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# Improving Commercial Justice in Bosnia and Herzegovina in the Face of COVID-19 Crisis – Phase I Analysis:

## *Crisis Impact Assessment and Options for Rapid Improvements*

April 2021



# Bosnia and Herzegovina

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April, 2021

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## Acronyms and Abbreviations

BD	Brčko District
BiH	Bosnia and Herzegovina
BL	Bankruptcy Law
CC	Cantonal Court
CEPEJ	European Commission for the Efficiency of Justice
CEST	Judicial and Prosecutorial Training Center
CMS	Case Management System
COE	Council of Europe
CPL	Civil Procedure Law
Crisis HQ	Crisis and Civil Protection Headquarters
DB	Doing Business
DCC	District Commercial Court
EBRD	European Bank for Reconstruction and Development
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EJTN	European Judicial Training Network
FBiH	Federation of Bosnia and Herzegovina
HBW	Home-based work
HCC	High Commercial Court
HJPC	High Judicial and Prosecutorial Council
IT	Information technology
L	Liquidation cases
LMS	Learning management system
MC	Municipal Court
Mals Kom	Commercial small claim cases
Mals	Ordinary small claim cases
MoJ	Ministry of Justice

Mož	Interim relief appeal cases
OECD	Organization for Economic Cooperation and Development
Project	Bosnia and Herzegovina Commercial Justice Technical Assistance Project financed by the UK Good Governance and Investment Climate Reform Trust Fund
Ps	Ordinary commercial disputes over BAM 5,000
Pvl	Reopening of proceedings cases
Pvlž	Appeal in extraordinary legal remedy proceedings
Pž	Commercial appeal cases
Reg	Company registration cases
RS	Republika Srpska
SME	Small and medium-sized enterprises
SSL VPN	Secure sockets layer virtual private network
St	Bankruptcy cases
UK	United Kingdom
VPN	Virtual private network
WB	World Bank

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## About this Report

This Report is produced as part of the Bosnia and Herzegovina (BiH) Commercial Justice Technical Assistance Project financed by the UK Good Governance and Investment Climate Reform Trust Fund. The Project supports BiH justice institutions in implementing reforms that will improve efficiency and access to commercial justice in BiH. The Project is part of a broader World Bank initiative to raise awareness of reform opportunities and inform policy dialogue on the efficiency, quality, and access to justice across countries in the Western Balkans, with a view to improving the performance of justice systems in these countries.

To date, the Project has yielded a set of recommendations for fast-tracking small claims, reducing caseload imbalances, building the capacity of judges, improving procedural efficiency, and increasing legal literacy among firms in BiH<sup>1</sup>. The Project has also supported the authorities to deliver select training programs and engage in developing implementation plans for selected priority reform recommendations. The COVID-19 crisis, however, posed unprecedented challenges to the planned implementation efforts and gave rise to new and urgent priorities for the BiH judiciary. In light of these evolving circumstances and needs, the Project will support the BiH authorities to identify policy options to ensure continuity in the provision of commercial justice services in times of crisis in the short term, and to boost recovery and resilience in the medium to long term.

In pursuit of this objective, the Project relies on the analytical reports produced to date and adopts a phased approach to ensure flexibility and sustainability of the proposed solutions so that they can be impactful in the short, medium, and long term. This Report is a Phase I deliverable that offers a rapid response to the crisis with recommendations on how to adjust court operations in the short term to efficiently process cases while managing health risks raised by the crisis. A following Phase II Report will build on the Phase I findings and assess options and design recommendations for further adjustment of ways commercial cases are processed by BiH courts to build resilience and ensure recovery of BiH commercial justice system in the medium to long term. This Phase I Report first provides an overview of the legislative and policy measures taken by BiH authorities in the face of the crisis. It then goes on to assess the impact of the COVID-19 outbreak on commercial case-flows, operation of commercial courts and commercial departments, and delivery and focus of commercial justice training. Finally, the Report ventures on to examine the potential of the BiH commercial justice system to adopt e-justice tools such as e-filing and online hearings.

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<sup>1</sup> The reports include: [Fast-Tracking Small Claims – a Comparative Analysis with Reform Proposals, Leveraging Procedural Reforms to Improve Commercial Justice in BiH](#), and [Strengthening Commercial Courts and Departments – Caseload Distribution, Backlog and Other Organizational Issues Affecting Performance](#).

## Acknowledgments

This Report was prepared under the leadership of Mr. Roberto O. Panzardi (Project Task Team Leader and Senior Public Sector Specialist) and Ms. Zuhra Osmanovic-Pasic (Project Task Team Leader and Governance Specialist). The key contributors to the report are World Bank experts comprising Ms. Olga Sipka (Lead Author and Attorney at Law), Ms. Svetozara Petkova (Legal Expert), Ms. Sonja Prostran (Legal Expert), Ms. Branka Babovic (Legal Expert), Ms. Tatjana Sofijanic (Legal Expert), and Mr. Esmir Berhamovic (Judicial IT Expert).

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## Executive Summary

1. **The COVID-19 crisis caused unprecedented challenges for commercial case processing in BiH.** When the crisis began in March 2020, all-level governments in BiH imposed strict measures to contain the spread of the virus (*lockdown*). Court operations were reduced to a minimum, home-based work was organized (HBW), and only emergency personnel attended the courts to process urgent cases. In May 2020, however, the lockdown eased, and courts resumed operations. At the time of writing the crisis in BiH is ongoing and the number of infections are rising.<sup>2</sup> The crisis is changing ways in which courts operate and affecting the ability of litigants to access courts and have their disputes resolved efficiently.

### Access to Courts for Litigants - Challenges in Case Processing

2. **The analysis of case-flow dynamics at BiH courts covering the period March 2019 – July 2020 confirms that the crisis affected courts' efficacy in case processing, especially efficacy of first-instance courts.** During the lockdown, all first-instance courts significantly reduced their operations and resolved only a half (or even less than a half) of cases they would have resolved under regular circumstances. When the lockdown eased, the first-instance courts accelerated resolution of cases. Still, they did not manage to recover fully and reach the case resolution rate levels recorded for periods prior to the crisis. Because of this by the summer 2020 the backlog started increasing at some courts, particularly backlog of ordinary commercial cases with a value of more than BAM 5,000 (approximately EUR 2,500). The situation is particularly concerning at Sarajevo Municipal Court, which is the biggest court in the country and where, during the summer, the backlog already increased.

3. **Access to courts was compromised by the crisis.** All modes of remote communication with courts have not been fully functional during the crisis:

- **Access to information:** Although all courts have websites, during the crisis courts failed to organize to make information on crisis management easily accessible online. Courts' phone lines were often clogged because courts still have outdated dispatching offices which cannot support a higher volume of calls. While use of email has improved during the crisis, it is still rare and not particularly favored by court users or judges alike.
- **Case filings:** All court submissions are filed in hard copy at filing offices or at the post office. System level laws for making e-filing of court documents possible are missing, and in practice e-filing of documents is not operational.
- **Hearings:** Legislation in place does not allow remote hearings or processing of commercial cases without a hearing, therefore, to process commercial cases courts must organize physical hearings. Social distancing rules mandate that physical hearings are held at those court premises that meet social distancing requirements and, given limited space, courts with inadequate facilities struggle to summon parties and process cases efficiently. Some large commercial case hearings have been postponed indefinitely because minimal distance between attendees could not be kept at available premises (e.g., large bankruptcy case hearings). In some courts, in spite of social distancing rules, hearings for commercial cases are held in judges' small offices that do not meet social distancing requirements. In addition, hearings are often postponed because litigants, lawyers, court experts, judges, or court staff often fall ill or are in isolation and thus cannot attend a face-to-face hearing.

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<sup>2</sup> [The cut-off date of the analysis conducted for preparation of the Report is 31 December 2020, see further detail on methodology in Annex 2.](#)

## Courts' Back-Office Matters – Challenges in Court Organization

4. **To adjust to the crisis, all courts introduced in-court measures to contain the spread of the virus.** Changes in working hours or protocols for parties' walking into the courts were introduced. Courts were working on adapting their facilities for safe distancing such as adding barriers and managing crowds, measuring peoples' temperatures, and mandating facemasks. The measures put in place and their number varied with time as courts had to adjust to the current situation and current emergency rules set up by crisis management bodies.

5. **The measures and emergency rules were interpreted and applied differently by different courts.** For instance, when deciding which cases should be processed as urgent, the notion of urgency was interpreted differently by courts. Also, each local crisis management body put in place its own set of local rules on measures to contain the spread of the virus. Consequently, courts in different locations had to follow different rules and imposed different measures to be adhered to. At the start of the crisis High Judicial and Prosecutorial Council (HJPC) made significant efforts to coordinate the work of all courts but the crisis response depended mostly on court presidents, court budgets and available facilities.

6. **Adapting to the crisis was difficult for courts as tools for remote court operation were not set up prior to the crisis:**

- **Home based work (HBW):** Requirements for productive HBW of judges were not in place as remote access to case files from judges' homes was not and is still not possible. The case management system (CMS) which contains scans of entire case dockets is not available to judges outside of court premises. However, judges with support of the HJPC managed to organize. HJPC revised relevant procedures to make it possible for judges to transfer e-copies of case files to judges' emails and home computers.
- **Judicial training:** Prior to the crisis, almost no online training was delivered to judges, mostly due to lack of interest. However, during the crisis the number of online training participants dramatically increased. Today training is delivered online, however, judges still congregate in a single conference room to attend these training events, and seldom if ever use chat options, screen sharing, reactions or any other tools for easy communication in an online environment.

## Recommendations and Opportunities

7. **The crisis created an opportunity for the BiH judiciary to make better use of remote and e tools for case processing, and made decision makers, court staff and court users more apt to change.** The crisis generated opportunities to introduce reforms that were much needed even before the crisis, such as: (i) e-documentary options to fast track commercial disputes and alleviate some of the workload of the case filing office while allowing filing which is quick and safe from face-to-face interaction, (ii) remote hearings to connect with parties from abroad, in isolation, without a facemask (iii) improving use of CMS, court websites and emails for more productive HBW and easier remote communication with courts. Benefits of these tools are many and can have long-term positive effects on case processing, regardless of the crisis. These reforms would also have a far-reaching impact on civil case processing in general and the BiH justice system as a whole. Some judges and lawyers see these reforms as the next logical step in the process of digital transformation of the BiH judicial system.

Although the BiH judiciary is generally supportive of these reforms, more support should be provided from the executive and legislative authorities at different levels of government<sup>3</sup>.

**8. Short-term opportunities to improve access to courts and court organization during the crisis could be quickly and easily implemented without much political resistance:**

- **Improving access to courts:** Webpages could have a designated COVID-19 section/dashboard that provides updates on court operations, hearing adjournments, etc., as well as clear instructions for parties on how to use available remote access tools. For instance, access to case files via the CMS which is already available to parties as a read-only application should be advertised as a preferred option for case file review. Courts could increase awareness of remote access tools through communication campaigns. Guidance on email communication could be provided for more clarity on how and when it is appropriate to communicate with courts via email. Judges could request the parties, court experts and lawyers to provide email addresses so that they communicate via emails too.
- **Improving court organization:** Courts could adapt their business processes to, for example, work in shifts, seek additional premises to hold hearings, seek assistance of expert epidemiologists to review business processes at court sites and provide tailor-made solutions. While individual courts should retain the freedom to adapt their business processes to court-specific circumstances, going forward the HJPC effort to coherently organize courts' response should change from *ad hoc*, emergency approach to a strategic one. Given that the crisis has persisted and will continue, an overall guideline or a strategy to spearhead the crisis management process needs to be developed. Some crisis management activities such as case-flow tracking and forums to share good practices between courts to better mitigate the risks raised by the crisis should be institutionalized and organized as regular HJPC activities. Court presidents/representatives should at least participate in local crisis management bodies so that needs of the judiciary are taken into consideration when emergency measures are designed.

**9. BiH should not shy away from attempting to implement more difficult and politically sensitive reforms such as introducing e-filing and online hearings.** The crisis has brought to light the enduring need for e-filing to be set up at the BiH courts and this tool should be made available to the parties. There is an overall readiness of the business community, the courts and the HJPC to start filing documents electronically but the FBiH/RS Government and relevant line ministries should do more to facilitate the needed regulatory change. Since the crisis has significantly impaired the ability of courts to conjure physical hearings, options for holding online hearings should be considered. A phased approach to introducing online hearings would be appropriate. Such an approach would include, among other things, a constructive dialogue with SMEs and lawyers, piloting of online hearings at selected courts, party consent to remote hearings, IT capacity building, etc.

**10. Although primarily intended for the commercial judiciary, this Report can also benefit other BiH justice stakeholders.** The report is primarily aimed at BiH policy makers and justice institutions, notably FBiH/RS Governments, Ministries of Justice, the HJPC and courts, as well as crisis management authorities. Given that the COVID-19 crisis affected the work of BiH courts at several levels (procedural, operational, organizational, etc.) and that many of the crisis-induced challenges are common to all courts and court cases, the commercial judiciary is not the only one that can benefit from the findings and gain from the recommendations presented herein. The parts of the judiciary dealing with civil and even criminal cases could also derive significant benefits from deploying some

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<sup>3</sup> Please note that the analysis of the political economy of digital reform is out of scope of the Report.

of the strategies and proposals set forth to maintain the effectiveness and ensure the quality of case processing during and after the crisis.

## Introduction

11. **Although civil and commercial justice in BiH has traditionally been slower paced compared to other Council of Europe (COE) member states, BiH was recently recognized for improving its case processing efficiency.** According to the 2020 CEPEJ report, the disposition time for first instance civil and commercial litigious cases in BiH was 483 days compared to a COE average of 201 days<sup>4</sup>. The number of first instance civil and commercial litigious cases pending at year end per 100 inhabitants in BiH was 5.38 as compared to a COE average of 1.16<sup>5</sup>. Nevertheless, relative to data for earlier years, the 2020 CEPEJ report praises BiH for being the jurisdiction (along with the Slovak Republic) with the biggest improvements regarding case processing efficiency of civil and commercial cases (disposition time and clearance rates)<sup>6</sup>.

12. **The COVID-19 crisis could reverse the positive trend in case processing efficiency and result in further increases of the backlog.** Globally and in BiH, the crisis impaired the work of the courts and created new legal challenges. In the case of BiH, crisis-induced challenges could easily jeopardize prior achievements and positive results. Anticipated new commercial cases – in particular those stemming from non-performance of contractual obligations, mass layoffs of workers, bankruptcies and liquidation – are expected to drastically increase in numbers in the aftermath of the crisis. This, paired with a slowdown of court operations due to the lockdowns, could lead to an increase of the backlog.

13. **To help ease negative effects of the crisis, this paper as a Phase I analysis strives to explain the effects of the crisis and recommend measures to be taken by policy makers in the short-term.** The report is primarily aimed at BiH policy makers and justice institutions, notably FBIH/RS Governments, Ministries of Justice, the HJPC and courts, as well as crisis management authorities. It is structured as a Phase I rapid analysis that: (i) examines initial effects of the crisis on the functioning of the courts in BiH, (ii) provides short-term recommendations to mitigate negative impacts of the crisis, and (iii) explores the readiness of the BiH judiciary and court users to venture into more innovative solutions for commercial case processing such as e-filing and online hearings. Although targeting the commercial judiciary as the project's primary audience, this Report can also benefit the broader judiciary, i.e., the civil judiciary or even the BiH justice system as a whole, by offering procedural and operational tools for improving the efficacy of justice during and after the crisis.

14. **The Report builds on extensive consultations with counterparts.** The analysis is based on: (i) a desk review of the COVID-19 related legal and policy framework in BiH and in comparator jurisdictions; (ii) a rapid virtual business survey supported by the RS and FBIH Chambers of Commerce; (iii) virtual interviews with key commercial law firms and attorney bars; (iv) virtual focus groups with selected courts; and (v) case-flow statistics, documents and other information provided by the HJPC (see Annex 2 for details on the methodology).

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<sup>4</sup> European judicial systems: Efficiency and quality of justice, CEPEJ Evaluation Report, 2020 Evaluation cycle (2018 data), Part 1 at <https://rm.coe.int/evaluation-report-part-1-english/16809fc058>.

<sup>5</sup> Ibid, Part 2 at <https://rm.coe.int/evaluation-report-part-2-english/16809fc059>.

<sup>6</sup> Ibid, Part 1 at <https://rm.coe.int/evaluation-report-part-1-english/16809fc058>.

## BiH Judiciary Response to COVID-19 Crisis to Date

### COVID-19 Crisis in BiH – Key Events and Authorities

15. **The COVID-19 crisis broke out in BiH in March 2020 and quickly became a national emergency.** The first case of COVID-19 in BiH was confirmed on 5 March 2020 whereas the first fatality was recorded on 21 March 2020<sup>7</sup>. The crisis soon mandated immediate action beyond what was provided for in existing legislation to prevent and contain the threat of the virus to the healthcare system, economy and the citizens.

16. **As BiH is largely decentralized and made up of autonomous FBiH and RS entities and a self-governing Brčko District (BD), so was its response to the crisis.** BD was first to declare the so-called ‘state of natural disaster’ on 13 March 2020<sup>8</sup>. Three days later, the FBiH Government also declared the ‘state of natural disaster’<sup>9</sup>, whereas the RS Government declared the ‘emergency situation’<sup>10</sup>. On 17 March 2020, the BiH Council of Ministers declared the ‘state of natural disaster’ throughout the country<sup>11</sup>. These emergency declarations allowed for ‘bypassing’ of usual practices and procedures in order to accelerate crisis response. They included designing of emergency response plans, activation of emergency operation centers, and swift mobilization of available resources to curb the spread of coronavirus across the country.<sup>12</sup>

17. **The crisis in BiH had three distinct stages of i) total lockdown with rigid confinement measures; ii) deconfinement and liberalization of measures; and iii) new tightening of measures due to crisis reescalation.** Stage one (Lockdown) was from mid-March to mid-May 2020, with minor differences in dynamics between the two entities<sup>13</sup>. Social distancing measures were introduced across the country, as well as curfews, a complete ban on public gatherings and movement of elderly and children, closure of non-essential businesses. Stage two commenced in mid-May 2020 and lasted approximately one month. As the curve of active infections had flattened, measures were gradually eased. Curfews were rescinded first in FBiH and then in RS and BD operations of most of the non-essential businesses were allowed with mandatory emergency measures in place<sup>14</sup>. Stage three

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<sup>7</sup> The information on confirmed cases was retrieved from websites of entity-level Public Health Institutes on September 30, 2020, available at: <https://www.zzjzfbih.ba/dnevni-izvjestaj-za-potvrđene-slucajeve-covid-19-u-fbih/> (FBiH Public Health Institute) and <https://www.phi.rs.ba/index.php?view=kategorija&id=45> (RS Public Health Institute).

<sup>8</sup> Decision Declaring the State of Natural Disaster Caused by COVID-19 (Coronavirus), published in BD Official Gazette no. 13/20, on 31 March 2020.

<sup>9</sup> Decision Declaring the State of Natural or Other Disaster Caused by COVID-19 in FBiH, published in FBiH Official Gazette, on 16 March 2020.

<sup>10</sup> Decision Declaring the Emergency Situation for the Territory of Republika Srpska, published in RS Official Gazette no. 25/20, available at: <https://www.paragraf.ba/propisi/republika-srpska/odluka-o-proglasenju-vanredne-situacije-za-teritoriju-republike-srpske.html>.

<sup>11</sup> BiH Council of Ministers Decision Declaring the State of Natural or Other Disaster Caused by COVID 19 in BiH, published in BiH Official Gazette no. 18/20, 2020, available at: <https://www.paragraf.ba/propisi/bih/odluka-o-proglasenju-nastanka-stanja-prirodne-ili-druge-nesre%C4%87e-na-teritoriji-bosne-i-hercegovine.html>.

<sup>12</sup> These declarations enabled the authorities to put through restrictive measures, such as prohibition of movement, mass gatherings, and others, in order to protect public health. On 28 March 2020, the RS National Assembly declared a ‘state of emergency’ on its territory, which conferred even greater powers upon the RS authorities, notably the RS President, to impose limits on human rights and freedoms during the pandemic, pass extraordinary legal acts, and undertake other measures which depart from the RS Constitution. The state of emergency in the RS was abolished on 21 May 2020, whereas the ‘state of natural disaster’ was first lifted in FBiH on 31 May 2020 and then in BD in early June.

<sup>13</sup> Information on all emergency orders and their amendments is available on websites of the FBiH Government at <http://fbihvlada.gov.ba/bosanski/naredbe.php> and the RS Chamber of Commerce at: [https://komorars.ba/usluge/korona\\_virus/](https://komorars.ba/usluge/korona_virus/).

