



Strasbourg, 27 January 2011

CCJE-GT(2011)1

**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE)**

Questionnaire with a view of the preparation of Opinion No. 14 on the non-materialisation of the judicial process and the use of IT by judges and court staff

BiH

Questionnaire with a view of the preparation of Opinion No. 14 on the non-materialisation of the judicial process and the use of IT by judges/court staff

1. Access to courts

a) May legal proceedings be instigated by electronic means?

No.

b) Is there relevant legislation?

No.

c) What are the main requirements for instigating legal proceedings by electronic means? (multiple choice possible)

- The parties must submit the claim with a qualified electronic signature
- The parties must fill in a downloadable form to be submitted electronically
- Other, please specify.

d) To what extent are legal proceedings instigated by electronic means in practice?

2. Procedure within courts

a) Once a claim has been issued electronically, does the procedure differ from a traditional procedure?

b) Does the electronic procedure differ according to the type of case (civil, criminal, administrative, etc.)?

c) How does the court communicate with the parties:

| <i>With parties who use electronic means themselves:</i> | <i>With other parties:</i> |
|---|---|
| <input type="checkbox"/> by traditional means? | <input checked="" type="checkbox"/> by traditional means? |
| <input type="checkbox"/> by using electronic communication? | <input type="checkbox"/> by using electronic communication? |
| <input checked="" type="checkbox"/> both? | <input type="checkbox"/> both? |

d) Do specific electronic means exist for the communication between lawyers and courts? Please specify.

The communication is conducted through attorneys' private addresses, business addresses of court officers or judges and business addresses of prosecutors and their associates.

e) Do electronic files exist?

Yes, they do but only to a certain extent. Owing to the fact that the High Judicial and Prosecutorial Council of BiH (HJPC) implemented the Court Management System (CMS) Project in the Court of BiH in September 2010, the cases opened after that date, as well as those opened earlier but that were active in that period exist also in electronic form (in addition to the paper file), while the old cases are managed only on paper. It should be noted that the CMS does not include the complete case file but only the documents drafted by the Court or the Prosecutor's Office of BiH (if the case concerned also exists in electronic form at the Prosecutor's Office of BiH). The documents entered in the CMS are not signed or

stamped by the Court and are mostly Word documents and other information entered in the database.

- If an electronic file exists, is there a paper file as well?

Yes.

- If both exist, which is the "authentic" file?

The paper file is the only authentic file, given that the CMS file is not complete. Moreover, the CMS files have no signature or stamp of the Court. The CMS is intended to facilitate the work and access to the files by judges and their associates, so they do not have to take case files from the Records Office for consultations since they are now accessible in the computer.

f) If yes, is there relevant legislation?

No.

g) What are the main requirements with respect to electronic files?

The existence of software which would be able to support the electronic management of a great number of cases; introduction of electronic case registration; a high level of security and a variety of restrictions on confidential data access; a high level of computer literacy among the population (parties); training of court staff, attorneys, prosecutors and population in general.

h) Are there special regulations and safeguards with respect to electronic files containing particularly sensitive information (e.g. health information, information concerning secret services)?

i) What happens when the authenticity of an electronic document is doubtful/controversial among the parties?

j) If parties wish to submit documents which are **not** in an electronic form (e.g. documents on paper), what procedure will the parties and the courts follow?

The Court receives a document, attaches it to the relevant case file and responds to the party in writing if the Court is required to respond.

k) Must paper documents be kept? If yes, how long?

Yes, permanently.

l) What is the procedure when a judge's or court clerk's hand signature is prescribed? Does digital signature exist?

Each document produced by the Court of BiH requires the judge's signature and in some cases the signature of the court officer (e.g. verdicts). Digital signature does not exist.

m) Do parties have access to the complete court file:

Yes, always

Yes, but only with specific conditions

No

Please indicate, if appropriate, the relevant legislation.

n) Do the parties or their lawyers have the possibility to follow the state of the proceedings via internet (secured)?

