

JUDICIAL TRANSPARENCY DURING THE PANDEMIC: PUBLIC AND MEDIA OUTREACH



Report:

**Judicial Transparency
during the Pandemic: Public
and Media Outreach**

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Summary

The work of the BiH judiciary was affected by the epidemiological measures introduced in response to COVID-19. The judicial institutions adopted a number of measures postponing most hearings, introducing duty rosters and work from home and cutting their working hours. Some institutions covered by the research did not publish the restrictive measures on their websites, while those that did failed to announce when they would resume normal operations. Notification was partial and inconsistent and, in the absence of generalised decisions and policies, depended on the assessments of the PR staff. The information in the published decisions varied as well; most included paragraphs or instructions on communication with the media and notification of the public and the press of the new measures and on the postponed meetings and hearings. Practices of notifying lawyers and parties to the proceedings of the measures were also inconsistent and improvised.

Nevertheless, the interviewed spokespersons opined that the adopted measures had not substantially affected their communication with the media, which continued via websites, e-mail and by phone, while only several institutions organised briefings and made statements to the media. The ten analysed judicial institutions published between one and 15 news items/press releases in the 15-March-15 May 2020 period. Only one institution issued a press release on scheduled hearings. Interviewed journalists said that their mode of communication with judicial institutions during the pandemic did not differ much from the pre-pandemic era and that it depended on the expertise and helpfulness of the staff charged with public relations. They mostly followed the work of the institutions online, by e-mail and in direct contact with the spokespersons.

This research aimed to explore the public outreach and transparency of BiH judicial institutions during the coronavirus pandemic, especially in the 15 March-15 May 2020 period, and formulate recommendations on how to increase judicial transparency, especially in crisis situations.

1. Introduction

Prior research has shown that the BiH judiciary lacks transparency, which has directly impinged on public trust in it.^[1] Although the High Judicial and Prosecutorial Council (HJPC) in 2014 developed Guidelines on the Publication of Prosecutorial and Court Decisions on Official Websites^[2] to ensure consistent and proactive publication of information, especially with regard to data anonymisation, and to strike a balance between personal data protection and public interest, research has shown that not all BiH judicial institutions apply the guidelines fully. Some have not posted the names of their public relations officers on their websites and rarely publish news on them.^[3] Many courts and prosecutor's offices lack communication strategies and only a handful have documents on crisis management and communication.^[4] Most courts and prosecutor's offices do not use social networks to communicate with the public, chief prosecutors and court presidents rarely give statements to the press or appear on TV shows, while judicial institutions rarely organise news conferences.^[5] Reporters are dissatisfied with the judiciary's transparency and outreach, as well as its replies to their requests for free access to information.^[6] The results of prior research indicate that the BiH judiciary needs to improve its public outreach and transparency.

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- [1] See, e.g. Damir Dajanović, Blerina Ramaj and Xheni Lame, 2018, *Openness of Judicial Institutions in BiH and the Region. Recommendations*, Civic Association Zašto ne? (Why not?), available in BCS at: <https://zastone.ba/app/uploads/2018/10/Otvorenost-pravosudnih-institucija-u-regionu-i-BiH-za-godinu-2017.pdf>.
- [2] HJPC, Guidelines on the Publication of Prosecutorial and Court Decisions on Official Websites, available in BCS at: https://www.pravosudje.ba/HJPC/faces/faces/pdfservlet?p_id_doc=28346
- [3] Erna Mačkić, 2018, *Transparency of the Response of the BiH Judiciary to Corruption*. Analitika, available in BCS at: <https://www.analitika.ba/bs/publikacije/osvrsti>; only the judicial institutions at the BiH level published over 15 news items in three-month period, while most courts and prosecutor's offices published less than five such items.
- [4] Model Strategy on Crisis Communication in BiH Courts and Prosecution Offices, Draft Version, USAID available in BCS at: <http://www.rs.cest.gov.ba/index.php/seminari-2020/42-3-46krizna-komunikacija-i-pruanje-informacija-od-interesa-za-javnost-o-predmetima-korupcije-i-drugih-sloenih-oblika-kriminala/2918-prezentacija-radni-nacrt-model-strategije-3-6-20/file>
- [5] *Ibid.*
- [6] *Transparency of the Response of the BiH Judiciary to Corruption*. Analitika, available in BCS at: <https://www.analitika.ba/bs/publikacije/osvrsti>.

The epidemiological measures introduced to prevent the spread of COVID-19 in BiH and the declaration of the state of emergency/state of disaster affected the work and regular functioning of the BiH judicial institutions.

In mid-March, the HJPC issued recommendations and decisions on the work of the BiH courts and prosecutor's offices, which did not address their notification of the public of the measures or provide guidance on media outreach.

This research aimed to explore the BiH judiciary's outreach practices, especially in the 15 March-15 May 2020 period.

The research was conducted in September 2020 and included **20 semi-structured interviews** with judicial spokespersons, reporters, and representatives of associations and lawyers. Specifically, such interviews were conducted with **10 spokespersons of various judicial** institutions in BiH: the HJPC, **five courts** (the BiH Constitutional Court, the Court of BiH, the Banja Luka and Prijedor District Courts and the Livno Municipal Court) and **four prosecutor's offices** (the FBiH Federal Prosecutor's Office, the Republican Public Prosecutor's Office, the Tuzla Canton Prosecutor's Office and the East Sarajevo District Prosecutor's Office). Interviews were also conducted with five journalists covering the work of BiH judicial institutions (BIRN, CIN, SRNA, *Nezavisne novine* and *Oslobođenje*); **two lawyers** (in Sarajevo and Bijeljina) and **three experts and representatives of associations** (*Vaša prava*, Transparency International BiH, and the Commission of Inquiry on the HJPC). The interviews were mostly conducted via online applications or by phone, and some were conducted face-to-face; some of the judicial spokespersons sent their replies by e-mail. In addition to the interviews, the research involved the desk-top analysis of the **press releases posted by the above institutions** on their websites in the 15 March-15 May period, and the published decisions and measures regarding the work of the judiciary during the pandemic. The authors selected institutions at various administrative levels and in different cities/entities. In order to gain insight in the information the judicial institutions distributed to the media, and to gauge media interest in specific topics and cases during the pandemic, the research also involved the analysis of media reports on judicial institutions that appeared on **two online news portals** (klix.ba and nezavisne.ba) in the 15 March-15 May 2020 period.

The following issues were, inter alia, addressed during the research: how the judicial institutions publicly communicated the decisions on measures undertaken to contain the spread of coronavirus; whether and how they published court and prosecutorial decisions or other information during the pandemic; how they communicated with reporters and lawyers; how accessible were their spokespersons

to the press and to what extent did they respond to their inquiries; and, which judicial topics did reporters devote the most attention to during this period.

The researchers collected decisions on the way the judicial institutions organised their work during the pandemic that were available on their websites and obtained additional information in interviews and from the spokespersons. Given that the research covered a small number of judicial institutions in BiH, it cannot be considered representative of the entire BiH judiciary. It, however, offers insight in the communication practices of judicial institutions in BiH and recommendations for improving them.

The Report will first describe how the judicial institutions in BiH organised their work and communicated with the media and the public. It will then provide a brief overview of media reports on the BiH judiciary and the views of reporters, lawyers and CSO representatives on the transparency of the BiH judiciary and their experiences of communication with it. The Report ends with recommendations for improving the BiH judiciary's transparency and public outreach.

