Chambers AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

# International Arbitration 2025

Definitive global law guides offering comparative analysis from top-ranked lawyers

**Bosnia & Herzegovina: Trends and Developments**

Miodrag Jevtić
Gecić Law

# BOSNIA & HERZEGOVINA


## Trends and Developments

**Contributed by:**
Miodrag Jevtić
**Gecić Law**

**Gecić Law** is a leading innovative law firms in South-Eastern Europe. Committed to redefining the role of law firms in this burgeoning regional market, Gecić Law advises international and local clients across a wide range of industries and both public and private sectors, guiding them through the region's complex legal landscape across multiple practice areas. Founded in 2015 by leading independent legal minds and seasoned professionals with a shared vision, the firm's team includes graduates of top-tier universities in the USA and Europe, each bringing extensive local and international expertise. This diversity of backgrounds enables the firm to deliver innovative, pragmatic solutions to even the most intricate legal challenges. Gecić Law is a proud member of two elite global alliances, extending its capabilities and presence worldwide. The firm has also earned numerous accolades from some of the most respected international legal rankings and professional associations across various practice areas.

## Author

**Miodrag Jevtić** is a partner at Gecić Law with over 20 years of legal experience in Serbia and the region, with a strong focus on banking and finance law. He advises leading financial institutions, investors and corporations on complex cross-border M&A and financing transactions, structured lending, capital markets and regulatory matters. Miodrag has also built a robust transactional and litigation practice, providing strategic counsel on regulatory and commercial issues and dispute resolution across industries such as TMT, trade, energy and transport. He is fluent in English and Serbian (Bosnian, Croatian, Montenegrin), with basic knowledge of French.

**Gecić Law**

Nikole Spasića 2
Belgrade
Serbia

Tel: +381 11 4043 570
Email: office@geciclaw.com
Web: www.geciclaw.com

GECIĆ | LAW

## Introduction

The arbitration landscape in Bosnia and Herzegovina remains shaped by its fragmented legal framework, limited institutional use, and growing exposure to investment arbitration. Despite being a party to the New York Convention and having domestic legislation influenced by the UNCITRAL Model Law, Bosnia and Herzegovina continues to experience structural challenges that limit the consistent application and development of arbitration practices.

This article provides a comprehensive overview of recent trends and developments in domestic and international arbitration in Bosnia and Herzegovina. It explores the current legal and institutional framework, the role and performance of arbitration institutions, court practice relating to the enforcement and annulment of arbitral awards, and the country's growing involvement in investor-state disputes. The article also addresses the state of arbitration education and community engagement, which are crucial to fostering a sustainable arbitration culture.

## Use of Domestic Arbitral Institutions in International Disputes

Although Bosnia and Herzegovina's domestic arbitration system remains underutilised in purely internal disputes, domestic arbitral institutions, particularly the Arbitration Court at the Foreign Trade Chamber of Bosnia and Herzegovina (FTC BiH), have, on occasion, served as venues for resolving international commercial disputes. These instances typically involve contracts between domestic and foreign entities where the parties have agreed to seat the arbitration in Bosnia and Herzegovina and apply local procedural rules.

In this context, the FTC BiH has played a limited but notable role in administering arbitrations with a cross-border element, particularly in sectors such as trade, construction and services. While such cases remain infrequent, their existence points to the latent potential of domestic arbitral institutions to contribute meaningfully to the international arbitration ecosystem, provided that legal and procedural conditions are conducive.

Recent reforms at the FTC BiH, including the adoption of updated arbitration rules in 2025, aim to improve the institution's accessibility and credibility in both domestic and international settings. The revised rules have introduced streamlined procedures, modernised cost structures, and clearer ethical obligations for arbitrators, aligning more closely with international best practices. These developments are designed to attract more international parties to consider Bosnia and Herzegovina as a viable arbitration seat and enhance procedural confidence for foreign investors already present in the market.

Nevertheless, significant challenges remain. The legal framework governing arbitration is still fragmented across entity-level civil procedure codes, and procedural vulnerabilities persist, such as the ability to terminate arbitration agreements based on minor technicalities. These issues continue to undermine the predictability and neutrality expected by foreign parties when selecting a dispute resolution forum.