No. The Court's website contains only general information about the status of a specific proceeding, such as a brief case summary, scheduled hearing, and pronounced verdict. The Public and Outreach Section prepares this information.

On the other hand, judges and their advisors have the possibility to follow the proceedings electronically (through video streaming from the courtrooms) whenever the proceedings are open for the public.

o) Is the access to electronic files within the court regulated? Please specify.

The HJPC Project has introduced the Court Management System (CMS) in all courts in BiH. CMS is not regulated by law, but by internal HJPC rules. The entire judicial staff underwent a training to use the CMS and apply the Instructions for Use issued by the HJPC.

p) Have judges/court staff access:

| <i>Judges</i> | | <i>Court staff</i> | |
|-------------------------------------|--|-------------------------------------|--|
| <input checked="" type="checkbox"/> | to all court files? | <input checked="" type="checkbox"/> | to all court files? |
| <input type="checkbox"/> | only to files within their jurisdiction? | <input type="checkbox"/> | only to files within their jurisdiction? |

This does not apply to the access to the CMS electronic case files. Only the judges and the staff working on the specific case have the access. There is also the possibility of accessing the paper file at the Records Office.

3. Oral hearing

a) Are there oral hearings based on electronic means (e.g. judges act based on electronic files accessible in computer)?

The only oral hearings based on electronic means are the examinations of witnesses via video link from other countries, as part of international legal assistance.

b) Are the expertise, the draft decision written by the rapporteur and personal notes accessible for judges in computer?

Draft decisions written by the rapporteur judge are not entered in the database; they are accessible on computer only if the judge sends them by email to the panel members for consideration. There is a shared folder (accessible by judges and professional staff) containing the documents facilitating the work of judges and their associates. These may include professional opinions of judges or associates (research papers) presented at internal meetings, collegiums, seminars etc.

c) Is the complete file accessible for the parties or their lawyers during the hearing (also in computer)?

No.

d) Has technical equipment been installed in courts enabling to project documents on screens visible to judges, parties and audience?

Yes.

e) Are oral hearings audio or video recorded?

Yes, they are both audio and video recorded. The Court has eight courtrooms six of which are equipped for audio and video recording, while two have only audio recording equipment.

f) Is video conference in public hearing used:

- for the hearing of witnesses?
- for the hearing of experts?
- for the hearing of parties?
- other? Please specify.

Please indicate the relevant legislation as well as the restrictions, if appropriate.

The Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters regulating the matter of international legal aid via video link is applicable in BiH.

g) If possible, please detail how many courts have been equipped with an adequate and sufficient electronic equipment to assist judges, court clerks and parties during oral hearings?

The answer relating to the Court of BiH: At the Court of BiH it is not possible to access the electronic files; there is an electronic database of the Court's decisions; the courtrooms are equipped with projectors; the court officer and the typist who attend the hearing have access to the internet in the courtroom; the Court has two courtrooms equipped with technical means for establishing audio-video link; of eight courtrooms six have the equipment for audio-video recording of the trial, while two have only the possibility of audio recording. It is important to note that the Court of BiH is the best equipped court in BiH and one of the best equipped courts in the region.

The answer relating to other courts:

| | 100% of courts | +50% of courts | -50% of courts | -10% of courts |
|---------------------------------------|-------------------------------------|--------------------------|--------------------------|-------------------------------------|
| Electronic files access | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Electronic data base of jurisprudence | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Screen projectors | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Internet access | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Video conferencing | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Audio conferencing | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Video recording | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Audio recording | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

We have prepared this answer in consultation with the HJPC of BiH. It should be emphasized that as for the first two questions we have in mind the access to the CMS

files as explained above. They are not complete electronic files which could replace the paper files.