2. Work of the BiH Judicial Institutions during the Pandemic

On 15 March 2020, the High Judicial and Prosecutorial Council (HJPC) issued Recommendations to Court Presidents and Chief Prosecutors in BiH on Work during the Epidemiological Situation in the Country (Corona COVID-19), advising them to review the possibility of cancelling the (court and prosecutorial) hearings scheduled for the 16 March-3 April period, except those that were urgent and could not be adjourned under the law; and to organise their operations to ensure the unimpeded work and protection of the staff.^[7] On 22 March 2020, the HJPC adopted a Decision on the Organisation of Work in Courts and Prosecutor's Offices in BiH, ordering the courts and prosecutor's offices to postpone all criminal trials except in cases in which pre-trial detention had been ordered or sought; where there was a risk of the case being time-barred; and in other urgent cases under BiH criminal law. Civil courts were entitled to pursue cases they considered urgent.^[8] The HJPC also ordered the judiciary to organise duty rosters and work from home of judges and prosecutors, and duty rosters of their administrative staff.^[9] **Neither document included any guidance on public outreach.** The urgent notification of parties to the proceedings that their hearings were adjourned was mentioned only in the HJPC's Recommendations.^[10] The HJPC said that the Recommendations and the Decision should be forwarded to all heads of judicial institutions.

[7] HJPC, Recommendations to BiH Court Presidents and Chief Prosecutors on Work during the Epidemiological Situation in the Country (Corona COVID 19). 15 March 2020. The Recommendations were published on the HJPC website www.pravosudje.ba in the section Press Releases on 15 March, together with the Decision on the HJPC's Work Regime. https://www.pravosudje.ba/HJPC/faces/pdfServlet?p_id_doc=62917.

[8] HJPC, written reply, 22 September 2020.

[9] HJPC, Decision on the Organisation of Work Processes in Courts and Prosecutor's Offices in Bosnia and Herzegovina, 22 March 2020. The Decision was published on the HJPC website www.pravosudje.ba in the Decisions section on 22 March. It is available in BCS at: <https://HJPC.pravosudje.ba/HJPC/faces/kategorije.jsp>.

[10] HJPC, Recommendations to BiH Court Presidents and Chief Prosecutors on Work during the Epidemiological Situation in the Country (Corona COVID 19). 15 March 2020.

At its session on 30 April 2020, the HJPC adopted a Decision on the development of plans on the relaxation of the measures, provision of adequate protective equipment and reintroduction of regular working hours by 15 May 2020.^[11] The decision specified that hearings could be organised only if it was possible to ensure adequate distancing in the premises and that the chief prosecutors and court presidents should notify the HJPC, the Ministries of Justice and Bar Chambers of the undertaken measures, and display clear instructions on the conduct of all those entering their institutions on their front doors.^[12] **The Decision made no mention of communication with the public or of the institutions' obligation to notify the public of the new measures.**

In line with the recommendations of the crisis headquarters and the HJPC, the BiH courts and prosecutor's offices introduced a number of work-related measures in March 2020: they cut the working hours and the number of staff that had to come to office; cancelled hearings except urgent ones; organised duty rosters and work from home; and restricted public access to court and prosecutorial facilities. They started relaxing the measures and going back to their regular regimes of work in late April 2020; the staff and public had to comply with the epidemiological measures. Trials were held only in courtrooms where physical distancing measures could be observed.

Some of the institutions covered by the research (the Constitutional Court, the Tuzla Canton Prosecutor's Office and the District Public Prosecutor's Office) did not publish information on the measures on their websites, while other institutions (the Court of BiH, HJPC, FBiH Federal Prosecutor's Office, the East Sarajevo Prosecutor's Office) did publish information on the restrictive measures (mostly in the News or Press Releases sections on pravosudje.ba) as well as that they resumed normal operations in April. The Prijedor District Court, for instance, published the plan on the relaxation of measures, but not the initial decision on shorter working hours and adjournment of hearings expect in cases where the judges decided that they had to take place and those that were urgent and could not be adjourned under the law. The Banja Luka District Court and the Livno Municipal Court published in the News sections of their websites both information on the initial restrictive measures and on resuming normal operations.

[11] HJPC, Decision on the Organisation of Work Processes in Courts and Prosecutor's Offices in Bosnia and Herzegovina, 22 March 2020, 30 April 2020. The Decision was published on HJPC's website www.pravosudje.ba in the Press Releases section on 30 April 2020. It is available in BCS at: https://www.pravosudje.ba/HJPC/faces/pdfservlet?p_id_doc=63678

[12] *Ibid.* https://www.pravosudje.ba/HJPC/faces/pdfservlet?p_id_doc=63678

The information in the published decisions varied as well. Most of the decisions contained brief information on the organisation of work, shorter working hours, duty rosters and cancellation of non-urgent hearings, but not instructions on how the parties to the proceedings, members of the public and journalists could find out about the new measures and the postponed meetings and hearings. Some decisions, like the one adopted by the Federal Prosecutor's Office, included specific information on in-house communication, e.g. that the prosecutors and staff were available on their cell phones, but not instructions on public communication with parties to the proceedings and the media.^[13]

The Banja Luka District Court decision said that all parties to proceedings were to be urgently notified of the adjournment of their hearings and that the decision was to be published on the Court's bulletin board and website.^[14] The Prijedor District Court decision on the plan on the relaxation of measures said that all parties to the proceedings should be familiarised with the plan and that it would be available on the Court's website. Out of the ten analysed judicial institutions, only the Livno Municipal Court published both the decisions on restrictive measures and on the relaxation of measures and documents with the names of on-duty staff, their cell phone numbers and e-mails.^[15] The decisions on measures did not include additional instructions on the work of the outreach units or PR officers.

Herewith an overview of the way the ten BiH judicial institutions organised their work based on the adopted measures and decisions available on their websites and on the interviews with/replies received from their spokespersons.

[13] FBiH Federal Prosecutor's Office, *Decision on the Organisation of the Work of the FBiH Federal Prosecutor's Office during the State of Accident in the BiH Federation*, 16 March 2020, available in BCS at: https://ft-fbih.pravosudje.ba/HJPC/faces/pdfservlet;jsessionid=ce604ecc0e78db89812e153db24754070a238b6d4850474d875862d397583b01.e34TbxyRbNiRb40Pch4QbxmKbXr0?p_id_doc=63041

[14] Banja Luka District Court, *Decision Concerning the Epidemiological Situation Caused by the Outbreak and Spread of COVID-19 (coronavirus)*, 16 March 2020, available in BCS at: https://www.pravosudje.ba/HJPC/faces/pdfservlet?p_id_doc=62940

[15] Livno Municipal Court, *Decision on the Work of the Livno Municipal Court*, 31 March 2020, published in the News section at <https://pravosudje.ba/>. See, e.g. this Court's decision on its work adopted on 23 March 2020, available in BCS at: https://www.pravosudje.ba/HJPC/faces/pdfservlet?p_id_doc=63095.

2.1. The Constitutional Court – combined work from home and office work during the pandemic in order to reduce the presence of staff in the offices. All Grand Chamber sessions were held online at scheduled times. The Constitutional Court also held a plenary session online (on 2 July 2020).^[16] The Constitutional Court is not part of the regular court network and the HJPC decisions on the organisation of the judiciary do not apply to it.

2.2. The HJPC on 15 March 2020 adopted a decision on its work regime due to the epidemiological situation,^[17] postponed all the meetings of the standing commissions and other HJPC bodies, the scheduled disciplinary hearings, testing and interviews with the candidates, with the exception of HJPC sessions that were held via an audio and video conference system.^[18] The HJPC resumed normal operations in late April in accordance with the decisions of the relevant authorities and crisis headquarters.^[19]

2.3. The Court of Bosnia and Herzegovina on 16 March 2020 issued an order introducing eight measures, including the one allowing judges or judicial panels to decide whether to continue or adjourn trials, depending on the areas the parties were coming from, the number of parties to the proceedings and the necessity of holding the hearings. At-risk staff were advised to take sick leave and the working hours were cut by half an hour from 8 am-4 pm to 8 am-3.30 pm. The BiH Court Police made sure that not more than three members of the public entered the building at the same time.^[20]

[16] BiH Constitutional Court, written reply, 9 September 2020.

[17] HJPC, *Decision on the Work Regime of the BiH HJPC Due to the Epidemiological Situation in the Country (Corona Covid-19)* 15 March 2020. The Decision was published on HJPC's website, in the Press Release section, together with the Recommendations of 15 March 2020, available in BCS at: https://www.pravosudje.ba/HJPC/faces/pdfServlet?p_id_doc=62916.