Despite these limitations, the gradual enhancement of local arbitral institutions may support a broader strategy to position Bosnia and Herzegovina as a credible venue for resolving disputes involving foreign parties. By reinforcing the competence, efficiency and impartiality of domestic arbitration mechanisms in international matters, the country could strengthen its reputation in the regional arbitration landscape and increase its appeal as a seat of arbitration in the Western Balkans.

## International Commercial Arbitration: Low Volume, Modest Impact

Bosnia and Herzegovina's participation in international commercial arbitration remains limited, despite the country's formal adherence to key international instruments such as the New York Convention and the Energy Charter Treaty. Domestic companies are rarely involved in proceedings before major arbitral institutions such as the ICC, LCIA, or VIAC. When they are, it is typically within the context of large-scale cross-border infrastructure or energy projects involving foreign contractors and international financing arrangements.

Several structural and practical factors account for this limited engagement. Many Bosnian companies lack the internal legal capacity and financial resources to pursue or defend claims in complex international arbitration proceedings. In addition, there is often

insufficient familiarity with arbitration mechanisms among local counsel, leading parties to favour more conventional dispute resolution forums, including domestic litigation or informal negotiation.

Furthermore, contractual frameworks for foreign investment projects in Bosnia and Herzegovina are frequently designed to channel disputes through bilateral investment treaties (BITs), rather than commercial arbitration clauses. As a result, many potentially commercial disputes involving foreign parties are redirected into the investor-state arbitration sphere. This dynamic further reduces the visibility and development of Bosnia and Herzegovina as an active jurisdiction in international commercial arbitration.

Compounding the issue is the absence of publicly available or centralised data on the number and nature of international commercial arbitrations involving Bosnian parties. When faced with a dispute of international character, many local companies tend to default to court proceedings or agree to alternative dispute resolution mechanisms under foreign jurisdictions, particularly where there is a perception of more predictable legal outcomes or stronger enforcement mechanisms.

### Investor-State Arbitration: Prominent and Expensive

In contrast to its modest role in international commercial arbitration, Bosnia and Herzegovina has become a highly visible and active respondent in investor-state arbitration proceedings. Over the past decade, and especially in the 2020–2025 period, the country has faced a growing number of high-value claims initiated under the auspices of ICSID and UNCITRAL, predominantly under bilateral investment treaties (BITs) and, to a lesser extent, the Energy Charter Treaty (ECT). Most of these claims have arisen in sectors with high regulatory and strategic significance, notably hydropower, thermal energy production, mining and renewable energy.

These proceedings have provided a more precise understanding of the recurring patterns in the conduct and defence of investor-state arbitration involving Bosnia and Herzegovina. Claimants have generally alleged breaches of fair and equitable treatment (FET), indirect expropriation, denial of justice and arbitrary interference with regulatory frameworks. These legal bases reflect standard BIT provisions. However, in the context of Bosnia and Herzegovina, they are often connected to unstable administrative processes, conflicting jurisdictional competences between state and entity levels, and deficiencies in implementing public-private investment agreements.

At the same time, these cases have allowed Bosnia and Herzegovina to gradually develop a body of legal and institutional experience in managing complex international disputes. Although the country's initial engagements in arbitration were marked by fragmented co-ordination and reliance on ad hoc legal teams, more recent disputes show increasing involvement of the Ministry of Foreign Trade and Economic Relations and improved co-operation between entity governments and international counsel.

Notably, legal experts and practitioners have observed that the *Viaduct* case (*Goljevšček v BiH*), among others, has catalysed re-evaluating risk allocation in public contracts and concessions, particularly in the energy and infrastructure sectors. A recurring issue has been the insufficient harmonisation between domestic laws and the obligations undertaken in international treaties, as well as a lack of ex-ante legal review of contracts from an investment protection standpoint.

Progress in this area requires Bosnia and Herzegovina to take a more proactive and structured approach to investment arbitration. This includes better internal co-ordination and capacity-building for government teams involved in arbitration and establishing a transparent and centralised case tracking system. Moreover, the state should consider conducting systematic treaty impact assessments and updating its network of BITs to reflect more balanced and modern standards, including more precise definitions of key terms, stronger exceptions clauses, and more structured procedural mechanisms.

From a long-term development standpoint, though frequently costly, the experience gained through these arbitrations allows Bosnia and Herzegovina to strengthen its legal resilience, improve regulatory predictability and gradually develop a more arbitra-

tion-aware public administration. This, in turn, could help attract more sustainable and dispute-conscious foreign investment, while at the same time increasing the state's ability to manage potential future claims efficiently and with a higher rate of success.

