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IMPROVING COMMERCIAL JUSTICE IN BOSNIA AND HERZEGOVINA (BIH) IN THE FACE OF COVID-19 CRISIS: MAIN CHALLENGES AND OPTIONS FOR IMPROVEMENTS

How did the COVID-19 crisis affect the BiH courts' operations in 2020?

BiH authorities imposed a lockdown in March 2020 to contain the spread of the virus. During the lockdown court operations were reduced to a minimum, home-based work was organized, and only emergency personnel attended the courts to process urgent cases. In May 2020 the lockdown eased, and courts resumed their operations. From May to December 2020 courts were operating with limited capacities while implementing strict health protection measures.

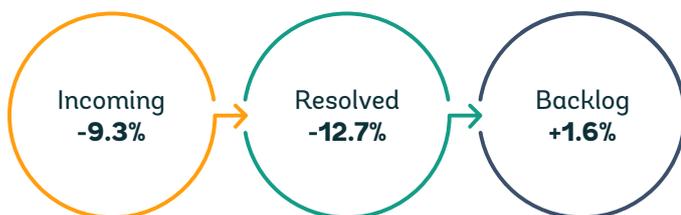


How did the COVID-19 crisis affect commercial litigation?

In 2020, both the number of incoming commercial cases to first instance BiH courts and the number of resolved cases declined. As a result, backlog remained relatively stable.

Caseload dynamic in **Sarajevo Municipal Court** deviated from the general trend. Although the number of incoming cases did not decline at this court, the resolution fell significantly leading to an increase of the overall commercial backlog.

BiH commercial cases dynamic (2020/2019)



Sarajevo Municipal Court commercial cases dynamic (2020/2019)



Courts were unable to conduct hearings that required gathering of a large group of people in a single room. As a result, most large insolvency cases could not be processed.



Large insolvency hearings pending before Tuzla Municipal Court because of the COVID-19 crisis

6 large insolvency proceedings pending, each involving over **100 creditors**

About **80%** of the creditors are workers claiming lost salaries

The creditors' claims total to over **EUR 40 million**

What were the greatest challenges for BiH courts' in responding to the COVID-19 crisis?

Insufficiently developed legislative framework and infrastructure for e-identification and e-services in the country severely limit the use of e-communication between courts and litigants.



Underdeveloped remote modes of communication with courts compromise access to information during crisis - relevant information is not available or updated on courts' websites, court staff do not regularly use e-mail, and phone lines are often clogged.

BiH court system is heavily reliant on physical hearings as civil procedure does not allow for online hearings. In many courts including Sarajevo Municipal Court, all commercial hearings are held at judges' small offices. This exposes staff, litigants, and the broader public to health risks. Outdated courtroom infrastructure limits the capacity to carry out insolvency and general commercial proceedings.



Options for home-based work are limited. The Case Management System (CMS) is not available to judges and judicial staff outside of court premises.

What are the risks of status quo if the crisis persists?

The number of incoming commercial cases is expected to increase in 2021, a result of the slowdown in case resolution in 2020 and the increased number of commercial disputes caused by the crisis, such as those related to labor or bankruptcy issues.



If this risk materializes and the court system continues to rely primarily on physical interactions, the backlog could increase exponentially.

Some large insolvency cases, which require gathering of hundreds of creditors, could be on hold for as long as the crisis persists.



How can courts better mitigate these risks?

Organize court workload using the most updated statistical information produced by the CMS.



Introduce backlog reduction measures in Sarajevo Municipal Court (e.g. by transferring some of the pending cases to other courts).

Improve business processes in all courts (e.g. introduce work in shifts, seek additional premises to hold hearings).



Develop an overall guideline to spearhead the crisis management process, which will address case-flow tracking and sharing of good practices.

Ensure uniform interpretation of substantive legal issues posed by the pandemic to facilitate judges' work, such as through training, interpretative opinions, pilot case initiatives and improved communication between lower and higher instance courts.



Provide specialized training programs for judges, such as on bankruptcy and liquidation proceedings.

What opportunities for commercial justice reform does the COVID-19 crisis create?

BiH businesses are ready to communicate remotely. As many as **92 percent** of businesses surveyed by the World Bank team note that their employees use e-mails and process documents electronically.

To enable e-communication with courts, it is necessary to:

- **Upgrade the CMS** to be an interactive tool for e-communication between the litigants and the court. This would also allow productive and secure home-based work.
- Align the **regulatory framework on e-services and e-identification** with the EU legislation; ensure recognition of various forms of e-identification across BiH jurisdictions.
- Build the required **physical infrastructure** for e-identification and e-services.
- Improve the **procedural rules** that govern the admissible forms of e-identification in communication with courts.
- Improve **remote modes of information sharing** via court websites, use of e-mail, phone lines and remote access to case files.

To speed up the resolution of certain case types, amend the Civil Procedure Laws to introduce:

- A **documentary track** that allows written-only examination of some case types; and
- An **online track** that allows judges to hold hearings in some civil and commercial cases via videoconference.