

High Judicial and Prosecutorial Council of Bosnia and Herzegovina

QUESTIONNAIRE

The impact of the COVID-19 pandemic on the administration of justice and free and independent exercise of the legal profession

1. Please describe the measures that were adopted in your country to guarantee the proper functioning of the justice system during the COVID-19 pandemic.

Given the complex constitutional structure of Bosnia and Herzegovina (BiH) and the division of competencies between the different levels of government, the measures during the COVID-19 pandemic were prescribed by the documents of different authorities. Certain number of documents prescribed measures that concerned the judiciary directly, while the largest number of documents only indirectly touched upon the segment of the judiciary. Only the measures that directly concerned the work of the judiciary during the pandemic will be presented, as required by the questionnaire. It is also important to point out the fact that in the beginning of the pandemic spread the measures changed relatively quickly and were being adjusted to the epidemiological situation in BiH, meaning they were harmonized with the epidemiological measures that were in effect at the time.

The High Judicial and Prosecutorial Council of BiH (the HJPC BiH) as the regulatory body of the judiciary, in accordance with its competencies prescribed by the Law on the HJPC BiH (*Official Gazette of BiH* no.: 25/04, 93/05, 48/07, 15/08) adopted a number of documents concerning the work of the HJPC BiH, courts and prosecutor's offices. Already on 15 March 2020 a Decision to organize the work of employees in the HJPC BiH was adopted, also postponing all the disciplinary hearings against judges and prosecutors and interviews with the candidates for appointments to judicial posts. On the same day, the HJPC BiH adopted the Recommendations for the court presidents and chief prosecutors on actions following the epidemiological situation, defining the obligation for all the employees in the judicial institutions in BiH to comply with decisions of the emergency headquarters in BiH. In addition, the Recommendations defined the need to consider the option of cancelling scheduled hearings (judicial and prosecutorial ones) in the period between 16 March and 3 April 2020, except for those prescribed by the law as urgent or irremissible. Besides that, the Recommendations defined that it is necessary to consider the option of organizing work in the judicial institutions to the extent that ensures unhindered work and protection of employees.

Already on 23 March 2020, the HJPC BiH adopted a Decision on organization of work in the courts and prosecutor's offices in BiH that, among other things, ordered the measures regarding:

- postponement of the main trial in criminal matters (except in cases where detention was ordered or order of detention was requested, in which there is the

- threat of statute of limitations, as in other urgent cases prescribed by the criminal procedure codes in BiH);
- postponing hearings in minor offence matters, except in cases that were initiated on the basis of a report on violation of decisions and instructions rendered by the competent bodies during the state of emergency caused by the pandemic;
 - postponing hearings in civil matters, except in cases where a security measure needs to be decided.

The cited document also defines the issue of work organization of the employees in judicial institutions.

At the beginning of April 2020, the HJPC BiH launched an initiative to amend the criminal procedure codes in BiH, in order to facilitate online trials and irremissible and urgent cases where there is a health risk to the participants to the proceedings and found a technical solution that facilitates conducting of online trials, as well as online investigative hearings. It should be noted that as of the date of the response to the Questionnaire, the legislative amendments have not yet been adopted by the competent authorities.

On 30 April 2020, the HJPC BiH repealed the previous decisions and adopted a new Decision on work organization in courts and prosecutor's offices in BiH that emphasized that the work of judicial institutions must be harmonized with the decisions of the competent emergency headquarters and other bodies in charge of managing the emergency on the territory under the jurisdiction of every single institution. Furthermore, it was pointed out that all decisions on the liberalization of the work measures in judicial institutions must be proportionate to the current epidemiological situation in the work area of all institutions and that it was possible to organize and set hearings only in the manner and on the premises where it is possible to provide proper social distance for everyone present.

