.49/00

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

References:

Law on Party Financing, Official Gazette of BiH, No.49/00

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | NO

References:

Law on Party Financing

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

References:

Law on Party Financing, Official Gazette of BiH No.49/00

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

29

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The most common infringements of the rules on financing political parties, candidates and the electoral process are: violations of the provisions of the Law on Political Party Financing and Election Law (which covers the financing of election campaigns),
" regulating the allowable amount of contributions donated to political parties by individual persons and legal entities,
" failure to report individual contributions in the excess of KM 100,
" acceptance of prohibited contributions and failure to submit financial reports in legally stipulated deadline.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Although BiH was one of the first countries in the region to adopt this law, there have been many problems with practical implementation of this law. One of the main reasons for that was the delay in establishing the Auditing Office within CEC BiH. The Office was eventually established five years after the Law had come into force. Most of these CEC BiH's reports had similar findings. In most cases, the parties were found to be in breach of the provisions regulating the allowed amount of contributions from legal entities; parties also failed to present in their financial reports contributions from individual contributors exceeding KM 100, received illicit contributions, and failed to submit financial reports within the prescribed deadline.

However, the control of the credibility of this data is not adequately solved either legislatively or institutionally. Although public, this data is not really analyzed by anyone, with the exception of several members of media outlets and CSOs. The institutions that should do this automatically, such as competent prosecutor's offices, have not dealt with a single such case.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The issue of auditing political party finances by the CIK is not legally and institutionally solved in a quality way. Competencies of the staff in the

CIK's Audit Department are questionable. Also, there is no institutionalized cooperation with SAIs, which are far more experienced and better equipped for this job, and who assert that most illegal transfers to political parties remain undetected. Careful scrutiny of the contracts that governments conclude with public or private companies as well as much stricter control of political party financing remain one of the major challenges for BiH.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

25

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | **25** | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | **25** | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | **25** | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Central election commission does impose penalties on offenders. But the work of this institution is politically biased, and very often only opposition parties are penalized. Also CEC acts very slowly. In 2009, the CEC was working on cases from 2007.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

Financial reports are audited, but the quality of CEC BiH's audit reports is questionable. Vacant positions in the administrative and professional service are filled through the BiH Civil Service Agency and the salaries are within the range applied in civil service, which is significantly lower than the salaries in SAs. It is therefore very difficult to fill the vacancies envisioned in the job plan and employ staff with appropriate qualifications. This is especially worrying in view of the fact that political parties are constantly perfecting their money-laundering systems and are always several steps ahead of slow legal regulations and investigations.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

44

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The data on political parties' expenditures is almost impossible to track since, with the exception of the rules related to election campaigns, there are virtually no other legal limitations on the expenditure of funds by political parties.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Audit reports can be accessed at the CEC website but problem is that CEC acting very slowly, these days they working on 2007 reports.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The control of the credibility of this data is not adequately solved either legislatively or institutionally. Although public, this data is not really analyzed by anyone, with the exception of several members of media outlets and CSOs. The institutions that should do this automatically, such as competent prosecutors offices, have not dealt with a single such case.

Audit reports can be accessed at the CEC website but problem is that CEC acting very slowly, these days they working on 2007 reports.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

44

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | **25** | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

III-1. ⁵⁶Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

56

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | **50** | 25 | 0

Comments:

The chief executive (chair of Council of Ministers) has only formal power to influence policies decisions, because of the complexity of constitutional and state structures. Also, the high representative has supreme executive power according to the Dayton Agreement. Formally, the chief executive provides reasons for policy decision very often through press conferences or press releases.

References:

Bertelsmann Stiftung, BTI 2008 Bosnia and Herzegovina Country Report.

Gütersloh: Bertelsmann Stiftung, 2007.

<http://www.bertelsmann-transformation-index.de/177.0.html?&L=1>

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Law on Administrative Procedure of BiH, Official Gazette of BiH No.19/02

Law on the Court of BiH arts.14, 19, Official Gazette of BiH No. 29/00

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | **25** | 0

Comments:

According to the Law on Administrative Disputes (at the level of BiH, Entities and Br ko District), it is possible to initiate an administrative dispute against a final administrative act issued in an administrative procedure. Final administrative acts issued by the institutions of BiH are subject to administrative dispute before the Court of BiH, while final administrative acts issued by the institutions of the Entities and the Br ko District are subject to administrative dispute before a relevant court (District Courts in RS, Cantonal Courts in FBiH and Basic Court in the Br ko District). The defendant is exclusively the institution or agency that issued the final administrative act and that the administrative dispute is initiated with the aim of quashing this act. The decision of the relevant court issued in an administrative dispute is not subject to complaint, but the aggrieved parties may appeal to the Constitutional Court of BiH if they think that some of their rights guaranteed by the Constitution of BiH (Article 1) and the European Convention on Human Rights and its protocols have been violated.

In addition to that, according to official court data from 2008, the Courts in BiH have a total of 13,758 unsolved administrative disputes. On the other hand, there is an acute problem of non-compliance with court decisions issued in administrative disputes. It is common for administration bodies to fail to act on court decisions or refuse to accept them although the law provides that court decisions are binding for the relevant administration bodies. Unfortunately, there is no legal mechanism in place allowing ordinary courts to force administration bodies to act on their decisions.

References:

Bertelsmann Stiftung, BTI 2008 Bosnia and Herzegovina Country Report.

Gütersloh: Bertelsmann Stiftung, 2007.

<http://www.bertelsmann-transformation-index.de/177.0.html?&L=1>

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | **50** | 25 | 0

References:

Bertelsmann Stiftung, BTI 2008 Bosnia and Herzegovina Country Report.

Gütersloh: Bertelsmann Stiftung, 2007.

<http://www.bertelsmann-transformation-index.de/177.0.html?&L=1>

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

References:

Law on Immunity of BiH, Official Gazette of BiH No.32/02

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

Law on Immunity of BiH, Official Gazette of BiH No.32/02

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

41

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH No. 16/02, 12/04

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

There is no legal ground.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

The only restrictions are with regard to entering public enterprise.

References:

There is no legal ground.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

References:

There is no legal ground.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

Second Evaluation Round Compliance Report on Bosnia and Herzegovina,
Adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)7_Bosnia-Herzegovina_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)7_Bosnia-Herzegovina_EN.pdf)

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

No legal ground.

References:

Second Evaluation Round Compliance Report on Bosnia and Herzegovina,
Adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)7_Bosnia-Herzegovina_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)7_Bosnia-Herzegovina_EN.pdf)

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

63

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Official website of the Central Election Commission
<http://www.izbori.ba>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Official website of the Central Election Commission
<http://www.izbori.ba>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Appeal to all political parties to publish campaign financing reports,
Press release Transparency International BiH
Banja Luka, Sept. 29, 2008

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

26. In law, can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

Law on Civil Procedure before the Court of BiH, Official Gazette of BiH, No.36/04

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

25

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Government resources are regularly used for parties activities. Public companies funds are very often misused for parties

financing. Processes of privatization are another way of misusing state resources. Members of ruling parties have privileged status in these processes.

References:

Bertelsmann Stiftung, BTI 2008 Bosnia and Herzegovina Country Report.

Gütersloh: Bertelsmann Stiftung, 2007.