[18] HJPC, written reply, 22 September 2020.

[19] *Ibid.* The HJPC did not publish on its website information on resuming normal operations.

[20] Court of BiH, *Order*, 16 March 2020. The Order was published on the Court's website www.sudbih.gov.ba on 16 March 2020, in the News section. It is available in BCS at: <http://www.sudbih.gov.ba/vijest/n-a-r-e-d-b-a-21358>

The Court said that parties were entitled to file submissions by post or personally. The Court provided temperature checking, protective masks and disinfectants at the entrance into the building. Judges and staff were instructed to work from home, while a duty roster was put in place to ensure the presence of judges (for actions that could not be postponed) and staff in the Court building.^[21] Only the hearings that could not be put off were held; the vast majority of them concerned pre-trial detention and extradition.^[22] After it adopted the decision to relax the anti-COVID-19 measures, the Court of BiH started scheduling trials, but trials with large numbers of defendants are not conducted.^[23]

2.4. According to the **Republican Public Prosecutor's Office**, the work of its staff from March to late April was based on ensuring that essential work was carried out. Only one staff member was allowed to work in each office and some of the staff worked from home. Communication was mostly by e-mail or phone and all submissions were sent by post. The shorter working hours were visibly displayed and accessible to members of the public contacting the prosecutors. The Collegium sessions were held once a week and there was always a prosecutor, stenographer and driver on call. All the scheduled interrogations, questioning and other investigation actions that were not urgent were postponed until further notice.^[24]

The Prosecutor's Office started normalising its work in early May, when it went back to its normal working hours and all staff started regularly coming to work, whilst maintaining physical distance. The Office said that all the offices were regularly disinfected and that it bought the disinfectants and the protective masks, which all staff must wear. The Office also bought a temperature checking device to check the temperature of everyone entering the building.^[25]

[21] Court of BiH, written reply, 9 September 2020

[22] *Ibid.*

[23] *Ibid.* The Court did not publish on its website the decision on the relaxation of measures and normalisation of its work.

[24] Republican Public Prosecutor's Office, written reply, 24 September 2020. The measures were not published on the website of the Prosecution Office.

[25] *Ibid.*

2.5. The FBiH Federal Prosecutor's Office on 17 March 2020 adopted a decision under which it would take actions only in urgent cases during the state of disaster in the BiH Federation. The published decision defines in detail the work of the Administrative Department, Registry and the Cabinet of the Chief Prosecutor, the number of staff present, and the organisation of the work of the Prosecutorial Department. Under the decision, all prosecutors and staff were to be available on their cell phones, the duty prosecutors were to assess the urgency of the cases, and the Federal Prosecutors were to review and update their case files, notifying the Registry where the case files were via the case management system (TCMS). The Office worked shorter hours, from 9 am to 2 pm, and the staff were ordered to keep receipt of post and members of the public to a minimum. The part of the decision on the duty roster of the Federal Prosecutors and the organisation of the work of the Administrative Department was anonymised.^[26]

2.6. The Tuzla Canton Prosecutor's Office followed the recommendations of the HJPC and crisis headquarters and adopted several decisions (or amendments to them) reducing the operations of the Office and organising a roster of prosecutors, who handled all cases, received specific enactments and assigned them to prosecutors working from home. Priority was given to urgent cases (motions to courts to order or extend pre-trial detention for grave crimes) and cases with urgent deadlines (appeals, rulings extending pre-trial detention), specific hearings, and trials running the risk of being time-barred. After two months, the Prosecutor's Office resumed its normal operations and is currently engaged in a number of trials and investigative hearings.^[27]

[26] FBiH Federal Prosecutor's Office, *Decision on the Organisation of Work of the FBiH Federal Prosecutor's Office during the State of Disaster in the BiH Federation*, 16 March 2020. The Decision was published on the Prosecutor's Office website on pravosudje.ba in the News section. It is available in BCS at: https://ft-fbih.pravosudje.ba/HJPC/faces/pdfservlet;jsessionid=ce604ecc0e78db89812e153db24754070a238b6d4850474d875862d397583b01.e34TbxyRbNiRb40Pch4QbxmKbxx0?p_id_doc=63041. The Prosecutor's Office did publish the decision on the relaxation of measures.

[27] Admir Arnautović, PR Officer, Tuzla Canton Prosecutor's Office, Zoom interview, 10 September 2020. The decisions on the measures were not published on the website of the Prosecutor's Office, but were forwarded to the researchers on their request.

2.7. The Chief Prosecutor of the **East Sarajevo District Public Prosecutor's Office** on 23 March 2020 adopted a decision cutting the working hours to four hours, from 8 am to noon, during which the Office was manned by duty prosecutors and the necessary administrative staff. All members of the public were prohibited from entering the Office and legal and natural persons were instructed to send their submissions by post. Only mailmen and police officers were allowed to enter the building with the consent of the duty prosecutor, who they could reach by phone. At least 80% of the staff were ordered to work from home in accordance with the schedule drawn up by the Chief Prosecutor and the Office Secretary.^[28] The Prosecutor's Office resumed normal operations in May.^[29]

2.8. The Prijedor District Court on 16 March 2020 adopted a decision: adjourning all scheduled hearings except those re which the judges decided that they had to take place and those that were urgent and could not be adjourned under the law (pre-trial detention cases, pending cases in which adjournment would cause irreversible consequences); cutting the working hours to 9 am-1 pm; reducing contacts with parties to the proceedings to a minimum; allowing parties to deliver their submissions only by post; prohibiting the staff from spending their breaks outside the building and allowing them to leave the building only in emergencies.^[30]

On 5 May 2020, the Court adopted the plan on the relaxation of measures, providing for the taking of epidemiological measures, temperature taking on entry into the building, regular disinfection, mandatory wearing of face masks and maintaining of physical distance, working hours from 7 am to 3 pm, work from home for judges and staff coming to work by public transport (until it was reintroduced).

[28] East Sarajevo District Prosecutor's Office, *Decision*, 23 March 2020. The Decision was published on the pravosudje.ba portal on 7 April 2020. Available in BCS at: https://www.pravosudje.ba/HJPC/faces/pdfServlet?p_id_doc=63302. The plan on relaxation of measures was not published on the Prosecutor Office's website.

[29] Neven Kramer, East Sarajevo District Prosecutor's Office Secretary, telephone interview, 8 September 2020.

[30] Prijedor District Court, *Decision*, 16 March 2020, sent by e-mail.

Hearings could be scheduled only in courtrooms where it was possible to maintain an adequate physical distance, whilst taking into account the urgency and statutory limitations of the cases and the number of parties to the proceedings. All visits to inmates in the detention units of Republika Srpska prisons were prohibited, except by their legal counsel. The Decision also recommended that the parties continue forwarding their submissions by post and specified that all the parties to the proceedings (parties, lawyers, the RS Attorney General) would be familiarised with the plan, which would also be posted on the Court website.^[31]

2.9. The Banja Luka District Court on 16 March 2020 adopted a decision by which it, inter alia, adjourned all hearings except those that were urgent or could not be postponed under the law, cut the working hours to 9am-1pm, ordered that all submissions be sent and delivered by post, and instructed all staff suffering from grave or chronic diseases to work from home.^[32] The decision also prohibited all visits to detainees in the pre-trial detention units of prisons, except by their lawyers. On 4 May 2020, the Court adopted a decision on the gradual relaxation of measures, extending the working hours to 8:30 am - 3:30 pm, and allowing the holding of main hearings, oral hearings and hearings in urgent cases where a two-metre physical distance between the parties could be maintained. The decision specified that the schedule of the above hearings would immediately be posted on the Court website and that written notification would also be sent to the relevant prosecutor's offices, the RS Bar Chamber, the RS Attorney General and the Tunjice – Banja Luka correctional facility. The decision also entitled judges and presiding judges to limit or temporarily exclude the public from the entire or part of a hearing in order to prevent the transmission of coronavirus and ensure gradual and controlled liberalisation of operations. The decision also specified that clear instructions on the work of the court and conduct of those entering the building would be displayed at the main and other entrances into the courthouse.^[33]

