

Bosna i Hercegovina
MINISTARSTVO PRAVDE



Босна и Херцеговина
МИНИСТАРСТВО ПРАВДЕ

REPORT
on Implementation of the Justice Sector Reform Strategy (JSRS)
in Bosnia and Herzegovina

Reporting period: January – June 2009

Institutions:

BiH Ministry of Justice, High Judicial and Prosecutorial Council of BiH, Judicial Commission of Brcko District BiH, F BiH Ministry of Justice, RS Ministry of Justice and Cantonal Ministries of Justice

Sarajevo, June 2009

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INTRODUCTION

At the 1st Ministerial Conference of the Justice Ministers in BiH, President of the High Judicial and Prosecutorial Council of BiH (HJPC BiH) and Judicial Commission of Brcko District BiH (JC BD BiH), held in Sarajevo on 17th December 2008, the Action Plan for Implementation of the JSRS BiH (JSRS AP) was adopted, as well as the Action Plan for the Report on Monitoring and Evaluation of Aid Effectiveness in BiH Justice Sector.

Ministerial Conferences, Technical Secretariat and Functional Working Groups have been established as mechanisms for monitoring and evaluation of the JSRS AP in BiH.

The aim of the **Ministerial Conferences (MCs)** is to ensure coordinated monitoring of the key reform initiatives, of common interest for the overall justice sector in BiH, and harmonised action with regards to these issues, as well as exchange of experiences and better usage of domestic and other resources.

The **Technical Secretariat (TS)**, currently composed only of staff from the Sector for Strategic Planning, Aid Coordination and EU Integrations (SSPACEI) of the BiH Ministry of Justice, with technical support from Atos Consulting, as part of the UK Government funded project, and JSDP, as part of the USAID funded project, has provided expert and technical support in preparing and holding the 1st and 2nd Ministerial Conference. In addition, Technical Secretariat has provided expert and technical support in preparing and holding quarterly meetings of the FWGs, including development of quarterly and six-monthly progress reports on implementation of the JSRS AP in BiH, based on reports submitted by competent BiH justice sector institutions. Technical Secretariat has agreed a unified format and content of the reporting templates for the JSRS AP. During the reporting period, the Technical Secretariat has also organised and held two regular donor update meetings.

The **Functional Working Groups (FWGs)** monitor and implement joint measures and initiatives, and give expert opinions and proposals for addressing key reform issues in the justice sector. In the period from January to May 2009, two rounds of quarterly meetings of each of the five FWGs have been held, i.e. 10 meetings overall. The first round of quarterly FWG meetings was held in February and March 2009 in Sarajevo. After a certain number of reports by competent BiH justice sector institutions have been delivered, they were compiled in five collective reports on implementation of the JSRS AP for the reporting period January-March 2009 and posted on the BiH MoJ web site. Second round of quarterly FWG meetings were held in April 2009, also in Sarajevo. This was followed by compilation of the collective Report on implementation of the JSRS AP for the period January-June 2009.

A **forum for donor aid coordination** was established earlier with the aim of informing the donors on key priorities for funding in the justice sector, where information on donor funded projects are exchanged, which advances coordination and helps avoid duplication of efforts and projects among the donors. Sixth regular donor update meeting was held in April 2009, and the seventh one in June.

With the aim of ensuring a system approach in monitoring donor aid effectiveness in the BiH justice sector and a more efficient coordination, **aid coordinators for the BiH justice sector institutions** have been appointed in all but three Cantons, who have attended the initial training in strategic planning and aid effectiveness, along with the members of the FWGs.

Activities related to establishment of the **JSRS Fund** will continue in the following period, in line with the envisaged timeline.

Despite the established mechanisms for monitoring and the fact that members of the Ministerial Conference have committed to fully implement obligations from the JSRS in BiH and give full support to FWG, Technical Secretariat, and the efforts related to donor aid coordination, during the first six months of implementation the following key issues have emerged:

- Most BiH justice sector institutions have not incorporated planned activities from the JSRS AP into their institutional strategic plans, i.e. work programmes. It was agreed that in June 2009 development of the institutional strategic plans would be initiated in those institutions which had not developed them so far, with the technical assistance provided by the Spanish Development Agency (AECID). Incorporating activities from JSRS AP into institutional strategic plans of all BiH justice sector institutions will facilitate further implementation and monitoring of the planned activities.
- Sectors or individuals from entity MoJs, HJPC BiH and JC BD BiH, engaged in strategic planning and aid coordination activities within their institutions, did not get involved in the Technical Secretariat activities.
- Out of a total number of 10 FWG meetings planned to be held in 2 rounds over the past five months, nine did take place. Second quarterly meeting of the FWG 1 – Judicial System, was not held in April 2009 due to the lack of quorum. Due to time constraints, it was not re-scheduled at a later stage. None of the FWG meetings were attended by all members. Other FWG meetings were held with majority of the members present (more than half). This happened in spite of the fact that the schedule of FWG meetings was announced to all institutions and FWG members as early as January 2009. Coordinating meetings of this type become pointless if representatives of the institutions, that have committed to closely cooperate and coordinate between themselves, do not attend the coordination meetings.
- Although the process and reporting formats were explained in detail to the FWG members and although the reporting deadlines were announced, the reports were still submitted late or in some cases they not submitted at all. In general, the reports are of very poor quality and do not contain information agreed with the FWG members at the beginning of the process, with exception of certain institutions and areas.
- The BiH justice sector institutions seem to have a low level commitment to implementation of the JSRS BiH, or to have failed to demonstrate their commitment through work and engagement in the FWGs. One of the main reasons for such situation is persistent lack of capacity in most institutions. With re-allocation of the existing capacities, and more efficient planning and coordination within the institutions, these limitations could be overcome in the short term.