<http://www.bertelsmann-transformation-index.de/177.0.html?&L=1>

S. Blagovcanin: Corruption in Bosnia and Herzegovina, Causes and Consequences, Fridrich ebert stiftung, Sarajevo 2009

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

50

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | **50** | 25 | 0

References:

BiH Constitutional Court: Will Court of BiH Prevail?"
By The Center for Investigative Reporting Sarajevo
Published on March 25, 2009
http://cin.ba/Stories/P20_CCourt/?cid=892,1,1

Bertelsmann Stiftung, BTI 2008 Bosnia and Herzegovina Country Report.
Gütersloh: Bertelsmann Stiftung
<http://www.bertelsmann-transformation-index.de/177.0.html?&L=1>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | **NO**

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

32

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:

There is no legal ground.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH Nos. 16/02, 12/04

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

There is no legal ground.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

There are no legal regulations.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government

colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Advocacy and Legal Advice Center Report 2008,
Transparency International BiH

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

There is not legal ground.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

56

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

Election Law of BiH, Official Gazette of BiH No.23/01

Laws on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.7/02, 9/02, 20/02, 4/04, 20/04, 25/05, 52/05, 77/05, 24/06

Correction of the Law on Changes and Amendments to the Election Law of BiH, Official Gazette of BiH No.25/02

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | **75** | 50 | 25 | 0

References:

Official website of the Central Election Commission

<http://www.izbori.ba>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

There are lot of cases according to TI Bosnia Center for legal advice, where the citizens reporting illegal requests for paying additional taxes in order to get information.

References:

Official website of the Central Election Commission

<http://www.izbori.ba>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | **0**

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

75

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH No. 28/00

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Some of the reports are easy accessible. But to get sensitive documents" (related to financial issues and spending budget) sometimes is next to impossible.

References:

Official website of the Parliament Assembly Bosnia and Herzegovina
<http://www.parliament.ba>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | **75** | 50 | 25 | 0

References:

Official website of the Parliament Assembly Bosnia and Herzegovina

<http://www.parlament.ba>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

53
III-3. Judicial Accountability

36. Are judges appointed fairly?

75

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH No.25/04

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | **25** | 0

Comments:

In addition to the basic and professional requirements set forth in the Law on HJPC, it is important to note the aggravating circumstances which can sometimes prevent the appointment of the best candidates to judicial or prosecutorial office. According to the 2002 decision of the Constitutional Court of BiH on constitutionality of nations, due steps should be taken, in principle, to ensure that the composition of courts/prosecutor's offices reflects the composition of population in the given jurisdiction according to the last population census from 1991. In some cases, this obligation may lead to certain judicial or prosecutorial offices being left vacant for lack of qualified candidates from the ethnic group to whom these offices belong. However, due to the ethnic quota principle, these vacant positions cannot be filled by candidates from other peoples even if they meet all the necessary requirements. To compound the matter, the judicial reform in BiH has reduced the number of courts and judges, while the number of cases has remained the same or even increased.

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2008
<http://www.hjpc.ba/intro/gizvjestaj/?cid=4276.2.1>

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008
http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH No.25/04

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

79

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

Criminal Procedure Code of BiH, Official Gazette of BiH No. 36/03, 26/04

Civil Procedure Code of BiH, Official Gazette of BiH No. 36/04

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

BiH Constitutional Court: Overstepping?
By The Center for Investigative Reporting
Published on Jan. 30, 2009

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH No.25/04

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH No.25/04

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Of 16 rulings issued in 2008 by the Disciplinary Prosecutor's Office of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, not one is concerned with the disciplinary offenses that could be directly associated with corruption. Instead, the rulings are mainly concerned with negligence or omission of performance of official duties, delays in delivering specific court rulings, interference with the work of a judge or prosecutor, and behavior in the court or outside the court that harms the reputation of the judicial/prosecutorial office. In one case a disciplinary measure was imposed for the behavior of a judge or prosecutor which constituted a serious breach of official duty or threatened to raise doubts among the public as to the impartiality or credibility of the judicial system.

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2008
<http://www.hjpc.ba/intro/gizvjestaj/?cid=4276.2.1>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Of 16 rulings issued in 2008 by the Disciplinary Prosecutor's Office of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, not one is concerned with the disciplinary offenses that could be directly associated with corruption. Instead, the rulings are mainly concerned with negligence or omission of performance of official duties, delays in delivering specific court rulings, interference with the work of a judge or prosecutor, and behavior in the court or outside the court that harms the reputation of the judicial/prosecutorial office. In one case a disciplinary measure was imposed for the behavior of a judge or prosecutor which constituted a serious breach of official duty or threatened to raise doubts among the public as to the impartiality or credibility of the judicial system.

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2008

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

32

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

Law on High Judicial and Prosecutorial Council, Official Gazette of BiH No.25/04

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Code of Judicial Ethics

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

References:

There is no legal ground.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

There is no legal ground.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no legal ground.

References:

Interviews with former judges, May 2009

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

Interviews with former judges, May 2009

Transparency International Global Corruption Barometer 2009, June 2009

<http://www.transparency.org>

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no legal ground.

References:

Index Register of information, administered by the High Judicial and Prosecutor Council of Bosnia and Herzegovina
<http://www.hjpc.ba>

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

25

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

Law on Freedom of Access to Information of Bosnia and Herzegovina, Official Gazette of BiH No. 28/00

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No such information is publicly available.

References:

Index Register of information, administered by the High Judicial and Prosecutor Council of Bosnia and Herzegovina, <http://www.hjpc.ba>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No such information is publicly available.

References:

Index Register of information, administered by the High Judicial and Prosecutor Council of Bosnia and Herzegovina <http://www.hjpc.ba>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

No such information is publicly available.

References:

Index Register of information, administered by the High Judicial and Prosecutor Council of Bosnia and Herzegovina
<http://www.hjpc.ba>

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

58

40a. In law, the legislature can amend the budget.

YES | NO

References:

Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina, representing the constitution of the country

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | **50** | 25 | 0

Comments:

A significant portion of public expenditures takes place outside the budgetary institutions (road directorates, power companies, telecoms, pension and health insurance, special/escrow accounts).

References:

Open budget index 2008

http://openbudgetindex.org/files/cs_bosniaherzegovina.pdf

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | **25** | 0

Comments:

The Assembly is still hampered by inadequate technical and human resources. Cooperation between the Parliamentary Assembly and the Council of Ministers remained weak. Lack of coordination in the legislative process, in particular between the State and the Entity parliaments, also continued to be a problem. The work of the various Parliamentary committees has been affected by inter-ethnic divergences. Entity voting has often prevented swift adoption of legislation.

Overall, the work of the Parliamentary Assembly of Bosnia and Herzegovina continued to be adversely affected by the unstable political climate and insufficient administrative resources."

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

References:

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

Open Budget Index 2008

http://openbudgetindex.org/files/cs_bosniaherzegovina.pdf

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

25

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

Budgetary process is transparent only formal. There are no public hearings and public debates about budget proposals. Opposition parties amendments are usually ignored.

References:

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

Open Budget Index 2008

http://openbudgetindex.org/files/cs_bosniaherzegovina.pdf

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | **25** | 0

Comments:

The budget debate process is open only formally according to law, but in practice NGOs and citizens do not participate in the budget making process.

The government did not prove to be receptive to advocacy by different social groups. The most powerful NGOs remain religious organizations, which received the greatest attention from the media. They have been better organized and more articulate than other NGOs.”

Freedom House Report Nation in Transit 2009

References:

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

Open Budget Index 2008

http://openbudgetindex.org/files/cs_bosniaherzegovina.pdf

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | **50** | 25 | 0

References:

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

33

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | **25** | 0

Comments:

Overall, Bosnia and Herzegovina's preparations in the area of financial control are progressing, but slowly. Stronger efforts are necessary to improve public internal financial control and the follow-up of audit reports."