<sup>14</sup> Sources: <http://ba.n1info.com/Vijesti/a432378/Novo-ublazavanje-mjera-u-Federaciji-BiH-od-sredine-maja.html> and <http://paljanskenovosti.ba/pocelo-ublazavanje-mjera-u-republici-srpskoj-od-danas-policijski-cas-od-22-00-casa/>.



started later in the summer, as the country started seeing a significant increase in a number of new COVID-19 cases. The sharp resurgence of infections resulted in new tightening of measures. At the time of writing, the number of cases continue to rise with new tighter measures imposed almost on a daily basis.

18. **The complex governance structure in BiH resulted in a multi-layered and regionalized approach to the crisis management.** Several crisis management bodies were established at different levels, reflecting the country's decentralized structure and preventing a coordinated and synchronized crisis response. The state level institutions dealt mainly with the closure of borders while the entity level institutions, which ended up being at the forefront of the battle, set up teams of experts to monitor the epidemiological situation and recommend public health and social measures. In addition, civil protection headquarters at all levels were activated to fight the crisis.

### BiH Judiciary's Response to the Crisis

19. **Both FBiH and RS adopted special laws on case processing during the crisis.** Both entities adopted special laws on deadlines in court proceedings and case processing during the crisis in early April (RS) and late April (FBiH)<sup>15</sup>, linking their validity with the duration of the state of emergency (RS) and the state of natural disaster (FBiH). These laws laid down a set of extraordinary rules aimed to minimize the impact of the crisis on court efficiency, while safeguarding due process and access to justice. They suspended key procedural deadlines, including for filing lawsuits, motions for initiating non-contentious and enforcement procedures, as well as for other time-bound motions such as ordinary and extraordinary legal remedies. They also limited service of process to via-mail service and allowed judges to exclude the general public from trials due to public health concerns. These rules did not apply to urgent cases as defined by the abovementioned laws, which included cases on discrimination in the workplace, companies' statutory matters, registration of businesses, interim measures and preliminary orders<sup>16</sup>.

20. **The HJPC, the Ministries of Justice and also the crisis HQs guided the justice sector response to COVID-19.** The HJPC published a set of instructions to regulate the work of the judiciary during the crisis, following emergency orders and recommendations of relevant crisis and civil protection headquarters (crisis HQs)<sup>17</sup>. Similarly, the RS Ministry of Justice issued recommendations designed to prevent the spread of the coronavirus in RS courts<sup>18</sup>. During Stage one, the operational capacity of courts was reduced to a minimum. Key measures introduced to minimize the risk of the virus were the reduced working hours, adjournment of hearings in all cases except urgent ones, introduction of duty schemes to reduce the number of staff at court facilities, HBW for judges who are off duty and for judges of higher courts, mandatory disinfection of court premises, and usage of facemasks and gloves in courts. Court presidents were and still are authorized to introduce additional *ad hoc*

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<sup>15</sup> FBiH Law on Deadlines in Court Proceedings and Case Processing during State of Natural Disaster on the Territory of FBiH, Official Gazette No. 28/20, available at: <http://privrednastampa.ba/zakon-o-rokovima-i-postupanju-u-sudskim-postupcima-za-vrijeme-stanja-nesrece-na-teritoriji-fbih-sluzbene-novine-fbih-28-20-od-07-05-2020/> and RS Regulation on Deadlines in Court Proceedings during State of Emergency, Official Gazette No. 32/20, available at: <https://www.paragraf.ba/propisi/republika-srpska/uredba-sa-zakonskom-snagom-o-rokovima-i-postupanju-u-sudskim-postupcima-za-vrijeme-vanrednog-stanja-za-teritoriju-republike-srpske.html>.

<sup>16</sup> Article 2 of the RS Regulation on Deadlines in Court Proceedings during State of Emergency, Official Gazette No. 32/20 and Article 2 of the FBiH Law on Deadlines in Court Proceedings and Case Processing during State of Natural Disaster on the Territory of FBiH, Official Gazette No. 28/20.

<sup>17</sup> Recommendations, guidelines and decisions made by the HJPC are available at: <https://vstv.pravosudje.ba/>.

<sup>18</sup> Recommendations made by the RS Ministry of Justice are available at: <https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpr/media/vijesti/Pages/default.aspx>.

measures in their courts, depending on the epidemiological situation at hand<sup>19</sup>. As the COVID-19 curve first started to flatten in May 2020 (Stage two), it became feasible to increase the operational capacity of the courts. As courts were slowly returning to regular working hours, court presidents were mandated to prepare plans for liberalization of emergency measures in their courts. Usage of facemasks and gloves at court premises remained mandatory, and scheduling of hearings was resumed provided that mandatory social distance is kept in courtrooms<sup>20</sup>. All these measures have remained in place in individual courts up till end of 2020 (Stage three). Courts were and are required to follow instructions provided by the local crisis HQ which also means that every court at each location adjusts operations to a different set of local measures.

**21. HJPC provided both overall instructions on measures to prevent the spread of the virus for all courts and communicated individually with courts to offer *ad hoc* solutions.** The first HJPC decision on organization of work of the courts during the crisis came out on 22 March 2020<sup>21</sup> and exclusively dealt with case management issues, i.e., processing of various case types such as criminal, misdemeanor, administrative and civil. Commercial cases were not specifically mentioned in this decision. The HJPC passed its first decision on social distancing rules and measures to prevent the spread of the virus on 30 April 2020<sup>22</sup>. This was when the first HJPC session took place since the crisis breakout<sup>23</sup> and when the reopening and ease of the lockdown started (end of Stage one). Additionally, HJPC has offered individual support to court presidents and courts as well as *ad hoc* emergency guidance to resolve certain problems that arise in practice. To support the listed activities and their coordination two bodies were formed at the HJPC one was tasked with day-to-day crisis management and the other for mitigating the negative effects of the crisis.

**22. The crisis management measures were put in place *ad hoc* in an emergency situation and no strategic approach to crisis risk management has been developed until end of 2020.** The HJPC's decision from 30 April 2020<sup>24</sup> ordered courts to design contingency plans by 15 May 2020. According to the HJPC these plans have been continuously reviewed internally and inspired individual recommendations provided to courts. However, HJPC efforts to help the judiciary cope with the crisis were made in an emergency setting and have not been fully institutionalized during 2020. There is no overall strategy on these topics to capture the activities conducted, lessons learned and future planning.

**23. Following the available HJPC's recommendations and orders of crisis management HQ's, courts adopted different rules of operation and considered different types of cases as urgent.** The courts reduced their working hours. Most of them worked from 8AM or 9AM to 1PM or 2PM from mid-March 2020. Courts slowly started going back to regular working hours in mid-May 2020. Office

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<sup>19</sup> HJPC Decision on Operation of Courts and Prosecutors Offices in BiH, 22 March 2020, available at: <https://vstv.pravosudje.ba/vstv/faces/vijesti.jsp?id=90105>. Also see HJPC Recommendation for Court Presidents and Public Prosecutors on Operation of Courts and Prosecutors Offices during COVID 19 Crisis, 15 March 2020, available at: <http://ba.n1info.com/Vijesti/a416497/Preporuke-VSTV-a-pravosudnoj-zajednici-povodom-epidemioloske-situacije-u-BiH.html>, and RS Ministry of Justice Guidance for Operation of Courts and Public Prosecutors during Pandemic, March 16, 2020, available at the following [link](#).

<sup>20</sup> HJPC Decision on Operation of Courts and Prosecutors Offices in BiH, 30 April 2020, available at: <https://www.pravosudje.ba/vstv/faces/vijesti.jsp?id=90689>.

<sup>21</sup> HJPC Decision on Operation of Courts and Prosecutors Offices in BiH No. 08-02-2-1020-2/2020, amended on April 27, 2020, <https://vstv.pravosudje.ba>.

<sup>22</sup> HJPC Decision on Operation of Courts and Prosecutors Offices in BiH No. 08-02-2-1020-55/2020, <https://vstv.pravosudje.ba>.

<sup>23</sup> European Commission Staff Working Document Bosnia and Herzegovina 2020 Report the European Commission also states on pg. 17 that "In the context of the COVID-19 pandemic, the HJPC failed to promptly ensure the continuity of its own activities. It held its first online session only on 30 April. The HJPC sent to relevant executive and legislative authorities guidance relative to the functioning of the judiciary on 22 March 2020, which were implemented through adoption of legislative acts at the level of entities and Brčko District, but not at the state level."

<sup>24</sup> Ibid.

hours varied from one hour/day in some courts to four hours/day<sup>25</sup>. During the lockdown hearings in civil cases (including commercial cases) were generally limited to ‘urgent cases’ as set out in emergency laws. However, the term ‘urgent case’ was not interpreted uniformly by all the courts. Some courts have reserved scheduling of hearings only for preliminary injunctions<sup>26</sup>, whereas others allowed hearings in all cases which are considered *urgent* by law<sup>27</sup>, or cases in which the statutory limitation period was expiring.<sup>28</sup> As the measures started to ease in May 2020, courts started scheduling hearings, some as early as from 15 May 2020<sup>29</sup>, and others from 1 June 2020<sup>30</sup>. Some courts explicitly mandated home-based judges to prepare work plans and regular status reports,<sup>31</sup> whereas others did not have such requirements<sup>32</sup>.

**24. Courts consider that more should be done to tailor the crisis management HQ measures to their needs.** Although tailored to public institutions, the measures set out by crisis HQ, which served as the basis for the implementation of measures at individual courts, did not account for specifics of workflow and courts’ business operations. Judges praise the initiative of the Travnik Municipal Court president, who, before the court resumed its operations after the lockdown, invited an epidemiologist to inspect the facilities and provide recommendations on the use of premises vis-à-vis physical distancing and virus-spread prevention.

**25. The opinion of the business community and commercial lawyers on the courts’ response to the crisis is divided.** Commercial lawyers found access to courts to be significantly impaired during the lockdown and that more could have been done to facilitate trials and case processing. Still, they confirmed that some courts managed to make up for the lockdown delays<sup>33</sup>. A survey of businesses has shown divided experiences and opinion of businesses when asked to assess the courts’ ability to adapt to the crisis (see Figure 1).

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<sup>25</sup> E.g. In Municipal Court in Zenica, working hours with parties lasted from 9AM until 11AM and was related only to civil cases in which preliminary injunctions were requested.

<sup>26</sup> E.g. Municipal Court in Zenica, Municipal Court in Sarajevo (judges were also allowed to decide if there is necessity to hold hearings in other cases as well).

<sup>27</sup> E.g. Municipal Court in Travnik, Municipal Court in Mostar, Municipal Court in Bihac.

<sup>28</sup> E.g. Cantonal Court in Bihac, Municipal Court in Tuzla.

<sup>29</sup> E.g. Municipal Court in Široki Brijeg, Municipal Court in Livno.

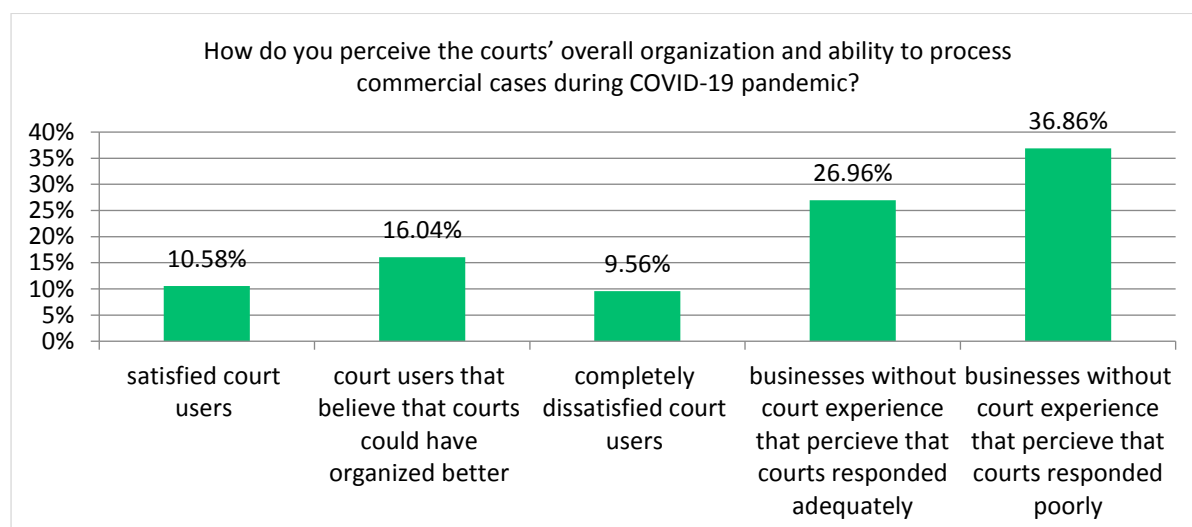
<sup>30</sup> E.g. Municipal Court in Mostar.

<sup>31</sup> E.g. Municipal Court in Tuzla, Municipal Court in Livno.

<sup>32</sup> E.g. Municipal Court in Sarajevo. In Municipal Court in Zenica, it was sufficient if home-based judges were in regular contact with Court Presidents or presidents of court departments via phone.

<sup>33</sup> Focus group discussions with RS and FBiH commercial lawyers held on October 9, October 30 and November 4, 2020.

**Figure 1. Survey of Business: Businesses’ perception of courts’ organization and ability to process commercial cases**



Source: World Bank Team Rapid Survey of Businesses Interim Results (based on 293 responses)

## Recommendations

26. **Given that the crisis has persisted and will continue during 2021, the HJPC should develop a strategy or at least a comprehensive guideline on court operations during and after the crisis.** HJPC efforts to manage the effects of the crisis should be documented to inform a strategy which would analyze results, capture lessons learned and provide a plan of action during crisis (possibly even for different scenarios, depending on epidemiological situations at hand) and after the crisis (taking into account anticipated challenges). The plan should among other factors institutionalize HJPC efforts to monitor case-flow, proactively communicate with different government levels to ensure clarity for court operations, as well as to set up regular meetings and forums that serve as a hub for dialog and sharing knowledge and good-practices between courts and other legal professionals.

27. **There should be more communication and collaboration between crisis HQs and judicial leadership.** Court presidents or designated staff should be appointed to attend crisis HQ meetings at least at the local level. This would ensure that crisis HQs consider specific needs of courts and balance access to justice and the right to health. Courts should actively seek assistance of local crisis HQ and seek an epidemiologist’s advice to assess the current situation in individual courts and define adequate response measures as needed.

## Commercial Case Processing in BiH at the Time of Crisis

### Impact of the Crisis on the Case-flow Dynamics at BiH Courts

28. **The below case-flow statistical analysis showcases trends of commercial case processing at BiH courts during the lockdown and in the post-lockdown period for (i) incoming cases, (ii) resolved cases, and (iii) pending cases (backlog).** The analysis reviews the case-flow in 19 first instance and 11 second instance courts from 1 January 2019 to 15 July 2020<sup>34</sup> and covers two distinct stages of the crisis: (i) stage one of the crisis (lockdown) which almost completely halted commercial case processing in BiH, and (ii) stage two (post-lockdown) reopening of courts in early summer. The report on Phase II of the analysis will examine the entire 2020 case-flow showing actual trends and the impact

<sup>34</sup> For more details on examined courts see Annex 2 – Methodology.

of crisis on the number of incoming, resolved and pending cases. Phase I analysis also shows per-court trends in two major BiH cities, Sarajevo and Banja Luka, examining statistics for: (i) first instance Banja Luka District Commercial Court (Banja Luka DCC) and Sarajevo Municipal Court (Sarajevo MC), and (ii) second instance Higher Commercial Court in Banja Luka (HCC) and Sarajevo Cantonal Court (Sarajevo CC). The statistical analysis shows case-flow trends and if trends are potentially caused by the crisis it attempts to provide preliminary reasoning for identified trends. However, the statistical analysis is only a snapshot of the situation at courts, and it does not allow providing an in-depth explanation for all case-flow fluctuations identified in the analyzed period.

29. **The analysis focuses on cases relevant for commerce and does not analyze trends for all types of cases being processed at these courts.**<sup>35</sup> The most common and important case types analyzed were **Ps** cases – ordinary commercial disputes over BAM 5,000 (circa 2, about EUR2500) processed at first instance courts, and **Pž** cases – commercial appeals processed at second instance courts. Other case types analyzed included **Mals Kom** – small claims utility (commercial) cases, **Mals** – small claims (commercial), **L** – liquidation, **St** – bankruptcy, and **Pvl, Pvlž** – extraordinary legal remedies at second instance courts.

#### Case-flow trends at first instance courts in BiH

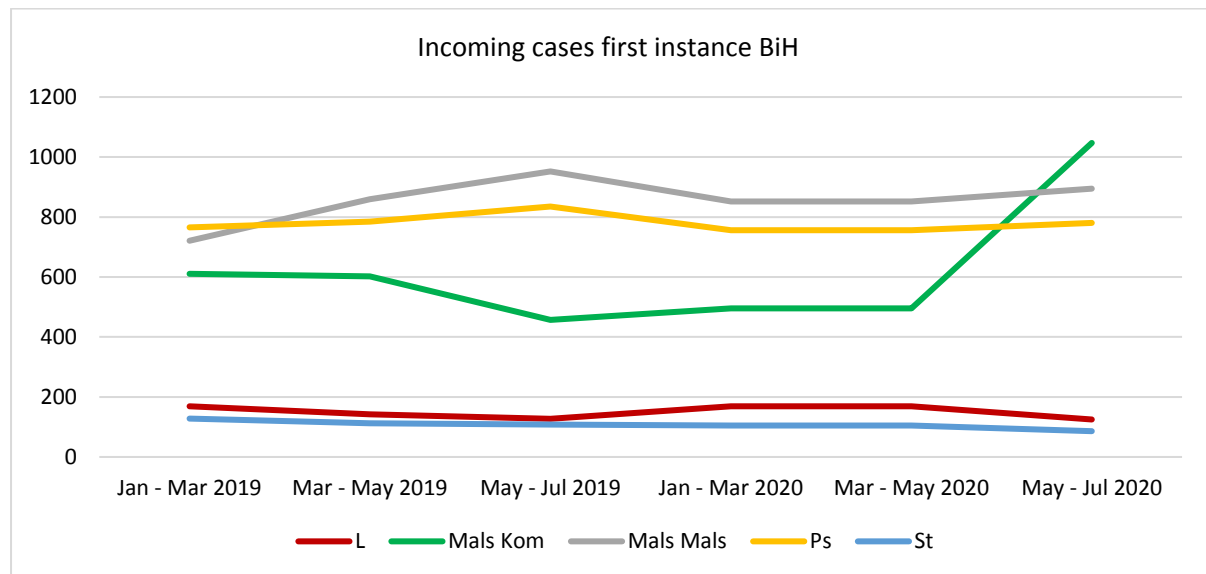
30. **While the overall number of incoming first instance commercial cases in BiH remained relatively stable during the lockdown, the number of incoming Mals Kom cases (small claims utility) sky-rocketed after the lockdown.** Contrary to impressions of judges and court presidents that the number of incoming commercial cases at first instance dropped significantly during the lockdown<sup>36</sup>, case-flow analysis has shown that the lockdown did not have a major impact on these numbers. Moreover, there was a slight increase in **L** (liquidation) cases, the total number of which was 169 compared to 142 in the same period of 2019. In the post-lockdown period, the total incoming **Mals Kom** (small claims utility) reached 1047 cases, a number which was not recorded in any of the earlier periods examined e.g., the number of these cases was 457 in the period May - July of 2019 (Figure 2). It is not clear whether the crisis caused utilities to increase filings of small claims and in Phase II report this trend will be examined further.

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<sup>35</sup> This is relevant for courts in the FBiH (including Sarajevo) where specialized commercial courts have not been established.

<sup>36</sup> Id.

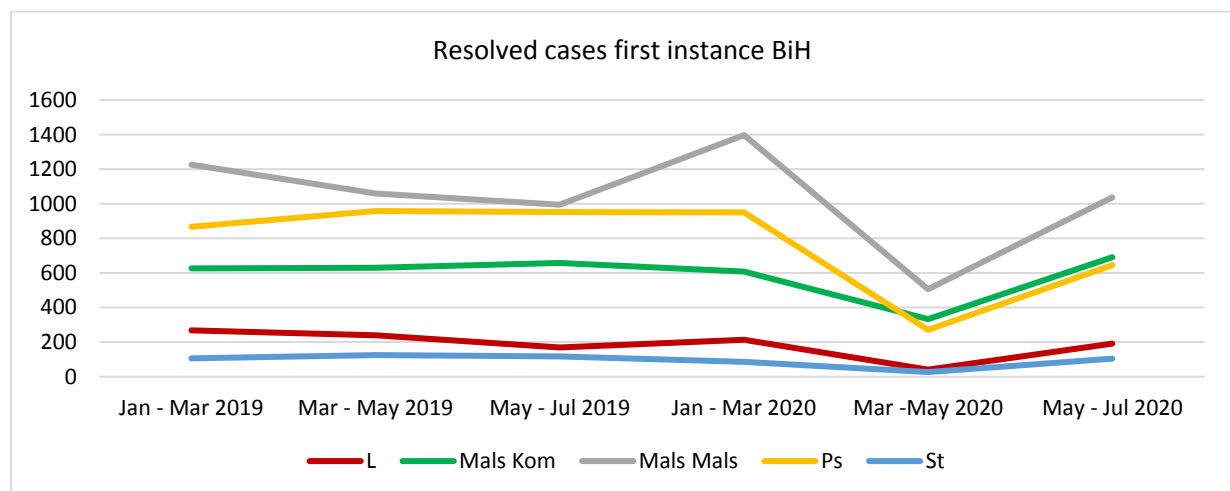
**Figure 2. Case-flow statistics: Incoming cases at first instance BiH courts 2019/2020**



Source: Statistical Data Provided by HJPC

31. **Case resolution rates at first instance courts fell during the lockdown and started rising in the post-lockdown period but not sufficiently to catch up or reach the resolution rates prior to the crisis.** During the lockdown courts disposed half (or even less than half) of the cases they disposed of in earlier periods (Figure 3). After the lockdown, courts started resolving more cases but failed to make up for the set-back caused by the crisis in the subsequent period. If this trend continues it will lead to an increase of backlog which will most likely be visible at the end of first quarter of 2021.