Besides the documents adopted by the HJPC BiH, on 18 March 2020, the Ministry of Justice in the Government of Republika Srpska issued a notification to the judicial institutions that, among other things, defined that the judicial institutions in Republika Srpska were obliged to comply with the decisions and instructions of the competent emergency headquarters and that the managers of the judicial institutions were obliged to make an assessment and consider the option to cancel the set hearings and the option not to set new hearings except those that were prescribed under the law as urgent or irremissible. On 29 April 2020, this Ministry issued a new notice informing, among other things, the managers of the judicial institutions with the seat in Republika Srpska to make an assessment and consider an option to set new hearings starting in the second half of May 2020. The President of Republika Srpska also passed a Decree with legal effect on time limits and actions in court proceedings during the state of emergency for the territory of Republika Srpska which, among other things, defined that the time limits for filing a complaint in civil litigation proceedings or a motion for initiation of non-litigation proceedings or the proceedings for enforcement of a title and other submissions bound by a time limit, shall cease to run during the state of

emergency, except in urgent cases listed in bullet points. The cited Decree also defined that the time limits for a damaged person to file a motion for criminal prosecution in criminal proceedings and to file a request for initiation of minor offence proceedings shall cease to run during the state of emergency. The same has been defined for the time limits in administrative disputes and time limits to declare regular and extraordinary legal remedies, motions for restitution for undertaking of other procedural actions in civil litigation, non-litigation and enforcement proceedings and administrative proceedings. The Decree also defined that the statute of limitations, prescribed under the civil law legislation shall not run during the state of emergency.

When it comes to the Federation of BiH, the Law on Time Limits and Actions in Court Proceedings During the State of Emergency on the Territory of the Federation of BiH was adopted on 6 May 2020, prescribing, among other things, that the time limits for filing a complaint in civil litigation proceedings or a motion for initiation of non-litigation proceedings or the proceedings for enforcement of a title and other submissions bound by a time limit, shall cease to run during the state of emergency, except in prescribed urgent cases. In addition, it was prescribed that in both criminal and minor offence proceedings, the time limits to appeal a decision that ended the proceedings and to declare extraordinary legal remedies and also to undertake other procedural actions shall cease to run during the state of emergency and that the prescribed exception had to be defined. The same has been prescribed regarding the time limits in administrative disputes relating to undertaking of procedural actions and meeting their financial obligations with determination of exceptions defined by the law and that statute of limitations, prescribed by the civil law legislation shall cease to run during the state of emergency.

2. Were these measures adopted on the basis of emergency legislation? If so, was the judiciary consulted prior to their adoption or has the legality or constitutionality of these measures been the subject of legal review?

All the measures adopted by the HJPC BiH and legislative and executive authorities had the character of measures adopted in emergencies, which is visible from the titles of the document as stated in the previous reply. As explained in detail to the question no.1, some measures were adopted by the legislative authorities (the Parliament of FBiH), some by the executive authorities (Ministry of Justice of the RS Government, RS President) taking over the competencies of legislative authorities, while the largest part of measures is the result of the HJPC BiH activities within this institution's competence for the issue of managing the judiciary in the absence of timely reactions of other branches of authority. The measures adopted as of the date of the response to the Questionnaire and adopted by all the branches of authority (legislative, executive and judicial) concerning the actions of the judiciary, were not the subject of the procedure to assess their legality and constitutionality in relevant courts. The measures adopted by the HJPC BiH are essentially the result of a judicial reaction to the current situation and it is imminent that they are the result of the judiciary, while

the measures adopted by the legislative or executive authorities did not go formally through the judicial basis before they were adopted by the relevant bodies. We have no official information on informal consultations.

3. Please indicate the measures that have been adopted in your country to provide access to justice during the COVID-19 pandemic:

(a) Have the courts remained opened throughout the different phases of the pandemic?

As explained in detail in the response to the question no.1, in general, the courts worked throughout the pandemic. In the initial period of the pandemic (March-May 2020), the courts worked with significantly reduced capacity, caused by the measures that were in effect. Since May 2020 to the day when the responses to the Questionnaire were written, the courts have been working with reduced capacity due to binding orders of the emergency headquarters in BiH, recommendations for social distancing and reduced moving and restricted number of persons in closed premises, which directly impacts the scope of activities. In addition, some courts are working part-time and have on-call duty established.

(b) Which criteria have been developed and used to identify urgent cases (e.g. cases on the legality of the pre-trial detention or domestic violence?)

The Law on Time Limits and Actions in Court Proceedings During the State of Emergency on the Territory of the BiH Federation (*Official Gazette of FBiH*, number: 28/20) defined urgent proceedings and cases in the following way.