[31] Prijedor District Court, *Plan on Relaxation of Measures Related to the COVID-19 (Coronavirus) Pandemic*, 5 May 2020, sent by e-mail and posted on the pravosudje.ba portal in the News section, available in BCS at: <https://oksud-prijedor.pravosudje.ba/>

[32] Banja Luka District Court, *Decision on the Epidemiological Situation Caused by the Appearance and Spread of COVID-19 (Coronavirus)*, 16 March 2020. The Decision was posted on the Court's website in the News section the same day, available in BCS at: https://www.pravosudje.ba/HJPC/faces/pdfservlet?p_id_doc=62940

[33] Banja Luka District Court, *Decision on the Organisation of Work of the Banja Luka District Court as of*

2.10. The **Livno Municipal Court** on 17 March 2020 issued detailed guidance on the implementation of anti-COVID-19 measures in the main courthouse and its departments in Tomislavgrad and Drvar. It specified the working hours and work of the Registry, the Business Register, and the issuance of documents and certificates, published the telephone numbers and e-mails via which the members of the public could contact the departments, and the ways in which they could obtain documents and excerpts from the Court register.^[34]

On 28 April 2020, the Livno Municipal Court adopted the Decision cutting the working hours to 9 am- 2 pm, and designating the duty judges and Court staff.^[35] Under the decision, members of the public were allowed to enter the Court building in urgent and emergency situations provided they notified the doorman on duty in advance. The Court also published documents with the names of the judges and stenographers on duty and the organisation of the work of services on duty in the Livno courthouse and the departments in Tomislav and Drvar, including the names of the officers, registrars and secretaries and their telephone and e-mail contact details. Such documents were published every week. Each decision specified it would be published on the Court's website and bulletin board. According to the Court Secretary, the parties were notified of all the decisions on the website, local radio and the portal.^[36]

4 May 2020 *Pending the Adoption of a Different Decision*. The Decision was published on the Court's website in the News section, available in BCS at: <https://www.pravosudje.ba/>

[34] Livno Municipal Court, *Notice on the Implementation of Protective Measures against Coronavirus in the Livno Municipal Court*, 17 March 2020. The Notice and the accompanying documents for each department were published on the Court's website in the News section of <https://pravosudje.ba/>. See e.g. those regarding the Registry, available in BCS at: https://www.pravosudje.ba/HJPC/faces/pdfservlet?p_id_doc=62972

[35] Livno Municipal Court, *Decision on the Work of the Livno Municipal Court*, 31 March 2020. The Decision was published on the Court's website in the News section of <https://pravosudje.ba/>. See, e.g. the decision on the organisation of work of 23 March 2020, available in BCS at: https://www.pravosudje.ba/HJPC/faces/pdfservlet?p_id_doc=63095.

[36] Marija Vila Robović, Court Secretary, Livno Municipal Court, telephone interview, 10 September 2020.

On 5 May 2020, the Court adopted a new decision on its work with a view to gradually resuming normal operations; it increased the number of judges and other staff working in the court, started scheduling hearings, giving priority to urgent cases, whilst bearing in mind the requirements for organising trials in the courtrooms and trial schedules. The Decision said that the Court would continue corresponding with the parties in writing or by phone and that the list of all officers by department was publicly available on the Court's main door and its website. It also said that the Court would encourage the parties via the media and the portal to resolve their disputes through court settlements and peaceful dispute resolution. The schedules and the names and contact details of the staff were also published.^[37]

[37] Livno Municipal Court, *Decision on the Organisation of the Municipal Court*, 6 May 2020. The Decision was published on the Court's website in the News section. See, e.g.: https://www.pravosudje.ba/HJPC/faces/pdfservlet?p_id_doc=63806.

3. Judiciary's Public Outreach and Views of Judicial Spokespersons

The judicial institutions did not change their communication and cooperation with the media much during the pandemic. The judiciary's limited activity and adjourned hearings led to less newsworthy information.

Most of the interviewed judicial spokespersons said that the anti-COVID-19 measures adopted by the BiH judiciary had not substantially affected its public and media outreach. The Federal and Tuzla Canton Prosecutor's Offices said that their PR officers had difficulties working from home during the first few weeks because of limited access to official documents. Most judicial institutions communicated with the media via the Internet (websites, e-mail, Skype) during the pandemic – like they did before the pandemic – and only some of them gave statements and organised briefings, or communicated with the media via Viber groups (the Tuzla Canton Prosecutor's Office), or sent out their press releases also to the local radio stations and portals (Livno Municipal Court Secretary). They did not organise news conferences and, for the most part, gave interviews via Internet applications, rather than face-to-face. The number of news items and press releases the analysed courts and prosecutor's offices issued in the 15 March-15 May period varied from one to 15. Most of the press releases were issued by the Banja Luka District Court (15); seven of them concerned the Court's work during the pandemic, while six regarded the ordering, extension or revocation of pre-trial detention. This was the only court in the observed period that issued a press release on scheduled hearings. As many as four judicial institutions (the Republican Public Prosecutor's Office, the Tuzla Canton Prosecutor's Office, the East Sarajevo District Public Prosecutor's Office and the Prijedor District Court) issued only one news item/press release in the two-month period. None of the analysed judicial institutions issued special guidance for journalists during the pandemic.

The ensuing section presents the media outreach of each of the ten analysed judicial institutions during the pandemic.

3.1. The **BiH Constitutional Court** said that the Court's public and media outreach had not been affected by the anti-pandemic measures and that it had continued cooperating and communicating with all the media in the new circumstances. The Court continued with its practice of publishing the agenda of its sessions, which were held online during the first months of the pandemic, and press releases on the adopted decisions after the sessions (for illustration purposes). In the 15 March-15 May period, the Court held four sessions and published three news items – one press release on the expiry of the term in office of an international judge, one on the appointment of the new judge, and one on a meeting of the regional Constitutional Courts. The Constitutional Court President gave several interviews to various outlets during the pandemic, about the cases pending before the Constitutional Court and the Court's work. The Court also replied to press inquiries on pending cases it received during the pandemic. ^[38]

3.2. The **HJPC** notified the public of its decisions about the work of judicial institutions through press releases, on its website and its Facebook profile. ^[39] In the 15 March-15 May period, the HJPC issued 13 press releases on, inter alia, the conclusions of several telephone sessions and meetings at which it decided that all judicial institutions in BiH should give maximum priority to cases concerning crimes against public health, to initiate the adoption of an Emergency Regulation on Temporary Measures in the BiH Judiciary, to develop an initiative on online trials and draft a conclusion on the need to enhance monitoring of public procurement procedures during the pandemic. According to information on www.pravosudje.ba, in the 5 March-15 May period, the HJPC held six telephone and two online sessions following the adoption of the rulebook on electronic sessions. The HJPC published the session schedules and conclusions on pravosudje.ba during the pandemic, but not the session minutes (the most recent one was posted in late 2019) and issued press releases about only several sessions. The HJPC published on its website instructions on media accreditation, the Index Register of Information, the guide to access to information but not special guidelines for media during the pandemic.

[38] BiH Constitutional Court, written reply, 9 September 2020.

[39] HJPC, written reply, 22 September 2020.

The HJPC said that the standard press inquiries were responded to via e-mail, like before the pandemic, but that most interviews/discussions from mid-March to mid-September 2020 were conducted in writing, over the phone or other Internet services providing for live feeds. Face-to-face interviews were not scheduled, and the HJPC Chairman gave interviews to reporters via Internet applications on a number of occasions. The press could not follow the HJPC telephone and electronic sessions, but, once the measures were relaxed in June 2020, the sessions were again held in the HJPC conference room, and the reporters were able to follow them from a separate room via a video link, provided they had applied for accreditation and complied with the prescribed epidemiological and physical distancing measures. During the pandemic, cameramen and photographers were able to take photographs/record footage in the conference room in which the HJPC held its sessions.^[40] The HJPC communicated with the courts electronically and via the Webex platform and, in its opinion, their communication did not suffer from any delays or disruptions.^[41]

3.3. The **Court of Bosnia and Herzegovina** posted the order on the measures and the press release on its website and sent it to the media and other stakeholders on the mailing list of the Court's Public Information and Outreach Section.^[42] The Court said that its public and media outreach during the pandemic had not differed much from the pre-pandemic period and that it was unimpeded. They said that the Court continued receiving and answering media inquiries via e-mail.^[43] The Court continued with its practice of disseminating press releases on its activities and stages of proceedings (confirmed indictments, ordered or revoked pre-trial detention, et al) and reports on weekly activities that are disseminated to the media and other stakeholders every Friday, and published on its website.^[44] The Court published 12 press releases in the 15 March - 15 May period; most of them (5) concerned confirmation of indictments.