**Figure 3. Case-flow statistics: Resolved cases at first instance BiH courts 2019/2020**



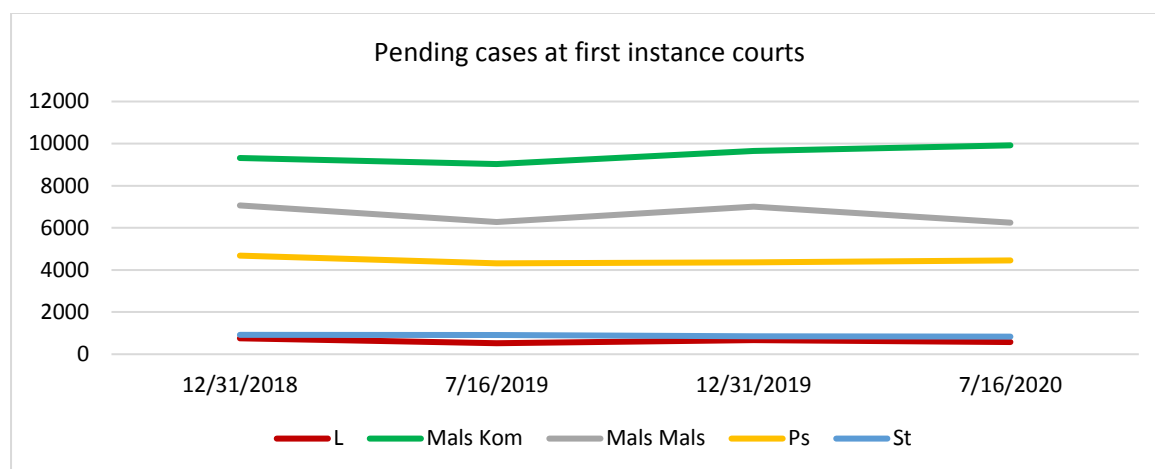
Source: Statistical Data Provided by HJPC

32. **At first instance courts the backlog<sup>37</sup> of the most important commercial case type (Ps) slightly increased towards mid-summer.** For all case types except for Ps cases (ordinary commercial disputes over BAM 5,000), the backlog was reduced by the summer of 2020 compared to 2019 year-end. However, the number of pending Ps cases increased from 4397 at 2019 year-end to 4508 on 16 July 2020 (**Error! Reference source not found.**). Given that Ps cases are the most common ones and m

<sup>37</sup> Term backlog and pending cases are used interchangeably throughout the text of the Report.

ost critical for businesses to be resolved they should be closely monitored to prevent a further backlog increase.

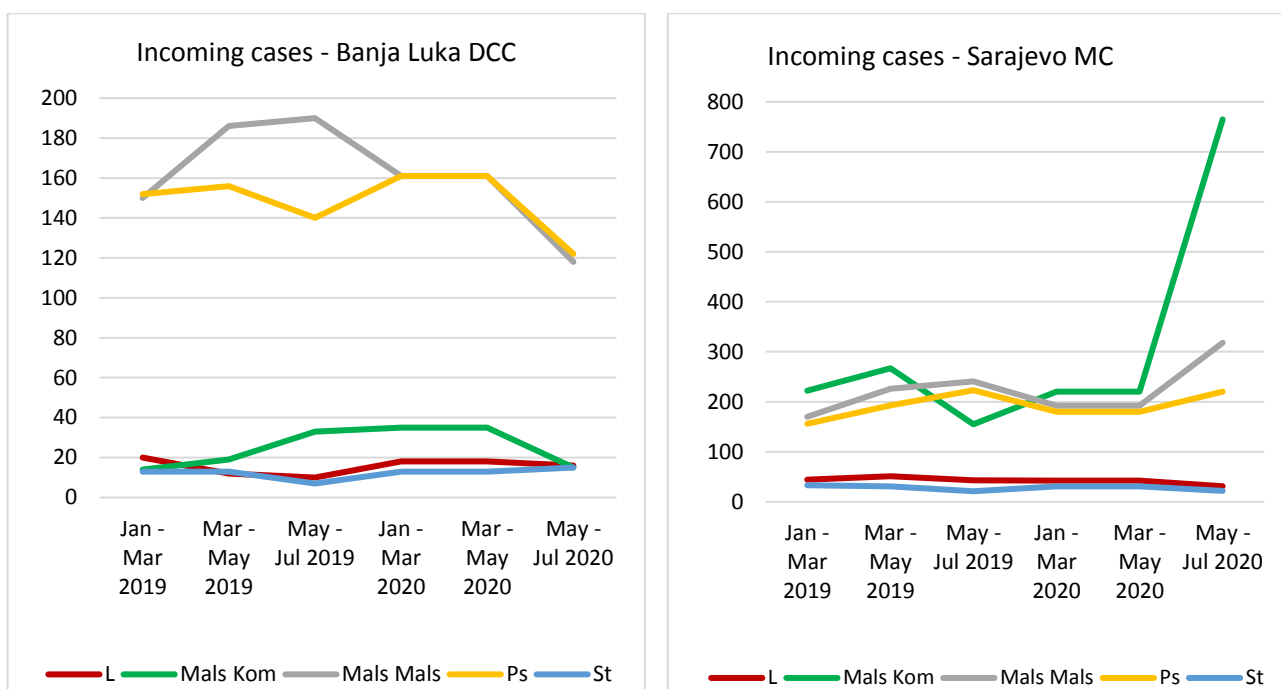
**Figure 4. Case-flow statistics: Pending cases at first instance BiH courts 2019/2020**



Source: Statistical Data Provided by HJPC

33. **While the number of incoming cases in both entity capitals Sarajevo and Banja Luka first instance courts remained stable during the lockdown, the trends started to significantly vary after the lockdown.** Banja Luka and Sarajevo first instance courts continued to receive new lawsuits during the lockdown at a pace similar to the rest of the BiH courts. Banja Luka DCC received 161 Ps cases from March to May 2020, which is only five cases more than in the same period of 2019. Similarly, the Sarajevo MC commercial department received 180 Ps cases, which is only 13 cases less than in the same period of 2019. However, the numbers of incoming Ps cases post-lockdown show significant variations among the two courts. While Banja Luka DCC recorded a decrease from 161 cases during the lockdown to 122 cases post-lockdown, Sarajevo MC recorded an increase from 180 cases during the lockdown to 220 cases post-lockdown. Moreover, Sarajevo MC recorded a sharp rise in received Mals Kom cases (small utility claims) after the lockdown, receiving as many as 765 cases compared to only 220 cases during the lockdown (Figure 5). As noted above in para 30, after lockdown there was a sharp rise in the number of received Mals Kom cases (1047 cases) in entire BiH and Sarajevo MC accounts for the largest share of these cases (72.2 percent).

**Figure 5. Case-flow statistics: Incoming cases at first instance Banja Luka DCC and Sarajevo MC courts**



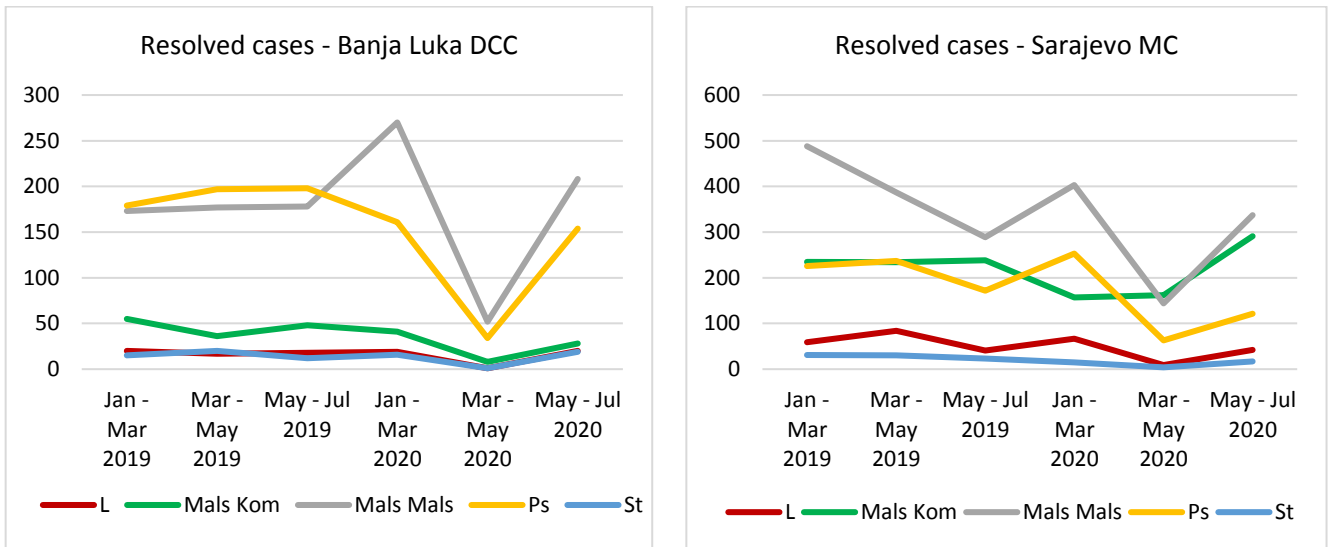
Source: Statistical Data Provided by the HJPC

34. **The numbers of resolved cases at Banja Luka DCC and Sarajevo MC first instance courts dropped sharply during the lockdown and increased significantly after the reopening; the increase, however, was not sufficient to reach the 2019 levels.** The number of resolved cases during the lockdown was as low as 63 Ps cases at Banja Luka DCC and 34 Ps cases at Sarajevo MC (Figure 6). These figures show that full shutdown of court operations for all cases but urgent ones significantly impaired courts ability to resolve commercial cases and that remote modes of operation were not effective. Following the reopening numbers of resolved cases picked up, rising to 154 in Banja Luka DCC and 121 in Sarajevo MC, almost double compared to the lockdown period. However, at both courts these numbers were still approximately 25 percent lower than in the same period of 2019. This suggests that courts continue to suffer the consequences of the crisis. As it will be explained in detail in section Impact of the Crisis on the Court’s Internal Organization, even after reopening courts struggle to process cases given staff reduction, parties failing to attend hearings, or hearings being postponed. In Sarajevo MC in particular, crisis reduced the courts’ capacity to service document filings and schedule hearings.

35. **For all types of commercial small claims, the numbers of resolved cases in the summer of 2020 were higher than in the summer of 2019.** The increase is particularly noteworthy in Sarajevo MC, although it is not negligible in Banja Luka DCC. This most likely derives from the structure of small claims’ cases and the level of their complexity, as they usually do not encompass a large number of participants, and therefore do not face the same social distance challenges as other case types.



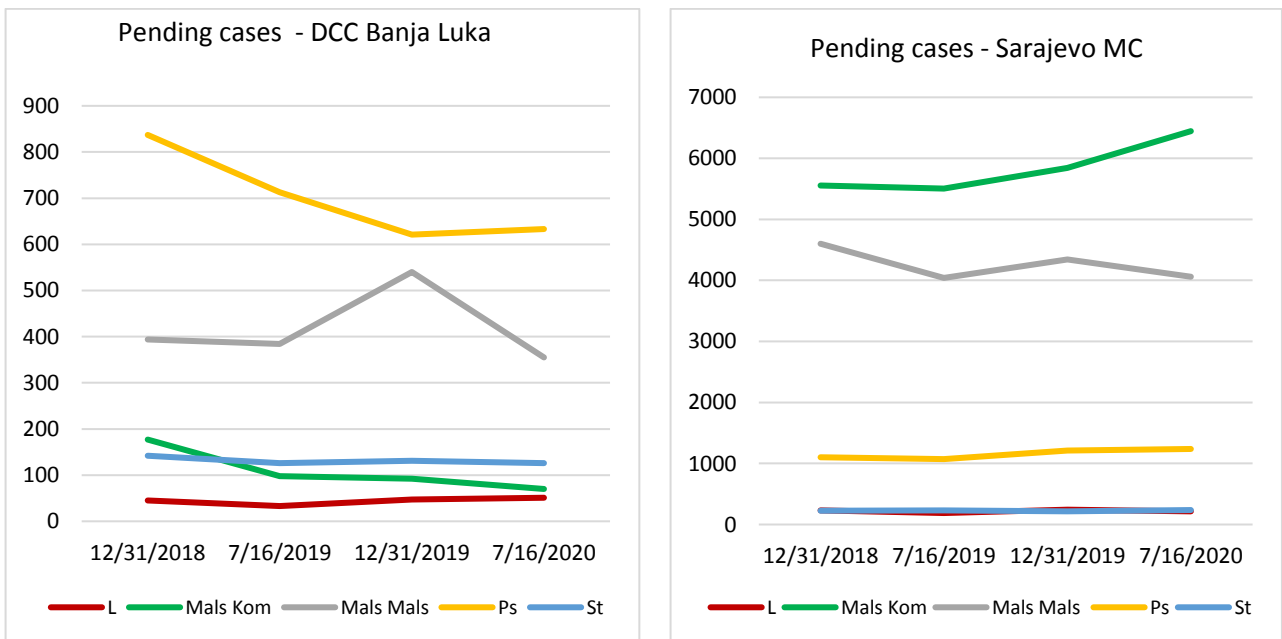
**Figure 6. Case-flow statistics: Resolved cases at Banja Luka DCC and Sarajevo MC 2019/2020**



Source: Statistical Data provided by HJPC

36. Compared to 2019 year-end the number of pending cases in mid-July 2020 increased in Sarajevo MC while it remained the same in Banja Luka DCC. For most categories of cases in Banja Luka DCC the number of pending cases remained the same or even slightly decreased. However, Sarajevo MC saw a rise in all categories, with Mals Kom – small utility claims rising most by 17 percent (from 5,505 to 6,446 cases), followed by Ps - ordinary commercial cases rising by 15.5 percent (from 1,072 to 1,238) and L - liquidations rising by 14.9 percent (from 188 to 216) (Figure 7). This clearly indicates that Sarajevo MC is struggling with its commercial caseload and warrants additional attention and measures to prevent the backlog from increasing going forward.

**Figure 7. Case-flow statistics: Pending cases at Banja Luka DCC and Sarajevo MC 2019/2020**

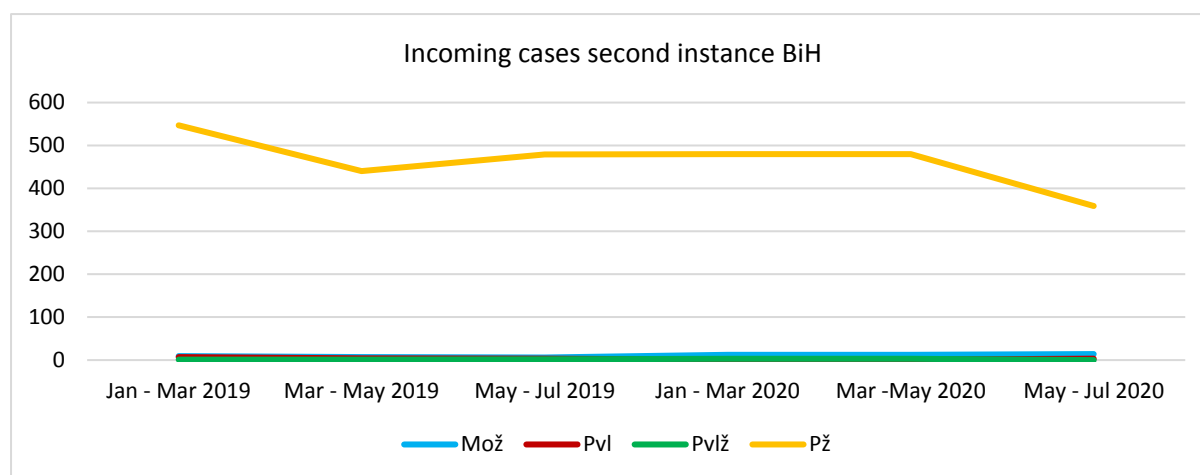


Source: Statistical Data provided by HJPC

## Case-flow trends at second instance courts in BiH

37. **The number of incoming cases at second instance courts remained the same during lockdown but fell soon after.** During the lockdown, the number of incoming second instance cases (Pž – commercial case appeals) was approximately the same as at the beginning of 2020. However, it fell significantly after the lockdown from 480 cases received by the end of the lockdown to only 359 cases received after the lockdown (Figure 8).

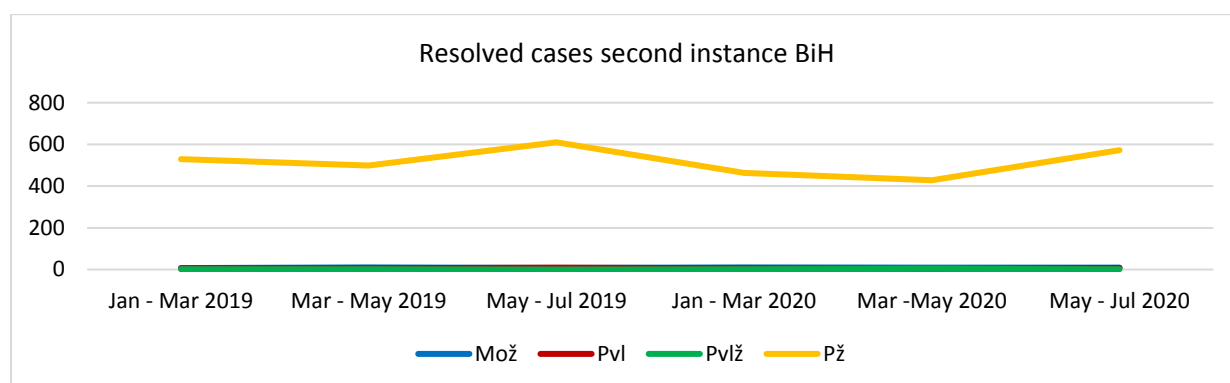
**Figure 8. Case-flow statistics: Incoming cases at second instance courts in BiH 2019/2020**



Source: Statistical Data Provided by HJPC

38. **Although the number of their resolved cases dropped during the lockdown, second-instance courts made up for the lockdown delays, unlike first instance courts.** As shown by Figure 9, second instance courts resolved 573 Pž cases after the lockdown, which is 145 Pž cases more than during the lockdown. This is also 110 cases more than prior to the start of the crisis (January to March 2020) and somewhat less (37 cases) than in the same period of 2019.

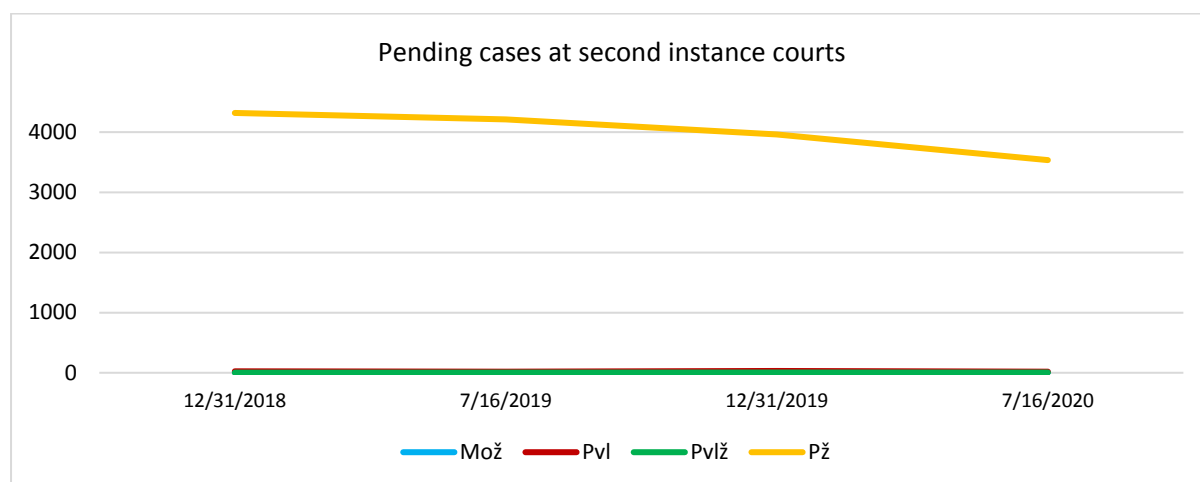
**Figure 9. Case-flow statistics: Resolved cases at second instance courts in BiH 2019/2020**



Source: Statistical Data Provided by HJPC

39. **Second instance courts managed to reduce some of their backlog during the crisis.** The number of pending cases in mid-summer 2020 was significantly lower than at 2019 year-end as the number of incoming cases decreased during the lockdown stage (Figure 10). However, this is expected to be only temporary. As the first instance courts accelerate adjudication, a surge of new cases is likely to reach the second instance courts.