In the terms of this law urgent proceedings in litigation matters, non-litigation matters and enforcement matters are considered:

- a) proceedings from family-legal relations between parents and children, exercising of parental rights and duties, deprivation of parental case and maintenance obligations,
- b) proceedings for protection from discrimination and harassment and violence at work,
- c) proceedings for keeping mentally ill persons in a health institution,
- d) status proceedings relating to the application of the Law on Commercial Companies (*Official Gazette of FBiH*, number: 81/15),
- e) proceedings for entering business operators in the Register of Business Operators,
- f) proceedings in which it is decided on the proposals for imposition of temporary and court security measures,
- g) proceedings for implementation of the enforcement titles relating to family-legal relationship,

h) proceedings to postpone and suspend the seizure of monetary claims on the judgment debtor's bank account.

Urgent proceedings in criminal matters are considered:

- a) proceedings in which detention was ordered or ordering of detention is requested,
- b) proceedings that are conducted for criminal offences from Articles 222, 225, 226 and 240 of the Criminal procedure Code of the Federation of BiH (*Official Gazette of FBiH*, no: 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, 46/16 and 75/17),
- c) proceedings that are conducted for criminal offences done during the state of emergency or related to the state of emergency,
- d) proceedings in which there is a threat of criminal prosecution becoming time barred.

Urgent proceedings in minor offence matters are considered proceedings initiated for minor offences during the state of emergency or relating to the state of emergency, as well as the proceedings where it is necessary to apply a provision of Article 17 of the Law on Minor Offences (*Official Gazette of FBiH*, no. 63/14).

On 6 April 2020, in accordance with the Constitutional Authorisations from the Constitution of Republika Srpska, the President of Republika Srpska adopted a Decree with legal effect on time limits and actions in court proceedings during the state of emergency for the territory of Republika Srpska (*Official Gazette of RS*, no. 32/20) that prescribed the following:

Urgent proceedings in criminal matters are considered:

- a) proceedings in which detention was ordered or ordering of detention is requested,
- b) proceedings that are conducted for criminal offences from Article 194 and 195 of the Criminal Procedure Code of Republika Srpska;
- c) proceedings conducted for criminal offences done during the state of emergency or related to the state of emergency;
- d) proceedings in which there is a threat of criminal prosecution becoming time barred.

At this point, it is especially necessary to point out the fact that, by its decision of 22 March 2020, the HJPC BiH ordered court presidents and chief prosecutors to postpone main trials in criminal matters except in cases:

- in which detention was ordered or ordering of detention is requested,
- in which there is a threat of criminal prosecution becoming time barred,
- in other urgent cases prescribed by the criminal codes in BiH.

c) What measures have been developed and implemented to manage the backlog caused by the COVID-19 pandemic?

On 22 October 2020, by its conclusion, the HJPC BiH drew the attention of judicial office holders to their obligation that they had to achieve maximum performance until the end of 2020 regardless of extraordinary circumstances. The judiciary is bound by the actions of legislative and executive authorities which have adopted binding orders and also by the recommendations of the emergency headquarters on the restricted number of people in closed premises. Therefore, to manage a potential backlog, interventions by legislative and executive authorities and emergency headquarters are necessary to enable that activities return to normal, which would also enable the HJPC BiH to manage these processes.

(d) Has your court system experienced an increase in pandemic-related cases, e.g. complaints against emergency measures or grievances caused by the pandemic (e.g. bankruptcy or family disputes)?

On the basis of the data obtained from the judicial institutions, as of March 2020, minor offence and criminal proceedings have been conducted, as well as labour disputes that can directly or indirectly be linked to the pandemic.

As for the minor offence proceedings, those have been conducted for violations of decisions adopted by the competent authorities (violation of the decision on prohibited movement and staying in open spaces, violation of a police curfew, violation of isolation measures, non-compliance with epidemiological protection measures, causing panic and disorder, violation of decisions on temporary suspension of services/shut-down of certain businesses and on work hours, violation of measures for direct price control and similar), while a low number of minor offence proceedings have been conducted for domestic violence.