[40] *Ibid.*

[41] *Ibid.*

[42] Court of BiH, written reply, 9 September 2020.

[43] Court of BiH, written reply, 9 September 2020. The Court received 320 inquiries from the start of the epidemic to 7 September 2020.

[44] These reports include information on the activities of Sections I, II and III of the Court of BiH's Criminal and Appellate Divisions and on the hearings scheduled for the upcoming week.

The Court of BiH also issued Information for Witnesses, whose summons to appear in court had been cancelled due to the circumstances, notifying them that they would be duly notified of the new dates by telephone and officially, by court summons. The Information also specified that witnesses outside BiH could send their questions by text or by Viber to the official cell phone numbers specified in the press release, or by e-mail.^[45]

Court of BiH has published guidelines for journalists, on trial monitoring and access to information, trial schedules, and application forms for interviews and audio-video recordings of trials.

3.4. The **Republican Public Prosecutor's Office** said that their communication with the media has not encountered any major difficulties since the outbreak of the pandemic. They said that the PR officer was available and that all requests for access to information were replied to within the statutory deadline. Although the Prosecutor's Office does not have a communication strategy or guidance on crisis communication, they said that communication followed the established line Chief Prosecutor (Deputy Chief Prosecutor) – acting Prosecutor – Spokesperson and that all information released by the Prosecutor's Office had to be pre-approved by the Chief Prosecutor. All information released in communication that can be qualified as crisis communication must be agreed on by the team (Chief Prosecutor (Deputy Chief Prosecutor) – acting Prosecutor – Spokesperson). The information is usually released by the Spokesperson, in a briefing or a press release and, where necessary, a news conference; press conferences were not organised during the pandemic. During the pandemic, the Prosecutor's Office communicated with the media by e-mail and phone; it said that it also published press releases on its activities. The Office published only one press release (on a ruling ordering pre-trial detention) in the 15 March-15 May period. The Prosecutor's Office has published a guide to access to information, the Index Register of Information and the name and contact details of its PR officer.^[46]

[45] Court of BiH, Information for Witnesses, 6 April 2020, available at: <http://www.sudbih.gov.ba/vijest/obavjetenje-za-svjedoke-suda-bosne-i-hercegovine-21364>

[46] Republican Public Prosecutor's Office, written reply, 24 September 2020.

3.5. The **Federal Prosecutor's Office** communicated with the media via press releases, telephone, Skype and Zoom during the pandemic. Its spokeswoman said that the greatest challenges arose during the first few weeks, when the staff worked from home and had difficulties accessing the office documents, but that staff on duty was tasked with forwarding the documents.^[47] She said that the Prosecutor's Office applied the HJPC Guidelines on the Online Publication of Prosecutorial and Court Decisions, which were developed within a USAID project. In the 15 March-15 May period, the Federal Prosecutor's Office published five press releases on its website, including a warning to the public and institutions to strictly comply with the relevant authorities' regulations and orders aimed at containing and preventing the spread of coronavirus and that non-compliance with them constituted punishable criminal offences. The Prosecutor's Office especially warned social network users to act with utmost caution given the fake news on coronavirus causing fear and panic among the population, and appealed to the public and online and print media not to disseminate unreliable and unverified information.^[48] The Prosecutor's Office also published a report on public procurements to implement the anti-COVID-19 preventive measures. The Prosecutor's Office has published its Public Relations Strategy, guide to access to information and the name and contact details of its PR officer.

[47] Nina Hadžihajdarević, Spokeswoman, FBiH Federal Prosecutor's Office, telephone interview, 14 September 2020.

[48] FBiH Federal Prosecutor's Office: *Warning to the Public and Institutions re the Coronavirus Pandemic*. 18 March 2020.

3.6. The **Tuzla Canton Prosecutor's Office** has a Communication Strategy which they review regularly. They say that their media outreach during the pandemic has been guided by the experience they gained during prior crisis periods, such as the 2014 public protests. The Prosecutor's Office Spokesperson said that work was difficult during the first few weeks because they worked from home and did not have access to all the documents, but that he then went back to work in his office. The Spokesman said that, like before, he communicated with the media on a daily basis, responded to their inquiries, spoke on TV, sent information via Viber groups, organised briefings and gave statements, mostly in front of the building.^[49] The Prosecutor's Office issued one press release in the 15 March-15 May period, on a ruling ordering the one-month pre-trial detention of two individuals. The Prosecutor's Office has posted on its website its PR strategy, a guide to access to information and the name and contact details of its PR officer.

3.7. The **East Sarajevo District Prosecutor's Office** said they had not encountered any challenges in their communication with the media and public during the pandemic, since it mostly took place online, via the website or by phone, but that the number of statements and press releases had decreased because of the limited operations of the Prosecutor's Office. The Office Secretary said that the only obstacle to public outreach had arisen in the period when the members of the public did not have access to the Court offices and sent their submissions by post.^[50] He said that the Prosecutor's Offices were familiar with crisis communication and that most of them had crisis management teams, but noted that they lacked human capacity. Furthermore, public outreach is impeded in Republika Srpska and some Prosecutor's Offices in FBiH because the Office Secretaries are tasked with public relations duties.^[51] In the 15 March-15 May period, the Prosecutor's Office issued one press release, which regarded the decision on anti-COVID-19 measures. The Prosecutor's Office has published its guide to access to information, Index Register of Information and the name and contact details of the officer charged with PR.

[49] Admir Arnautović, PR Officer, Tuzla Canton Prosecutor's Office, Zoom interview, 10 September 2020.

[50] Neven Kramer, Secretary of the East Sarajevo District Prosecutor's Office, telephone interview, 8 September 2020.

[51] *Ibid.*

3.8. The **Prijedor District Court** said that the pandemic had not impinged on its communication with the media, which ordinarily takes place via e-mail and telephone. The Court publishes all important decisions and press releases on its website in accordance with the Rulebook on the Publication of Decisions on the District Court's Website.^[52] The Court said they had not issued any press releases or given any interviews during the pandemic and that they received only one request for access to information and one press inquiry on the situation in the observed period.^[53] In the 15 March-15 May period, the Court published information on its plan to relax the anti-COVID-19 measures. The Court has published the name and contact details of its PR officer and the Freedom of Access to Information Act (FAIA).

3.9. The **Banja Luka District Court** said that they had responded to all public and media inquiries and requests but that press had less interest in the work of the Court due to the smaller number of hearings. All decisions on the work of the Court were published on its website and the main door of the courthouse. Given that the Court only held urgent hearings in criminal cases (on pre-trial detention), information about these cases and rescheduled hearings was published on the website.^[54] The Court published 15 press releases in the 15 March-15 May period; seven concerned the work of the Court during the pandemic and six the ordering, extension or revocation of pre-trial detention. The Court also published a press release on the scheduled hearings and the Protocol on Mandatory Protective Measures Applying to Parties to Proceedings in Pre-Trial Detention Criminal Cases, which governs the entrance of suspects into the courthouse and provides for online hearings of witnesses, court experts and other parties.^[55] The Court has published its PR and Information Plan and its Internal and External Communication Plan. The access to information application form and the name and contact details of the PR Officer are published on the Court's website.