**Figure 10. Case-flow statistics: Pending cases at second instance BiH courts 2019/2020**

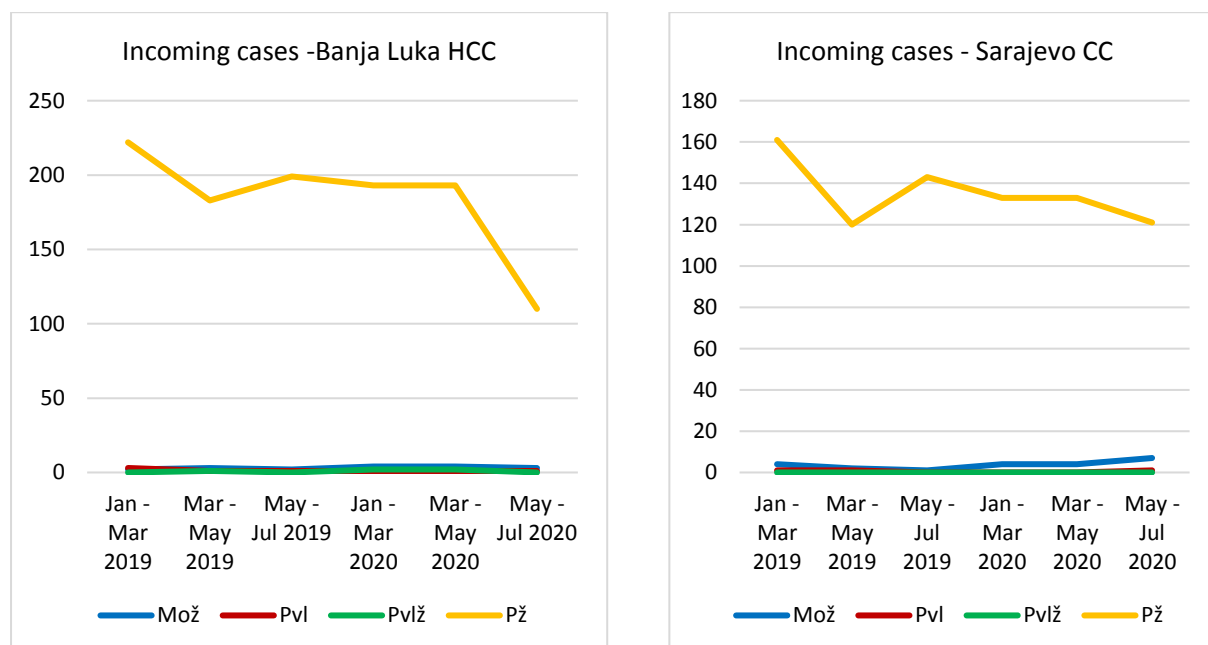


Source: Statistical Data provided by HJPC

40. **The numbers of incoming cases in the second instance Sarajevo CC and Banja Luka HCC did not significantly change during the lockdown but dropped afterwards as a result of slower case resolution at first instance courts.** In both courts, the numbers of received Pž cases during the lockdown were slightly higher than in the same period of 2019. However, as the resolution rates at first instance courts started to drop, the numbers of incoming cases dropped at second instance after the lockdown. The drop in Sarajevo CC was not nearly as significant as in Banja Luka HCC (

41. Figure 11).

**Figure 11. Case-flow statistics: Incoming cases at second instance Banja Luka HCC and Sarajevo CC 2019/2020**

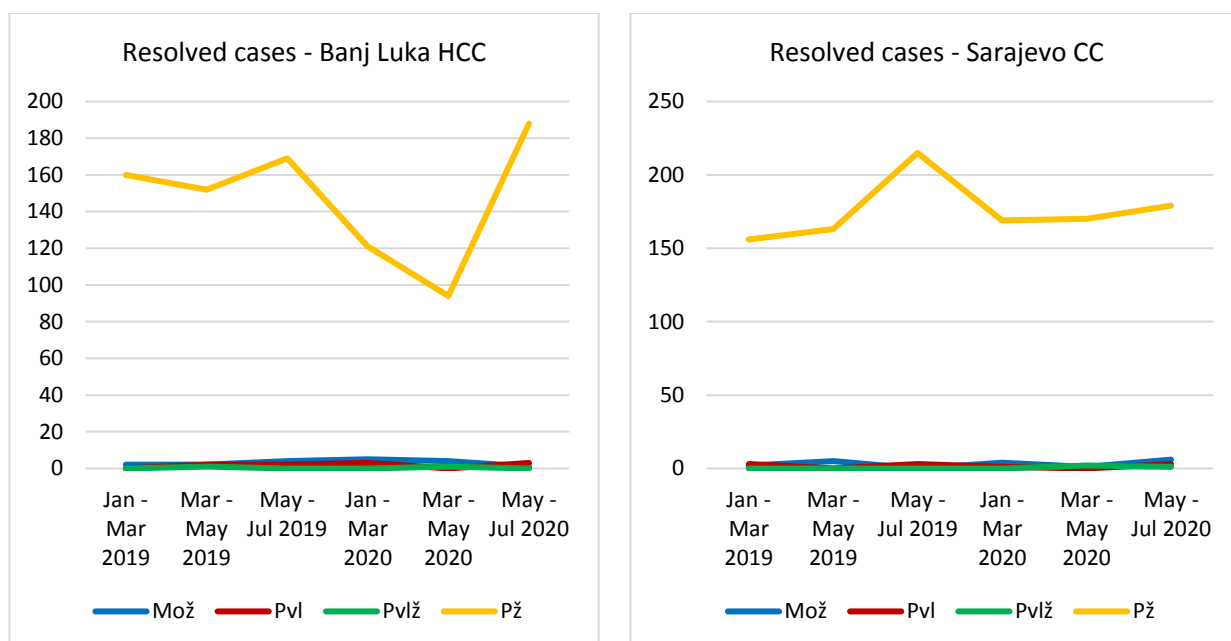


Source: Statistical Data Provided by HJPC

42. **While the second instance Sarajevo CC maintained the same pace of case resolution throughout the crisis, Banja Luka HCC accelerated deliberations in the post-lockdown period.** While Sarajevo CC resolved 170 Pž cases during the lockdown and 179 Pž cases post-lockdown, HCC resolved

only 94 Pž cases during the lockdown but has doubled the number of resolved cases to 188 Pž post-lockdown (Figure 12).

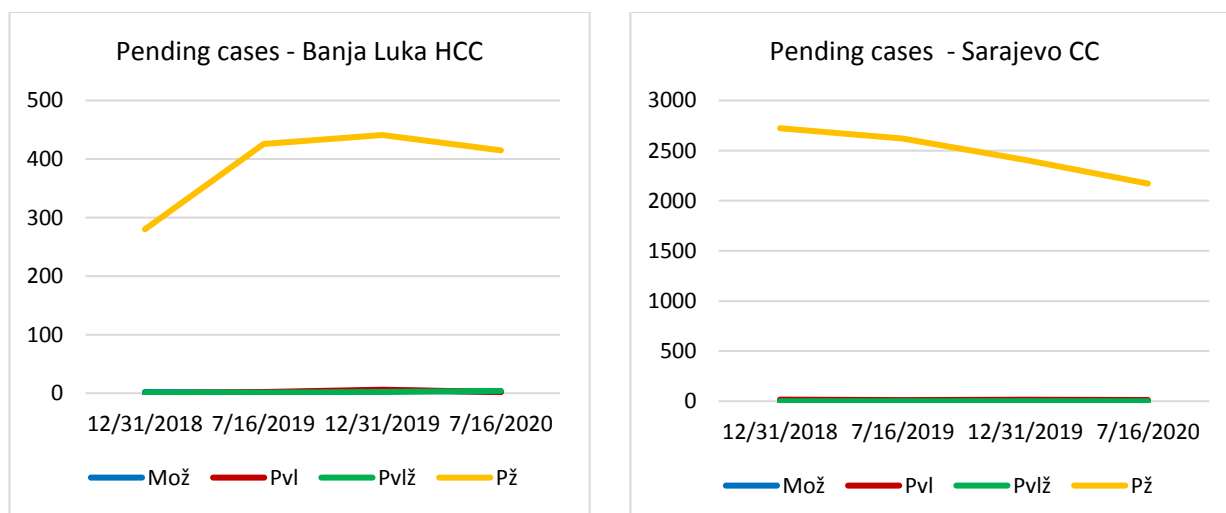
**Figure 12. Case-flow statistics: Resolved cases at second instance HCC and Sarajevo CC courts**



Source: Statistical Data Provided by HJPC

43. **The decrease in the number of incoming cases allowed Sarajevo and Banja Luka second-instance courts to reduce their backlogs.** The decrease in the backlog was particularly significant for Sarajevo CC, where the number of backlogged Pž cases fell by 235 (from 2,406 at 2019 year-end to 2,171 in July 2020). Banja Luka HCC also managed to reduce its backlog by 26 cases (from 441 at 2019 year-end to 415 in July 2020), despite working with one judge less (Figure 13).

**Figure 13. Case-flow statistics: Pending cases at Banja Luka HCC and Sarajevo CC 2019/2020**

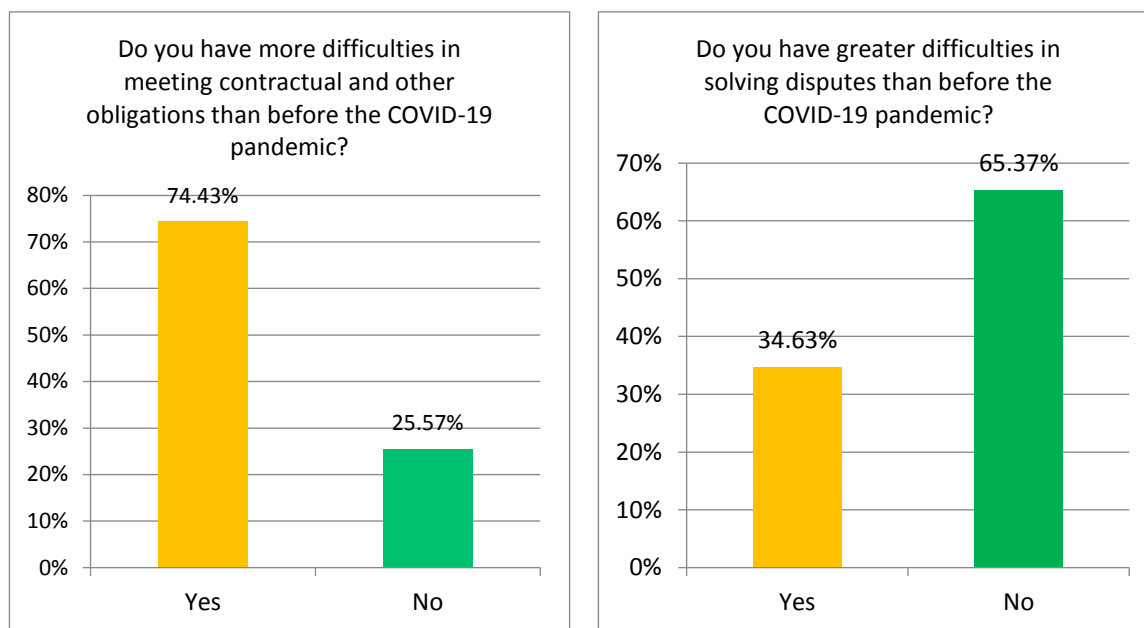


Source: Statistical Data Provided by HJPC

44. **The number of incoming cases at all BiH courts is expected to start rising in 2021 as a long-term reflection of the crisis.** Worldwide, the COVID-19 crisis is expected to create an “avalanche of cases which can clog even the most efficient legal system leading to delays and judicial arrears that

could last decades”<sup>38</sup>. BiH will probably not be an exception. As the crisis persists, businesses will most likely be less able to resolve their disputes out of court and will start filing more lawsuits. Approximately 75 percent of businesses already reported that they find it more difficult to settle their obligations, while 35 percent reported greater difficulties in resolving disputes compared to before the crisis (Figure 14). If courts are not able to quickly resolve cases, the surge of new lawsuits will lead to an increased backlog. While it is not possible to predict when exactly this surge will reach the courts, it will most likely happen towards the end of 2021 when businesses are anticipated to return to normal operations.

**Figure 14. Survey of Businesses: Ability to resolve disputes and meet contractual obligations**



Source: Rapid Survey of Businesses Interim Results (based on 309 responses)

## Recommendations

45. **As it will be exceedingly difficult for the BiH courts to quickly resolve the anticipated new surge of cases, the HJPC should continuously monitor case-flow trends during and post crisis.** The BiH courts have been facing challenges with efficacy of commercial case processing even before the crisis. Struggling with a backlog increase has been one of the main drivers of performance challenges<sup>39</sup>. It is, therefore, unlikely that BiH courts will be able to reduce the existing backlog while coping effectively with the incoming surge of cases. This will be even more difficult if the crisis persists and courts have to work at reduced capacity level, with judges and staff often falling ill and hearings being postponed. Real-time monitoring of case-flow statistics and prompt reaction of the HJPC to manage and resolve setbacks and address issues faced by individual courts will therefore be critical to mitigate the effects of the crisis. This activity should be institutionalized as part of a crisis management process set out in the crisis management strategy to be rendered (see also the recommendations under BiH Judiciary Response to COVID-19 Crisis to Date). The HJPC and individual courts should specifically:

- i. monitor rise of Ps (ordinary commercial disputes over BAM 5,000) cases across the courts,
- ii. address the increase of backlog at Sarajevo MC as a matter of urgency,
- iii. advise second instance courts to make use of the drop of incoming cases from first instance courts to clear some of the backlog.

<sup>38</sup> World Bank Legal Vice-Presidency, COVID-19: Navigating Legal Challenges, May 6, 2020 para 15 pg. 7.

<sup>39</sup> *Strengthening Commercial Courts and Departments in BiH: Caseload Distribution, Backlog, and Other Organizational Issues Affecting Performance*, World Bank.

## Impact of the Crisis on the-Courts' Internal Organization

### Social Distancing and Health Protection Measures at BiH Courts

46. **All courts adopted a set of basic social distancing and health protection measures to cope with the crisis.** Courts were required to follow instructions of the local crisis HQ on measures to be put in place such as maximum work hours, use of facemasks outside and indoors, curfews and similar. This meant that every court had to adjust to different local rules depending on its location and thus put in place different measures depending on its specific facility requirements and budget. However, all the courts introduced the following mandatory measures: (i) measuring body temperature of court employees and users when entering the court building; (ii) mandatory wearing of facemasks in court buildings; and (iii) observing the minimum social distance in courts. While judicial police ensured compliance with measures (i) and (ii), court presidents and staff were to ensure compliance with measure (iii).

47. **While the RS commercial courts seem to have adequate facilities to observe the mandatory social distancing rules and ensure continuity of their operations, the FBiH courts had difficulties to comply with the social distancing requirements.** In the RS, Banja Luka courts have particularly modern and spacious facilities which allow for sufficient compliance with social distancing measures. Prijedor and Trebinje courts have recently been relocated and provided with adequate premises. Although located in a shared building, Istočno Sarajevo court did not face major issues either<sup>40</sup>. Only Bijeljina court, located in a former supermarket, experienced challenges with implementing social distancing measures. The courts in the FBiH, particularly the larger ones, experienced difficulties in observing the social distancing measures. While Tuzla Municipal Court was only recently relocated to a new building spacious enough to allow for compliance with these measures, in most of the other FBiH courts, a few large courtrooms are available and are shared between court departments. This is often to the detriment of commercial departments, which are normally assigned one or no courtrooms (see also para. 65 below). Commercial case hearings are often held in judges' small offices which are not suited to accommodate large group attendees and the general public. Work of the case filing offices was also compromised by social distancing rules. Very few courts have filing offices large enough to provide for social distancing among their employees. As a result, the courts: reduced office hours for registries (Mostar and Sarajevo Municipal Courts); organized the work of registry clerks in shifts (Mostar Municipal Court); adopted work schedules for registry clerks so that they come to work on designated days (Sarajevo MC); introduced plexiglass shields between working stations (Mostar and Zenica Municipal Courts, Banja Luka DCC).

48. **Several court presidents reacted proactively by introducing additional measures to adjust the operations of their courts.** The court presidents have continued to introduce such measures after the lockdown, especially in October 2020 when the number of COVID-19 cases started to rise. These measures were tailored to local epidemiological conditions and largely reflected the court presidents' management skills and available funding. The following are examples of such initiatives:

- i) setting up of crisis-management teams responsible for designing court-specific measures, composed of heads of the court's departments (Tuzla Municipal Court);
- ii) managing court facilities in a way to minimize physical interaction between judges, staff and visitors, such as by restricting the use of elevators, controlling people-flow, and protecting surfaces with disposable nylon covers in courtrooms (Banja Luka DCC);
- iii) ordering mandatory break between hearings to ventilate and disinfect premises (Zenica Cantonal Court); and

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<sup>40</sup> According to the court president, the premises are adequate and there are no issues with implementing social distancing measures.

- iv) organizing transportation to and from work for employees who live far from the court building (HCC Banja Luka).

49. **Professionalism in the organization of work at Sarajevo MC has been critical for an adequate response to the crisis country-wide, however, measures put in place were not fully effective and Sarajevo MC was at the end of 2020 facing operational challenges.** As the largest court in BiH, Sarajevo MC is unique with its sheer number of commercial cases processed, and number of users visiting the court building. The way this court organizes its work therefore impacts efficiency of commercial case processing and of the crisis response at the country-level. While the court has introduced the relevant social distancing measures, spread of the virus among the court's administrative staff indicates that they have not been sufficiently effective. The resulting increased absence of administrative staff from work due to illness has impaired case processing at this court and caused queuing and crowding at case filing counters. Also, in spite of social distancing rules, commercial case hearings are held in small judge's offices, exposing judges and litigants to health risks.

#### Home Based Work (HBW) of Judges and Court Staff

50. **Remote work for judges was introduced as one of the health protection measures during the lockdown.** Most courts introduced work schedules for judges and other court staff to reduce the number of people in court buildings at one time (e.g., Banja Luka DCC, Sarajevo MC, Mostar MC). Consequently, most judges and other court staff worked from home. During HBW judges drafted decisions in already finalized trials. As per the HJPC's recommendation, judges were allowed to take case files home. Rules on supervising the case transfer process were revised to enable judges to download electronic copies of case files from CMS and access them from their private computers.

51. **However, judges and lawyers alike report that judges' HBW was not overly productive.** For example, the Istočno Sarajevo court president was not aware of decisions issued during HBW at this court. According to the Banja Luka HCC President judges could not keep up with the backlog reduction plan and they were also unable to meet their quotas. All interviewed lawyers indicated that only exceptionally did they see any progress in any case during the HBW. Statistics show that HBW during the lockdown was somewhat productive for second instance judges but not for the first instance courts (see Impact of the Crisis on the Case-flow Dynamics at BiH Courts).

52. **Judges' inability to access electronic case files from their private computers largely affected productivity of HBW.** The CMS contains electronic dockets - scans of all case files. This is a robust, multifunctional IT tool that helps alleviate the effect of the crisis in many ways. Box 1 below explains the CMS functionalities in greater detail. For judges the CMS is available for full access and interaction only from their workstations at courts. The HJPC CMS department is of the opinion that interaction with the CMS via personal computers which are not part of the HJPC IT system should not be allowed for security reasons. Furthermore, the CMS is not available to judges remotely even as a read-only application. In a way, judges have fewer opportunities to use the CMS remotely than the parties and lawyers, as CMS read-only application is available to non-judicial staff outside of the courts.