4. Information services for judges

Are there central databases accessible for judges containing:

| <i>Database run by State</i> | <i>Database run by a private institution</i> |
|---|---|
| <input type="checkbox"/> national legislation | <input type="checkbox"/> national legislation |
| <input type="checkbox"/> European legislation | <input type="checkbox"/> European legislation |
| <input type="checkbox"/> national case-law | <input type="checkbox"/> national case-law |
| <input type="checkbox"/> international case-law | <input type="checkbox"/> international case-law |
| <input type="checkbox"/> law review articles | <input type="checkbox"/> law review articles |

There are official internet websites providing the information listed above, such as websites of the Court of BiH, HJPC, ICTY, Entity Supreme Courts, Constitutional Court of BiH.

Please specify the private institution.

5. Practical court work

- a) What is the work of the judge:
- in writing the documents? Yes.
 - in delivering the documents? The judge issues the order for delivery of the documents to the parties.
 - in registering the documents? Yes. However, the judges often engage the staff to work on the cases and give them instructions to act upon through the CMS which also includes work on document registration.
- b) What is the work of the court staff:
- in writing the documents? Yes.
 - in delivering the documents? Yes.
 - in registering the documents? Yes.
- c) Is there enough staff to do this work? Please specify. Yes, for the time being. However, the CMS to some extent slowed the case processing down which required the hiring of additional staff. On the other hand, the continued increase of the number of judges in the Court of BiH calls for the increase of administrative and professional staff supporting the work of the judges.
- d) Do judges write their decisions themselves on their computer?
- Judges write some decisions themselves on their computer; some judges use the services of the typists; some decisions are drafted by legal officers.
- e) Do judges use specific technics (e.g. voice recognition, structure or model of decision available in a database)? Please specify.
- The judges often use templates for decision drafting. The templates are available in the CMS which contains 28,000 templates designed to uniform the work of all courts.
- f) Is modern technology used to monitor the length of proceedings and for case flow management within the court (eg. alert system)?

Alert system is used only in cases in which a person is ordered into custody. The judge and his associate receive by email information on the expiry of a deadline for a certain action (review of justification of custody or extension of custody). There is also a possibility of entering the “expiry of important deadline” category into the CMS which enables the monitoring of all statutory deadlines thus preventing their expiry.

- g) Are data concerning the work of each judge contained in a database which can be used for statistics, evaluations, etc? Please specify

Yes. The CMS enables review of cases and the case status at the moment of its assignment to a judge. Management Reports on the judges’ work on the cases are available only to the President of the Court and Heads of the Records Offices (there are two Records Offices in the Court of BiH).

6. Internet

- a) Is internet accessible for each judge in his/her office? Is this access limited ? Please specify. Yes. Access to some internet websites including, among many others, Facebook and YouTube is limited.

- b) Do all courts have their own website? Please specify which court and the content of the website.

Below are the Courts that have their own websites on the “pravosudje.ba” judicial web portal. The Courts and the Prosecutor’s Offices’ websites contain basic information about the institution, current events, online case review, trial schedule etc.

| | |
|---|---|
| Okružni privredni sud u Trebinju Trebinje District Commercial Court | http://pravosudje.ba/vstv/faces/index.jsp?ins=165 |
| Okružni privredni sud u I. Sarajevu Istočno Sarajevo District Commercial Court | http://pravosudje.ba/vstv/faces/index.jsp?ins=164 |
| Okružni privredni sud u Doboju Doboj District Commercial Court | http://pravosudje.ba/vstv/faces/index.jsp?ins=163 |
| Kantonalni sud u Mostaru Mostar Cantonal Court | http://ksud-mostar.pravosudje.ba |
| Osnovni sud Brčko Distrikta Brčko District Basic Court | http://ossud-brckodistriktbih.pravosudje.ba |
| Apelacioni sud Brčko Distrikta Brčko District Appellate Court | http://apsud-brckodistriktbih.pravosudje.ba |
| Kantonalni sud u Tuzli Tuzla Cantonal Court | http://ksud-tuzla.pravosudje.ba |
| Kantonalni sud u Bihaću Bihać Cantonal Court | http://ksud-bihac.pravosudje.ba |
| Općinski sud u Tuzli Tuzla Municipal Court | http://opsud-tuzla.pravosudje.ba |
| Općinski sud u Tešnju Tešanj Municipal Court | http://opsud-tesanj.pravosudje.ba |
| Federalno tužilaštvo F BiH Federation of BiH Prosecutor's Office | http://ft-fbih.pravosudje.ba |
| Kantonalno tužilaštvo Kantona Sarajevo | http://kt-sarajevo.pravosudje.ba |