[52] Prijedor District Court, written reply 8 September 2020

[53] *Ibid.*

[54] Slavica Divjak, PR Officer, Banja Luka District Court, Zoom interview, 14 September 2020

[55] Banja Luka District Court, *Protocol on Mandatory Implementation of Protective Measures Applying to Parties to Proceedings in Pre-Trial Criminal Cases*, News, 6 April 2020, available in BCS at: https://www.pravosudje.ba/HJPC/faces/pdfservlet?p_id_doc=64304

3.10. The **Livno Municipal Court** said that they had published the decisions on the work of their Court on their website, and via local media, although there was not much interest in its work. The Spokeswoman said she had sent press releases to the radio stations and portals but that, given the small number of outlets in Livno, the reporters usually contacted her directly, by phone or e-mail.^[56] In the 15 March-15 May period, the Court posted three press releases on its website, on the work of this Court during the pandemic. The Court does not have a communication strategy but it has posted the FAIA and the name and contact details of its PR officer.

[56] Marija Vila Robović, Court Secretary, Livno Municipal Court, telephone interview, 10 September 2020.

4. Media Coverage of the Judiciary

Limited operations and cancelled hearings resulted in lesser media interest in information on the work of the judiciary. The spokespersons of the judicial institutions confirmed that the media were less interested in information about their cases during the pandemic, especially during the first few months when all news focused on COVID-19.

The HJPC said that the number of media inquiries had been much smaller than the previous year: 61 in the 1 March-15 September 2020 period compared to 145 in the same period in 2019. Thirty-seven requests under the FAIA were made in the 1 March-15 September 2020 period, compared to 57 such queries in the same period in 2019.^[57]

The spokespersons said that media coverage focused on pandemic related cases (e.g. before the Court of BiH, Rajo Kikić and Fadil Novalić)^[58] and on public procurement cases (Republican Public Prosecutor's Office),^[59] followed by terrorism cases (Court of BiH), various criminal and war crime cases.

The media followed and published the press releases and other information released by the BiH judicial institutions during the pandemic. Two online outlets (klix.ba and nezavisne.com) issued 106 news items on domestic court cases and prosecutorial investigations in the 15 March-15 May 2020 period; they concerned discontinued investigations, filed charges, new cases (especially coronavirus cases), extension of pre-trial detention, confirmed indictments, etc. Most of the news items regarded the actions of the BiH Prosecutor's Office, the Court of BiH, the Banja Luka District Court, the Banja Luka District Prosecutor's Office, the Herzegovina-Neretva Canton Prosecutor's Office, the Sarajevo Cantonal Court, etc. Seventy-three of the articles clearly mentioned the sources of information, in most cases press releases issued by the judicial institutions, the spokespersons, prosecutors, lawyers and judges. Most of the news items were in the form of brief reports/press releases, and were not accompanied by detailed research or analysis.

[57] HJPC, written reply, 24 September 2020.

[58] Court of BiH, written reply, 9 September 2020.

[59] Republican Public Prosecutor's Office, written reply, 24 September 2020.

Sixteen articles published in this period regarded the work of the courts/prosecutor's offices during the pandemic. The sources of these articles were, for the most part, the press releases issued by the HJPC, Court of BiH, BiH Prosecutor's Office, the Federal Prosecutor's Office, the BiH Constitutional Court and the Sarajevo Cantonal Court. The authors of some news/information also quoted as their sources individuals working in these institutions: BiH Constitutional Court President Zlatko Knežević, HJPC Chairman Milan Tegeltija, HJPC member Amila-Mimica Kunosić, Trebinje District Court President Bojan Stević and Court of BiH President Ranko Debevec.

These articles concerned the HJPC's recommendations on the work of the courts and prosecutor's offices due to the pandemic,^[60] Court of BiH's decision on changes in the way it worked,^[61] adjournment of hearings in the Sarajevo Canton,^[62] announcement of the HJPC telephone session,^[63] the Constitutional Court electronic session,^[64] the HJPC release on the online trials initiative,^[65] et al. All the articles were pick-ups of the press releases or carried short statements by BiH judicial officials. None of the articles analysed the way the BiH judiciary was working or the proposals to introduce online trials; nor did they provide detailed information.

The two online outlets also published seven articles criticising and reviewing the work of judicial institutions, but only three of them focused on their work during the pandemic: one op-ed focused on the HJPC decision on the organisation of the work

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- [60] Nearly all trials may be adjourned because of coronavirus, Klix.ba, 15 March 2020, available in BCS at: <https://www.klix.ba/vijesti/bih/gotovo-sva-sudjenja-u-bih-mozda-budu-otkazana-zbog-koronavirusa/200315124>
- [61] Court of BiH introduces preventive measures because of coronavirus, Nezavisne novine, 16 March 2020, available in BCS at: <https://www.nezavisne.com/novosti/bih/I-Sud-BiH-uveo-preventivne-mjere-zbog-virusa/589115>
- [62] All hearings involving three or more defendants adjourned in Sarajevo Canton, Klix.ba, 17 March 2020, available in BCS at: <https://www.klix.ba/vijesti/bih/u-kantonu-sarajevo-zbog-koronavirusa-otkazana-sva-rocista-s-tri-i-vise-optuzenih/200317104>
- [63] HJPC to discuss suspending deadlines during emergency situation tomorrow, 23 March 2020, Klix.ba, available in BCS at: <https://www.klix.ba/vijesti/bih/HJPC-sutra-o-ukidanju-rokova-u-postupcima-za-vrijeme-vanredne-situacije/200325107>
- [64] Constitutional Court held electronic session, 27 March 2020. Nezavisne novine, available in BCS at: <https://www.nezavisne.com/novosti/bih/Ustavni-sud-BiH-odrzao-sjednicu-elektronskim-putem/591163>
- [65] HJPC reviewing online trial option for urgent cases and cases that cannot be postponed, klix.ba, 31 March 2020, available in BCS at: <https://www.klix.ba/vijesti/bih/HJPC-bih-razmatra-opciju-online-sudjenja-u-neodgodivim-i-neophodnim-predmetima/200331129>

of BiH courts and prosecutor's offices of 22 March 2020,^[66] the second on online trials,^[67] while the third reported on the crowds in front of the Sarajevo Municipal Court caused by the restrictive measures.^[68] The small number of articles discussing the judicial institutions' measures and decisions during the pandemic shows that these outlets did not review their work. None of the cited articles dealt with judicial transparency or public outreach during the pandemic.

[66] Milan Blagojević, *Tribulation and Law*, 25 March 2020, Nezavisne novine, available in BCS at: <https://www.nezavisne.com/index/kolumne/Nevolja-i-pravo/590834>.

[67] *Corona and BiH judiciary: Will online trials begin and function*, 29 April 2020, klix.ba, available in BCS at: <https://www.klix.ba/vijesti/bih/korona-i-bh-pravosudje-hoce-li-zazivjeti-i-funkcionisati-online-sudjenja/200428067>

[68] *Large crowds in front of land register in Sarajevo, only one counter open due to pandemic*, 29 April 2020, klix.ba, available in BCS at: www.klix.ba/vijesti/bih/velike-guzve-pred-grunтовnicom-u-sarajevu-zbog-pandemije-radi-samo-jedan-salter/20042904

5. Judiciary's Media Outreach

Prior research has shown that judicial transparency is not satisfactory and that journalists are dissatisfied with their communication with judicial institutions and their replies to press requests for free access to information.^[69] The interviewed journalists thought that the BiH judiciary's outreach and transparency had not changed much during the pandemic and that the outlets' communication with the judicial institutions depended on the heads of the latter and their PR officers.