#### Box 1 – BiH Case Management System Functionalities

##### CMS use in courts in BiH

The CMS was developed to allow for automation of internal work processes involving management of cases in the courts from their registration to archiving. The key functionalities of the system are:

- Judges and legal associates can access cases electronically as all incoming documents are scanned and documents created by judges or administrative staff are stored in the CMS. By leveraging this functionality, circulation of paper case file is almost eliminated;
- Judges and legal associates receive electronic notification of new cases assigned to them and additional documents received related to existing cases. Judges can create electronic tasks for their assistants or court registry clerks to carry out as specific administrative work.
- Simple and quick electronic access to information on deadlines and tasks;
- Fast and efficient electronic notification of parties involved in cases submitted before the courts (information on a judge assigned to the case);
- Electronic registration of delivery and receipt for each document;
- Unified electronic records of all decisions, detentions, sanctions and penalties and tracking their enforcement;
- Efficient issuing of court certificates on criminal proceedings for physical and legal persons;
- Immediate electronic data transfer between the prosecutors' offices and the courts and between first and second instance courts, thus eliminating the need for double entry of data and reducing the risk of data entry errors.

Electronic access to case information and documents as well as case workflows minimize staff circulation within court buildings. Consistent usage of these CMS functionalities underpins efforts to prevent spreading of COVID-19 among judicial staff. The CMS was also the technological basis for establishing the following electronic services currently available to court users via judicial web portal ([www.pravosudje.ba](http://www.pravosudje.ba)):

- Read-only access to court cases via the Internet (web browser or smart phone). This enables parties in the proceedings and their legal representatives to access information related to court cases they participate in via the Internet, at any time and by using any device with Internet access. Electronic access to cases and electronic notification on changes in cases is available to eligible court users via "E-SUD" application;
- Notification of parties about date and location of court hearings.

Source: [www.pravosudje.ba](http://www.pravosudje.ba)

## Recommendations

53. **The HJPC should ensure exchange of knowledge on identification and application of relevant health protection measures among the courts.** The HJPC organized dialog and some knowledge sharing between courts on health protection measures. These events were sporadic, given the emergency situation. These efforts should be institutionalized and established as a regular activity (see also section BiH Judiciary's Response to the Crisis). The HJPC as the central judicial body should identify ways to share practices related to response to the crisis, among and across different courts, regions and jurisdictions. The HJPC should also organize regular exchange of knowledge between courts and a wide range of professionals, in particular lawyers and Bar associations, to ensure that access to justice and safety measures are adequately taken into account and that each court implements the most appropriate set of health protection measures.

54. **A temporary judicial body should be established to deal with operational challenges.** Such crisis management bodies seem to be functional for crisis situations which emerge locally in individual courts. They follow court performance data closely and can react swiftly to rising backlogs by providing recommendations and guidance but also at the policy level by providing information and advice to the HJPC. International examples of temporary judicial bodies are described in more detail in Box 2 below.



## Box 2 – International Examples - Temporary Judicial Bodies

### Specialized judicial COVID-19 bodies

In response to the crisis, the **Albanian Judicial Council (KLGJ)** established a **Temporary Committee** on 16 April 2020, mandated to analyze the legal framework and identify problems relating to court infrastructure. The Committee was tasked to draft, propose and oversee measures put in place during the COVID crisis, in collaboration with court presidents. The Committee drafted a guiding instruction for courts on measures to be taken in response to the crisis, which included information on measures to prevent the spread of the infection, planning and conducting proceedings, and administrative measures relevant to court services. The KLGJ created a weblink at their official website which included information on COVID-related measures and posters for the general public illustrating how to address the court and what to expect in time of crisis (<http://klgj.al/covid-19/>). The posters provided answers to questions such as: *When should I go to the court? How will the court inform me that my case is urgent? How will hearings take place?*

On 11 August 2020 the **Serbian Supreme Court of Cassation, High Judicial Council and Ministry of Justice** created an **ad-hoc COVID-19 Working Group (WG)** composed of representatives of these institutions. The WG was primarily tasked to collect and analyze information on court operations and case processing during and in the aftermath of the crisis and capture lessons learned. It was also mandated to assess the impact of emergency measures on case outcomes. The WG also played an advisory role by providing recommendations to courts facing specific crisis-related challenges in the areas such as human resources management, case allocation and office hours.

55. **The following measures identified as good practice examples could be introduced by individual courts, in particular by the Sarajevo MC to maintain efficient court operations while reinforcing some of the health protection measures already in place:**

- ✓ Extending, instead of reducing, the court working hours and particularly of the administrative staff and case filing offices and organizing work in two shifts. This could prevent crowding of court users and allow fewer staff occupying an office at a single time.
- ✓ Consider introducing work in shifts for judges so that hearings could be held in the afternoon and court office space could be utilized more productively (see **Error! Reference source not found.**).
- ✓ Use of plexiglass barriers at the offices where hearings are conducted, particularly if commercial case hearings are held in judges' small offices.
- ✓ Put in place people flow and crowd management tools particularly at larger courts. These include allowing entrance to the court building with reason only, monitoring people flow within the court, restricting the use of elevators and providing people-flow signage (see **Error! Reference source not found.**).

### Box 3 – International Best Practices Examples – Health Protection Measures

#### Work in shifts in courts

While BiH courts introduced work in shifts only for administrative staff, courts in some countries also introduced work in shifts for judges:

- The High Court of Singapore implemented a justice continuity plan by dividing the judges of the Court into two separate teams: Team A and Team B. No judge from Team A was to be in physical proximity or in close contact with a judge from Team B. As a result, there were court proceedings with a bench of three judges, with one attending via video link.
- In Lithuania work of all court employees was scheduled in a way that there would be no more than one person working in a closed office at a time.

#### Reduction of flow of court users

In the Banja Luka DCC, attorneys and parties who attend hearings are greeted at the court building lobby by a courtroom staff and escorted to the courtroom. Other visitors can only access premises situated in the lobby, which include filing and registry offices.

A similar measure was introduced by the Trieste Court (Italy); in addition, Trieste Court further reduced the flow of visitors by:

- Allowing personal visits to the court only based on an appointment scheduled in advance. This allows planning and management of the flow of people and avoids queuing.
- Setting out that queries can be made only via phone or e-mail and ensuring that such queries are answered promptly.
- Setting out that new lawsuits as well as all other types of procedural documents are filed exclusively by mail or electronically or placed in special letterboxes located outside the court.

56. **Making possible that judges access the CMS remotely is vital for more productive and secure HBW.** The lockdown and introduction of a vast HBW emphasized the need that judicial staff can remotely access the CMS so that they can perform routine office tasks and resolve cases while working from home. The remote access to the CMS for judges would enable business continuity and prevent increasing backlog particularly for second instance judges who work mostly on case file reviews and rarely summon hearings. Beyond the current crisis, the remote access to the CMS would enable judges and judicial associates to prepare timely for hearings, draft decisions at the most convenient times, and perform administrative tasks when otherwise prevented from using court facilities. Remote access to case files for judges via the CMS is more secure than carrying case files home, provided adequate IT solutions and equipment (laptops) for judges as well as awareness of security and data privacy issues. Remote access to the CMS for judges should be designed and deployed in a way to avoid exposing judicial IT infrastructure, the CMS and other software applications to any cybersecurity risks while preserving privacy of personal data stored in the system (Box 4). The access could be enabled in several phases. Read-only application could be available soon, while interactive mode would require feasibility assessment and acquisition of adequate equipment.

## Box 4 – IT readiness for HBW

### Making remote CMS access possible

Implementation of the remote access should be preceded by:

- ✓ Assessment of existing legal framework on use and administration of CMS (Rulebook on CMS) and Judicial Information System Security Policy to identify and draft the necessary amendments;
- ✓ Assessment of judicial IT network and system infrastructure, including capacity of the main Internet link, data center network and management systems;
- ✓ Assessment of data center security infrastructure (current VPN architecture, authentications methods, network access control, firewall/web application firewall, data loss prevention systems);
- ✓ Risk assessment of available options for client connectivity (such as by providing laptops to judges) and judicial information system security;
- ✓ Assessment of authentication and security aspects of the CMS.

The assessment should define several options for implementation of remote access to the CMS<sup>41</sup> and propose the optimum solution taking into account costs, security, data privacy and management. The proposed solution should be piloted with a limited number of users from selected courts. Technical implementation should be followed by training and raising awareness of judges, legal associates and administrative staff on secure remote access and use of the CMS as well as adherence to data privacy measures.

## Impact of the Crisis on Commercial Case Processing

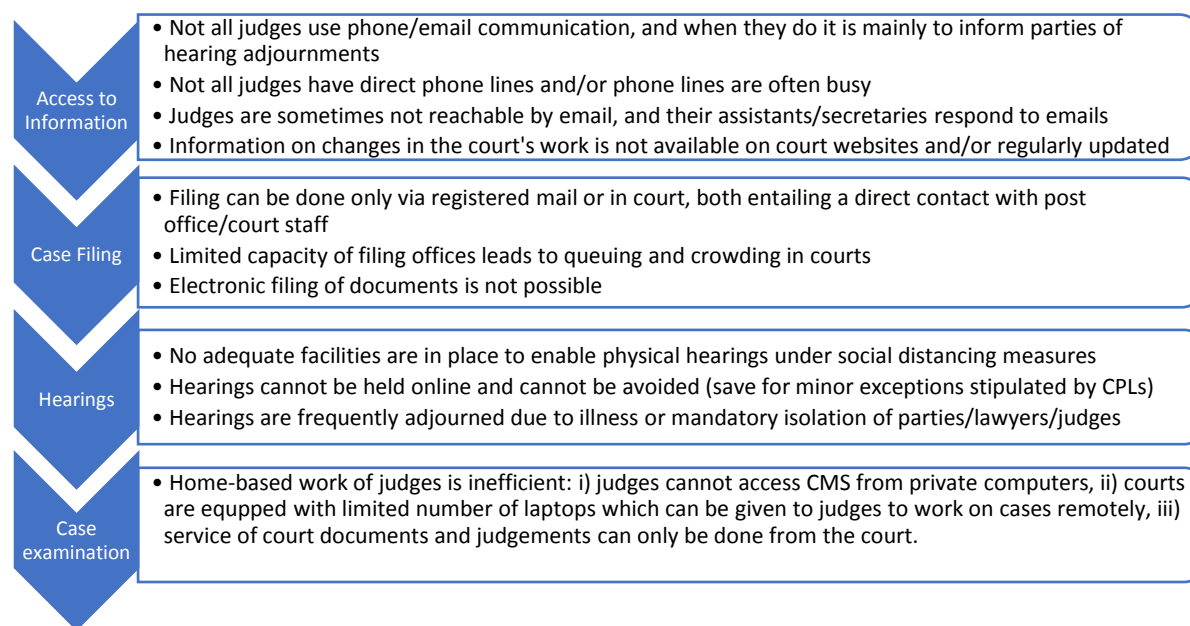
### 57. The crisis affected all trial stages and processes, as follows (see also Box 5):

- i) Access to information. Changes of working hours and frequent rescheduling of hearings resulted in a greater need to communicate with courts. Given the health risks, remote modes of communication were preferred over the traditional face-to-face contact. However, court mostly communicate with the parties even for general information face-to-face as remote modes of communication with courts are not fully functional (websites, phones, emails).
- ii) Case filing. Parties can only file their submissions physically, either by mail or at the court therefore changes in court operations led to queuing and crowding which increased party inconvenience and compromised access to filing services.
- iii) Hearings. Organizing a physical hearing poses major health risks as it entails gathering of a group of people in a small space. To date courts have been struggling to find adequate space to hold hearings. Lawyers and judges report an increased risk of infection due to inadequate facilities. Litigants and judges often fall ill or are in isolation, which results in adjournment or postponement of hearings.
- iv) Drafting court documentation and review of case files. Ability to review cases and draft documents has been least affected by the crisis relative to other court activities. However, as productive HBW is difficult without access to case files, case processing was affected by judges being on mandatory HBW (for details see section on HBW for judges and court staff above).

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<sup>41</sup> These could for example include remote access VPN, SSL VPN, deployment of multi-factor authentication in VPN or CMS authentication process.

## Box 5 – Trial Activities and Key Issues in the COVID-19 Era



### Communication with the court

58. **To share information courts mostly rely on walk-in face-to-face communication.** All court submissions are filed in hard copy at filing offices or at the post office. Parties and their lawyers mostly communicate with judges on their case during or after the hearings. Expert witness's communication with the court is mostly hardcopy exchange of documents. Expert witnesses have to come to the court to pick up hard copies of case files for review, file reports and opinions, and submit other associated documentation<sup>42</sup>. After attempting to receive the information via phone or website, court users often decide to visit the court even for general information<sup>43</sup>.

59. **Court webpages often do not contain the most up-to date information on court operations during the crisis.** General information such as working hours or location of the court are mostly available online. Also, hearings schedules are automatically retrieved from the CMS and presented on the courts' web pages. However, information on court operations is usually not available online. Even when this is the case, the information is either not available at a single web location or it cannot be easily traced (scanned PDFs stored in subdirectories).

60. **Information on individual cases related to hearings schedules or the status of the case can in principle be obtained by phone.** However, very few commercial judges have individual land lines as it is more common that courts have a central dispatching office. The dispatching office is, as court users report, almost always clogged – sometimes it takes hours to reach the court.

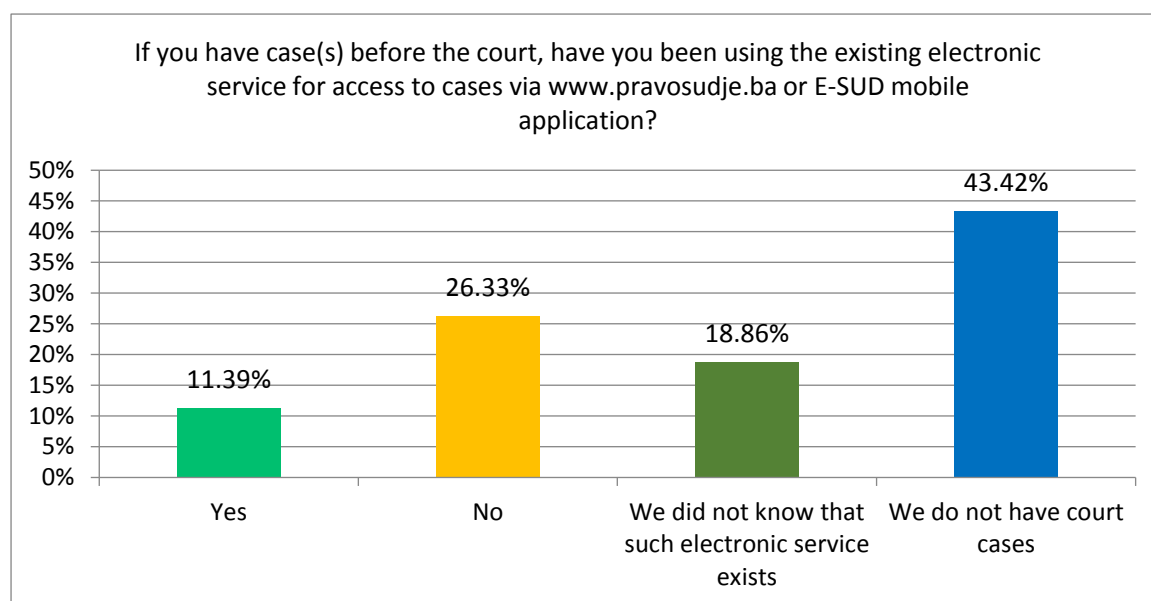
61. **Parties that want to receive information related to their cases can access case files via the CMS, however, majority of businesses with cases before courts do not use the CMS case file access.** To access the CMS remotely parties need to file a request (orally or in writing) and obtain an access code to log on the judicial website (*www.pravosudje.ba*). Normally, the code is free of charge if

<sup>42</sup> Focus group discussions with judges from District Commercial Court Banja Luka (19 November 2020), Municipal Court Sarajevo (20 November 2020), Municipal Court Tuzla (23 November 2020), Municipal Court Mostar (24 November 2020), and District Commercial Court Istočno Sarajevo (26 November 2020).

<sup>43</sup> Focus groups held with RS and FBiH commercial lawyers on 9 October 2020, 30 October 2020 and 4 November 2020.

collected at court. If the code is sent via a registered mail standard service of process fees apply. However, the code is still not free in all cantons in the FBiH entity, while in the RS entity it became free only in July 2020. For parties, no interaction with the CMS is possible as it is a read-only application. If parties wish to send official documents, file lawsuits, appeals, or any other acts, they are obligated to file a hardcopy. According to the Survey of Businesses, the majority of businesses with cases before the court are either not aware of CMS remote access to case files, or have not used this service (Figure 15).

**Figure 15. Survey of Businesses: Use of CMS remote access to case files**



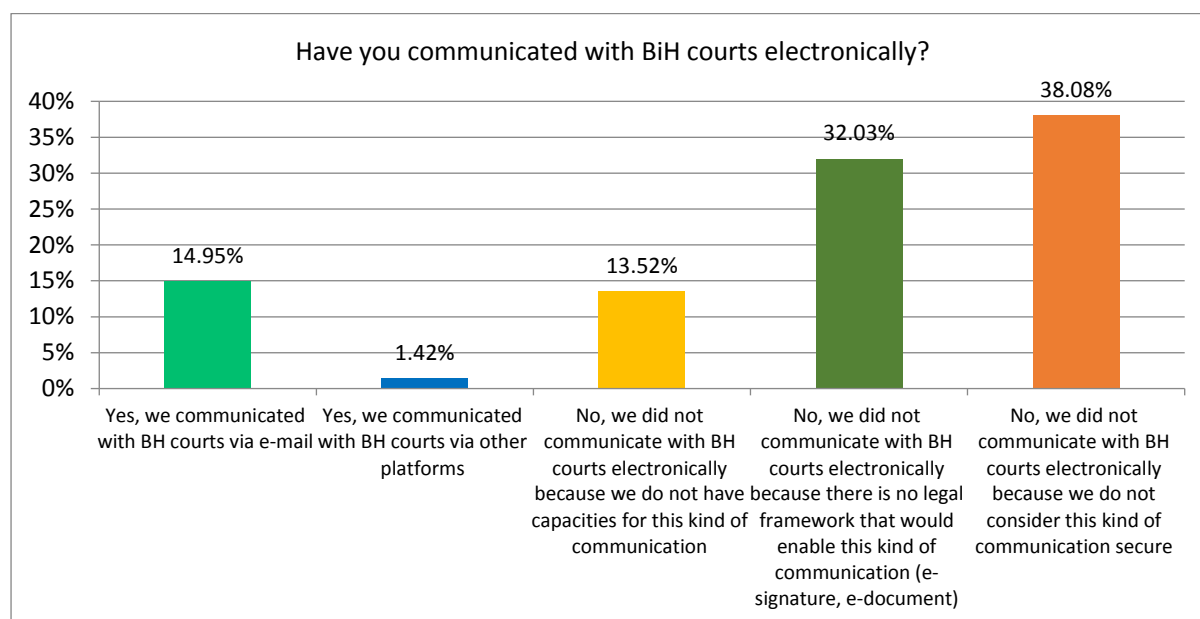
Source: Rapid Survey of Businesses Interim Results (based on 281 responses)

62. **In regular circumstances parties rarely communicate with courts via email; however the crisis made judges more responsive to emails.** Information such as hearing schedules and case status are now increasingly being exchanged with parties via phone or even email. Some lawyers report increased communication between judges and parties via email. E-mail was even used for filing of evidence to trial participants, though such submissions had to be supplemented with hard copies. Lawyers highlighted the Tuzla MC as an example of proactivity in responding to emails<sup>44</sup>. All surveyed courts however noted that they have not received any guidance from the HJPC to use emails as a preferred means of communication, and that they have ventured to do so on their own initiative<sup>45</sup>. Only 14.95% businesses surveyed reported that they have communicated with the BiH court electronically.

<sup>44</sup> Focus group discussions with RS and FBiH commercial lawyers held on November 4, 2020.

<sup>45</sup> Source: Focus group discussions with commercial judges from District Commercial Court in Banja Luka (19 November 2020), Municipal Court in Sarajevo (20 November 2020), Municipal Court in Tuzla (23 November 2020), and Municipal Court in Mostar (24 November 2020).

**Figure 16. Survey of Businesses: Electronic Communication with Courts**



Source: Rapid Survey of Businesses Interim Results (based on 281 responses)

63. **Although businesses are concerned about security of email communication with courts, BiH court’s emails are in fact well protected from cybersecurity risks.** As many as 38 percent of respondents found this method of communication insecure, while 32 percent would feel more comfortable if this method of communication were regulated by a specific guideline (see **Error! Reference source not found.**). However, businesses seem to be unaware of IT support available at BiH courts. Several technical controls have been deployed to prevent e-mail servers from network attacks at [www.pravosudje.ba](http://www.pravosudje.ba). Antimalware and anti-spam protection is regularly deployed at several layers (e-mail gateway, e-mail server and endpoints - computers) and is regularly updated.