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

References:

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

References:

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

Open Budget Index 2008

http://openbudgetindex.org/files/cs_bosniaherzegovina.pdf

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

It is common for parliament to conduct formal public hearings of responsible persons in institutions where irregularities have been found. Ministers rarely or never attend such hearings, sending their assistants instead. The parliament seems to conduct these hearings in order to create a false impression of being proactive, although nothing really changes. There have also been attempts by parliamentarians to invalidate the findings of audit reports in order to protect their fellow party members in the executive. Additionally, the existing parliamentary commissions and committees have neither the required capacity nor the expert support to adequately evaluate audit reports and propose appropriate actions.

References:

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

Open Budget Index 2008

http://openbudgetindex.org/files/cs_bosniaherzegovina.pdf

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

They are the Committee for Budget and Finance and the Committee for Audit.

References:

Rules of Procedure for the House of People of the Parliamentary Assembly of BiH, Official Gazette of BiH No. 27/00

Rules of Procedure for the House of Representatives of the Parliamentary Assembly of BiH, Official Gazette of BiH No. 20/00

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁴⁴Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

According to law there are three types of redress:

a. control of legality of administrative acts: by means of lodging an appeal through an administrative procedure or through court control of final administrative acts, i.e. administrative court proceedings (provided for in the laws on general administrative procedure and laws on administrative court proceedings).

b. inspection oversight of the application of relevant laws: through administrative inspections. These inspections oversee the application of the Law on General Administrative Procedure when administrative bodies regulate rights and obligations of citizens

and legal entities.

c. administrative oversight of a public authority, which is carried out by the heads of administrative bodies. This oversight takes place through application of rules regarding the observance of work discipline and, in particular, through application of the Codes of Conduct for civil servants.

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | **NO**

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

36

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | **25** | 0

References:

Quarterly corruption perceptions research, Transparency International BiH, March 2009
<http://www.ti-bih.org>

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

Quarterly corruption perceptions research, Transparency International BiH, March 2009

<http://www.ti-bih.org>

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

References:

Quarterly corruption perceptions research, Transparency International BiH, March 2009
<http://www.ti-bih.org>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

Comments:

Civil Servants (even mid and junior level officials) formally have clear job description. During the vacancies these job descriptions are published on web site of Civil service agency.

References:

Civil Service Agency website
<http://www.ads.gov.ba>

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

The supreme audit institution very often reports that institutions making payments to civil servants for various reasons from anniversary bonuses to payments on occasion of religious holidays etc.

References:

Reports of Supreme audit institutions in Bosnia and Herzegovina 2009

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

Government only advertises vacancies publicly, but a general list of government positions does not exist.

References:

Public Administration Reform Monitoring Report,"
Center for Human Politics, Doboj, 2008

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | **50** | 25 | 0

Comments:

It is difficult to make such estimation. Some of them are non-functional because of cronyism or nepotism, others because of a lot of backlog cases before the courts. Also there are a lot of problems with implementation of court decisions. Thus, the responsibility for acting on court decisions issued in administrative disputes rests with the executive, which sometimes renders the appellate procedure meaningless and inefficient.

References:

Quarterly corruption perceptions research, Transparency International BiH, March 2009
<http://www.ti-bih.org>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | **75** | 50 | 25 | 0

References:

Report on Realization of the Budget, Ministry of Finance and Treasury, Bosnia and Herzegovina

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

Second Evaluation Round Compliance Report on Bosnia and Herzegovina,
Adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)7_Bosnia-Herzegovina_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)7_Bosnia-Herzegovina_EN.pdf)

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

44

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

There are not broadly applied cooling off periods for civil servants. Article 16. of Law on Civil Service defines very specific situation where civil servants cannot join companies if they had exercised regular supervision over such company while in their public sector role. This is not general provision and there are not such general provisions.

In practice there was not any single cases that somebody was penalized for violations of this provisions

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | **NO**

References:

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | **0**

Comments:

In practice there was not any single cases that somebody was penalized for violations of this provisions.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Second Evaluation Round Compliance Report on Bosnia and Herzegovina,

Adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)7_Bosnia-Herzegovina_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)7_Bosnia-Herzegovina_EN.pdf)

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Second Evaluation Round Compliance Report on Bosnia and Herzegovina,

Adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)7_Bosnia-Herzegovina_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)7_Bosnia-Herzegovina_EN.pdf)

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Second Evaluation Round Compliance Report on Bosnia and Herzegovina,

Adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)7_Bosnia-Herzegovina_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)7_Bosnia-Herzegovina_EN.pdf)

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Second Evaluation Round Compliance Report on Bosnia and Herzegovina,
Adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)7_Bosnia-Herzegovina_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)7_Bosnia-Herzegovina_EN.pdf)

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

25

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:

Second Evaluation Round Compliance Report on Bosnia and Herzegovina,
Adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)7_Bosnia-Herzegovina_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)7_Bosnia-Herzegovina_EN.pdf)

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Second Evaluation Round Compliance Report on Bosnia and Herzegovina,
Adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)7_Bosnia-Herzegovina_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)7_Bosnia-Herzegovina_EN.pdf)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Second Evaluation Round Compliance Report on Bosnia and Herzegovina,
Adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Second Evaluation Round Compliance Report on Bosnia and Herzegovina,
Adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)7_Bosnia-Herzegovina_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)7_Bosnia-Herzegovina_EN.pdf)

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

References:

There is no legal ground.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

Comments:

Not only has there been no progress in adopting and implementing whistleblower protection legislation, but there have also been reports of individuals being persecuted for reporting cases of corruption in some state institutions. This situation was identified in the GRECO report, which was published in late April and adopted by the Council of Ministers.

References:

There is no legal ground.

CoE GRECO 2nd evaluation round compliance report on BiH (16/02/09)

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

References:

There is no legal ground.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

References:

There is no legal ground.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

There is no such internal reporting mechanism.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

There is no such internal reporting mechanism.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

There is no such internal reporting mechanism.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

References:

There is no such internal reporting mechanism.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

References:

There is no such internal reporting mechanism.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

0
IV-3. Procurement

51. Is the public procurement process effective?

60

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH No. 16/02, 12/04

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH No. 16/02, 12/04

Law on Civil Service in the Institutions of BiH, Official Gazette of BiH Nos. 12/02, 19/02, 35/03, 4/04, 26/04, 37/04, 48/05, 2/06

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Conflict of interest regulations do not implemented for procurement officials. In practice there is literally no any single case where this rules were applied.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

References:

No such mechanism exists.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

No such mechanism exists.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

83

52a. In law, citizens can access public procurement regulations.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Law on Public Procurement of BiH, Official Gazette of BiH No.49/04

Laws on Changes and Amendments to the Law on Public Procurement, Official Gazette of BiH Nos. 19/05, 52/05, 92/05, 24/06, 70/06

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All regulations, procurement notices, contract award notices and cancellation notices are published in the above sources.

References:

Official Gazette of Bosnia and Herzegovina

Website of Public Procurement Agency:

<http://www.javnenabavke.ba>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

All regulations, procurement notices, contract award notices and cancellation notices are published in the above sources. But the problem lies with annexes on contracts. Even when a public procurement procedure is formally conducted by means of open bidding, the parties subsequently amend the awarded contracts with annexes that completely change or nullify the very purpose of the bidding procedure.

References:

Official Gazette of Bosnia and Herzegovina

Website of Public Procurement Agency:

<http://www.javnenabavke.ba>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Official Gazette of Bosnia and Herzegovina

Website of Public Procurement Agency:
<http://www.javnenabavke.ba>

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | **50** | 25 | 0

Comments:

The implementation of the existing Public Procurement Law is far from satisfactory, as stated in the reports of all four Supreme Audit Institutions (BiH, FBiH, RS and Br ko District). Although open bidding is by far the most commonly used procedure (81.47 percent, according to the 2007 report of the Public Procurement Agency 2007), a large number of audit reports identified inconsistent or erroneous application of legal provisions or even deliberate flouting of the law.