Due to the epidemiological measures and postponement of most trials, the press **mostly followed the work of the judicial institutions through their official announcements and press releases on their websites.** Prior research has shown that judicial transparency has been undermined by inconsistencies in the publication of the names of suspects and defendants, and a trend of restricted access to information from trials.^[70] Under the HJPC's 2014 Guidelines on the Publication of Prosecutorial and Court Decisions on Official Websites,^[71] information about the filed and confirmed indictments may be published regardless of the character or gravity of the crime and depending on the capacities and resources of the prosecutor's offices; in particular, at least minimal transparency should be ensured with respect to war crimes, organised crime and corruption cases. The Guidelines also lay down that judgments in criminal cases are public and are to be published regardless of the character or gravity of the crime, and depending on the capacities and resources of the courts. The courts may, however, decide not to disclose the personal data of the defendants, plaintiffs, victims or witnesses in order to protect their private or intimate life.^[72]

[69] Erna Mačkić. 2018, *Transparency of the Response of the BiH Judiciary to Corruption*. Analitika, available in BCS at: <https://www.analitika.ba/bs/publikacije/osvrti>

[70] Erna Mačkić. 2018, *Transparency of the Response of the BiH Judiciary to Corruption*. Analitika, available in BCS at: <https://www.analitika.ba/bs/publikacije/osvrti>; HJPC, *Guidelines on the Publication of Prosecutorial and Court Decisions on Official Websites*, available in BCS at: https://www.pravosudje.ba/HJPC/faces/faces/pdfservlet?p_id_doc=28346; Emina Ćerimović, Edin Hodžić and Amra Mehmedić, 2014, *Anonymisation of Court and Prosecutorial Acts in BiH*, available in BCS at: http://utfbih.ba/wp-content/uploads/2016/06/anonimizacija-studija_web_5maj_0.pdf

[71] HJPC, *Guidelines on the Publication of Prosecutorial and Court Decisions on Official Websites*, available in BCS at: https://www.pravosudje.ba/HJPC/faces/faces/pdfservlet?p_id_doc=28346

[72] Ibid.

Notwithstanding the Guidelines, the interviewed reporters said that the judicial institutions' practices of publishing information on pravosudje.ba were not uniform.^[73] Only a handful of the institutions publish confirmed indictments, some do not publish judgments or they anonymise them,^[74] while no information is available about dismissed or rejected cases.^[75] Reporters consider data anonymisation, i.e. publication of initials or redacted texts precluding the identification of the individuals particularly problematic; in their view, such anonymisation is neither justified nor in public interest. The practices of publishing press releases are not uniform either. The analysis showed that the judicial institutions covered by the research published a small number of press releases during the first two months of the pandemic. The Guidelines on the Publication of Prosecutorial and Court Decisions on Official Websites do not include instructions on the publication of press releases. Even some of the available PR strategies do not contain precise information on the content and timing of press releases.^[76] The Court of BiH has been e-mailing and publishing on its website its weekly press releases on the Court's activities and case updates, but some reporters said they had difficulty reaching the Court by phone, especially during the pandemic.^[77]

Communication with the judicial spokespersons and PR departments was the journalists' second key source of information about the work of the judiciary. Reporters said that some institutions had excellent spokespersons/press units and promptly responded to inquiries, and even used Viber groups to communicate with them.^[78] However, in some cases, such good practices depended on just one individual. Oslobođenje's reporter said that problems usually arose when the Tuzla Prosecutor's Office spokesperson went on holiday, because "there's no-one we can obtain information from when he's on vacation."^[79] On the other hand, reporters said that some judicial institutions (the Mostar Cantonal Prosecutor's Office and the BiH Prosecutor's Office) were not media friendly at all and did not reply to

[73] Ljiljana Mitrović, Nezavisne novine reporter, written reply, 27 September 2020.

[74] Denis Džidić, BIRN Director, interview, Sarajevo, 3 September 2020.

[75] Selma Učanbarlić, CIN reporter, interview, Sarajevo, 3 September 2020.

[76] See, e.g. the Federal Prosecutor's Office *Public Relations Strategy*, available in BCS at: https://ft-fbih.pravosudje.ba/vstvl/faces/pdfservlet?p_id_doc=6579

[77] Vera Bugarin, SRNA news agency reporter, telephone interview, 21 September 2020.

[78] The reporters commended the Tuzla Canton Prosecutor's Office, the Una-Sana Canton Prosecutor's Office, the Sarajevo Canton Prosecutor's Office, the Court of BiH and the HJPC. Zinaida Đelilović, Oslobođenje reporter, interview, Sarajevo, 3 September 2020.

[79] Zinaida Đelilović, Oslobođenje reporter, interview, Sarajevo, 3 September 2020.

their inquiries.^[80] Three interviewed reporters singled out the lack of transparency of the BiH Prosecutor's Office, saying it usually replied to their inquiries with "no comment".^[81] CIN's reporter elaborated their problems in communication with the BiH Prosecutor's Office "We have absolutely no idea of how that institution works, except what we see at the end, in court if an indictment is confirmed and a case tried (...) That is not enough, especially in light of all those accusations about the insufficient prosecution of corruption cases; we don't know what happens to the cases, how they are assigned, how the investigations are conducted, the stage an investigation is in, what is happening between them, who the people working there are. We tried to obtain various data from the BiH Prosecutor's Office, but to no avail. We, as journalists, are ultimately forced to seek out other sources to obtain the information, which, of course, impedes and prolongs our investigation process," she said.^[82] The BIRN Director thinks that prosecutor's offices are generally non-transparent and that it is difficult to obtain information about the status of specific cases from them. He also points out that both the prosecutor's offices and the courts organise **news conferences** extremely rarely, which further corroborates their lack of transparency and the reporters' problems in accessing specific data.^[83] In addition, as some spokespersons noted, some judicial institutions do not have spokespersons and their duties are performed by the Secretaries, who are overstrained.^[84]

Journalists also highlighted the problem arising from some PR and outreach staff's **unfamiliarity with the Freedom of Access to Information Act**.^[85] Research has indicated that the FAIA is inconsistently applied by BiH judicial institutions and that reporters frequently receive partial replies to their requests, if any.^[86] Research has also shown that the judicial institutions' practices vary when it comes to their publication of guides to access to information and their Index Registers of Information, which

[80] Ibid.

[81] Vera Bugarin, SRNA news agency reporter, telephone interview, 21 September 2020.

[82] Selma Učanbarlić, CIN reporter, interview, Sarajevo, 3. September 2020.

[83] Denis Džidić, BIRN Director, Sarajevo, 3 September 2020.

[84] Neven Kramer, Secretary of the East Sarajevo District Prosecutor's Office, telephone interview, 8 September 2020. See also Damir Dajanović, Blerina Ramaj and Xheni Lame, 2018, *Openness of Judicial Institutions in BiH and the Region. Recommendations*, Civic Association Zašto ne? (Why not?), available in BCS at: <https://zastone.ba/app/uploads/2018/10/Otvorenost-pravosudnih-institucija-u-regionu-i-BiH-za-godinu-2017.pdf>

[85] Selma Učanbarlić, novinarka CIN-a, intervju, Sarajevo, 3.9.2020

[86] Erna Mačković. 2018. *Transparentnost pravosuđa u Bosni i Hercegovini u domenu procesuiranja koruptivnih krivičnih djela*. Analitika. <https://www.analitika.ba/sites/default/files/publikacije/Transparentnost%20pravosudnih%20institucija%20-%20osvrt.pdf>

specify the types of information and the forms in which it is available, which these institutions hold and which they are under the obligation to publish.^[87]

As per the **reporters' access to hearings** during the pandemic, one of the interviewed journalists noted problems in that area as well. For instance, CIN's request to cover a hearing in Kakanj (indictment against a judge) during the pandemic was rejected under the explanation that crisis HQ measures were in place and that the courtroom could not fit a large number of spectators. This limited the work of the press and rendered difficult public insight in cases before judicial institutions.^[88] Reporters also noted that the HJPC has over the past few years changed its communication with the media, and opened its sessions and disciplinary proceedings to the public.^[89] The media publicly criticised the inability to follow the HJPC's telephone and online sessions.^[90] SRNA's reporter says that her communication with the HJPC was good during the pandemic, and that the spokesperson provided her with information, but that reporters had difficulty following the sessions in the HJPC's premises because the HJPC did not follow the agenda, closed its sessions when discussing some issues that interested the journalists and rarely gave statements to the press.^[91]

Furthermore, **substantial outreach risks were posed by the fact that the pandemic has resulted in the slower prosecution of specific cases.** More specifically, as the BIRN Director noted, there is still no solution for continuing trials with larger numbers of co-defendants.^[92] "Six months into the pandemic, no solution has been found; nor are there discussions on what to do with large cases with over 10 co-defendants, which cannot be tried in compliance with physical distancing measures. These cases are simply stuck. These are huge, systemic cases concerning war crimes, organised crime, the Srebrenica genocide, corruption, terrorism, cases in which nothing has happened for half a year. This shows that no systemic consideration has been given to finding a modality to speed up the process," Džidić thinks.^[93] The fact that a solution to continue their prosecution has not been identified yet has undermined public perceptions of the judiciary given the high profile of these cases.