Due to all of the above, the collective six-monthly report does not necessarily reflect the actual reform status in the BiH justice sector, as it was compiled based on insufficient participation of the competent BiH justice sector institutions in the FWG and without all the expected reports submitted, while other were of very poor quality.

Table 1. Reports delivered in the reporting period January-June 2009

1 st Quarter	2 nd Quarter
1. Judicial system	
<ol style="list-style-type: none"> 1. High Judicial and Prosecutorial Council of BiH, 2. Judicial Commission of Brcko District BiH, 3. USC Ministry of Justice, 4. HNC Ministry of Justice, Administration and Local Self-administration. 	<ol style="list-style-type: none"> 1. High Judicial and Prosecutorial Council of BiH, 2. Judicial Commission of Brcko District BiH, 3. USC Ministry of Justice. 4. SC Ministry of Justice and Administration.
2. Execution of Criminal Sanctions	
<ol style="list-style-type: none"> 1. BiH Ministry of Justice, 2. FBiH Ministry of Justice, 3. RS Ministry of Justice, 4. Judicial Commission of Brcko District BiH, 5. TC Ministry of Justice and Administration, 6. ZDC Ministry of Justice and Administration, 7. USC Ministry of Justice, 8. PC Ministry of Justice and Administration. 	<ol style="list-style-type: none"> 1. BiH Ministry of Justice, 2. RS Ministry of Justice, 3. Judicial Commission of Brcko District BiH, 4. USC Ministry of Justice.
3. Access to Justice	
<ol style="list-style-type: none"> 1. BiH Ministry of Justice, 2. High Judicial and Prosecutorial Council of BiH, 3. FBiH Ministry of Justice, 4. Judicial Commission of Brcko District BiH, 5. BPC Ministry of Justice, Administration and Labour Relations, 6. TC Ministry of Justice and Administration, 7. USC Ministry of Justice, 8. PC Ministry of Justice and Administration. 	<ol style="list-style-type: none"> 1. BiH Ministry of Justice, 2. High Judicial and Prosecutorial Council of BiH, 3. Judicial Commission of Brcko District BiH, 4. USC Ministry of Justice, 5. BPC Ministry of Justice, Administration and Labour Relations.
4. Support to Economic Growth	
<ol style="list-style-type: none"> 1. BiH Ministry of Justice, 2. Judicial Commission of Brcko District BiH, 3. BPC Ministry of Justice, Administration and Labour Relations, 4. TC Ministry of Justice and Administration, 5. USC Ministry of Justice, 6. WHC Ministry of Justice and Administration, 7. BiH Association of Mediators, 8. PC Ministry of Justice and Administration. 	<ol style="list-style-type: none"> 1. BiH Ministry of Justice, 2. FBiH Ministry of Justice, 3. High Judicial and Prosecutorial Council of BiH, 4. Judicial Commission of Brcko District BiH, 5. BPC Ministry of Justice, Administration and Labour Relations, 6. USC Ministry of Justice, 7. BiH Association of Mediators.
5. Well-Managed and Coordinated Sector	
<ol style="list-style-type: none"> 1. BiH Ministry of Justice, 2. RS Ministry of Justice, 3. High Judicial and Prosecutorial Council of BiH, 4. Judicial Commission of Brcko District BiH, 5. FBiH Ministry of Justice, 6. CBC/CCB Ministry of Justice and Administration, 7. USC Ministry of Justice, 8. TC Ministry of Justice, 9. BPC Ministry of Justice, Administration and Labour Relations. 	<ol style="list-style-type: none"> 1. BiH Ministry of Justice, 2. RS Ministry of Justice, 3. High Judicial and Prosecutorial Council of BiH, 4. Judicial Commission of Brcko District BiH, 5. CBC/CCB Ministry of Justice and Administration, 6. USC Ministry of Justice, 7. TC Ministry of Justice. 8. BPC Ministry of Justice, Administration and Labour Relations.
6. Donor Aid Coordination	
Not requested	<ol style="list-style-type: none"> 1. BiH Ministry of Justice, 2. High Judicial and Prosecutorial Council of BiH, 3. RS Ministry of Justice, 4. Judicial Commission of Brcko District BiH, 5. TC Ministry of Justice and Administration, 6. ZDC Ministry of Justice and Administration,

Report on Implementation of the Justice Sector Reform Strategy in BiH

	7. CBC/CCB Ministry of Justice and Administration, 8. USC Ministry of Justice.
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1. OVERVIEW OF THE JSRS BiH ACTION PLAN IMPLEMENTATION

Based on the submitted reports, presented in Table 1 of this report, Sector for Strategic Planning, Aid Coordination and EU integrations (SSPACEI) of the MoJ BiH has compiled an Overview of the total number of planned and implemented activities related to JSRS BiH implementation for the period January – June 2009, presented in Table 2 of the report.