1. Even when a public procurement procedure is formally conducted by means of open bidding, the parties subsequently amend the awarded contracts with annexes that completely change or nullify the very purpose of the bidding procedure.

2 Incompetent members of the selection committees along with nepotism, corruption and exertion of constant pressure make public procurement in BiH a field that is especially prone to the illegal spending of public funds.

Auditors have warned on several occasions that certain companies in FBiH and RS are awarded all major government contracts under very suspicious circumstances, and that these companies know in advance what to include in the bid in order to win the contract. However, the number of indictments issued by the competent prosecutors for malversations in public procurement remains extremely low.

References:

Official Gazette of Bosnia and Herzegovina

Website of Public Procurement Agency:
<http://www.javnenabavke.ba>

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

67

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Law on Privatization of the State-Owned Capital in Enterprises, Official Gazette of BiH

Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina, Official Gazette of BiH No 14/98

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

Law on Conflict of Interest in Governmental Institutions of BiH, Official Gazette of BiH No. 16/02, 12/04

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

References:

Privatization in Bosnia and Herzegovina”
Transparency International BiH, May 2009

E standards forum, financial standard foundation: Country brief B&H 2008

<http://www.estandardsforum.org/system/briefs/236/original/brief-Bosnia-Herzegovina.pdf?1254987832>

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

55

54a. In law, citizens can access privatization regulations.

YES | NO

References:

Law on Privatization of the State-Owned Capital in Enterprises, Official Gazette of BiH

Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina, Official Gazette of BiH No. 14/98

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

Comments:

A particular problem in public contracting is the privatization process, which is hampered by numerous irregularities that cause illegal outflows of public funds. Avoidance of the most transparent open-bidding procedures, legal changes that give government the discretion to privatize virtually every public company according to special (classified) programs, breaches of the laws, ignorance of the responsible institutions and of the auditors' findings and recommendations, political pressures and open threats to whistleblowers and watchdog organizations (as was the case with Transparency International BiH while monitoring the privatization of the RS Petrol Industry) are the most common practices in the BiH privatization process so far.

References:

Privatization in Bosnia and Herzegovina”
Transparency International BiH, May 2009

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

Law on Privatization of the State-Owned Capital in Enterprises, Official Gazette of BiH

Framework Law on Privatization of Enterprises and Banks in Bosnia and Herzegovina, Official Gazette of BiH No. 14/98

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

Comments:

Up until now, the most common practices in the BiH privatisation process are:

- ” avoidance of the most transparent open bidding procedures;
- ” legal changes that allow the government to privatise virtually every public company according to special (classified) programmes without any possibility for public to access contracts;
- ” breaches of the laws;
- ” ignorance of the responsible institutions and the auditors findings and recommendations;
- ” political pressure and open threats to whistleblowers and watchdog organisations (as was the case with TI-BiH while monitoring the privatisation of the RS Petrol Industry).

In the Republic of Srpska, jurisdiction for the privatisation process was transferred from the RS Privatisation Direction to the RS Investment-Development Bank (IRB), which is also in charge of investing the privatisation incomes. The integrity of this institution is disputable, since there are some serious accusations that conflicts of interests and nepotism influence the major criteria of the IRB s credit awards. The work of the analogue institution in the Federation of BiH, the F BiH Investment Bank, also came under public scrutiny for its allegedly biased decisions on investment projects in F BiH. Both institutions are suspected to be heavily influenced politically.

References:

Privatization in Bosnia and Herzegovina”
Transparency International BiH, May 2009

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

Comments:

Up until now, the most common practices in the BiH privatisation process are:

- ” avoidance of the most transparent open bidding procedures;
- ” legal changes that allow the government to privatise virtually every public company according to special (classified) programmes;
- ” breaches of the laws;
- ” ignorance of the responsible institutions and the auditors findings and recommendations;
- ” political pressure and open threats to whistleblowers and watchdog organisations (as was the case with TI-BiH while monitoring the privatisation of the RS Petrol Industry).

In the Republic of Srpska, jurisdiction for the privatisation process was transferred from the RS Privatisation Direction to the RS Investment-Development Bank (IRB), which is also in charge of investing the privatisation incomes. The integrity of this institution is disputable, since there are some serious accusations that conflicts of interests and nepotism influence the major criteria of the IRB s

credit awards. The work of the analogue institution in the Federation of BiH, the F BiH Investment Bank, also came under public scrutiny for its allegedly biased decisions on investment projects in F BiH. Both institutions are suspected to be heavily influenced politically.

References:

Privatization in Bosnia and Herzegovina”
Transparency International BiH, May 2009

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁶⁸National Ombudsman

56. Is the national ombudsman effective?

30

56a. In law, the ombudsman is protected from political interference.

YES | NO

References:

Law on the Human Rights Ombudsman of BiH, Official Gazette of BiH Nos.19/02, 32/06

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Given the fact that over the last two years the ombudsman offices in BiH have been operating in an unusual environment with regards to the political authorities (failure to merge entity-level ombudsman offices into the state-level ombudsman office on the one hand, and failure to appoint the state ombudsmen within the legally stipulated time frame on the other), it is obvious that the position of the ombudsmen as an institution in BiH is not clearly and finitely defined. This significantly undermines the credibility of the ombudsmen as protectors of human rights. When they assumed office in early 2009, the newly-appointed ombudsmen of BiH stated that the Ombudsman Office in Sarajevo contained a backlog of complaints that citizens filed over two years ago.

References:

Populari: Are we ticking the right boxes? The BiH Ombudsman institutions reform saga, Sarajevo, May 13, 2009
<http://www.populari.org/pdf/Ombudsman.pdf>

Acting High Representative Raffi Gregorian: Work of Institution of BiH Ombudsmen is of utmost importance, Feb, 11, 2009

Ivo Bradvica: There Is A Backlog Of Cases
Interview with the newly appointed BiH ombudsman, Ivo Bradvica
Nezavisne novine [independent daily],
Jan. 2, 2009
http://www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=43046

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

REPORT ON THE STATUS OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA 2008,
The Helsinki Committee for Human Rights in Bosnia and Herzegovina
Sarajevo, Feb. 11, 2009
<http://www.bh-hchr.org/Reports/Report%20on%20the%20status%20of%20HR%20in%20BH.pdf>

The Report of Informal NGO Coalition for UPR of Bosnia and Herzegovina, June 2009
<http://humanrightshouse.org/Articles/11175.html>

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

According to the newly adopted Rulebook there will be total of 13 offices. Further on, the Rulebook stipulates there will be 86 people employed in the BiH Ombudsman Institution. On the day the new Ombudsman took over the institution, there were 29 – including eight interns – in three offices: Sarajevo, Banja Luka and Br ko.