As for criminal proceedings, they have been conducted for non-compliance with health regulations during the pandemic, transmission of a communicable disease, failure to apply measures for protection against communicable diseases and similar. Besides that, criminal proceedings have been conducted for acceptance of gifts and other forms of gain, misconduct in public service and commercial business, abuse of position or authority, forging of documents, theft, damage and confiscation of other people's property.

Labour disputes have been conducted for termination of an employment contract because of reduced business and pandemic consequences, as well as discrimination and abuse at work due to the state of emergency.

As for the constitutional courts in BiH, although the HJPC BiH has no jurisdiction over these courts, information have been collected in the past period on the cases conducted in these courts, which, directly or indirectly can be linked with the pandemic:

- the Constitutional Court of BiH rendered decisions in appeals against orders of the competent civil protection headquarters (violation of the right to freedom of movement, the right to non-discrimination and similar) and the decision of the Federation Minister of Health of the Federation of BiH (ordering quarantine measure),
- the Constitutional Court of RS also rendered decisions in initiatives to initiate proceedings to assess the constitutionality and legality of the general acts related to the normative regulations arising from the pandemic, while the HJPC BiH does not dispose of other information related to these cases,
- the Constitutional Court of the FBiH has not received a single case that could be, directly or indirectly, related to the pandemic.

4. Please describe the health and safety measures adopted in the court system to ensure protection of all actors in the justice system (judges, prosecutors, parties to the proceedings and their lawyers, court officials, law enforcement officials) during the COVID-19 pandemic?

With the aim to ensure functioning of a justice system in the pandemic and at the same time taking into account the necessary measures for protection of the health of the population and judicial employees, in the period between 15 March and 30 April 2020, the HJPC BiH passed decisions with recommendations for all the courts and prosecutor's offices in BiH, instructing them to organise their work by complying with decisions, orders and instructions of emergency headquarters on the jurisdiction territory of every single judicial institution and related to that initiated the following:

- processing urgent or irremissible cases (in cases where detention was ordered or order of detention was requested, in which there is the threat of statute of limitations, as in other urgent cases as prescribed by the criminal procedure codes in BiH) is done by organizing work at home with an established schedule of judges or prosecutors on-call regarding processing of the said cases;
- adopting an intervention regulation on temporary measures in judicial bodies in BiH to establish the legal grounds for adoption of measures to safeguard the health and lives of people, ensure actions by certain bodies and public officials, facilitate that in the proceedings that are not conducted in that time period to put the procedural deadlines on hold and especially those that are important for the parties to exercise their rights and facilitate actions for prevention of the disease spread in prisons and to ensure safe conditions for the prisoners and their work environment;
- adopted and sent to the competent justice ministries in BiH the Initiative for urgent amendment to the criminal procedure codes in BiH that would define the legal grounds to introduce audio-video recording by a link, meaning online trials and conducting actions and proceedings during the pandemic in all procedural situations where the presence of participants to the proceedings is envisaged, and which could be a serious threat and risk to their health;

- issued recommendations to all the courts and prosecutor's offices on the organisation of work and the obligation of compiling a plan for gradual liberalisation of measures that need to be taken proportionate to the epidemiological situation on the work area of every judicial institution, especially regarding scheduling and holding hearings taking into account case urgency and age and the number of participants in the specific proceedings.

The health and safety measures that are taken to organise unhindered work of courts and prosecutor's office include the following:

- the work of the judicial institutions must be reorganized by harmonising it with the decisions of the emergency headquarters and other competent bodies to manage the crisis on the jurisdiction territory of every single institution;
- all decisions on the liberalisation of work measures in judicial institutions must be proportionate to the current epidemiological situation in the area of work of every institution that has to be monitored on a daily basis and measures are to be introduced or mitigated accordingly;
- according to the liberalisation of measures, the court presidents and chief prosecutors in BiH are obligated to introduce full-time working hours for those who come to work and define the number according to the spatial capabilities of every single judicial institution for work in the social distance conditions and to ensure health and epidemiological protection of all those who come to work, as well as those who come to judicial institutions after receiving the summons;
- before the liberalisation of measures and establishment of a new work regime, all judicial institutions are obligated to ensure a sufficient number of protective items that, besides other recommendations of the competent epidemiological, sanitary and other institutions, particularly should include: a disinfection foot bath mat (a disinfection barrier) at the entrance to the building of a judicial institution, a hand sanitizer dispenser at the entrance to the building of a judicial institution, temperature measuring at the entrances of judicial institutions, mandatory mask wearing while staying in the building of a judicial institution, wearing protective gloves to work with the parties, as needed or recommended by the epidemiological and sanitary services organise disinfection of all rooms in the building of a judicial institution and especially rooms that area available to the public (corridors, registries, protocols, detention rooms, courtrooms, interrogation rooms, toilets and similar) as well as to organise other preventive technical measures to be taken and are suitable for the building of the judicial institution and its conditions;
- on the basis of the HJPC BiH decisions, the court presidents and chief prosecutors are obligated to make a Plan for liberalisation of measures in the institutions they manage and deliver it to the HJPC BiH, justice ministries and bar associations and in case there are no adequate protective items that are necessary for liberalisation of measures, the court presidents and chief prosecutors will inform the HJPC BiH about