#### Case Filing Services

64. **Access to court case filing services was compromised during the crisis.** Even before the crisis the BiH judiciary attempted to allow e-filing and Civil Procedure Laws (CPLs)<sup>46</sup> were amended to allow that all submissions in civil proceedings can be made electronically, if a filed document is signed with a qualified e-signature. However, e-filing to courts is not possible in practice as it is not operational across the country. No legal framework on e-signature/e-document is in place (in the case of FBiH) and the implementation of the existing frameworks is poor and uncoordinated between different government levels (for example, the RS authorities do not accept all certificates issued by accredited certification authorities at the BiH level). Lack of e-filing options make court users fully dependent on physical delivery of court submissions, either via registered mail or at court premises as both require face-to-face contact with postal officers and/or court clerks. At the time of crisis physical delivery of documents was difficult. Social distancing requirements and operational challenges that courts and post offices faced caused inconvenience for parties filing documents. To file parties had to wait in long lines and be vigilant of changes in ways filing offices operate during crisis. It took longer to file documents, inspect cases, and undertake administrative tasks, physical filing also bore an increased risk of infection.

<sup>46</sup> Article 334 of FBiH CPL, Article 334 of RS CPL and Article 72 of BD CPL.

## Box 6 – Users’ Perception of Access to Courts is Based on the Operation of Case Filing Office

### Case filing in the Banja Luka DCC

During the lockdown, the Banja Luka DCC managed to maintain filing office services by introducing an outdoor counter. Other courts in BiH stopped receiving documents other than via regular postal services. By opening a counter that could be accessed directly from the street, the Banja Luka DCC retained a perception of uninterrupted court operations. This was greatly praised by the RS Bar Association and lawyers as giving comfort that the court is operational and accessible.

## Hearings

65. **As physical hearings involve gathering of a group of people in a small space lockdown and social distancing rules have affected scheduling of all hearings, but scheduling of commercial case hearings seems to be significantly impaired.** This was particularly the case in FBiH, where no commercial courts are in place and municipal courts process all types of cases. During the lockdown, priority was given to scheduling and processing of urgent civil and criminal litigation cases and only requests for injunctions in commercial litigation were processed. Furthermore, after the lockdown large courtroom facilities were allocated to all types of cases and again predominantly to criminal and general civil litigation cases. In the Sarajevo MC and many other FBiH courts all commercial case hearings are being heard at judges’ small offices rather than at larger courtrooms, exposing staff, litigants, and the broader public to health risks. For large insolvency cases it remains impossible to schedule hearings or creditor’s meetings<sup>47</sup> as no court or other municipal building has space enough to safely accommodate all trial participants (see **Box 7 – Crisis Halts Processing of Large Insolvency Cases**Box 7).

## Box 7 – Crisis Halts Processing of Large Insolvency Cases

### Large insolvency case hearings cannot be summoned in Tuzla

Six insolvency proceedings are pending at Tuzla MC due to lack of capacities to hold hearings either at the court building or out of court in rented premises. For these cases no hearing or a creditor meeting have been held since the crisis started. These are some of the largest insolvencies in BiH with filed creditors’ claims totaling to over EUR 40 million. Each of these cases involves over 100 creditors, of which about 80 percent are workers claiming lost salaries.

66. **CPLs do not provide a possibility to hold online hearings.** Article 4 of the RS, FBiH and BD CPLs sets forth the principle of immediacy and orality implying that taking of evidence must happen directly in front of the judge<sup>48</sup>. Furthermore, CPLs state that hearings need to be held in the court building and only exceptionally can they be held in another location<sup>49</sup>. All the interviewed lawyers and judges found it necessary for the CPLs to explicitly change to allow for any form of online hearings to be summoned. To date no online, remote or any other type of a hearing apart from the traditional face-to-face physical hearing was organized for commercial cases in BiH nor is it considered that this could be done without adequate legislative changes<sup>50</sup>.

<sup>47</sup> Source: Focus groups discussions with judges from Municipal Court in Sarajevo (20 November 2020) and Municipal Court in Tuzla (23 November 2020).

<sup>48</sup> Article 4 of RS, FBiH and BD CPLs.

<sup>49</sup> Article 327 of the FBiH CPL, Article 327 of the RS CPL, Article 78 of the BD CPL.

<sup>50</sup> Focus group discussions with RS and FBiH commercial lawyers held on October 9, October 30 and November 4, 2020, and focus group discussions with commercial judges from District Commercial Court Banja Luka (November 19, 2020), Municipal

67. **CPLs provide the option to resolve cases without a hearing but only in exceptional circumstances.** Currently, the courts in BiH are authorized to decide on a case without a hearing only if a duly served defendant has failed to respond to the claim within the statutory deadline<sup>51</sup>. Examination of cases based solely on documents is not possible for small claims or for any other case types.

68. **CPLs, however, allow the courts even in regular circumstances to hold as few hearing events as possible.** CPLs regardless of crisis strive to achieve efficiency in case processing through rules on hearings, taking of evidence, service of process, abuse of procedural rights, etc. The key aim is to ensure that only relevant evidence is heard during trial and that the trial is finalized in the shortest possible time. Notably, CPLs provide that only one preparatory and one main hearing should be held, and they set clear deadlines for scheduling of hearings<sup>52</sup>. Moreover, RS CPL indicates that preparatory hearing in commercial cases should be held only on an exceptional basis<sup>53</sup>. Thus, following the letter of the CPLs judges could resolve cases by quick scheduling and holding of only two hearings.

69. **Even before the crisis the courts rarely if ever managed to strictly follow CPLs efficiency principles and to hold only two hearings without adjournments or postponements.** Postponing of a hearing has in the past been a result of judges', lawyers', and parties' lack of proactivity. Judges tended not to manage the case properly and allowed the parties to offer new evidence late in the trial or to provide parties additional time to review new evidence. Also, judges even allowed submission of irrelevant evidence, the examination of which then prolonged the hearing process and caused new postponements. Most has happened because the higher courts seem to frequently overturn judgments for denial of the parties 'right to be heard' (that is for denial of the right to supply new evidence). Thus, first instance judges often accept all evidence without filter, irrespective of when the new evidence is supplied or even of its relevance for the case<sup>54</sup>. CESTs, together with the World Bank, are working on addressing these issues and have during 2020 organized trainings for judges that are focusing on improving trial techniques relevant for hearings.<sup>55</sup>

70. **Adjournments of hearings seem to be even more frequent during the crisis.** All interviewed courts and lawyers confirmed that the adjournments are more frequent now at the time of crisis as lawyers and judges fall ill or are in isolation. Some courts believe that a significant number of lawyers are misusing the crisis claiming sick leave and isolation to prolong trials. In the Mostar MC, for example, the court is making an effort to regularly request the litigants to back their statements with documentation issued by health authorities.

## Recommendations

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Court Sarajevo (November 20, 2020), Municipal Court Tuzla (November 23, 2020), Cantonal Court Zenica (November 23, 2020), Municipal Court Mostar (November 24, 2020), High Commercial Court Banja Luka (November 24, 2020), and District Commercial Court Istočno Sarajevo (November 26, 2020).

<sup>51</sup> However, judge is only empowered to issue this judgment based on the claimant's request. If the claimant has not specifically asked the court to render a judgment based on non-appearance, the judge needs to schedule a hearing, regardless of whether the defendant has responded to the claim or not.

<sup>52</sup> Articles 11, 75, 94, of the FBiH CPL, Articles 11, 75 and 94 of the RS CPL, and Articles 11, 198 and 217 of the BD CPL.

<sup>53</sup> Article 433v of the RS CPL.

<sup>54</sup> Leveraging Procedural Reforms to Improve Commercial Justice in Bosnia and Herzegovina, World Bank available at <https://openknowledge.worldbank.org/handle/10986/32509>.

<sup>55</sup> CESTs have, with support of the World Bank, implemented the following trainings on improving trial techniques and case management in organising hearings: 19 May 2020 "Preparation of the case file in litigation proceedings", 19 October 2020 "Coping with frivolous appeals".



71. **In the short term, courts should work to:** (i) improve the modes of remote communication, (ii) provide additional space for conducting physical hearings, and (iii) improve case management to process commercial cases more quickly.

72. **Options for improving remote communication between courts and court users include:**

- i) **The HJPC and individual courts should have a designated COVID-19 section on their websites** with all relevant information on changes to court operations. This information should be easily accessible and easy to understand and made available rapidly and regularly. Currently, most courts that do provide information related to the crisis on their websites usually provide copies of legal protocols and court presidents' decisions on court operations. These documents need to be searched for at the website and interpreted by parties that are mostly laypersons.
- ii) **Capacities of phone lines should be reviewed** to assess whether changes are possible to allow for quick communication and larger volumes of calls.
- iii) **Use of emails should be encouraged among judges and judicial associates.** To make court users and judges more comfortable in using this mode of communication the courts and the HJPC should provide publicly available instructions on how judges and parties should communicate via email. Judges should encourage parties, expert witnesses and court interpreters to provide their email addresses and establish this line of communication. Notably, under the RS CPLs judges are entitled to summon hearings by email<sup>56</sup>. If needed, courts should task more of their employees to promptly reply to emails received on the courts' generic email addresses. Information on cybersecurity of the e-mail communication can be disseminated to users with continuous education of judges and court clerks on e-mail etiquette and information security issues.
- iv) **Parties' access to CMS files should be encouraged.** The HJPC should advise competent cantonal authorities to abolish fees for CMS access codes. A communication campaign for increased CMS access should be launched via HJPC and court websites. Phone and filing office personnel and judges should be instructed to encourage walk-in parties to use remote CMS access to files. Signs and infographics on the use of CMS access should be available at court filing offices. Expert witnesses participating in specific cases should have access to files via the CMS.

73. **Courts without adequate facilities should use the option of organizing hearings out of court buildings, as provided by the CPL.** The CPLs make it possible for a court to decide to hold a hearing out of court, if necessary, cost-effective or if it reduces the trial duration<sup>57</sup>. The HJPC and courts could consider using this regulatory option to schedule hearings in out-of-court premises that have adequate space. However, this would still not be an option for the largest cases, particularly insolvency cases, as these are normally attended by hundreds of workers. If the crisis persists for such cases remote hearings seem to be the only option.

74. **Case management could be improved to enable more efficient commercial case processing:**

- i) Within the flexibility afforded by the existing legal and regulatory framework judges should be strict and make all understand that hearings are held in extraordinary circumstances and that they carry associated effort, resources and risks. Judges should clearly communicate that inappropriate methods to postpone the case would not be tolerated and that any misuse will be sanctioned.

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<sup>56</sup> Art 443d CPL RS.

<sup>57</sup> Articles 327 of the FBiH and RS CPLs, and Article 78 of the BD CPL.

- ii) Judges should focus on preparing well for the hearing, particularly for the preparatory hearing, to be able to quickly and with certainty deny baseless requests for hearing postponements (new evidence submitted late, irrelevant evidence that needs to be further reviewed by the parties, etc.). Preparatory hearings should be well-organized, with all evidence proposals being thoroughly assessed and carefully selected for presentation at the main hearing.
- iii) Judges should also ensure that hearings are organized at the right stage of the process when the evidence has been collected and compiled, to minimize face-to-face interaction between the parties, experts, and judges.
- iv) The CPL RS has a specific section that deals only with commercial case processing. This section specifies that preparatory hearing will be scheduled on an exceptional basis only if the court considers this justifiable given the complexity of the case and other circumstances. Judges should use this exception as appropriate to reduce the number of hearings held.
- v) Training of judges that cover case management techniques including case management during the crisis (see also section Impact of the Crisis to Judicial Training ) should continue
- vi) Some of the earlier Project analysis which provide further recommendations for improving commercial case processing regardless of crisis should be revisited and made use of during the crisis. Some of the recommendations, among other, note the need for coordination between practice of first and second instance judges through joint conferences, higher court judgment reviews of negative and positive court practices etc.<sup>58</sup>

75. **While the proposed short-term solutions could help alleviate negative effects of the crisis, long-term reforms are needed to cope with a prolonged crisis mode of operation.** The proposed measures to adjust the commercial case processing to the “new normal” can only offer some degree of comfort during crisis times. The application of these measures will however not fully prepare the BiH courts to the prolonged crisis mode of operation and an anticipated incoming surge of cases. The BiH legislative framework and the current IT infrastructure make it impossible for the courts to work remotely. Long-term reforms should, therefore, be considered to adjust the legislative framework to introduce e-filing and remote hearings. The crisis is an opportunity to implement these reforms, which were needed even before the crisis (see details under Cyberjustice – Forward-Looking Reform to Facilitate Use of ICT for Better Service Delivery section)

## Impact of the Crisis to Judicial Training

### Delivery of Training

76. **The crisis has impacted the format in which judicial training is delivered.** Before the crisis most training activities were conducted in a traditional face-to-face setting in accordance with Judicial and Prosecutorial Training Centers’ (CEST) annual training plans. In March 2020, even before the state of emergency was declared, all face-to-face learning events were cancelled and CESTs rapidly reoriented to delivery of online training held through the Cisco WebEx platform as per the HJPC’s instruction. At first, judges showed very little interest for online training (on some occasions, there were less than five judges registering for a session). However, in May 2020 the number of judges taking part in online training increased tenfold, likely because judges were slowly getting used to the online setting, but also because training attendance was a prerequisite to meet the annual training quota.

77. **Adapting to online training and distance learning was marked with challenges, including lack of equipment, limited participation in discussions and underuse of available IT functionalities.** Both

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<sup>58</sup> See *Leveraging Procedural Reforms to Improve Commercial Justice in Bosnia and Herzegovina* pg. 37, World Bank, available at <https://openknowledge.worldbank.org/handle/10986/32509>.

lecturers and participants were using only basic WebEx functionalities, and unfortunately this has not changed much to date. Some training participants lacked equipment such as cameras or headsets, and there were also complaints about poor connectivity. Adapting to the online environment entirely depended on the abilities of lecturers or requirements of external donors. Judges and CESTs were given instructions on how to use WebEx as a technical tool, but not on how to actually participate in online courses. A questionnaire which examined judges' online training experience revealed that half of judges connected without using the camera, while only one third took part in the discussion. In addition, RS and FBiH CESTs have Learning Management Systems (LMS) at their disposal and use WebEx in their day-to-day work. The possibilities offered by this system have been underused by the commercial judges and currently there are no e-modules in the field of commercial law.

**78. While judges welcomed the flexibility offered by online training, face-to-face remains the preferred training mode, as it offers more opportunity for discussion and interaction.** Judges and court presidents seemed to prefer to gather in a single room to attend online training. Reportedly, this way of attending training improves the training experience as it allows for some face-to-face interaction between participants and facilitates discussion during and in-between training session. It also makes the IT support easier. Evaluation of online training activities in 2020 showed flexibility as the biggest advantage of online training, whereas the lack of discussion was characterized as the biggest disadvantage. This also aligns with the EJTN<sup>59</sup> training standards which find face-to-face training to be the most suitable training form for achieving key goals of judicial training. E-learning is most appropriate when the main training goal is to acquire new knowledge, but so-called 'blended learning' is a better fit if the training goal is understanding and implementing acquired knowledge<sup>60</sup>.

#### Focus of Training

**79. The focus of judicial training somewhat shifted to crisis related issues.** Topics for the 2020 judicial training were initially selected in 2019 and reflected in the CESTs annual training plan. At first, the training was completely unrelated to the crisis. As judges started facing problems in their day-to-day work that were partly or entirely crisis-induced, training was adjusted to capture topics most relevant to the crisis. Subsequent training started covering issues such as legal and organizational challenges that kept emerging in the context of the crisis. In order to adapt to these new and emerging requirements, the project supported CESTs to deliver eight online training events during 2020, adjusting them to account for the impact of the pandemic. For example, a training on "*Gory Topics in Commercial Caselaw*"<sup>61</sup> involved expert discussion on employment law matters arising from the crisis.

**80. Moving forward, the COVID-19 crisis will further reshape training needs.** The crisis reinforced the need to digitalize court procedures and develop cyberjustice in BiH<sup>62</sup>. Such digital transformation, apart from technical support, will require the delivery of training for judges and other court staff to improve their digital skills and ensure efficient performance. This entails introductory and continuous training in digital literacy focused on delivery of electronic justice. The shift in training focus will also be mandated by the impact of the crisis on business operations. Businesses are facing increased challenges related to employment matters (layoffs, reduction of salaries), inability to meet contractual obligations, and inability to collect debts due to suspension of enforcement and liquidity problems. Some of these pandemic-related issues are linked to the interpretation of emergency rules, suspension of procedural deadlines and statute of limitation periods, processing of urgent cases and

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<sup>59</sup> EJTN Handbook on Judicial Training Methodology in Europe, 2016.

<sup>60</sup> EJTN Handbook on Judicial Training Methodology in Europe, 2016.

<sup>61</sup> "*Aktuelna pitanja iz sudske prakse*" - Hot Topics in Commercial Caselaw.

<sup>62</sup> Phase II report will detail on the options to fast-track commercial disputes using e-filing and online hearings tools. HJPC has already submitted an initiative to use online hearings for criminal procedure (see below section Cyberjustice – Forward-Looking Reform to Facilitate Use of IT for Better Service Delivery on description of the initiative).

inability to schedule and hold hearings. These issues will likely result in new court cases and require increasing of judges capacities in term of knowledge and skills to analyze these novel legal issues<sup>63</sup>.

## Recommendations

81. **CESTs should develop instructions on online training participation.** To improve the quality of online training and the training experience of participants, CESTs could consider drafting a manual on participation in online training, which would include detailed instructions on how to: i) join the training, ii) take active part in the discussion, iii) maintain interaction with lecturers by asking questions, and iv) use WebEx functionalities such as the chat options, screen sharing, reactions etc. This would make judges more familiar and comfortable with the online training setting and enhance interaction.

82. **CESTs should consider preparing a manual on how to integrate new learning methods in judicial training.** CESTs could consider developing a manual for educators on how to improve online training by integrating other training methods. The manual could have a special section on safe implementation of face-to-face learning methods during crisis, and options for judges to customize their learning experience in order to enhance the value of training programs.

83. **Available resources should be deployed to improve the use of modern technologies in delivery of training; missing e-modules should be developed.** RS and FBH CESTs' existing LMS contain a growing number of online modules. The project is supporting the FBiH CEST to develop an online training platform to improve e-learning and integrate other learning methods in judicial training. The project is also supporting CESTs in developing e-modules in the field of commercial law to allow for further specialization of commercial judges. Usage of these and other tools should be optimized to ensure efficient and interactive delivery of judicial training.

84. **Training curricula on commercial justice should be adjusted to the new circumstances.** Judicial training plans relevant for commercial justice would need to be adjusted to cover relevant legal issues that have arisen and/or are expected to arise due to the crisis. Ideally, these should be reflected in CESTs' 2021 judicial training plans. The following topics were recognized by BiH judges and lawyers as vital for commercial case processing in the times of crisis and should be included in future judicial training: (i) case management and digitalization of court proceedings; (ii) interpretation of force majeure and economic hardships rules; and (iii) specific bankruptcy law issues which are not covered by the existing training curricula. The project is supporting CESTs to develop the 2021 training program for commercial justice addressing these topics and to implement specific training (Annex 3 – 2021 Training Proposal for Commercial Judges ).

## Cyberjustice – Forward-Looking Reform to Facilitate Use of IT for Better Service Delivery

85. **The body of literature examining the IT innovation in justice service delivery looks at judicial digitalization in a holistic way.** Implementing IT solutions in delivery of justice is a much broader and a more complex process than just an upgrade of the technical capacities of courts. Digitalizing commercial case process requires change of mindset of court staff and court users often requiring unlearning the traditional manner in which court services are rendered. For example, much before the crisis CEPEJ had in detail monitored and analyzed manners in which justice in Europe could be

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<sup>63</sup> Focus group discussions with commercial lawyers held on 9 October 2020, 30 October 2020 and 4 November 2020.

administered by better harnessing ICT<sup>64</sup>. Similarly, and more recently, the European Bank for Reconstruction and Development (EBRD) took a holistic approach to use of IT for commercial justice, noting that digital transformation requires “*rethinking of court processes in their entirety to ultimately increase access to courts and court user satisfaction*”.<sup>65</sup> The EBRD argues that the crisis has further enhanced the necessity for digital transformation and suggests that online courts are a promising option for such a transformation<sup>66</sup>.

**86. Attempting to highlight the readiness of BiH for digitalization of commercial case processing the below analysis examines specific aspects and challenges for digitalization** a. Digital transformation is a holistic process and therefore some aspects of digitalization of BiH court services have already been reviewed in other sections of the report (as relevant for court operations, case processing and training). The below analysis, however, goes a step further as it wishes to highlight the opportunity for digital transformation the crisis has afforded and it examines the readiness of court users (businesses and commercial lawyers) and courts (judges and court presidents) to adapt to new remote options to conduct hearings and file cases. It focuses on two essential elements of setting up online courts - e-filings and online hearings. This Phase I analysis does not go on to specify the most suited models for deployment of these new modern services nor does it define regulatory reforms or IT infrastructure needed to adopt and implement these tools. The follow up Phase II of the analysis will further examine these topics and provide recommendations on regulatory changes needed to enable e-filings and online hearings for commercial justice in BiH. Analysis of political economy of digital transformation is also out of scope of both Phase I and Phase II reports.