References:

Populari: Are we ticking the right boxes? The BiH Ombudsman institutions reform saga,
Sarajevo, May 13, 2009
<http://www.populari.org/pdf/Ombudsman.pdf>

Acting High Representative Raffi Gregorian: Work of Institution of BiH Ombudsmen is of utmost importance,
Feb, 11, 2009

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Populari: Are we ticking the right boxes? The BiH Ombudsman institutions reform saga, Sarajevo, May 13, 2009
<http://www.populari.org/pdf/Ombudsman.pdf>

Acting High Representative Raffi Gregorian: Work of Institution of BiH Ombudsmen is of utmost importance, Feb, 11, 2009

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

2008 Human Rights Report: Bosnia and Herzegovina
BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

Acting High Representative Raffi Gregorian: Work of Institution of BiH Ombudsmen is of utmost importance, OHR Feb, 11, 2009

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

REPORT ON THE STATUS OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA 2008,
The Helsinki Committee for Human Rights in Bosnia and Herzegovina
Sarajevo, Feb. 11, 2009

<http://www.bh-hchr.org/Reports/Report%20on%20the%20status%20of%20HR%20in%20BH.pdf>

The Report of Informal NGO Coalition for UPR of Bosnia and Herzegovina, June 2009

<http://humanrightshouse.org/Articles/11175.html>

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

When they assumed office in early 2009, the newly-appointed ombudsmen of BiH stated that the Ombudsman Office in Sarajevo contained a backlog of complaints that citizens filed over two years ago (interview of the newly appointed BiH ombudsman, Ivo Bradvica with Nezavisne novine [independent daily] on Jan. 2, 2009 (Ivo Bradvica: There Is A Backlog Of Cases). Considering the state of the ombudsman office in Bosnia and Herzegovina, it is clear that the everyday actions and influence of the ombudsmen on government bodies in cases of human and civil rights violations are significantly weakened. Namely, according to the ombudsman laws currently in effect in BiH, the opinions and recommendations that the ombudsmen give in individual cases are not binding for the government bodies concerned. Thus government bodies often turn a deaf ear to the ombudsmen's suggestions and recommendations and no one from these bodies or organizations are held accountable for failing to comply.

References:

REPORT ON THE STATUS OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA 2008,
The Helsinki Committee for Human Rights in Bosnia and Herzegovina
Sarajevo, Feb. 11, 2009

<http://www.bh-hchr.org/Reports/Report%20on%20the%20status%20of%20HR%20in%20BH.pdf>

The Report of Informal NGO Coalition for UPR of Bosnia and Herzegovina, June 2009

<http://humanrightshouse.org/Articles/11175.html>

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

There is no legal ground.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Considering the state of the ombudsman office in Bosnia and Herzegovina, it is clear that the everyday actions and influence of the ombudsmen on government bodies in cases of human and civil rights violations are significantly weakened. Namely, according to the ombudsman laws currently in effect in BiH, the opinions and recommendations that the ombudsmen give in individual cases are not binding for the government bodies concerned. Thus government bodies often turn a deaf ear to the ombudsmen's suggestions and recommendations and no one from these bodies or organizations are held accountable for failing to comply.

References:

Acting High Representative Raffi Gregorian: Work of Institution of BiH Ombudsmen is of utmost importance
Feb. 11, 2009

2008 Human Rights Report: Bosnia and Herzegovina
BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Populari: Are we ticking the right boxes? The BiH Ombudsman institutions reform saga,
Sarajevo May 13, 2009
<http://www.populari.org/pdf/Ombudsman.pdf>

Acting High Representative Raffi Gregorian: Work of Institution of BiH Ombudsmen is of utmost importance,
Feb. 11, 2009
http://www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=43046

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

Law on the Human Rights Ombudsman of BiH, Official Gazette of BiH Nos.19/02, 32/06

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

REPORT ON THE STATUS OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA 2008

The Helsinki Committee for Human Rights in Bosnia and Herzegovina

Sarajevo, Feb 11, 2009

<http://www.bh-hchr.org/Reports/Report%20on%20the%20status%20of%20HR%20in%20BH.pdf>

The Report of Informal NGO Coalition for UPR of Bosnia and Herzegovina, June 2009

<http://humanrightshouse.org/Articles/11175.html>

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

References:

REPORT ON THE STATUS OF HUMAN RIGHTS IN BOSNIA AND HERZEGOVINA 2008

The Helsinki Committee for Human Rights in Bosnia and Herzegovina

Sarajevo, Feb 11, 2009

<http://www.bh-hchr.org/Reports/Report%20on%20the%20status%20of%20HR%20in%20BH.pdf>

The Report of Informal NGO Coalition for UPR of Bosnia and Herzegovina, June 2009

<http://humanrightshouse.org/Articles/11175.html>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

Comments:

As far back as 2006, the Parliamentary Assembly of Bosnia and Herzegovina adopted the Law on Changes and Amendments to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina, which provides for the termination of the entity-level ombudsman offices and transfers responsibility to the institutions of BiH. Acting in compliance with this law, in 2007 the Parliament of the Federation of Bosnia and Herzegovina passed the Law On Manner of Terminating the Federation of Bosnia and Herzegovina Ombudsman Office in the Transitional Period and Transfer of its Responsibility to the Office of the Human Rights Ombudsman of Bosnia and Herzegovina. This law asserts how the Office of the Ombudsman of the Federation of Bosnia and Herzegovina will eventually cease to operate once the legal requirements regarding the transitional period are fulfilled. These legal requirements are necessary for merging the entity-level ombudsman offices with the Office of the Human Rights Ombudsman of Bosnia and Herzegovina.

References:

Law on the Human Rights Ombudsman of BiH, Official Gazette of BiH Nos.19/02, 32/06

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

63

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

Law on the Auditing of the Financial Operations of the Institutions of BiH, Official Gazette of BiH Nos.17/99, 12/06

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

Comments:

Some holders of public office who received a negative opinion from the auditor exert pressure on auditors by means both fair and foul. Accordingly, the Supreme Auditor of the Republic Srpska has publicly stated on several occasions that he was under enormous pressure as a result of such assaults.

For some time now, the media in the Federation of BiH has accused the Supreme Auditor and his deputy of being linked with leaders of the ruling political parties and covering up corruption. The opposition has expressed concerns about whether the supreme auditor and his deputy were appointed in a legal way and raised doubts about the FBIH Auditor's work. However, the indictment issued against the incumbent deputy to the supreme auditor for abuses of power in previous jobs attracted a lot of attention.

References:

Open budget index 2009

http://openbudgetindex.org/files/cs_bosniaherzegovina.pdf

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Open budget index 2009

http://openbudgetindex.org/files/cs_bosniaherzegovina.pdf

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

One of the senior officials of the Office for the Audit of the BiH Institutions publicly presented evidence that certain audit reports

had been altered to cover up malversations of senior public office holders. Nobody has disputed these claims so far. It is interesting to note that all of this happened at the same time as the appointment of the managerial staff in the Office for the Audit of the BiH Institutions.

Everything that has been leaked to the public has cast serious doubt on the independence and threatens the previously earned credibility of audit institutions. For this reason it is necessary to initiate, in line with the existing audit laws, monitoring of audit institutions' performances.

References:

Open budget index 2009

http://openbudgetindex.org/files/cs_bosniaherzegovina.pdf

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Official website of the Supreme Audit Institution of BiH

<http://www.revizija.gov.ba/>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

At the state level of BiH, there have been doubts about the findings published in July 2008. One of the senior officials of the Office for the Audit of the BiH Institutions publicly presented evidence that certain audit reports had been altered to cover up malversations of senior public office holders. Nobody has disputed these claims so far. It is interesting to note that all of this happened at the same time as the appointment of the managerial staff in the Office for the Audit of the BiH Institutions.

References:

Official website of the Supreme Audit Institution of BiH

<http://www.revizija.gov.ba/>

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme Audit Institutions face numerous problems, including weak implementation of their recommendations and constant pressure on these institutions as well as the regulations and procedures for appointing supreme auditors.

References:

Open budget index 2009

http://openbudgetindex.org/files/cs_bosniaherzegovina.pdf

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | **50** | 25 | 0

Comments:

At the state level of BiH, there have been doubts about the findings published in July 2008. One of the senior officials of the Office for the Audit of the BiH Institutions publicly presented evidence that certain audit reports had been altered to cover up malversations of senior public office holders. Nobody has disputed these claims so far. It is interesting to note that all of this happened at the same time as the appointment of the managerial staff in the Office for the Audit of the BiH Institutions.