Bosnia and Herzegovina's role in investor-state arbitration has highlighted its vulnerabilities and potential. As legal practice in this domain matures, the lessons learned must be institutionalised, through legislative reform, education and co-ordinated defence strategy, so that the country can transition from a reactive to a proactive actor in the evolving landscape of international investment law.

Below is an overview of the key investor-state cases involving Bosnia and Herzegovina.

### *Goljevšček (Viaduct) v Bosnia and Herzegovina (ICSID ARB/16/36)*

In what has become a landmark case, Slovenian investors brought claims against Bosnia and Herzegovina under the Austria-BiH BIT, citing the obstruction of their hydroelectric projects on the Vrbas River. The ICSID tribunal issued a EUR50 million award in April 2022, finding that Bosnia and Herzegovina had violated fair and equitable treatment obligations. The state's request for annulment was rejected by an ICSID ad hoc committee in May 2024, thereby upholding the award. This case marks the first successful conclusion and enforcement of ICSID arbitration against Bosnia and Herzegovina. The decision has triggered enforcement proceedings targeting the state's foreign assets in Belgium and Luxembourg and has placed significant pressure on domestic courts to comply with international obligations.

### *EGS d.o.o. v Bosnia and Herzegovina (ICSID Case)*

This ongoing case involves a Slovenian energy company seeking approximately EUR750 million in damages over investment disruptions in a thermal power plant project. The claim is based on alleged violations of the Austria-BiH BIT. While the case remains pending, it underscores the potential financial exposure facing Bosnia and Herzegovina in the energy sector.

### *Aggarwal & Gupta v Bosnia and Herzegovina (UNCITRAL, India-BiH BIT)*

This arbitration was brought by Indian and US nationals over a failed acquisition in the insurance sector. The claimants alleged discriminatory treatment and expropriation. The tribunal, seated under UNCITRAL rules, rejected all claims in 2020, finding no breach of the BIT. Bosnia and Herzegovina prevailed in this case, avoiding liability.

### *Mittal v Bosnia and Herzegovina (ICSID Case)*

Indian businessman Pramod Mittal initiated ICSID proceedings claiming expropriation and unfair treatment concerning his investment in a metallurgical coke plant (GIKIL) in Lukavac. Filed in 2021, the case remains pending. Reports suggest the claim could reach EUR370 million. This case has attracted significant public attention due to Mittal's global profile and prior legal entanglements in Bosnia and Herzegovina.

### *HEP d.d. Zagreb v Bosnia and Herzegovina (Energy Charter Treaty)*

Croatian utility company HEP submitted a notice of dispute under the Energy Charter Treaty concerning its stake in the Gacko coal-fired power plant. Although formal arbitration has not commenced, the company has estimated its claims at around EUR100 million. Negotiations remain ongoing, and Bosnia and Herzegovina has repeatedly sought to delay escalation to formal proceedings.

### *Vjetropark Trusina (Kermas Energija) v Bosnia and Herzegovina (ICSID Case)*

Filed in 2023, this case involves an Austrian investor's claims regarding a failed wind power concession. The claimant alleges denial of justice and regulatory obstruction, with damages estimated at over EUR100 million. The proceedings are in the preliminary stages.

## Judicial Attitudes and Enforcement Challenges

Domestic court decisions continue to shape the perception and practical use of arbitration in Bosnia and Herzegovina. Courts have historically demonstrated ambivalence towards arbitration, especially in enforcing foreign arbitral awards. A notable precedent is the 2003 I *nkometal AG v KHK Lukavac* case, in which a Tuzla court denied enforcement of an ICC award involving an industrial lease, citing exclusive domes-

tic jurisdiction over real estate matters. The Supreme Court upheld this decision.

In domestic arbitration, a 2016 case, *Bamcard d.d. Sarajevo v Verisoft*, resulted in the Sarajevo Cantonal Court annulling an arbitral award issued under the FTC BiH rules. The court found that the arbitral tribunal had relied on evidence not presented during the hearing, violating procedural fairness. While the court's reasoning was narrow, the decision contributed to a broader perception of judicial overreach.

Enforcement of ICSID awards, though formally uncontroversial under Bosnia and Herzegovina's international obligations, faces practical hurdles. Domestic courts lack consistent experience in processing enforcement requests, and no specialised chamber or judiciary is trained in international arbitration standards. The enforcement of the *Viaduct* award is a crucial test for the system's credibility.