| | |
|--|---|
| Sarajevo Cantonal Prosecutor's Office | |
| Kantonalno tužilaštvo Posavskog kantona-Orašje Posava Canton-Orašje Cantonal Prosecutor's Office | http://kt-orasje.pravosudje.ba/ |
| Tužilaštvo Hercegovačko-neretvanskog kantona Herzegovina-Neretva Cantonal Prosecutor's Office | http://kt-mostar.pravosudje.ba |
| Tužiteljstvo Srednjobosanskog kantona Central Bosnia Cantonal Prosecutor's Office | http://kt-travnik.pravosudje.ba |
| Osnovni sud u Bijeljini Bijeljina Basic Court | http://ossud-bijeljina.pravosudje.ba |
| Okružni sud u Bijeljini Bijeljina District Court | http://oksud-bijeljina.pravosudje.ba |
| Republičko tužilaštvo RS RS Prosecutor's Office | http://rt-rs.pravosudje.ba |
| Kantonalno tužilaštvo Zapadnohercegovačkog kantona West Herzegovina Cantonal Prosecutor's Office | http://kt-sirokibrijeg.pravosudje.ba |
| Kantonalni sud u Odžaku Odžak Cantonal Court | http://ksud-odzak.pravosudje.ba |
| Općinski sud u Livnu Livno Municipal Court | http://opsud-livno.pravosudje.ba |
| Okružni sud u Trebinju Trebinje District Court | http://oksud-trebinje.pravosudje.ba |
| Osnovni sud u Prnjavoru Prnjavor Basic Court | http://ossud-prnjavor.pravosudje.ba |
| Općinski sud u Orašju Orašje Municipal Court | http://opsud-orasje.pravosudje.ba |
| Osnovni sud u Doboju Doboj Basic Court | http://ossud-doboj.pravosudje.ba |
| Okružni sud u Banjoj Luci Banjaluka District Court | http://oksud-banjaluka.pravosudje.ba |
| Kantonalni sud u Livno Livno Cantonal Court | http://ksud-livno.pravosudje.ba |
| Kantonalno tužilaštvo Kantona 10 Livno Canton 10 Livno Prosecutor's Office | http://kt-livno.pravosudje.ba |
| Kantonalni sud u Novom Travniku Novi Travnik Cantonal Court | http://ksud-novitravnik.pravosudje.ba |
| Okružno tužilaštvo u Doboju Doboj District Prosecutor's Office | http://ot-doboj.pravosudje.ba |
| Okružni sud u Doboju Doboj District Court | http://oksud-doboj.pravosudje.ba |
| Kantonalno tužilaštvo Zeničko-dobojskog kantona Zenica-Doboj Cantonal Prosecutor's Office | http://kt-zenica.pravosudje.ba |
| Općinski sud u Kakanju Kakanj Municipal Court | http://opsud-kakanj.pravosudje.ba |
| Okružno tužilaštvo Banja Luka | http://spectuz-banjaluka.pravosudje.ba/ |