References:

Open budget index 2009

http://openbudgetindex.org/files/cs_bosniaherzegovina.pdf

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

83

60a. In law, citizens can access reports of the audit agency.

YES | NO

References:

Law on the Auditing of the Financial Operations of the Institutions of BiH, Official Gazette of BiH Nos.17/99, 12/06

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Official website of the Supreme Audit Institution of BiH

<http://www.revizija.gov.ba/>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Official website of the Supreme Audit Institution of BiH

<http://www.revizija.gov.ba/>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

Supreme Audit Institutions (SAIs) exist in parallel: one at the state level (the Audit General Office of the Joint Institutions of BiH) and two at the entity level: Audit General Office of the Federation of BiH (responsible for the 10 Federal cantons) and Audit General Office of the Serbian Republic (RS– Republika Srpska).

References:

Law on the Auditing of the Financial Operations of the Institutions of BiH, Official Gazette of BiH Nos.17/99, 12/06

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

82
V-3. Taxes and Customs

62. Is the tax collection agency effective?

75

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Macroeconomic Unit of the Governing Board of the Indirect Tax Authority, Bulletin, No 46, May 2009

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Macroeconomic Unit of the Governing Board of the Indirect Tax Authority, Bulletin, No 46, May 2009

http://www.oma.uino.gov.ba/bilteni/Oma_Bilten_eng_46.pdf

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Macroeconomic Unit of the Governing Board of the Indirect Tax Authority, Bulletin, No 46, May 2009
http://www.oma.uino.gov.ba/bilteni/Oma_Bilten_eng_46.pdf

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008
http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Macroeconomic Unit of the Governing Board of the Indirect Tax Authority, Bulletin, No 46, May 2009
http://www.oma.uino.gov.ba/bilteni/Oma_Bilten_eng_46.pdf

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008
http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

References:

Law on Indirect Taxation System in Bosnia and Herzegovina, Official Gazette of BiH Nos.44/03, 52/04

Law on Indirect Taxation Authority, Official Gazette of BiH, No.89/05

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

According to TI BiH opinion poll more than 55 percent of citizens think that tax and custom administration is corrupt.

Overall, Bosnia's preparations in the area of taxation are progressing. Its tax legislation is aligned with the EU acquis to a large extent, especially in the field of VAT. It is necessary to ensure that amendments to the existing legislation remain in line with EU provisions. Significant efforts are also needed to reinforce the administrative capacity and to fight against corruption, in order to improve tax collection and reduce the size of the informal economy."

The COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008

References:

Macroeconomic Unit of the Governing Board of the Indirect Tax Authority, Bulletin, No 46, May 2009

http://www.oma.uino.gov.ba/bilteni/Oma_Bilten_eng_46.pdf

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT, Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

References:

Law on Customs Policy of BiH , Official Gazette of BiH No. 57/04

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

According to TI BiH opinion poll more than 55 percent of citizens think that tax and custom administration is corrupt.

Overall, Bosnia's preparations in the area of taxation are progressing. Its tax legislation is aligned with the EU acquis to a large extent, especially in the field of VAT. It is necessary to ensure that amendments to the existing legislation remain in line with EU provisions. Significant efforts are also needed to reinforce the administrative capacity and to fight against corruption, in order to improve tax collection and reduce the size of the informal economy."

The COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008

References:

Macroeconomic Unit of the Governing Board of the Indirect Tax Authority, Bulletin, No 46, May 2009
http://www.oma.uino.gov.ba/bilteni/Oma_Bilten_eng_46.pdf

COMMISSION OF THE EUROPEAN COMMUNITIES BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008
http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

35

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

Law on Public Companies of the Serbian Republic (RS Republic Srpska) 75/04

Law on Public Companies of Federation of Bosnia and Herzegovina

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Internal audit committees do not truly oversee" state-owned companies. Rather, each company is under the control of a governing board. The governing boards are appointed largely by political parties and the control of state enterprises is divided among the parties in the ruling coalition.

References:

BH Telecom" Still without Supervisory Board
NEZAVISNE NOVINE, B.SIMI, Nov. 1, 2008

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

BH Telecom" Still without Supervisory Board
NEZAVISNE NOVINE, B.SIMI, Nov. 1, 2008

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | **25** | 0

References:

BH Telecom” Still without Supervisory Board
NEZAVISNE NOVINE, B.SIMI, Nov. 1, 2008

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

References:

BH Telecom” Still without Supervisory Board
NEZAVISNE NOVINE, B.SIMI, Nov. 1, 2008

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

45

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

Law on Enterprises, Official Gazette of the Serbian Republic (RS, Republika Srpska, Nos .24/98, 62/02, 66/02, 38/03, 97/04

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | **50** | 25 | 0

Comments:

State Owned Enterprises (SOEs) are subject to oversight by Supreme Audit Institutions (SAIs). Existing findings of the audit reports in the sector of SOEs are soft, as the auditors don't want to arouse the anger of the political leadership. Even a fleeting glance at some media reports will provide much more information on such embezzlements than the SAIs has ever managed to provide in their official reports.

Weekly magazine "Dani" published stories about illegal activities in BH telecom, state owned company, also TV show "60 minutes" often broadcasts stories about illegal activities in SOC.

References:

Official websites of the Supreme Audit Institutions

<http://www.revizija.gov.ba>

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

In practice, it is very difficult to access the financial records of state-owned companies.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

In practice, it is very difficult to access the financial records of state-owned companies.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

Internal audit committees do not truly oversee” state-owned companies. Rather, each company is under the control of a governing board. The governing boards are appointed largely by political parties and the control of state enterprises is divided among the parties in the ruling coalition.

References:

Law on Public Companies of the Serbian Republic (RS Republic Srpska) 75/04

Law on Public Companies of Federation of Bosnia and Herzegovina

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

60

V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

63

70a. In law, anyone may apply for a business license.

YES | NO

References:

Framework Law on Single Business Registration in Bosnia and Herzegovina, Official Gazette of BiH No. 42/04

Law on Enterprises, Official Gazette of the Serbian Republic (RS — Republika Srpska) Nos. :24/98, 62/02, 66/02, 38/03, 97/04

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS — Republika Srpska) No.42/05

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

Law on Enterprises, Official Gazette of the Serbian Republic (RS — Republika Srpska, Nos .24/98, 62/02, 66/02, 38/03, 97/04

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS — Republika Srpska) No.42/05

Framework Law on Single Business Registration in Bosnia and Herzegovina, Official Gazette of BiH No. 42/04

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to "Doing Business", there are 12 procedures to start a business:
Stipulate a founding act and have it notarized in the municipality office (7 days),
Obtain a statement from a commercial bank that the full amount of the capital has been paid in; pay the registration fee to the budget account of the cantonal court (1 day),
Obtain the statement of tax authorities that the founders have no tax debts (1 day),
Obtain a court registration with Municipal Courts (15 days),
Buy a company stamp (1 day),
Apply for a resolution on intended activities to the competent municipality (1 day),
Apply for an utilization permit to the canton ministry of commerce (15 days),
Apply for a company identification number with the competent tax office (15 days),
Open a company account with a commercial bank (1 day),
Enroll the employees in pension insurance with the Pension Insurance Institute (Zavod za penziono osiguranje) (1 day),
Enroll the employees in health insurance with the Health Insurance Institute (Zavod za zdravstveno osiguranje) (1 day),
Adopt and publish a rule book on matters of salary, work organization, discipline, and other employee regulations (1 day).