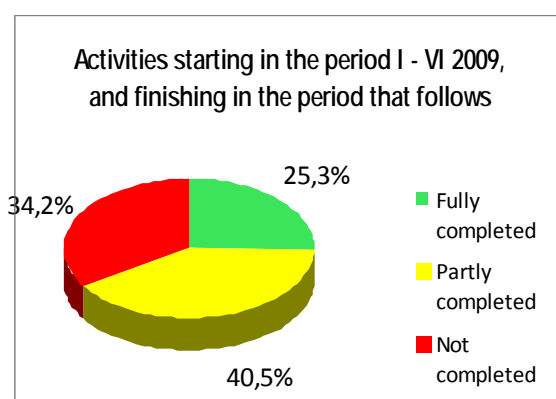
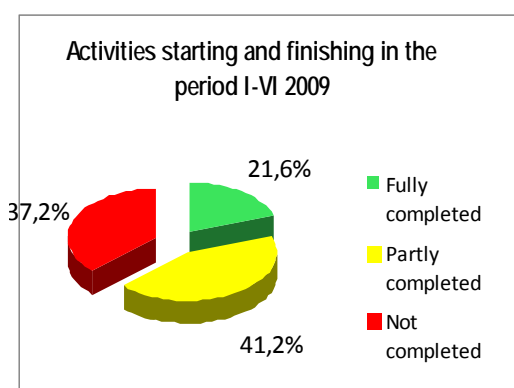
There are 69 strategic programmes and 207 activities identified overall. Pillar 5 contains the most, i.e. 19, strategic programmes, Pillar 1 contains 17 strategic programmes, while Pillars 2 and 4 contain 12 strategic programmes each, and Pillar 3 contains 7 strategic programmes.

According to the presented information, in the reporting period, out of 51 activities overall that were due to be started and completed by the end of June 2009, 11 activities or 21.6% have been completed in full, 21 activity or 41.2% have been partly completed and 19 activities or 37.2% have not even been started.

In the same period, 158 activities finishing in the following period were supposed to be started. Out of these activities, 40 or 25,3% were completed in full, 64 or 40,5% partly and 54 or 34.2% have not even been started.

Table 2. Overview of the total number of planned and implemented activities related to JSRS BiH implementation for the period January – June 2009

PILLAR	No. of planned strategic programmes I-VI 2009	No. of planned activities I-VI 2009	Number of planned activities starting and finishing in the period I-VI 2009						Number of planned activities starting in the period I-VI 2009, and finishing in the period that follows							
			Total	Fully completed		Partly completed		Not completed		Total	Fully completed		Partly completed		Not completed	
				No	%	No	%	No	%		No	%	No	%	No	%
1.	17	50	23	7	30,4	10	43,5	6	26,1	27	15	55,6	6	22,2	6	22,2
2.	13	24	6	1	16,7	1	16,7	4	66,7	18	1	5,56	6	33,3	11	61,1
3.	9	24	4	0	0	3	75	1	25	20	3	15	8	40	9	45
4.	13	34	13	1	7,69	5	38,5	7	53,8	21	2	10,5	7	36,8	12	63,2
5.	7	26	5	1	40	3	40	1	20	21	2	4,76	9	47,6	10	47,6
5a.	12	51	0	0	0	0	0	0	0	51	17	33,3	28	54,9	6	11,8
Total	71	209	51	11	21,6	21	41,2	19	37,2	158	40	25,3	64	40,5	54	34,2



1.1 JUDICIAL SYSTEM

Strategic objective for this pillar is to further strengthen and maintain independence, accountability, efficiency, professionalism and harmonisation of the judicial system which ensures the rule of law in BiH. Overview of implementation of the activities from Pillar 1 – Judicial System is enclosed in Annex 1 of the Report. Issues concerning this Pillar have been divided into three sub-groups:

1.1.1 Independence and Harmonisation

There are five strategic programmes in this sub-group. It was planned for three strategic programmes to be initiated in the first half of 2009: introduction of programme budgeting in all BiH judicial institutions, harmonisation of the procedure for selection of the BiH Constitutional Court judges with the existing procedures for selection of judges for the RS and FBiH Constitutional Courts, and enacting a single law and associated by-laws on prosecutors offices in FBiH.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- HJPC BiH is actively engaged on improvement of budget planning in courts and the Judicial and Prosecutorial Training Centres (JPTC) in FBiH and RS are trying through donor aid projects to improve capacities of the court presidents and chief prosecutors in monitoring and preparing realistic budgets for justice sector institutions. Beside that, more active engagement and coordination of the competent institutions are necessary, in particular with regards to defining the strategic guidelines and policies for the justice system development.
- On 9 February 2009, the HJPC BiH urged the MoJ FBiH to undertake steps towards preparing and initiating procedure for adopting the Law on Prosecutors' Offices in FBiH. According to latest information available to HJPC BiH, MoJ FBiH held a meeting with cantonal ministers to discuss this issue. Although there are certain objections with regards to financing of the prosecutors' offices, the law was supported at this meeting. At the FWG meeting it was agreed that FBiH MoJ would report on the implementation of this activity. However, the FBiH MoJ did not deliver the requested report. Thus the final status of this law remains unknown. Activities regarding development of draft by-laws (Rules of Procedure and Rulebook on Systematisation) have been done by the HJPC BiH, but it is not possible to complete these until the Law on prosecutors' offices is adopted in FBiH.
- At the FWG 1 meeting, held on 5 and 6 March 2009, it was agreed to forward the issue of harmonisation of the procedure for selection of the BiH Constitutional Court judges with the existing procedures for selection of judges for the RS and FBiH Constitutional Courts to the 2nd MC, where the MC members will be asked to take position on the possibility to implement those activities.

Expected outcomes of the strategic programmes: more effective system for preparing realistic budgets of judicial institutions in BiH, that are in line with agreed strategic directions of action, further safeguarded independence of the judiciary, including a more transparent process of appointment of judges to BiH Constitutional Court, leading to selection of more independent and better qualified judges, and support in meeting pledges made by BiH under the European Partnership for BiH.

1.1.2 Efficiency and Effectiveness

There are eight strategic programmes in this sub-group. It was planned for all the eight strategic programmes to be initiated in the first half of 2009: resolving backlog of cases in the enforcement procedure, analysis of backlogs in the prosecutors offices, introduction of alternative measures for criminal prosecution, reconstruction of the courts and prosecutors offices, computerisation of the judiciary, adopt

regulation to advance efficiency of administration in courts and prosecutors offices, ongoing training of judges and prosecutors, and analysis of the required number of judges and prosecutors.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- Activities planned for the reporting period regarding resolving the backlog of cases in the enforcement procedure have been fully implemented without any major difficulties. Currently, the analysis and recommendations of the Working Group for resolving the backlog of cases is being finalised, and upon completion it will be forwarded to HJPC BiH and competent institutions to give their opinions.
- Activities planned for the reporting period regarding analysis of backlogs in the prosecutors' offices have been fully implemented without any major difficulties. Meeting with chief prosecutors regarding this issue was held in December 2008 and analysis of backlogs in the prosecutors' offices and measures necessary to resolve this issue is currently being finalised. It is expected that guidelines on proceeding and cooperation of authorised persons and prosecutors in conducting evidence procedures during the investigation will be adopted in May 2009.
- At the FWG 1 meeting it was agreed that with regards to analysis on the alternative measures for criminal prosecution the BiH Ministry of Justice would send a letter to the team in charge of implementation of criminal legislation to remind them that their activities are a part of the JSRS BiH and need to be completed within the given deadline, asking them to provide an update on this issue in writing to the BiH Ministry of Justice.
- Activities planned for the reporting period regarding computerisation of the courts and prosecutors' offices have mostly been initiated and according to HJPC BiH no major problems in implementation of this activity within provided deadline are expected.
- The JPTCs in FBiH and RS are institutions essential for ensuring continuous training and capacity development, in particular for the top and middle management in the BiH justice institutions. At the meeting of the HJPC BiH Permanent Commission for Education with Directors of the JPTCs in FBiH and RS, held on 19 March 2009, it was agreed that HJPC BiH will try to ensure support from bilateral partners for strengthening human resources and technical capacities of the JPTCs in FBiH and RS. Implementation of this activity will also require more active engagement of the MoJs.
- Activity expected to be initiated in the reporting period regarding development of policy for advancing the efficiency of administration in courts and prosecutors offices is the analysis of the status and selection of expert and administrative-technical staff for all the courts and prosecutors' offices in BiH, which would also include recommendations for harmonisation of regulation, improvement of their status and putting them all at an equal level, as well as the cost implications of these measures. In February 2009, the HJPC BiH concluded that decision on establishing an HJPC BiH working group for review of the status and role of the expert associates, as well as apprentices and volunteer apprentices would be discussed again at the HJPC BiH session in September 2009. Although the HJPC BiH undertook certain steps with regards to implementation of this activity, coordination of all the competent institutions in this matter is required, having in mind the existing financial limitations, as well as the decision of the RS Constitutional court regarding judicial function office holder.
- Analysis of the required number of judges and prosecutors with regards to the number of cases was planned for this reporting period. It was completed and no major obstacles are expected in implementation of the activity within deadlines identified in the JSRS BiH.