## Educational Infrastructure and Community Initiatives

The future of arbitration in Bosnia and Herzegovina depends heavily on capacity building and education. The legal education system offers limited formal training in arbitration. However, emerging efforts are being made to close this gap.

The University of Sarajevo's Faculty of Law offers a master's programme with modules dedicated to international arbitration and dispute resolution. In addition, the faculty regularly fields teams for the Willem C. Vis International Commercial Arbitration Moot, providing practical exposure to arbitration procedures and argumentation.

The NGO Arbitri has played a central role in promoting arbitration awareness. It organises the annual Sarajevo Arbitration Days, bringing together local practitioners, international experts and students. The organisation also collaborates with both entities' Judicial and Prosecutorial Training Centres to offer continuing legal education for judges and lawyers.

Despite these positive developments, a systemic approach to arbitration education remains lacking. Very few practising lawyers in Bosnia and Herzegovina specialise in arbitration, and commercial awareness among judges remains uneven. Language barriers, a preference for litigation, and limited public trust in arbitration processes all contribute to the slow growth of a domestic arbitration culture.

## Institutional and Legislative Reform: A Necessity, Not an Option

The fragmented legislative framework continues to be a significant barrier to the development of arbitration. While all three CPAs are modeled on the UNCITRAL Model Law, provisions allowing for the easy termination of arbitration agreements severely undermine party autonomy and procedural predictability. Legal scholars and practitioners have long called for adopting a unified state-level arbitration law. However, Bosnia and Herzegovina's constitutional structure, dividing competencies between state and entity levels, has made such reform politically challenging.

Nevertheless, momentum is building for incremental change. The 2025 reform of the FTC BiH's arbitration rules is a step in the right direction. Additional efforts are needed to:

- remove Articles 450 and 451 of the CPAs, or at least significantly limit their application;
- introduce specialised training for judges dealing with arbitral enforcement and annulment;
- create a centralised arbitration registry to improve transparency and data collection; and
- encourage more companies to include arbitration clauses in commercial contracts

## Conclusion: The Road Ahead

Bosnia and Herzegovina stands at a pivotal juncture in the evolution of its arbitration framework. The country's repeated exposure to investor-state disputes has not only resulted in significant financial liabilities, some exceeding tens of millions of euros, but has also drawn critical international attention to the structural weaknesses in its legal and regulatory systems. Simultaneously, the domestic arbitration landscape remains underdeveloped, fragmented and vastly underutilised, despite longstanding membership in key international conventions and recent institutional efforts at reform.

Yet, within this challenging environment lies a unique opportunity for transformation. The growing number of high-stakes international arbitration cases has forced the state to engage with complex procedural frameworks, build institutional memory, and gradually develop cross-sectoral co-ordination in defending its interests. Parallel to this, the emergence of dedicated arbitration initiatives, such as the annual Sarajevo Arbitration Days, expanded academic curricula, and increased participation in global mooting competitions, reflects a nascent but meaningful shift in legal culture, particularly among the younger generation of practitioners and students.

The pathway to a functional and credible arbitration ecosystem will depend on the country's ability to undertake decisive institutional and legislative reforms. Chief among these is the need to harmonise arbitration provisions across the entity-level civil procedure acts and, ideally, adopt a unified state-level arbitration law aligned with international standards such as the UNCITRAL Model Law. Equally important is the need to strengthen the judiciary's understanding of arbitration principles, develop consistent enforcement practices for arbitral awards, and foster a culture of trust in alternative dispute resolution mechanisms.

More broadly, arbitration must be recognised not merely as a procedural alternative to court litigation, but as a strategic instrument for advancing national economic policy. A robust and predictable arbitration environment enhances legal certainty, boosts investor confidence and reinforces the rule of law. For Bosnia and Herzegovina, this means positioning itself as a reliable jurisdiction within the Western Balkans for domestic and cross-border dispute resolution, an asset of growing importance in a region striving for EU integration and deeper economic co-operation.

Ultimately, the success of Bosnia and Herzegovina's arbitration reform efforts will hinge on sustained political will, institutional co-ordination, and meaningful investment in legal education and professional capacity-building. If these conditions are met, the country can mitigate future risks and transform arbitration from a reactive necessity into a proactive pillar of its legal and economic development strategy.

## CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Rob.Thomson@chambers.com