### Electronic filing

**87. An electronic document filing option is normally a precursor of and a prerequisite for digital transformation and introduction of online commercial courts however electronic filing, in practice, is not possible in BiH.** As early as in 2016 CEPEJ reported that almost all surveyed jurisdictions in Europe provide the parties with the option of electronic filing of documents<sup>67</sup>. The crisis has re-emphasized the necessity of introducing e-filing and the overall court digital transformation. Some regional commercial justice systems have mandated all businesses to communicate with courts via e-tools during the crisis (see Box 8). E-filing during the crisis is also essential to allow for effective HBW of lawyers and judges. In BiH, however, as explained in section Impact of the Crisis on Commercial Case Processing e-filing is not operational.

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<sup>64</sup> CEPEJ Guidelines on How to Drive Change Towards Cyberjustice looks at the “*depth of changes taking place in human organization and activities that make use of information systems in order to better identify challenges facing them*” and is using the term Cyberjustice “*to broadly understood as grouping together all the situations in which the application of ICTs, at least, forms part of a dispute resolution process whether in or out of court*”. For more details see: European Commission for the Efficiency of Justice (CEPEJ), *Guidelines on How to Drive Change Towards CyberJustice*, December 7, 2016.

<sup>65</sup> *From digitalization to digital transformation: A case for online court in commercial disputes?* Draft discussion paper. October 2020, para 6 pg. 4, European Bank for Reconstruction and Development.

<sup>66</sup> *Ibid.*

<sup>67</sup> Out of 64 jurisdictions 74% reported that it is possible to submit a case to the court online.

## Box 8 – Mandatory E-Communication with Courts – Case of Croatia

### Commercial e-filing in Croatia

In **Croatia**, electronic communication with courts became fully operational with the adoption of the latest amendments to the Civil Procedure Law in 2019 and the Rulebook on Electronic Communication in January 2020.

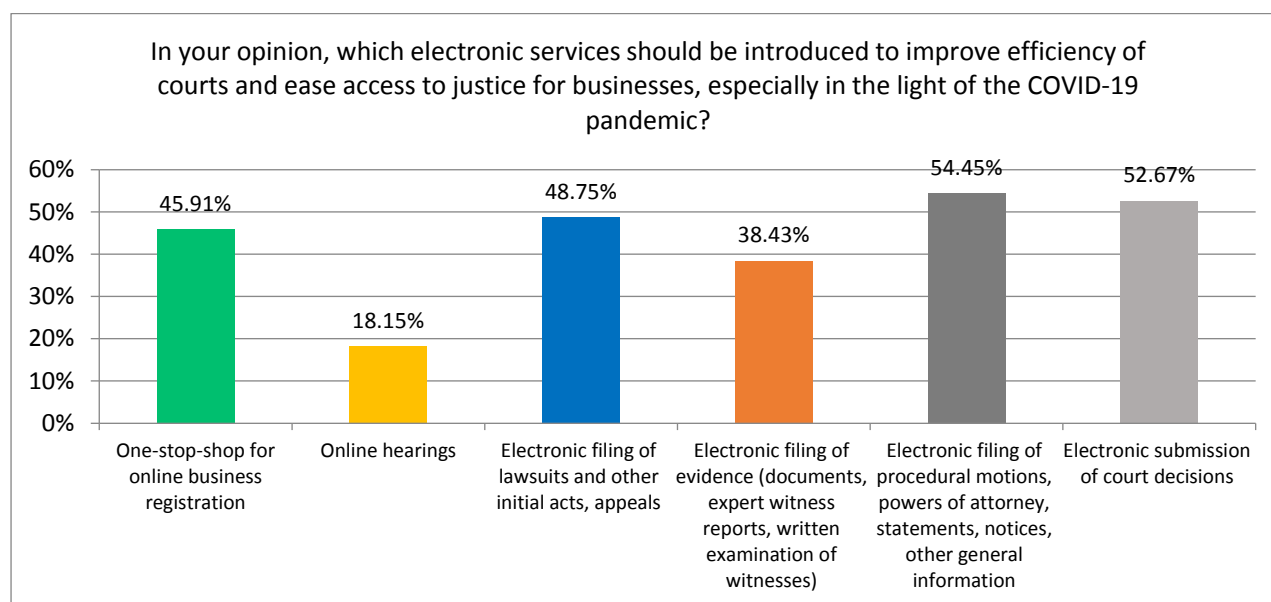
These changes enabled not only electronic submission/retrieval of documents, but also remote access to case files for the parties. E-communication is facilitated through a special system developed for these purposes ("eKomunikacija").

While e-communication remains optional for natural persons, as of 1 September 2020 it became mandatory for all legal entities seated in Croatia. Attorneys, public notaries and similar were already bound to communicate with courts electronically. Failure of parties to sign up for/use e-communication before the court may lead to negative consequences, including risk of facing a default judgment.

88. **BiH courts, judges and lawyers are ready to use e-filing.** BiH courts are equipped with a robust multifunctional CMS, which makes a solid IT base to further digitalize and offer e-filing. It is fed with scans of all documents submitted at court counters real-time or via post, at the time when they are received by courts (see also description of CMS in the section Impact of the Crisis on the Courts' Internal Organization). Almost all interviewed lawyers and judges support introduction of e-filing mechanisms. Some expressed their discontent with the length of regulatory reform to introduce these changes and lack of availability of e-filing options to parties. Others mentioned that some judges with little experience in electronic communication could benefit from training in this field.

89. **The business community considers it useful to establish secure e-filing and a one-stop-shop for online business registration.** When asked which electronic services should be introduced to improve efficiency of courts and ease access to justice, surveyed businesses were in favor of all of the different modes of e-submissions to courts, including filing of lawsuits, documents, electronic receipt of decisions and others (Figure 17. **Survey of Businesses: Electronic Services to be Offered by Courts**). Also, the majority of businesses in BiH use electronic communication in their daily operations. Approximately 92 percent of surveyed businesses indicated that all their relevant employees use e-mails and process documents electronically while only about eight percent is not fully comfortable with the use of e-communication and document processing tools.

**Figure 17. Survey of Businesses: Electronic Services to be Offered by Courts**



Source: *Rapid Survey of Businesses Interim Results (281 businesses responded to question)*

### Online Hearings

90. **The crisis disrupted court hearings, a major part of court operations, both in BiH and worldwide.** Traditionally, court hearings have been a central element of most types of litigation. Even before the pandemic, court hearings and the associated summoning, adjournments and cancellations were a main cause of delays in case processing. The crisis exacerbated these challenges and initial lockdowns caused postponement of all but the most urgent hearings in jurisdictions across the world. According to the EBRD, an overwhelming majority of surveyed jurisdictions reported that they were requested to postpone commercial case hearings and that they expect a significant backlog in commercial cases<sup>68</sup>. In BiH as well, only urgent commercial case injunction hearings were heard during the lockdown. After the lockdown commercial case hearings were heard, facilities and space permitting, while there are insolvency hearings and creditor meetings that cannot be summoned to date (see section above Commercial Case Processing in BiH at the Time of Crisis). Therefore, a key to ensuring continuity in the provision of justice services during crisis is remote case processing and the ability to conduct remote hearings in spite of lockdowns and social distancing rules.

91. **However, the introduction of IT tools to facilitate remote work, specifically remote hearings poses challenges and different jurisdictions have set up different rules for operating remote hearings:**

- **Legislative foundation:** To venture into the use of remote hearings (audio and video conferences), judges need authorization in the law. The jurisdictions that were the first to adapt to the crisis were the ones where audio or video-conference hearings were allowed

<sup>68</sup> From digitalization to digital transformation: A case for online court in commercial disputes? Draft discussion paper. October 2020, pg. 8, European Bank for Reconstruction and Development.

even before the pandemic (e.g., Slovenia<sup>69</sup>, Norway<sup>70</sup>, Finland<sup>71</sup>). Yet, others introduced this option during the crisis by virtue of emergency legislation (e.g. England and Wales<sup>72</sup>, Italy<sup>73</sup>).

- **Guaranteeing compliance with the fundamental principles of civil procedure:** The principles of publicity and orality are central to litigation. At the same time, these principles are not absolute and the need for efficiency in civil justice has already led to deviations from these principles. The crisis has led to further compromise; the publicity of physical court hearings has been significantly affected due to public health consideration. The introduction of video-conferencing for the purposes of civil litigation needs to go hand in hand with measures aimed at ensuring that, to the extent possible, the principles of orality and publicity are accounted for even when the case is examined online.
- **IT literacy of judges, parties, lawyers, court administrative staff and other court users:** To ensure efficient use of video conferencing, both judges and parties need to have basic IT skills. This is not always the case. Deficiencies in IT literacy cannot be addressed by a single measure and a combination of organizational and regulatory measures is rather needed to overcome these issues.
- **Availability of adequate IT infrastructure:** Successful video conferencing requires computers, headphones, cameras, video-conferencing devices, high-speed networks and Internet connections and IT security solutions for ensuring confidentiality and integrity of the infrastructure and online sessions. A decision needs to be made whether judges would participate in video conference only from specially equipped premises within the court buildings, or also from their homes.
- **Availability of adequate software:** Some justice systems employ dedicated software, usually part of the courts' CMS, in order to carry out video conferencing (e.g., Austria<sup>74</sup>). Others authorize the use of commercially available systems such as Zoom, WebEx, Microsoft Teams, Skype for Business, and others. In either case, a regulatory act (e.g., of the judiciary's governing body or the Ministry of Justice) usually specifies what platform(s) can be used to establish a video conference. For example, the UK authorizes remote hearings by any type of third-party software, including BT conference call, Skype for Business, court video link, BT MeetMe, Zoom and ordinary telephone call<sup>75</sup> (the list is non-exhaustive) whereas Italy authorizes only Microsoft Teams and Skype for Business<sup>76</sup>.

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<sup>69</sup> Aleš Galič, [Slovenian Civil Procedure in the age of Covid-19](#), *Septentrio Reports* No 5 (2020): Civil Justice and Covid-19.

<sup>70</sup> Anna Nylund, [Civil Procedure in Norway and Covid-19: Some Observations](#), *Septentrio Reports* No 5 (2020): Civil Justice and Covid-19.

<sup>71</sup> Laura Ervo, [Corona-Jurisdiction in Finland](#), *Septentrio Reports* No 5 (2020): Civil Justice and Covid-19.

<sup>72</sup> John Sorabji, [English and Welsh Courts in the Age of Covid-19](#), *Septentrio Reports* No 5 (2020): Civil Justice and Covid-19.

<sup>73</sup> Elisabetta Silvestri, [Extraordinary Measures Concerning Civil Justice Adopted by the Italian Government in Connection with the Emergency Caused by Coronavirus](#), *Septentrio Reports* No 5 (2020): Civil Justice and Covid-19.

<sup>74</sup> Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, [IT Applications in the Austrian Justice System](#) 35 (Dec. 2018), p. 35.

<sup>75</sup> [Protocol Regarding Remote Hearings](#) issued on March 26, 2020 by the Judiciary of England, point 13. Interestingly, in England where a range of options for remote hearings was available, a rapid study into users' experiences found the majority of hearings described to be audio hearings, with participants using a telephone to join: only 27% of hearings in the sample were fully video hearings. The most commonly-used platform for a fully video hearing was Skype (69%). Byrom, Natalie & Beardon, Sarah & Kendrick, Abby. (2020). [The impact of COVID-19 measures on the civil justice system](#), p. 8.

<sup>76</sup> European Commission for the Efficiency of Justice (CEPEJ), [Management of the judiciary - compilation of comments and comments by country](#), Italy.



## Box 9 – IT Options for Operating an Online Hearing

### Remote Hearings International Examples

- Legislation of **Austria** does not set limitations regarding location of video conferences.
- The legislation of **Australia** is somewhat more specific. It stipulates that the judge may only grant a request to use a video link after determining that the courtroom or other place where the judge is sitting and the place at which the remote person is located are both equipped with technology that allows “presence of all eligible persons” to see and hear persons who are appearing, giving testimony, or making submissions.
- By contrast, in **Russia and Ukraine**, the law is quite restrictive and requires that the person who would participate in a court hearing from a distance, should do so from another court building equipped with video-conferencing facilities.

92. **Many of the above challenges have been identified as constraints to quick introduction of online hearings in BiH while the effect of some needs to be further assessed.** The need for legislative change, compliance with CPLs principles and the degree of IT literacy were identified as challenges to the quick introduction of online hearings in BiH. Availability of adequate software and IT infrastructure at BiH courts should be assessed further.

### Compliance with the Fundamental Principles of Civil Procedure

93. **The principle of orality has long been central to litigation**<sup>77</sup>. In essence, the oral presentation of witness testimony and of parties’ submissions directly before the court facilitates the search for the truth. The spontaneity of an oral response and person-to-person reactions, the possibility for cross examination and the direct and immediate contact of the court with the sources of information have traditionally been considered as a key element of litigation. At the same time, arranging for personal appearance in court can be expensive. Additionally, business or administrative relationships frequently leave a clear documentary trail, which reduces the weight of and need for witness testimony. Thus, the growing demand for litigation has led to an overall decline in the principle of orality even before the outbreak of the COVID-19 pandemic. Gradually, numerous jurisdictions started to allow exchange of pleadings and evidence in writing, distance hearing of witnesses and experts, and in some cases written-only examination of the entire case.

94. **The principle of publicity of court proceedings is yet another tenet of contemporary litigation.** Historically, it has been referred to as “the very soul of justice”<sup>78</sup>. Its principal goal is to ensure public control over the manner in which justice is administered. This principle is reflected in the main international human rights instruments, such as the European Convention on Human Rights and Fundamental Freedoms which states that “[i]n the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing.”<sup>79</sup> The convention determines also the admissible restrictions to the right to a public hearing<sup>79</sup>. Thus similar to the principle of orality, the principle of publicity has not been absolute. Again, the COVID-19 pandemic has caused some limitations to the application of the principle of publicity, in the interest of public health.

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<sup>77</sup> For a discussion of the traditional role of this principle, Adolf Homburger, [Functions of Orality in Austrian and American Civil Procedure](#), 20 Buff. L. Rev. 9 (1970).

<sup>78</sup> “Publicity is the very soul of justice. It is the surest of all guards against improbity. It keeps the judge himself, while trying, under trial.”, Jeremy Bentham 1748–1832 English philosopher: *Publicity in the Courts of Justice* (1843).

<sup>79</sup> Article 6 of the European Convention on Human Rights and Fundamental Freedoms.

95. **In BiH, one of the key challenges for the introduction of online commercial case hearings as seen by some judges and attorneys was whether oral and direct examination of evidence could be achieved online.** Interviewed judges and litigant commercial lawyers who were skeptical about the introduction of online hearings were concerned that online hearings would not provide the court or the opposing party the right degree of “directness” and immediacy [*neposrednosti*] in evidence examination. More specifically, when examining witnesses and hearing parties, online lawyers and judges were unsure whether they would be able to adequately read facial and body expressions to give faith to a testimony provided online.

96. **However, other commercial lawyers and judges are supporters of online hearings and believe that the use of facemasks makes physical hearings less “direct” than an online one.** Currently parties and witnesses are heard while wearing a facemask and according to some it is impossible to fully give faith to a statement provided in such a setting. The argument of these lawyers and judges is that during the pandemic more transparency could be secured in an online setting when parties, witnesses and experts are participating with less discomfort and stress caused by the risk of contracting the virus.

97. **Interestingly, judges and lawyers processing criminal cases seem to be more comfortable with online tools for evidence examination than their colleagues working on commercial cases.** Although testimonies given in criminal cases generally seem to require a higher degree of direct and immediate interaction with the court than those given in civil and particularly commercial cases, it seems that judges and lawyers participating in criminal case examinations are more receptive to the use of online hearings than their colleagues working on commercial cases. Already in 2013, a model of remote online hearing of witnesses for processing of war crimes was introduced in BiH (Box 10). Moreover, in April 2020 the HJPC launched a formal initiative proposing to state and entity-level Ministries of Justice to amend the Criminal Procedure Codes in order to allow for online hearings/remote trials when health risks are involved. The initiative, among other, elaborates on e-tools that could be used for organizing this type of trials<sup>80</sup>. However, entity-level Ministries of Justice were not supportive of this initiative.<sup>81</sup>

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<sup>80</sup> The HJPC’s initiative is available in local language on the following link [https://www.pravosudje.ba/vstv/faces/vijesti.jsp?id=90321&vijesti\\_jezik=B](https://www.pravosudje.ba/vstv/faces/vijesti.jsp?id=90321&vijesti_jezik=B).

<sup>81</sup> Leveraging Procedural Reforms to Improve Commercial Justice in Bosnia and Herzegovina, World Bank, p. 35.

## Box 10 – Use of Remote Hearings in War Crime Cases in BiH

### Teleconference Systems for Interviewing War Crime Witnesses in BiH<sup>82</sup>

The HJPC established an integrated videoconference system in the BiH judiciary during 2013. The primary objective was to improve processing of war crime cases in cantonal and district courts throughout BiH by enabling remote testimonies of witnesses residing in countries out of BiH. The video-conferencing system has been further expanded in several phases and now has physical telepresence devices installed in more than 40 courts and prosecutors' offices. The videoconference system enables several options in terms of its application in judicial proceedings:

- Witness located in one city in BiH testifies at the main trial held before the court in another city;
- Protected witness' testimony from a separate room in the courthouse or from another court;
- Testimony of a witness residing abroad at the trial before one of the courts in BiH;
- Testimony of witnesses from BiH at trials before courts in other countries;

This video-conferencing system has recently been integrated with the Cisco WebEx cloud-based telepresence platform which practically enables court parties, their attorneys, witnesses or expert witnesses to participate in „virtual“ court hearings remotely from their home or office computers, while judges can hold hearings from the courtroom or from their homes.

Since the COVID-19 pandemic has made face-to-face meetings impossible in many cases, this video-conferencing system has been intensively used since March 2020 for holding HJPC's sessions, meetings with court presidents, chief prosecutors, donors and the judicial community in general. Different kinds of online training have also been provided to judges and prosecutors through this system.

98. **Some interviewed judges and lawyers pointed out that online hearings are more transparent than physical ones as they could be easily recorded and made available for (re)viewing.** In practice the minute keeping of physical hearings is not perfect which makes it challenging to subsequently review and analyze statements at the hearing. This is of particular concern for second instance courts, which are required to rule on appeals based on documents and minutes on file. Taping and reviewing videos of hearings seems a useful tool to overcome these challenges. Videos make it possible to again witness the hearing with full transparency of events occurring at the trial.

### IT literacy of judges, court staff, lawyers and parties

99. **To ensure efficient use of video conferencing, judges, court staff, lawyers and parties need to have relevant IT and digital skills and be able to use the requisite hardware and software.** For example, a rapid review of the implementation of remote hearings in the United Kingdom has demonstrated that almost half of the hearings experienced technical difficulties, especially with regard to full video hearings<sup>83</sup>.

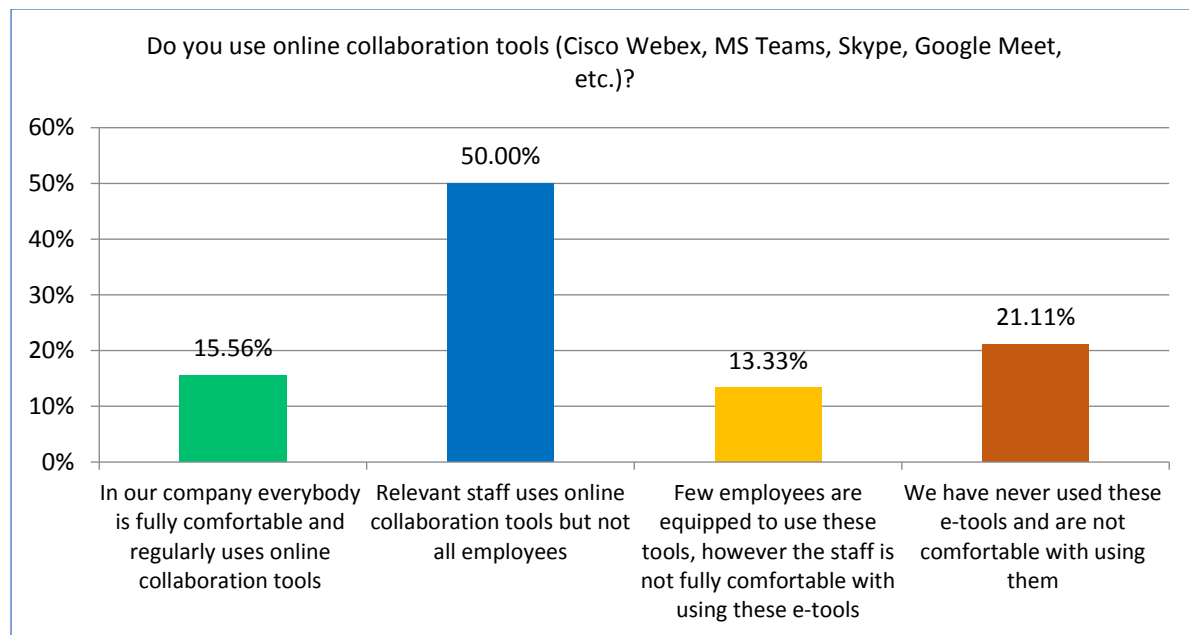
100. **In BiH, some SMEs and small attorney offices may lack the IT capacities to comfortably participate in online hearings.** According to the Survey of Businesses, 21 percent of SMEs have never used online collaboration e-tools and are not comfortable with using them while 13 percent of them have few employees equipped to use these tools (Figure 18). Focus groups with lawyers revealed that some individual commercial lawyers oppose the introduction of online hearings (RS Bar Association). Judges also noted that some of the litigants they interact with seem to lack IT skills needed to communicate with courts electronically. When it comes to digital transformation of court services, the

<sup>82</sup> Source: [www.pravosudje.ba](http://www.pravosudje.ba).