Expected outcomes of the strategic programmes: increased efficiency of the court work through introduction of a case management system that will enable sharing of information, generation of statistics

and recording of significant trends, as well as through greater uniformity in the way the courts are administered and opportunities for exchange of the best practice; reduction in backlog of cases, which will increase the capacity of courts and prosecutors offices to deal with other types of cases, aside from the enforcement cases, and increased efficiency and reduction in backlog of cases will contribute towards an improved public perception of courts and prosecutors offices.

1.1.3 Accountability and Professionalism

There are seven strategic programmes in this sub-group. It was planned for the six strategic programmes to be initiated in the first half of 2009: develop and complete timeframes of proceedings in all courts and prosecutor offices in BiH, improve provisions pertaining to disciplinary responsibility of the judges and prosecutors, reform and improve the system of bar exams in BiH, establish a legal obligation for hiring apprentices, volunteer apprentices and expert associates in all courts and prosecutor offices in BiH, training of judges and prosecutors, and harmonise records and statistics and ensure conditions for access to criminal records.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- Activities planned for the reporting period regarding development and completion of timeframes of proceedings in all courts and prosecutor offices in BiH are underway and no major difficulties regarding their implementation have been recorded
- Analysis of the existing provisions on disciplinary responsibility of the judges and prosecutors in the Law on HJPC BiH has been completed. Operational plan of the HJPC BiH for 2009 provides for HJPC BiH to adopt in the second quarter recommendations regarding required amendments to the Law on HJPC BiH.
- Draft amendments to the entity rulebooks on criteria for establishing the number of expert and administrative staff, including apprentices, but not volunteers and expert associates, were adopted at the HJPC BiH session held on 13 May 2009, and will be forwarded into further procedure. Although the HJPC BiH undertook certain steps to implement activity related to establishment of a legal obligation for hiring apprentices, volunteer apprentices and expert associates in all courts and prosecutor offices in BiH, in proportion to their size, coordination of all responsible institutions with regards to this matter is required, having in mind the existing financial limitations, as well as the decision of the RS Constitutional court regarding judicial function office holder.
- In this reporting period analysis of the existing medium-term strategic plans for training of judges and in JPTCs of FBiH, RS and JC BD was due to be conducted, and recommendations for their further improvement developed, in line with needs and priorities of the justice institutions. Activities planned for this reporting period are conducted without any major difficulties.
- In this reporting period an analysis of the possibilities for establishment of criminal records, statistics and reports in electronic format, to which the police and prosecutors' offices would have access, was due to be conducted, as well as recommendations from the analysis including legal, technical, institutional and organisational framework, adopted. Activities have been fully implemented.

Expected outcomes of the strategic programmes: more efficient and accountable court system due to increased pressure on judges and prosecutors to meet performance standards, greater uniformity in standards for the bar exam across BiH, leading to improvement in quality of lawyers, and an improved system of continuous professional development for judges and prosecutors in BiH, and a more positive public perception about the judiciary.

1.2 EXECUTION OF CRIMINAL SANCTIONS

Strategic objective for this Pillar is to develop a more harmonised system of criminal sanctions in BiH which by respecting European standards ensures humane and legal treatment, and effective re-socialisation in prisons in BiH. Overview of implementation of the activities from Pillar 2 – Execution of Criminal Sanctions is enclosed in Annex 1 of the Report. Issues concerning this Pillar have been divided into three sub-groups:

1.2.1 Management of the System for Execution of Criminal Sanctions

There are three strategic programmes in this sub-group. It was planned for all the three strategic programmes to be initiated in the first half of 2009: harmonisation of standards, establishment of prison administrations and re-categorisation of the prisons and classification within the prisons in BiH.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- At the level of BiH amendments to the Law on execution of criminal sanctions have come into effect, while at the level of FBiH amendments to this Law, which have achieved a greater level of harmonisation with the Law at the level of BiH, have been adopted prior to the latest amendments. Following amendments adopted to the Law on execution of criminal sanctions at the level of BiH, additional harmonisation of this Law at the entity level will most probably be required.
- Although a lot has been done in terms of capacity development in FBiH to be able to change categorisation in certain segments, further implementation of some of the planned prison reconstruction projects is brought into question due to great uncertainty regarding financing possibilities. The BiH Ministry of Justice has initiated certain activities asking for information from the competent institutions regarding categorisation of prisons and harmonisation in prisoner classification; however no feedback information has been received so far.

Expected outcomes of the strategic programmes: development of a coherent system for execution of criminal sanctions in BiH, that puts the country in a better position to meet the European and international standards, better strategic and operational management of prison resources and facilities, leading to equal application of the prison standards related to human resources management, development of health care and treatment programmes, as well as efficiency and effectiveness, establishment of a basis for effective and efficient performance of monitoring aimed at improving prison standards, segregation of policy and operational management that will allow the ministries of justice to be in a better position to allocate resources for improvement of the overall system and thus respond to trends identified within the sector for execution of criminal sanctions.