References:

Doing Business 2009: Bosnia and Herzegovina
<http://www.doingbusiness.org/ExploreEconomies/?economyid=26>

Doing Business in Southeast Europe 2008: Dealing with Licenses in Sarajevo, Banja Luka and Mostar, Bosnia and Herzegovina
<http://www.doingbusiness.org/subnational/exploreconomies/SEE.aspx>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | **25** | 0

References:

Doing Business 2009: Bosnia and Herzegovina

<http://www.doingbusiness.org/ExploreEconomies/?economyid=26>

Doing Business in Southeast Europe 2008: Dealing with Licenses in Sarajevo, Banja Luka and Mostar, Bosnia and Herzegovina

<http://www.doingbusiness.org/subnational/exploreconomies/SEE.aspx>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

Law on Enterprises, Official Gazette of the Serbian Republic (RS — Republika Srpska, Nos .24/98, 62/02, 66/02, 38/03, 97/04

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS — Republika Srpska) No.42/05

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

Law on Enterprises, Official Gazette of the Serbian Republic (RS — Republika Srpska, Nos .24/98, 62/02, 66/02, 38/03, 97/04

Law on Registration of Business Entities, Official Gazette of the Serbian Republic (RS — Republika Srpska) No.42/05

Law on Business Companies, Official Gazette of Federation BiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

Law on Business Companies of the Federation Bosnia and Herzegovina, Official Gazette of FBiH No. 23/99, amendments Nos. 45/00, 2/02, 6/02, 29/03

Law on Enterprises, Official Gazette of the Serbian Republic (RS — Republika Srpska, Nos .24/98, 62/02, 66/02, 38/03, 97/04

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Doing Business 2009: Bosnia and Herzegovina

<http://www.doingbusiness.org/ExploreEconomies/?economyid=26>

Doing Business in Southeast Europe 2008: Dealing with Licenses in Sarajevo, Banja Luka and Mostar, Bosnia and Herzegovina

<http://www.doingbusiness.org/subnational/exploreconomies/SEE.aspx>

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Doing Business 2009: Bosnia and Herzegovina

<http://www.doingbusiness.org/ExploreEconomies/?economyid=26>

Doing Business in Southeast Europe 2008: Dealing with Licenses in Sarajevo, Banja Luka and Mostar, Bosnia and Herzegovina

<http://www.doingbusiness.org/subnational/exploreconomies/SEE.aspx>

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | **25** | 0

References:

Doing Business 2009: Bosnia and Herzegovina

<http://www.doingbusiness.org/ExploreEconomies/?economyid=26>

Doing Business in Southeast Europe 2008: Dealing with Licenses in Sarajevo, Banja Luka and Mostar, Bosnia and Herzegovina

<http://www.doingbusiness.org/subnational/exploreconomies/SEE.aspx>

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

VI-1. ⁶⁷Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

Law on Prevention of Money Laundering, Official Gazette No. 29/04

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Criminal Code of BiH, Official Gazette No. 3/03

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

44

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

References:

Law on the Prosecutor's Office BiH, Official Gazette Nos. 24/02, 42/03

Amendment, Official Gazette Nos. 03/03, 37/03, 42/03, 09/04, 35/04, 61/04

Law on the State Investigation and Protection Agency, Official Gazette No. 27/04

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Interview with the principal deputy of High Representative, Raffi Gregorian
GLOBAL, Aug. 13, 2009

http://www.ohr.int/ohr-dept/preso/pressi/default.asp?content_id=43860

COMMISSION OF THE EUROPEAN COMMUNITIES
BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Please see comments for judiciary and law enforcement agencies.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | **25** | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

Of the law enforcement agencies, the key role in legal processes against corruption is held by SIPA [State Investigation and Protection Agency], which has also been subjected to political pressure for performing its statutory duties. In addition to political pressure, the key problem that SIPA faces is a lack of personnel, as the official data shows that SIPA has only 67 percent of the staff envisaged by the job plan — i.e. only 1,300 of the total 1,950 staff envisaged by the job plan.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

COMMISSION OF THE EUROPEAN COMMUNITIES
BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Only the prosecutor's offices makes regular (annual) public reports. State Investigation and protection agency reports are not publicly available.

References:

Second Evaluation Round Compliance Report on Bosnia and Herzegovina,
Adopted by GRECO at its 41st Plenary Meeting (Strasbourg, Feb. 16-19, 2009)
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2\(2008\)7_Bosnia-Herzegovina_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2(2008)7_Bosnia-Herzegovina_EN.pdf)

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | **25** | 0

Comments:

With regard to legal action against corruption during the reported period, the Department for Organized Crime of the BiH Prosecutor's Office conducted investigations into the work of some senior officials. The work of this institution caused quite a stir, especially among the representatives of the RS Government, who openly questioned the legitimacy and legality of this institution and exerted constant pressure on it. Of the law enforcement agencies, the key role in legal processes against corruption is held by SIPA [State Investigation and Protection Agency], which has also been subjected to political pressure for performing its statutory duties. In addition to political pressure, the key problem that SIPA faces is a lack of personnel, as the official data shows that SIPA has only 67 percent of the staff envisaged by the job plan.

References:

COMMISSION OF THE EUROPEAN COMMUNITIES
BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008
http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

With regard to legal action against corruption during the reported period, the Department for Organized Crime of the BiH Prosecutor's Office conducted investigations into the work of some senior officials. The work of this institution caused quite a stir, especially among the representatives of the RS Government, who openly questioned the legitimacy and legality of this institution and exerted constant pressure on it. Of the law enforcement agencies, the key role in legal processes against corruption is held by SIPA [State Investigation and Protection Agency], which has also been subjected to political pressure for performing its

statutory duties. In addition to political pressure, the key problem that SIPA faces is a lack of personnel as the official data shows that SIPA has only 67 percent of the staff envisaged by the job plan.

References:

Interview with the principal deputy of High Representative, Raffi Gregorian
GLOBAL, Aug. 13, 2009
http://www.ohr.int/ohr-dept/presse/pressi/default.asp?content_id=43860

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

25

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Please see comments for judiciary and law enforcement agencies.

References:

COMMISSION OF THE EUROPEAN COMMUNITIES
BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008
http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | **25** | 0

References:

2008 Human Rights Report: Bosnia and Herzegovina
BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Televised Attack on Woman Shocks Bosnia” Balkan Insight
Srecko Latal
Sarajevo, April 22, 2009
<http://www.balkaninsight.com/en/main/news/18359/>

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

There is no government anti-corruption agency. Instead, anti-corruption tasks are divided among existing police agencies, ministries and prosecutor's office. Absence of rule of law and an inadequate judicial system are considered among the major causes of corruption in Bosnia and Herzegovina (BiH), as are complicated political and administrative systems and inadequate influence of the private sector and civil society on the governments.

One of BiH's international obligations as per adopted and ratified international documents is to establish an anti-corruption body. In April 2009, the Council of Ministers issued a decision forming a working group charged with drafting the Law on Anti-Corruption Agency. As the draft law has already been drawn up by the American Bar Association/Rule of Law Initiative (ABA- ROLI) with full participation of competent state institutions (representatives of the Ministry of Security, Ministry of Justice, State Prosecutor's Office, Central Election Commission, and State Border Police), the establishment of the new working group can be seen as a way to buy time, as there is no actual political will to establish the agency.

References:

Law on the Prosecutor's Office BiH, Official Gazette Nos. 24/02, 42/03

Amendment, Official Gazette Nos. 03/03, 37/03, 42/03, 09/04, 35/04, 61/04

Law on the State Investigation and Protection Agency, Official Gazette No. 27/04

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

56
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

58

77a. In law, there is a general right of appeal.