<sup>83</sup> Byrom, Natalie & Beardon, Sarah & Kendrick, Abby. (2020). [The impact of COVID-19 measures on the civil justice system](#), p. 8.

Survey of Business showed that introducing online hearings was not a priority for BiH businesses (Figure 17. **Survey of Businesses: Electronic Services to be Offered by Courts** above).

**Figure 18. Survey of Businesses: SME Readiness to Use Online Collaboration Tools**



Source: *Rapid Survey of Businesses Interim Results (filtered to 90 SMEs that responded to question)*

101. **However, certain groups of litigants are eager and ready to use online hearings.** All larger commercial law firms in BiH are fully equipped for an electronic mode of operation and support the introduction of online hearings. They argue that online hearings would not only increase efficiency of commercial case processing but also increase access to justice. They highlight that online hearings would allow for less travel time between courts in different cities, particularly given weak road infrastructure in BiH. Some judges find online hearings to be a useful tool that they would feel comfortable using provided adequate regulatory framework and IT capacities in courts.

### Recommendations

102. **The regulatory framework needs to be revised to allow for more systemic online hearings and e-filings at BiH courts while the digital transformation efforts should be institutionalized.** There is a high degree of readiness of the HJPC, BiH courts and court users to use the e-filing options for commercial cases. Entity Ministries of Justice should be more proactive in proposing and pushing forward the needed changes to introduce the two e-tools. A specific (existing or new) body within HJPC should be tasked with project planning for successful implementation of digital transformation efforts. The body should assess best options for deployment of e-services and online hearings and coordinate and monitor the activities needed to take place to make the e-tools deploy in practice.

103. **When considering regulatory change and deployment of online hearings the following steps should be taken:**

- Before proposing new rules or amendments to the CPLs, the Ministries of Justice with support of the HJPC and courts should first assess for which civil/commercial cases introducing online hearings would be most acceptable. The transition to digital form should be gradual and start with cases that predominantly focus on examination of written documents (such as commercial monetary claims).

- Gradually switch to an online environment by using a blended approach to online hearings providing a possibility that some participants appear in person in a court while others connect online.
- Online hearings should be piloted at several first instance courts before rolling out to all the courts.
- Given the SMEs potentially limited technical capacities, it should be considered to initially offer online hearings based on party consent only.
- If the crisis persists the entity Ministries of Justice with support of the HJPC and the courts should urgently propose changes to insolvency laws to allow that meetings of creditors and insolvency hearings could be held online.

104. **The HJPC, Ministries of Justice and Bar Associations should start a dialog with lawyers and businesses on deploying online hearings in a manner acceptable to court users.** The discussions should help raise awareness of the benefits of the tool, increase IT literacy and capacities of court users and particularly of individual lawyers. The dialog should be facilitated through (i) communication campaigns, (ii) training on online hearings for judges, inviting lawyers and other court professionals, and (iii) interviews with Bars and lawyers to model the tools to fit lawyers/businesses' needs and concerns.

105. **The HJPC and Ministries of Justice should ensure digital inclusion of small businesses when developing new e-justice tools.** The internet penetration rate in BiH in 2018 was 70 percent, almost doubled compared to 2008<sup>84</sup>. It is similar to the rate in other countries in the region which switched to mandatory e-communication during the crisis, such as Croatia (Box 8). This suggests that the level of Internet access in BiH allows for expansion of e-tools for court users. Given the reluctance of some SMEs to switch to e-justice, certain digital inclusion tools could still be considered, such as:

- Developing user-friendly support for e-justice tools and making it available via traditional means of communication, such as phone support service.
- Widely disseminating instructions for use of online services via designated websites and in court premises so that they are easily accessible for court user's that walk-in to courts, and training court staff to provide relevant information.
- Designing e-application to reduce risks of digital exclusion: (i) focus on the needs of court users rather than those of courts in developing tools, (ii) provide options to access e-services early and have time to set up and test prior to start of the connection, (iii) provide options to save and edit any available online forms prior to submission, (iv) use interactive applications that inform about next steps and confirm successful completion of steps and status of submission.
- Develop tools in coordination with relevant state and entity level line ministries and other bodies engaged in digital inclusion to gain more information of options available to overcome the digital divide challenges relevant for BiH.

106. **The deployment of online hearings will require an assessment of judicial IT capacities and infrastructure to ensure that the BiH court system is not exposed to cybersecurity risks.** The assessment of the existing IT network infrastructure (capacity of the main Internet link, data center network) and video-conferencing system should lead to developing a plan for usage of the system under various workload scenarios (e.g., number of simultaneous sessions supported, number of participants, optimal video resolution of the hearings). The assessment should also identify IT and audio/video equipment needed to perform online hearings, ensuring that all software and hardware used is safe from cybersecurity risks. Based on this assessment, pilot courts for conducting online

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<sup>84</sup> Internet penetration rate reflects the percentage of individuals that have access to the Internet. Source: 5G Country Profile Bosnia and Hercegovina ITU [https://www.itu.int/en/ITU-D/Regional-Presence/Europe/Documents/Events/2020/5G\\_EUR\\_CIS/5G\\_Bosnia%20and%20Herzegovina-final.pdf](https://www.itu.int/en/ITU-D/Regional-Presence/Europe/Documents/Events/2020/5G_EUR_CIS/5G_Bosnia%20and%20Herzegovina-final.pdf).

hearings should be identified. This should be the basis for rolling out the network infrastructure and video-conferencing systems to all courts. The assessment should also enable the HJPC to provide instructions on minimum technical requirements for setting up online hearings in terms of hardware, software, network/Internet connection speed and audio/video codecs, among other.

## Conclusion

107. **The unexpected COVID crisis has had an immense effect on all aspects of courts operation in BiH.** For BiH commercial justice the crisis, like many changing events, caused challenges, pointed to system weaknesses but also afforded new opportunities for reform:

- **Challenges:** Most of the challenges for crisis management were caused by the BiH complex governance structure. The multi-layered and a local approach to management of the crisis made it difficult for courts to establish a uniform and a coherent response, and it also forced the HJPC to invest significant efforts in coordination of courts activities country wide. After the initial *ad hoc* approach, given no sign of crisis subsiding, it is timely for HJPC to consider institutionalizing its efforts to manage the crisis. An overall guideline or a strategy for crisis management should be developed while case-flow tracking and forums to share good practices between courts to better mitigate the risks should be organized as regular activities.
- **Weaknesses:** The crisis revealed an important weakness of the BiH commercial justice system and that is system's full reliance on physical interaction with court users for delivery of services. The options for remote communication with courts are either not set up or if set up are not fully functional or favored by staff and users alike. Importantly, the digital and remote services that are offered are only ancillary to and a fraction of core services that the court provides (for example information on court websites, CMS read-only access to case files, online judicial trainings). However, no trial stage can be completed electronically or remotely. Parties cannot file lawsuits, submit evidence or appeal electronically. Judges cannot render judgments or give procedural orders during HBW/remotely. No one can participate in a hearing remotely. Reliance on face-to-face interaction is intertwined in every aspect of a commercial trial and during a pandemic - a crisis which can only be managed by implementing social distancing rules and by avoiding physical interaction - it is an impediment to courts' business continuity and case processing.
- **Opportunities:** The crisis created an opportunity to implement the delayed digitalization of court processes and set up core commercial justice e-services – e-filing and online hearings. The exposed weaknesses of the BiH commercial justice provide a strong argument for implementing more difficult reform to modernize and digitalize core trial activities. There is an overall readiness of court users, judges and judicial staff to file and review electronic documents while the judicial community is ready to start setting up options for online hearings. The decision makers in the judiciary, the HJPC, the Ministries of Justice, executive and the legislature should seize this opportunity to implement the novel methods of justice service delivery. These reforms will not just benefit crisis management but will also have a long-lasting effect, as these tools will stay after the crisis and be used to expedite and modernize commercial case management long term.

## Annex 1 – Table of Recommendations

Recommendations and key activities:	Responsibility	Timeline
<b>I. Improving and harmonizing response of BiH judiciary to COVID-19 crisis</b>		
1. The HJPC should consider developing a strategy or at least a comprehensive guideline on court operations: (i) during the crisis and (ii) after the crisis. The strategy should capture lessons learned and future plans. The strategy should institutionalize HJPC efforts to monitor case-flow, proactively communicate with different government levels to ensure clarity for court operations, and set up regular forums to serve as a hub for dialog and knowledge sharing between courts and professionals.	HJPC	Short-term
2. Establish stronger communication and collaboration between crisis management bodies and judicial leadership to make sure the needs of the judiciary are taken into consideration when designing crisis response measures. Court presidents or designated staff should be appointed to attend crisis HQ meetings at least at the local level.	HJPC, RS/FBiH MoJs, local crisis HQs	Short-term
<b>II. Monitoring case-flow at BiH courts and promptly responding to identified changes in caseload dynamics</b>		
Continuous monitoring of case-flow statistics and regular and prompt reactions to identify and resolve setbacks and address issues of individual courts, specifically:	HJPC	Short-term
<ul style="list-style-type: none"> <li>The number of incoming Ps cases at all courts could be closely monitored to ensure timely reaction to a potential surge in cases.</li> </ul>	HJPC	Short-term
<ul style="list-style-type: none"> <li>The crisis-induced increase of backlog at Sarajevo MC should be urgently dealt with.</li> </ul>	HJPC, Sarajevo MC	Short-term
<ul style="list-style-type: none"> <li>The drop of case inflow from first instance courts could be used to clear out backlog at second instance.</li> </ul>	Second instance courts/court presidents, HJPC	Short-term
<b>III. Improving in-court and out-of-court organization of work during/after the crisis</b>		
1. Temporary judicial bodies could be established at courts to deal with operational challenges that might emerge during the pandemic and in the post-pandemic phase , and monitor/inform HJPC about case-flow dynamics.	Court presidents, HJPC	Short-term
2. Individual courts should be able to adjust emergency measures to their specific circumstances and budget. Big courts such as the Sarajevo MC could consider: <ul style="list-style-type: none"> <li>✓ extending the court’s working hours (especially of filing offices) by organizing work in shifts for administrative staff,</li> <li>✓ introducing work in shifts for judges and staff to optimize use of court space and avoid overcrowding,</li> <li>✓ using plexiglass barriers at hearings (especially in smaller courtrooms and judges’ offices),</li> <li>✓ monitoring and strictly controlling people flow in the court.</li> </ul>	Court presidents	Short-term
3. Remote access to the CMS could be enabled in a phased approach to ensure more productive and secure HBW. Enabling such access requires assessment of legal framework, IT infrastructure, data center security infrastructure and risks related to accessing CMS from private computers, as well as authentication.	HJPC	Medium to Long-term
<b>IV. Improving efficiency of commercial case processing</b>		
1. Remote communication with courts could be further strengthened through: <ul style="list-style-type: none"> <li>✓ designated COVID-19 sections on courts/HJPC webpages with timely updates on court operations,</li> <li>✓ assessing and, if needed, increasing phone line capacities at courts to facilitate communication,</li> <li>✓ encouraging judges to use email communication (developing guidelines)</li> </ul>	HJPC, courts	Short-term



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<ul style="list-style-type: none"> <li>✓ encouraging parties to access case files primarily through the CMS (e.g. by abolishing fees for CMS access codes and preparing infographics on use of the CMS by parties)</li> </ul>		
2. Courts with inadequate facilities could organize hearings outside of court to ensure safety of hearing participants and social distancing.	<b>Courts, court presidents</b>	<b>Short-term</b>
3. Case processing could be improved through simple trial techniques such as: <ul style="list-style-type: none"> <li>✓ being stricter about procedural deadlines and reducing number of hearings and delays to a minimum,</li> <li>✓ preparing well for hearings (especially the preparatory one) and scheduling hearings at the right stage of the process to make sure all evidence proposals are thoroughly assessed and carefully selected,</li> <li>✓ using the option stipulated by CPL RS to eliminate preparatory hearing if appropriate.</li> </ul>	<b>Courts with support of second instance courts</b>	<b>Short-term</b>
<b>V. Revisiting judicial training plans and methods</b>		
1. Instructions on online training participation could be developed and distributed to judges and legal associates to improve their training experience.	<b>RS/FBiH CESTs</b>	<b>Short-term</b>
2. A manual for educators on how to integrate new learning techniques in judicial training could be prepared to optimize the learning experience and improve quality of training.	<b>RS/FBiH CESTs</b>	<b>Short-term</b>
3. Judicial training curricula could be adjusted to cover hot topics in case processing during the crisis: <ul style="list-style-type: none"> <li>✓ case management and digitalization of court proceedings,</li> <li>✓ interpretation of force majeure and economic hardships rules,</li> <li>✓ bankruptcy law issues which are not covered by the existing curricula.</li> </ul>	<b>RS/FBiH CESTs</b>	<b>Short to medium-term</b>
<b>VI. Digitalizing court procedures through e-communication and online hearings</b>		
1. Change of the regulatory framework to allow e-services for commercial justice	<b>RS/FBiH MoJs,</b>	
2. Online hearings should be introduced using a phased approach. The following steps should be taken: <ul style="list-style-type: none"> <li>✓ assess in which types of commercial cases online hearings are most appropriate,</li> <li>✓ conduct assessment of judicial IT capacities and platforms that could be used for online hearings,</li> <li>✓ establish a dialog with lawyers and small businesses on deploying online hearings in a manner acceptable to them,</li> <li>✓ pilot online hearings at selected first instance courts,</li> <li>✓ offer online hearings based on party consent at first, to ensure access to justice for parties that do not have IT capacity to attend hearings online, make it possible for some parties to attend in person</li> <li>✓ enable online meetings of creditors in bankruptcy cases to make sure these cases can go forward if the crisis persists.</li> </ul>	<b>RS/FBiH MoJs, with support of the HJPC</b>	<b>Medium to Long-term</b>
3. IT literacy of judges could be improved through focused training. Problems related to IT illiteracy of parties could be addressed through holding online hearings only with party's consent or if the hearing only requires presence of lawyers or expert witnesses, and through use of digital inclusion tools.	<b>HJPC, RS/FBiH CESTs, RS/FBiH MoJs, BiH Ministry of Transport and Communication</b>	<b>Short to Medium-term</b>

## Annex 2 – Methodology

The Report analyzes key challenges in commercial case processing in BiH posed by the COVID-19 outbreak and provides recommendations for improving the continuity of commercial justice in the face of crisis. Building on options, methods and solutions for backlog reduction, fast tracking, and expediting commercial case processing previously developed under the Project, the Report offers rapid response measures that can enable the BiH judiciary to deal with the emerging problems in a more efficient manner. The report is an interim deliverable and the cut of date of the conducted analysis under the Report is 31 December 2020. The Report is a result of a multistage analytical process:

- i) Desk Review. The review included COVID-19 related legal and policy framework in BiH, including laws, regulations, guidelines and recommendations adopted by BiH governments prior and during the crisis.
- ii) Comparative Analysis. The analysis included legislation, academic papers and caselaw, including that of the European Court of Human Rights (ECtHR), to compare selected experiences of BiH judiciary with that of comparator jurisdictions and offer best-practice examples.
- iii) Online Rapid Survey of Businesses. The survey helped quickly identify the impact of COVID-19 on business operations. The survey was distributed via RS and FBiH Chambers of Commerce networks consisting of over 10,000 businesses which the target of responses of 500 companies for each chamber. The Chambers also widely advertised the Survey within RS and FBiH. The Survey was available to all businesses and it was anonymous. Not all businesses responded to all survey questions. This Report uses interim survey results collected from November to December 2020, based on a total of 463 responses. The business will continue populating the Survey and the results will be revisited as part of Phase II analysis upon closing of the Survey in January 2021.
- iv) Focus Group Discussions with Lawyers. Small group discussions on predefined topics were conducted with key commercial justice court users, including 10 commercial law firms and the RS Bar Association. The main discussion points included court operations during the crisis and effects of the crisis on commercial case processing, with special focus on access to court premises, organization of hearings, work of filing offices, and communication with courts; key legal issues that arose or are expected to arise due to the COVID-19 pandemic; and possibilities for online hearings and e-communication with courts.
- v) Virtual Meetings with Courts. Sessions were held with court presidents and commercial judges from seven first and second instance BiH courts in October and November 2020. Key discussion topics included the impact of the COVID-19 crisis on court operations and case processing; key legal issues that arose or are expected to arise due to the crisis; options for introducing fast-track procedures for commercial case processing, including online hearings, written only examination and e-communication with courts; and usage of IT in courts.
- vi) Statistical Data Analysis. To underpin findings from other sources and help design measures for improvement, the HJPC statistical data on commercial case-flow was analyzed for: (i) first and second instance courts, (ii) years 2018, 2019 and 2020, and (iii) principal litigious case types (Mals Kom, Mals, St, L, Ps cases in first instance and Mož, Pvlž, Pvl, Pž cases in second instance). The courts analyzed were MCs in Bihac, Gorazde, Kakanj, Livno, Mostar, Orašje, Sarajevo, Travnik, Tuzla, Zenica, Čitluk, Široki Brijeg and Žepče, and DCCs in Banja Luka, Bijeljina, Dobojo, Istočno Sarajevo, Prijedor and Trebinje (in first instance); Cantonal Courts in Bihać, Goražde, Livno, Mostar, Novi Travnik, Odzak, Sarajevo, Tuzla, Zenica, and Široki Brijeg, and HCC in Banja Luka (in second instance). Special focus was on the Municipal and Cantonal Courts in Sarajevo, and the District and High Commercial Courts in Banja Luka, the biggest FBiH and RS courts. To examine commercial caseload trends, the analysis looked at three periods: the lockdown (March 16 – May 15 2020) and two identical time periods before and after the lockdown (January 16 – March 15 2020 and May

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16 – July 16 2020), also comparing with the 2019 statistics for the same periods. The numbers of pending cases as of 16 July 2020 (the last day used for the purposes of the Report), December 31, 2018 and December 31, 2019 were also compared.

### Annex 3 – 2021 Training Proposal for Commercial Judges<sup>85</sup>

Topic	Type and scope of training	Organization
Case management and online hearings	<ul style="list-style-type: none"> <li>• Case management during crisis</li> <li>• Interpretation of procedural rules relevant for case management during the crisis</li> <li>• Use of IT in court proceedings</li> <li>• Online hearings</li> </ul>	<p><u>Educator:</u> Law professor or a legal researcher, local judge</p> <p><u>Methodology:</u> A combination of presentations and group work. Pre-prepared learning materials should be distributed to participants to ensure better quality of group work</p>
Interpretation of force majeure and economic hardship rules	<ul style="list-style-type: none"> <li>• Impact of COVID-19 outbreak on fulfilment of contractual obligations, including delays in fulfilment of contractual obligations</li> <li>• Interpretation of force majeure and economic hardship clauses</li> </ul>	<p><u>Educator:</u> Law professor or another legal researcher and local judge</p> <p><u>Methodology:</u> A combination of presentations and group work. Pre-prepared learning materials should be distributed to the participants for better quality of group work.</p>
Business Valuation and Bankruptcy in times of COVID-19	<ul style="list-style-type: none"> <li>• Business valuation approaches</li> <li>• Key challenges in the process of business valuation in bankruptcy proceedings</li> </ul>	<p><u>Educator:</u> Law professor or another legal researcher</p> <p><u>Methodology:</u> A combination of presentations, case- study and group work. Pre-prepared learning materials should be distributed to the participants for better quality of group work.</p>

<sup>85</sup> During the drafting of this Report, CESTs have accepted the training plan proposal and have in the first quarter of 2021 held trainings on listed topics at least once. On judges' request trainings will be repeated during 2021.