1.2.2 Prison Overcrowding

There are three strategic programmes in this sub-group. It was planned for all the three strategic programmes to be initiated in the first half of 2009: development of the conditional release system, recognition of alternative sentences and implementation of the "community service" institute and improvement of conditions in prisons through reconstruction of current facilities or abandoned military facilities, as well as construction of a state prison.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- FBiH passed the Decree on application of character development recommendations toward minors.

- Adoption of the Law on juvenile perpetrators of criminal offences and criminal-legal protection of children and juveniles in RS is expected by the end of 2009.
- Plan for the reconstruction of all prisons is developed.
- FBIH has undertaken the reconstructions of prisons, the capacities in Tuzla prison are extended for 152 places and in the facility of Section in Orasje for 52 places.

Expected outcomes of the strategic programmes: reduced overcrowding and pressure on prisons, resulting in greater respect of human rights, prisons which are better able to meet European standards, as well as to more effectively maintain order and security inside the prison, better segregation of prisoners and limited contact between prisoners of different categories, increased possibilities of effective treatment of prisoners, including rehabilitative work, as a result of fewer pressures on the limited space, and increased scope for reintegration of offenders into society, through maintaining wider ties with the community rather than severing these ties by incarceration, which would only be applied to persons who had committed serious criminal offences and who pose the greatest threat to the society.

1.2.3 Application of International Standards

There are seven strategic programmes in this sub-group. It was planned for all the seven strategic programmes to be initiated in the first half of 2009: improvement of the system of treatment for specific categories of prison population, improvement of the system of health protection in prisons, establishment of a system of independent prison inspection in BiH prisons, education and training for prison staff, introduction of alternative measures for custody, improvement of standards regarding the incarceration procedure and development and harmonisation of the system of amnesty and pardoning in line with the EU standards.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- Agreement on use of the facility in Sokolac has been reached. In FBIH persons under measure of compulsory psychiatric treatment (currently relocated to the prison clinic from the former Forensics Department) will be re-located outside Zenica Prison by the end of the month. The agreement on use of East Sarajevo Prison for juveniles has not been formally reached and so far no steps have been undertaken regarding establishment of a joint facility for female prisoners.
- The BiH Ministry of Justice, through Article 41 of the new Law on the execution of criminal sanctions, provides for establishment of an Independent commission for monitoring and exercising human rights and freedoms. In the following period, this issue needs to be coordinated with Ministry for Human Rights and Refugees, since the BiH Council of Ministers has passed a decision on establishment of an independent commission at the state level, whose competencies would overlap with the commission stipulated in the new Law on execution of criminal sanctions.
- The BiH Ministry of Justice has initiated some activities aimed at achieving greater coordination and cooperation between different levels of authority regarding prison staff training; however, vacant post in charge of training and coordinating training with entity level needs to be filled.
- In terms of introduction of alternative measures for custody, the OSCE conducted a preliminary analysis, but this needs to be carefully reviewed by the competent MoJs.
- Strategic programme related to improvement of standards regarding the incarceration procedure and holding of incarcerated individuals and suspects by the prosecutors' office has been transferred to competency of the FWG 1 – Judicial System.

Expected outcomes of the strategic programmes: improved chances of rehabilitation amongst specific categories of prison population and reduced risk to specific categories in prisons, improved health care system in prisons, which is effective, efficient and sustainable, as well as aimed at reducing the risk of serious epidemics outbreaks or other health related problems inside and outside the prison facilities, objective and competent assessment of prison conditions which can support compliance with European and international standards and drive the future reform, higher and more uniform standards across the prison service, improved professional skills of prison staff and better position for the country to meet relevant European and international standards in each of the relevant areas.

1.3 ACCESS TO JUSTICE

Strategic objective for this Pillar is to advance the system of international legal aid and establish, strengthen and maintain systems and processes that guarantee equal access to justice in BiH. Overview of implementation of the activities from Pillar 3 – Access to Justice is enclosed in Annex 1 of the Report. Issues concerning this pillar have been divided into three sub-groups:

1.3.1 International Legal Assistance and Cooperation

There are five strategic programmes in this sub-group. It was planned for four strategic programmes to be initiated in the first half of 2009: professional development of judges and prosecutors, harmonisation of court practice related to international legal assistance, adopting the Law on international legal assistance and cooperation in criminal matters, and establishment of a single registry of convictions for BiH citizens convicted abroad.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- Through JPTCs in FBiH and RS regular training of judges and prosecutors are held on the provision of international legal assistance and cooperation. For example, in the reporting period four seminars for judges and prosecutors have been held about the international legal assistance through JPTC. However, the problem is that persons attending this training are not necessarily the persons dealing directly with international legal assistance procedures so that the objective of targeted professional development is not being achieved.
- BiH Council of Ministers adopted, at its 89th session, Proposal of the Law on international legal assistance in criminal matters. Area of international legal assistance in criminal matters will be separated from the Criminal Procedure Code of BiH by this proposal of the law and regulated in a comprehensive manner in accordance with the practice of the European Union and neighboring countries.
- The issue of establishing a single registry of convictions for BiH citizens convicted abroad, primarily for those who are BiH citizens but have not been born in BiH, is addressed in the new Law on international legal assistance in criminal matters which assigns competency for this criminal registry to BiH Ministry of Security.