| | |
|---|---|
| - SPECIJALNO TUŽILAŠTVO Banjaluka District Prosecutor's Office-SPECIAL PROSECUTOR'S OFFICE | |
| Osnovni sud u Gradišci Gradiška Basic Court | http://ossud-gradiska.pravosudje.ba |
| Kantonalni sud u Sarajevu Sarajevo Cantonal Court | http://ksud-sarajevo.pravosudje.ba/ |
| Osnovni sud u Derventi Derventa Basic Court | http://ossud-derventa.pravosudje.ba/ |
| Općinski sud u Travniku Travnik Municipal Court | http://opsud-travnik.pravosudje.ba/ |
| Općinski sud u Bugojnu Bugojno Municipal Court | http://opsud-bugojno.pravosudje.ba/ |
| Osnovni sud u Modriči Modriča Basic Court | http://ossud-modrica.pravosudje.ba/ |
| Osnovni sud u Mrkonjić Gradu Mrkonjić Grad Basic Court | http://ossud-mrkonjicgrad.pravosudje.ba |
| Općinski sud u Goraždu Goražde Municipal Court | http://opsud-gorazde.pravosudje.ba/ |
| Općinski sud u Konjicu Konjic Municipal Court | http://opsud-konjic.pravosudje.ba/ |
| Općinski sud u Zenici Zenica Municipal Court | http://opsud-zenica.pravosudje.ba/ |
| Općinski sud u Kiseljaku Kiseljak Municipal Court | http://opsud-kiseljak.pravosudje.ba |
| Općinski sud u Visokom Visoko Municipal Court | http://opsud-visoko.pravosudje.ba |
| Općinski sud u Žepču Žepče Municipal Court | http://opsud-zepce.pravosudje.ba |
| Kantonalni sud u Zenici Zenica Cantonal Court | http://ksud-zenica.pravosudje.ba |
| Kantonalni sud u Goraždu Goražde Cantonal Court | http://ksud-gorazde.pravosudje.ba |
| Osnovni sud u Sokocu Sokolac Basic Court | http://ossud-sokolac.pravosudje.ba |
| Osnovni sud u Višegradu Višegrad Basic Court | http://ossud-visegrad.pravosudje.ba |
| Općinski sud u Gradačcu Gradačac Municipal Court | http://opsud-gradacac.pravosudje.ba |
| Osnovni sud u Novom Gradu Novi Grad Basic Court | http://ossud-novigrad.pravosudje.ba |
| Osnovni sud u Kotor Varošu Kotor Varoš Basic Court | http://ossud-kotorvaros.pravosudje.ba |
| Općinski sud u Cazinu Cazin Municipal Court | http://opsud-cazin.pravosudje.ba |
| Osnovni sud u Tesliću Teslić Basic Court | http://ossud-teslic.pravosudje.ba |
| Osnovni sud u Prijedoru Prijedor Basic Court | http://ossud-prijedor.pravosudje.ba |
| Općinski sud u Zavidovićima Zavidovići Municipal Court | http://opsud-zavidovici.pravosudje.ba |
| Općinski sud u Velikoj Kladuši Velika Kladuša Municipal Court | http://opsud-velikakladusa.pravosudje.ba |
| Općinski sud u Živinicama Živinice Municipal Court | http://opsud-zivinice.pravosudje.ba |
| Okružni sud u Istočnom Sarajevu Istočno Sarajevo District Court | http://oksud-istocnosarajevo.pravosudje.ba |
| Općinski sud u Gračanici | http://opsud-gracanica.pravosudje.ba |