it and will not start the liberalisation of measures until they are provided with the said items;

- it is possible to organise and schedule hearings only in a way and in the rooms where adequate social distance can be ensured for everybody present and with constant natural airing, taking into account case urgency and age and the number of participants to the proceedings;

- the court presidents and chief prosecutors will inform the HJPC BiH on all the measures taken in the organisation of work and place clear instructions at the entrances to the courts and prosecutor's offices about the time when the parties are received and the manner of behaviour for everybody entering the buildings of judicial institutions.

5. Please provide information of the technological means used to ensure the functioning of the court system in the COVID-19 pandemic (e.g. online submissions to courts or hearings held in videoconference):

(a) What measures have been adopted to ensure that all judicial stakeholders (e.g. judges, court staff, prosecutors) have access to adequate technological means and appropriate training on new procedures (e.g. use of electronic platforms to access documents, electronic case management and videoconferencing options)?

A timely intervention on the network equipment has provided the ICT officers in judicial institutions with a VPN (Virtual Private Network) access. In this way, the cited users have been enabled to work from home in full capacity, meaning to work with all application systems including the CMS/TCMS and access the contents shared in a judicial network.

In cooperation with a local Cisco partner, the HJPC BiH ensured the use of tools for Cisco WebEx collaboration. The existing videoconference system that is also based on the Cisco equipment has been integrated.

The Cisco WebEx user manual has been written for the Judicial Information System users (for Chrome, Internet Explorer and edge computers and iPhone and Android devices). The manual has been distributed to all Cisco WebEx conference participants.

Three-day testing conferences have been held that served to adjust the WebEx environment for the judicial institutions' managers to participate in conferences. After the testing phase was successfully carried out, what followed were conferences of court presidents and chief prosecutors, meetings of standing committees for efficiency of courts and prosecutor's offices, working groups, interviews to staff the positions of judicial office holders and similar.

Apart from that, the entity centres for judicial and prosecutorial training were provided with the Cisco WebEx tool and technical support to hold online seminars.

In this way, all judicial office holders were enabled to attend uninterrupted online seminars organised by the entity centres for judicial and prosecutorial training.

The court police in BiH was also enabled to use the Cisco WebEx tool, as well as external partners with whom meetings were held during the pandemic.

According to the aforementioned, the video conference system was enabled for all the judicial institutions, centres for judicial and prosecutorial training, court police and external partners to hold seminars, conferences, internal meetings and similar.

Since there was no possibility to change the user passwords outside the judicial network, the directory services were reconfigured, which extended the user passwords for 180 days. Among other things, this intervention resulted in uninterrupted access to official email outside the judicial network for more than 6,000 Judicial Information System users.

By the decision of the HJPC BiH of 23 March 2020, the second and third instance court judges were sent to work from home and the ICT Department developed and implemented a functionality in the CMS to enable export of all documents and their attachments from specific cases. In the telephone session on 23 April 2020, the HJPC BiH adopted a Decision to Amend the Decision on Organisation of Work of Courts and Prosecutor's Offices in BiH, which enabled the first instance judges and prosecutors to work from home and also the Instruction on Document Export from the CMS/TCMS, about which all first instance courts and prosecutor's offices were informed. After the Decision was adopted, the functionality was enabled for all first instance courts and prosecutor's offices. In this way, all judges and prosecutors were enabled to work on cases from home.