Expected outcomes of the strategic programmes: further strengthened capacity of the BiH judiciary to deal with these cases and increased awareness of the obligations related to international legal assistance, leading to better cooperation on civil and criminal matters, increased quality of implemented European and other international obligations, especially of the Council of Europe conventions, and improved cooperation

with other states, consistent and equal application of the laws regulating international legal assistance and cooperation in all BiH courts, and clearer and more streamlined functions and responsibilities among all the actors in the justice chain.

1.3.2 Free Legal Assistance and Access to Legal Information

There are four strategic programmes in this sub-group. It was planned for two strategic programmes to be initiated in the first half of 2009: improvement of legal and institutional framework for establishment of a free legal assistance system and continuous training for the free legal assistance providers.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- Progress in this area rather varies, where BD BiH, some cantons and recently RS have adopted laws on free legal assistance. However, the degree of harmonisation among these laws is questionable and there is a risk of different institutional treatment of this issue, which could lead to lack of equality for citizens.

Expected outcomes of the strategic programmes: compliance of BiH with key European and international conventions, especially with the European Convention on Human Rights, common legal framework and provision of minimal standards guaranteeing equality for all before the law, more effective system of legal assistance based on clear standards for all those receiving free legal assistance and similar standards for free legal assistance providers throughout BiH, enhanced effectiveness and sustainability ensured through provision of training programmes and impact assessment studies of various models of free legal assistance provision.

1.3.3 Care of Court Users and Role of Civil Society

There are three strategic programmes in this sub-group. It was planned for all three strategic programmes to be initiated in the first half of 2009: full implementation of the Care of Court Users Strategy in BiH, transparency in the work of courts and prosecutor offices, explore modalities for more active engagement of the NGO sector in BiH in monitoring the justice sector work in BiH.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- The application of more precise standards that would ensure greater access to information has still not been put into practice in all justice institutions, although a certain number of model courts have developed the standards. The application will have to be carefully monitored and progress reported in the following period.
- Some steps regarding more active engagement of the civil society have been undertaken; results and outcomes will be monitored and reported.

Expected outcomes of the strategic programmes: fair and equitable access to justice increased and services provided through courts in line with the needs of ordinary citizens ensured, as a result of implementation of selected programmes, increased focus on the needs of the citizens, though building commitment of court actors to improve their focus on the citizen and delivered results that matter to them, leading to greater trust and confidence into the BiH courts, both in terms of current and future court users.

1.4 SUPPORT TO ECONOMIC GROWTH

Strategic objective for this Pillar is to define and implement measures through which the justice sector will contribute to creation of a more favorable environment for sustainable economic development in BiH. Overview of implementation of the activities from Pillar 4 – Support to Economic Growth is enclosed in Annex 1 of the Report. Issues concerning this pillar have been divided into four sub-groups:

1.4.1 Mediation and Alternative Dispute Resolution in Commercial Cases

There are eight strategic programmes in this sub-group. It was planned for all eight strategic programmes to be initiated in the first half of 2009: ensure strategic guidelines for development of alternative dispute resolution (ADR), promote benefits of ADR at the level of executive authorities in all BiH government institutions, continue promoting ADR among the business, legal and academic community, define clear mechanisms and activities for promoting and encouraging the use of mediation among the judges in BiH, strengthen the role of MoJ BiH in defining policies for ADR and in establishing a system to evaluate and monitor the application and effectiveness of mediation, improve capacities of the BiH Association of Mediators for development of human resources, a system of standardisation, training, licensing and service provision, continuous training on successful referral of cases to mediation as part of induction and continuous professional development trainings for judges, ensure a system for provision of mediation services throughout BiH.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- Action Plan for development of mediation in BiH adopted at the end of 2008.
- A working group was established to analyse the introduction of obligatory mediation for those commercial cases that would improve support to economic growth, including development of a list of commercial cases suitable for obligatory mediation.
- CMS allows monitoring of the number of cases referred by the judges for mediation. There is a need for further development of a reporting system.
- According to the available information, the Law on court taxes has been passed in three Cantons (WHC, PC and TC), and in five Cantons the Draft of the Law is in the procedure and its adoption is planned by the work programme in 2009.
- There are no serious obstacles for the BiH Association of Mediators to meet the requirement of the parties to hold mediation in any town in BiH and its current capacities are sufficient to respond to the existing demands. The BiH Ministry of Justice must carefully monitor demand for mediation to ensure it is satisfied.

Expected outcomes of the strategic programmes: strengthened role of MoJ BiH in development of policy for mediation and possibly other forms of ADR in line with the legal practice results in BiH and international experiences, and facilitated development of a BiH wide strategic approach to development of mediation and other forms of ADR for other types of disputes, aside from commercial ones, increased awareness of key institutions with benefits of mediation and ADR, reduced pressure on courts and reduced conflicts and tensions between the parties in dispute, clear mechanisms that would make referrals from courts to mediation easier and improved quality of mediation services in BiH.