YES | NO

References:

Criminal Procedure Code, Official Gazette Nos. 36/03, 26/04

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

The greatest problem of the judiciary in Bosnia and Herzegovina remains the large number of backlogged cases and drawn-out trials where citizens and legal entities have to wait a long time before courts even to start working on their cases, making the road to justice very long and costly. This still occurs despite the fact that the open positions for judges are filled to a 96.52 percent capacity and the positions of prosecutors to the capacity of 93.851 per cent. It should be noted that the High Judicial and Prosecutorial Council did make some steps towards reducing the number of backlogged cases. However, according to the Council's 2008 Annual Report, there remains a total of 2,036,757 backlogged cases in the courts of BiH, 1,464,464 of which are so-called public utility cases. This is an insignificant reduction in the number of backlogged cases in comparison with 2007, which means that the problem of backlogged cases will continue to pose a major obstacle to accelerating court procedures and exercising the right to access the courts.

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2008
<http://www.hjpc.ba/intro/gizvjestaj/?cid=4276,2,1>

COMMISSION OF THE EUROPEAN COMMUNITIES
BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008
http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2008

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

75

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2008
<http://www.hjpc.ba/intro/gizvjestaj/?cid=4276.2.1>

2008 Human Rights Report: Bosnia and Herzegovina
BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

25

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Enforcement of judicial decisions takes years in many cases. Implementation mechanisms are still very weak.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

COMMISSION OF THE EUROPEAN COMMUNITIES
BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

81

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Law on High Judicial and Prosecutorial Council (HJPC) of BiH, Official Gazette BiH Nos. 25/04, 93/05

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Political pressures were very intense during the reporting period, especially those coming from the members of the RS Government and the prime minister of RS. On several occasions they uttered public threats against the representatives of the Public Prosecutor's Office of BiH, which is conducting an investigation into a multimillion embezzlement of public funds in connection with the construction of the administrative center of the RS government, RS public broadcast service and a motorway in RS.

References:

TI Bosnia and Herzegovina Report: EC Progress Report Consultations with the European Commission 2009, June 2009

Corruption Claims Hold Back Bosnia"

BusinessWeek, March 17, 2009

http://www.businessweek.com/globalbiz/content/mar2009/gb20090317_535188.htm

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

Book of rules for the operation of the court

Judicial Reform Index for Bosnia and Herzegovina, American Bar Association, Volume II, Sarajevo, 2006

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Law on High Judicial and Prosecutorial Council (HJPC), Official Gazette of BiH Nos. 25/04 93/05

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

2008 Human Rights Report: Bosnia and Herzegovina
BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

COMMISSION OF THE EUROPEAN COMMUNITIES
BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008
http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

2008 Human Rights Report: Bosnia and Herzegovina
BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

COMMISSION OF THE EUROPEAN COMMUNITIES
BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008
http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

75

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina
Released on June 30, 2009
http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

2008 Human Rights Report: Bosnia and Herzegovina
BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR
Released on Feb. 25, 2009
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

Freedom House: Nations in Transit 2009 Report on Bosnia and Herzegovina

Released on June 30, 2009

http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=242:nations-in-transit-2009&catid=30&Itemid=92

2008 Human Rights Report: Bosnia and Herzegovina

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

Released on Feb. 25, 2009

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119071.htm>

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Criminal Procedure Code, Official Gazette Nos. 36/03, 26/04

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2008
<http://www.hjpc.ba/intro/gizvjestaj/?cid=4276,2,1>

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

The Annual Report by Association Vaaa prava Bosnia and Herzegovina 2008
http://www.vasaprava.org/Documents/PublicRelations/VPBiH-Annual%20Report_2008.pdf

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2008
<http://www.hjpc.ba/intro/gizvjestaj/?cid=4276,2,1>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | **50** | 25 | 0

References:

Doing Business Bosnia and Herzegovina 2009

<http://www.doingbusiness.org/ExploreEconomies/?economyid=26>

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | **75** | 50 | 25 | 0

References:

High Judicial and Prosecutorial Council of Bosnia and Herzegovina Annual Report for 2008

<http://www.hjpc.ba/intro/gjzvjestaj/?cid=4276,2,1>

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

25

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

While laws and regulations on fairness in promotions exist to insure that the best candidates are given jobs in public service, in practice, personal preferences, nepotism, cronyism and rivalries strongly influence the final choice.

References:

The Center for Investigative Reporting
Cadets with A Murky Past"
Published on June 20, 2009
<http://cin.ba/Stories/AdHoc/?cid=919,1,1>

HEAD OF EUROPEAN UNION POLICE MISSION STEFAN FELLER: NO POLICE IN THE WORLD CONSIST OF SAINTS
Dnevni Avaz, Feb. 4, 2009
<http://www.eupm.org/Details.aspx?ID=914&TabID=3>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

References:

HEAD OF EUROPEAN UNION POLICE MISSION STEFAN FELLER: NO POLICE IN THE WORLD CONSIST OF SAINTS
Dnevni Avaz, Feb. 4, 2009
<http://www.eupm.org/Details.aspx?ID=914&TabID=3>

COMMISSION OF THE EUROPEAN COMMUNITIES
BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008
http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

References:

Dodik announces possible withdrawal of Serb representatives from BiH institutions, Prud agreement under question
MIA Archive and Research Report
Feb. 24, 2009,
<http://www.miabalkan.info/dodik-excerpt-022409.pdf>

Ajder, Miroslav: Bosnia: The Corruption Code
Transitions Online
March 17, 2009
<http://www.ceeol.com/aspx/issuedetails.aspx?issueid=291183d7-453a-4a4c-a907-fc4f7d5748cb&articleId=5c506c46-6a20-48a6-a11f-aaed80c191fa>

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

63

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

The mechanism is called the Units for Professional Standards.

References:

Law on the State Investigation and Protection Agency, Official Gazette of BiH No. 27/04

European Police Mission in Bosnia and Herzegovina

<http://www.eupm.org>

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Advocacy and Legal Advice Center Report
Transparency International BiH 2008

COMMISSION OF THE EUROPEAN COMMUNITIES
BOSNIA AND HERZEGOVINA 2008 PROGRESS REPORT,
Brussels, Nov. 5, 2008

http://dei.gov.ba/bih_i_eu/najvazniji_dokumenti/dokumenti_eu/?id=2592

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

Law on the State Investigation and Protection Agency, Official Gazette of BiH No. 27/04

European Police Mission in Bosnia and Herzegovina

<http://www.eupm.org>

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

References:

Dodik announces possible withdrawal of Serb representatives from BiH institutions, Prud agreement under question
MIA Archive and Research Report

Feb. 24, 2009,

<http://www.miabalkan.info/dodik-excerpt-022409.pdf>

Ajder, Miroslav: Bosnia: The Corruption Code

Transitions Online

March 17, 2009

<http://www.ceeol.com/aspx/issuedetails.aspx?issueid=291183d7-453a-4a4c-a907-fc4f7d5748cb&articleId=5c506c46-6a20-48a6-a11f-aaed80c191fa>

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Law on the State Investigation and Protection Agency, Official Gazette of BiH No. 27/04

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

According to Center for Investigate Journalism (CIN), it appears that every year some 2,000 to 2,700 complaints are filed by citizens and fellow policemen against officers. In short, nearly all disciplinary measures wind up being overturned and policemen accused of wrong-doings are let go with no consequences. Other reports sit for so long without action that they end up dropped because deadlines set by law have been missed.

References:

HEAD OF EUROPEAN UNION POLICE MISSION STEFAN FELLER: NO POLICE IN THE WORLD CONSIST OF SAINTS
Dnevni Avaz, Feb. 4, 2009

<http://www.eupm.org/Details.aspx?ID=914&TabID=3>

The Center for Investigative Reporting: Police On the Edge of the Law
Published in April 2009

<http://cin.ba/Reports/1/?cid=735,1,1>

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