(b) What measures have been adopted to facilitate access to justice for disadvantaged groups and individuals who may not own a computer, not have access to Internet or might not be tech-savvy enough to participate in online hearings?

- NO INFORMATION

(c) Which safeguards have been put in place to ensure that the use of technological means does not adversely affect the fair trial and due process standards (e.g. public hearings, adequate time and facilities to communicate with one's lawyer, access to interpretation...)?

- NO INFORMATION

6. Please provide information on additional budgetary resources allocated to the court system for the years 2020-2021 to enable that the judiciary and the public

prosecution continue to function and recover from the pandemic. Do these measures include safeguards to prevent and tackle corruption in the allocation of these additional budgetary resources?

The process of preparing proposals, drafts and final adopting of individual budgets of courts and prosecutor's offices for 2020-2021 went according to an established procedure in a way that the courts and prosecutor's offices prepared their budget proposals as per the instructions of the competent ministries of finances in BiH and in close cooperation with the HJPC BiH, which includes planning of the staff expenditures, costs of materials, services and capital investments.

In that regard, financing of the needs of courts and prosecutor's offices in the pandemic has been done through the implementation of regular budgets of courts and prosecutor's offices for 2020 and in that context, the HJPC BiH, as the central coordinating body in charge of financial independence of courts and prosecutor's offices, has not been informed in 2020 about any significant pandemic-caused hindrances in financing of courts and prosecutor's offices.

Bearing in mind that financing of the needs of courts and prosecutor's offices in the pandemic has been done through the implementation of the regular budgets of courts and prosecutor's offices for 2020 and through the planning of the 2021 budget, it can be stated that the standard budget procedure that includes the participation of courts and prosecutor's offices, finance ministries, parliaments and the HJPC BiH (on 14 levels of financing – 10 cantons, two entities, the Brcko District of BiH and the level of BiH) in the process of drafting, proposing and finally adoption of the 2021 budget is a measure to prevent corruption in allocation of budgetary resources.

7. Please describe the measure that have been adopted to enable lawyers to carry out their activities during the COVID-19 pandemic, particularly with regard to their access to people under arrest or detention and the means to facilitate confidential client-lawyer communications during online hearings.

The HJPC BiH has not adopted measures to particularly regulate the segment of lawyer work during criminal proceedings during the pandemic. The chief prosecutors have been adopting decisions on the work organisation and special measures according to the decisions and recommendations of the HJPC BiH, whose composite part are the measures of emergency headquarters about the use of personal protection equipment, social distancing for at least 2m and disinfection of rooms by prescribed means. Some prosecutor's offices have decided to restrict the work hours with the parties, including lawyers, while some have introduced the obligation that submissions are e-mailed or mailed. Some chief prosecutors have decided to allow the parties to enter a building only at the invitation of the prosecutor or other authorised person, all the while complying with all the measures, including measuring of the body temperature and disinfection.

The strategic forum for the cooperation between police and prosecutors has adopted the text of the Standardised Rules and Guidelines on Actions during the Pandemic. It

has been delivered to the prosecutor's offices and law enforcement agencies to discuss it in operational forums for cooperation and agree on its implementation.

A part of the text of these Guidelines refers to the deprivation of liberty and organising rooms for restriction of movement/detention units, as well as for the interrogation of the suspect and hearing of witnesses and is in the following part:

- establish a practice that the ministries of internal affairs, which are in touch with the competent health ministries, ensure that a preliminary check-up is carried out and, if need be, testing for COVID-19, before they deprive persons of their liberty;
- according to the possibilities of the competent institution, designate separate rooms for persons who have been restricted to move or detained and are positive for COVID-19;
- since for safety reasons the expert witnesses have not been allowed to enter the rooms of the Prison, which hindered the work of prosecutors in detention cases, it is necessary to designate a special room where actions that are necessary for presentation of findings and opinions will be taken, while their movement in the competent institution will be reduced to a minimum;
- to interrogate a suspect or hear a witness, wherever possible use the room that is positioned in such a way that the movement of a witness or suspect is reduced to a minimum and where prescribed social distancing can be maintained;
- ensure use of protective equipment for the person coming in contact with witnesses or suspects.