| | |
|--|---|
| Gračanica Municipal Court | |
| Osnovni sud u Zvorniku Zvornik Basic Court | http://ossud-zvornik.pravosudje.ba |
| Općinski sud u Bosanskoj Krupi Bosanska Krupa Municipal Court | http://opsud-bosanskakrupa.pravosudje.ba |
| Općinski sud u Ljubuškom Ljubuški Municipal Court | http://opsud-ljubuski.pravosudje.ba |
| Općinski sud u Kalesiji Kalesija Municipal Court | http://opsud-kalesija.pravosudje.ba |
| Općinski sud u Širokom Brijegu Široki Brijeg Municipal Court | http://opsud-sirokibrijeg.pravosudje.ba |
| Osnovni sud u Vlasenici Vlasenica Basic Court | http://ossud-vlasenica.pravosudje.ba |
| Osnovni sud u Trebinju Trebinje Basic Court | http://ossud-trebinje.pravosudje.ba |
| Općinski sud u Čapljini Čapljina Municipal Court | http://opsud-capljina.pravosudje.ba |
| Osnovni sud u Foči Foča Basic Court | http://ossud-foca.pravosudje.ba |
| Kantonalni sud u Širokom Brijegu Široki Brijeg Cantonal Court | http://ksud-sirokibrijeg.pravosudje.ba |
| Općinski sud u Sanskom Mostu Sanski Most Municipal Court | http://opsud-sanskimost.pravosudje.ba |
| Općinski sud u Mostaru Mostar Municipal Court | http://opsud-mostar.pravosudje.ba |
| Općinski sud u Bihaću Bihać Municipal Court | http://opsud-bihac.pravosudje.ba |

7. Use of private personal computers/laptops by judges and court staff

- a) May a judge use his private PC/laptop for professional purposes (e.g. at home or on the way home and back?)
Yes.
- b) May e-mails be sent from the court to a judge's private e-mail address and vice versa containing professional information?
Yes, provided that the information is not confidential.
- c) Does this require special technical safeguards (e.g. excluding access by third persons, family members, etc.)? Please specify.
No.
- d) Is the situation the same for all court staff?
Yes.

8. Use of data

- e) Is the data contained in the procedure used for another aim than the procedure itself?
Yes, the data are used for statistical reporting, analysis of monitoring the length of case proceedings, analysis of certain type of cases etc.

f) Is this data used for statistics?

Yes.

g) If yes:

- who produces these statistics?

Records Offices or professional staff, depending on the type of statistics.

- how and by whom are these statistics used?

It depends on the party requesting information; they include statistics agencies, Court of BiH, HJPC, Ministry of Justice, Ministry of Security and the like.

9. Data security

a) Does legislation exist to protect personal data processed through the electronic infrastructure of a court?

Yes

No

b) If yes, are there requirements applicable to processing data in courts?

rules on access to data by the person concerned or other persons/institutions

correction and deletion requirements

other. Please specify.

c) If there is a general Data Protection Commissioner, has he or she already dealt with IT at the judiciary?

No.

d) Is there a special Data Protection Commissioner in each court (e.g. a judge with this additional task)?

No.

10. Participation of judges

Who decides about the electronic infrastructure of a court? Are judges implicated in the relevant decisions concerning the implementation of IT in courts?

This matter is primarily dealt with by the Information and Communications Section in consultation with the management of the Court. Judges may participate in that process if they are interested to do so.

11. Conclusion

Please give your opinion on the advantages and disadvantages of the development of IT in courts?

The CMS electronic system has recently been introduced in BiH. The system functions with some limitations. At first, many judges expressed their dissatisfaction with the introduction of this system because it slowed down their work to a certain extent, since each action undertaken in the proceedings should be entered in the CMS. The authorization for CMS

data entry has therefore been given to the legal officers to lift excessive workload from the judges.

One of the system deficiencies is the fact that it does not contain electronic case files which can replace the paper files. Rather, at the moment it only represents a large database the contents of which depends to a large extent on the commitment or knowledge of an associate or judge and on what information they will enter in the system, if at any. There are no sanctions for failure to enter information in the CMS. This directly affects the quality of the statistics received from the CMS.

On the other hand, the broadening of the circle of persons who can enter data in the case managed through the CMS may increase the risk of making confidential information (by a human error) available to a large number of people. All legal officers working with the judges and all judges have access to the CMS database. All these persons have the authorization to enter changes in their cases and can access any other case of the Court entered in the CMS.

A continued training of the staff on the use of IT in courts is necessary so that its introduction would not be useless or a complicating factor, but one which would facilitate the work of the Court.