[87] Ibid.

[88] Selma Učanbarlić, CIN reporter, interview, Sarajevo, 3. September 2020

[89] Ibid.

[90] Admir Muslimović, 2020, *Reporters prevented from covering HJPC electronic session*, Detektor, <https://detektor.ba/2020/11/18/novinarima-onemoguceno-pracenje-elektronske-sjednice-vstv-a/>

[91] Vera Bugarin, SRNA reporter, telephone interview, 21 September 2020.

[92] Denis Džidić, BIRN Director, interview, Sarajevo, 3 September 2020.

[93] Ibid.

6. Judiciary's Communication with the Legal Community

Lack of judicial transparency has also impinged on the work of legal professionals. Information on new modes of work was disseminated to lawyers and parties to the proceedings partially, albeit not even by all institutions. According to interviewed legal professionals and CSOs, they often had to look for additional information in the media to find out important details.

“All of us lawyers received notification of the new modes of operation from a large number of courts, we were showered with them. But they did not tell us anything. We learned the rest – that no trials of more than five co-defendants could be held, that only pre-trial detention cases would be heard because they were urgent - from the media reports... Some judicial panels would occasionally notify us that the main hearings in some cases had been adjourned until further notice ..., ” says Sarajevo lawyer Nina Kisić.^[94] Another problem lawyers encountered during the pandemic was their **inability to communicate with their clients face to face** because visits to pre-trial detention units were prohibited, and that they had to communicate by phone.^[95] They also alerted to their general lack of access to documents, such as judgments, indictments and decisions to discontinue investigations, and that the **scope and quality of information published by the judiciary varied greatly**. They commended the Court of BiH's practice of issuing reports on its activities, case summaries and texts of the judgments.^[96]

CSOs cooperating with the judiciary were not sent guidance on the judiciary's work regime during the pandemic. Transparency International, which monitors trials and corruption cases before BiH courts, said that none of the courts had notified them of the monitoring rules or the rules on accessing the courtrooms because of the pandemic. They also said that the prosecutor's offices were non-transparent and that they had difficulty accessing prosecutorial decisions.^[97]

Peđa Đurasović, a Legal Adviser with the association “Vaša prava BiH” (Your Rights BiH) alerts to the **lack of a clear communication strategy** at the HJPC

[94] Nina Kisić, Sarajevo lawyer, Zoom interview, 23 September 2020.

[95] *Ibid.*

[96] Tajtana Savić, Bijelina lawyer, Zoom interviews, 24 September 2020.

[97] Uglješa Vuković, Transparency International, 22 September 2020. Zoom interview.

level that would facilitate exchange of information on proceedings before courts and preparation of prosecutorial indictments. In his view, in the absence of such a strategic approach and clearly defined communication responsibilities of judicial staff, the judicial institutions' public outreach depends on the good will of their spokespersons.^[98]

Communication risks that arose during the pandemic can also be ascribed to the **slowdown in adjudicating specific cases**. Damir Arnaut, the Chairman of the Temporary Commission of Inquiry on the HJPC, criticised the Council of Ministers for the slowness in the drafting and submission for adoption of amendments to the BiH Criminal Procedure Code in response to HJPC's initiative to urgently amend the law to provide for **online trials and actions and proceedings during the pandemic** in all procedural situations requiring the presence of the parties to the proceedings in order to minimise risks to their health during the pandemic.

[98] Peđa Đurasović, Legal Adviser, *Vaša prava BiH*, Zoom interview, 10 September 2020.

7. Conclusion and Recommendations

The pandemic and the introduced epidemiological measures have posed outreach challenges to the judiciary, given the adjournment of most hearings and the shorter working hours. The cancellation of hearings in high-profile cases, including corruption, organised and war crime cases, and lack of information on when they would resume further impinged on public perceptions of the judiciary.

Despite the relaxation of measures in May 2020, there are still problems in scheduling and holding hearings in cases with large numbers of parties to the proceedings, given that many courts lack courtrooms in which physical distancing rules can be observed. This is why the HJPC expects that the number of incoming and resolved cases will be smaller in 2020 than in the past and that the proceedings will take longer on average.^[99] In the light of prior research showing that the transparency of BiH judicial institutions is not at a satisfactory level, the adjourned hearings and adopted measures are likely to further diminish public trust in the judiciary.

Notwithstanding, the BiH judicial institutions mostly maintained their pre-pandemic modes of outreach during the pandemic and failed to adequately respond to communication challenges. They: a) published partial information on the adopted measures (some did not publish information or they published information on shorter working hours, but did not subsequently publish that they had resumed normal operations); b) did not organise news conferences at which they could reply to complex questions about high profile cases; c) did not provide the parties to the proceedings with full information on the adopted measures or the continuation of the trials. Outreach practices varied during the pandemic as well and good media outreach depended primarily on the helpfulness and diligence of the spokespersons, rather than on a strategic approach and consistent outreach policies.

The BiH judiciary needs to improve its outreach practices in order to increase its transparency, especially during crisis situations, as well as to win greater public trust. The following recommendations are based on the interviews with and replies of the spokespersons, journalists, lawyers and civil society representatives, as well as on the analysis of secondary sources.

[99] HJPC, written reply, 22 September 2020.

- » The HJPC should adopt a comprehensive communication strategy accompanied by extremely clear and detailed guidance on which information judicial institutions must publish proactively and reactively and how they should publish it. Rulebooks on specific media events, such as news conferences and briefings, should be adopted based on the strategy. They should specify the roles and obligations of all the key actors (spokespersons, court presidents and chief prosecutors) and the information they must release to the public.
- » The communication strategy should include crisis communication guidelines, providing precise instructions on which information has to be released to the public (the media, parties to the proceedings) and how it should be released. As per crisis situations in which the work of the judicial institutions is limited, the guidelines should specify in detail how the public should be informed of the imposed measures and which information should be publicly released (information on scheduled and rescheduled hearings, access to judicial institutions). The guidelines should clearly specify the roles and modes of operation of the outreach units, and the chief and duty prosecutors and judges and their public communication duties.
- » In times of crisis, each institution should designate its key senior managers (court presidents, registrars, secretary generals) to monitor the situation in their fields of work and recommend to the court presidents and chief prosecutors how to organise the work of their institutions in emergency circumstances. Once the latter adopt such decisions, the institutions are to designate staff to monitor their implementation at the operational level and regularly hold brief online meetings with macro and medium management and exchange information to ensure their prompt response to the new circumstances.
- » Judicial institutions should comply with the FAIA and the Guidelines on the Publication of Court and Prosecutorial Decisions on Official Websites, which specify the way in which decisions during the investigation stage and after the confirmation of indictments are published. The publication of information on www.pravosudje.ba should be harmonised. Other relevant information concerning judicial institutions, such as their trial calendars, contact details of their PR officers, Index Registers of Information, guides to access to information, etc., should also be published.
- » Judicial institutions should also post on their websites key information on their activities on a weekly basis and disseminate such information to all media.
- » Heads of judicial institutions and their PR officers should be provided with training in proactive and reactive transparency and awareness should be raised of the importance of judicial transparency.

- » Put in place the legal framework facilitating the unimpeded functioning of the courts and their communication with parties by making maximum use of IT.
- » Judicial spokespersons and press units should respond to media inquiries and forward them information relevant to the public on a regular (daily) basis.
- » Funds should be allocated to hire staff that will be charged only with media affairs in judicial institutions where PR duties are performed by secretaries.

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