1.4.2 Reform of the Land Registry Administration

There are five strategic programmes in this sub-group. It was planned for all five strategic programmes to be initiated in the first half of 2009: finalise legislative framework for optimal functioning of the land registry administration, ensure unified standards in provision of services in the land registry offices, develop criteria and regulations prescribing the number and status of the land registry employees, strengthen capacities of the entity MoJs and land registry offices for dealing with requirements of the land registry administration.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- Final agreement regarding establishment of SKOZA at the level of BiH reached; formal decision of the BiH Council of Ministers awaited.
- Results vary in this area, with much greater progress recorded in RS than in FBiH
- In FBiH, the adoption of the key legislative regulations necessary for effective functioning of the land administration reform is underway.
- Status of the LR employees is different in the two entities, with situation in RS estimated as better than in FBiH.

Expected outcomes of the strategic programmes: clear legislative framework set up, facilitating a more efficient and transparent work and provision of better services for users and ensuring that standards of service provision are clear in all land registry offices across BiH, resulting in increased users trust; greater efficiency in land registry sector, brought about by each institution carrying out its role in coordination with others, and a coherent system of land registry developed in BiH, leading to legal certainty regarding property rights and a better environment for investment.

1.4.3 Commercial Courts or Commercial Departments in Courts

In consultations with other competent institutions from the BiH justice sector, the BiH Ministry of Justice will prepare a draft proposal for implementation of this strategic programme for the next meeting of this FWG.

1.5 WELL-MANAGED AND COORDINATED SECTOR

Strategic objective for this Pillar is to coordinate and make roles and responsibilities of key justice sector institutions more efficient, with the aim of achieving more effective, transparent and accountable justice system in BiH. Overview of implementation of the activities from Pillar 5 – Well-Managed and Coordinated Sector is enclosed in Annex 1 of the Report. Issues concerning this pillar have been divided into three sub-groups:

1.5.1 Coordination of Competencies

There are three strategic programmes in this sub-group. It was planned for two strategic programmes to be initiated in the first half of 2009: establish and hold ministerial conferences, with HJPC BiH President in attendance, and strengthen the coordinating role of MoJ BiH.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- Activities related to establishment and holding of the MCs are continuous and at the moment only SSPACEI from MoJ BiH is actively engaged on this. However, certain difficulties have emerged regarding mechanisms and the JSRS monitoring processes described in Section 1, explained in more detail in Section 3 of this Report.

- HJPC BiH, RS MoJ and JD BD BiH have appointed persons to JSRS Technical Secretariat. It is important to enable proper functioning of this joint body, as it could improve coordination within and among the institutions regarding JSRS implementation.
- Competent institutions have, as an interim solution, at the request of the BiH Ministry of Justice nominated employees who would deal with strategic planning and donor aid coordination issues. However, more active engagement of these persons needs to be ensured.

Expected outcomes of the strategic programmes: better coordination and consultations between different parts of the justice sector in BiH at both political and technical level, leading to more harmonised and effective management, monitoring and evaluation of multiple tasks provided for by the reform process, so that the justice sector as a whole fulfils the common objectives, improved efficiency resulting from decreased duplication of efforts and increased coherence resulting from joint approach to issues from the sector-wide perspective, prioritisation of reforms across the whole sector, that will have a greater impact from directing scarce resources to areas which may be lesser in need than other, reform coherence – improvement in one may depend on corresponding changes in another area, greater focus on citizens resulting in support for more effective change and reform that is more likely to be successful, as it takes full account of citizens' needs and intricate relations among different levels and segments of the justice sector.

1.5.2 Strategic Planning and Policy Development

There are two strategic programmes in this sub-group. It was planned for both strategic programmes to be initiated in the first half of 2009: establish institutional capacities for strategic planning and policy development, and develop and maintain a system for collection, analysis and exchange of all relevant information among the key justice sector institutions.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- In the reporting period, the initiative for finding additional donor funds for trainings on strategic planning and development of institutional strategic plans in the entity MoJs, cantonal MoJs and JC BD BiH has been undertaken.

Expected outcomes of the strategic programmes: development of more informed, appropriate and strategic justice sector policies in BiH, that are also better coordinated among the different levels of government and the various justice sector institutions, and better communication and cooperation among the justice sector institutions and among the justice sector institutions and the NGO sector.

1.5.3 Donor Coordination and EU Integration

There are two strategic programmes in this sub-group. It was planned for both strategic programmes to be initiated in the first half of 2009: establish and maintain an aid coordination mechanism with the aim of achieving more efficient coordination with donors active in the justice sector and establish an infrastructure and capacities in the state and entity MoJs, as well as JC BD BiH, to support the process of harmonisation of regulation in the BiH justice sector with the *Acquis Communautaire*.

In the reporting period the following progress was recorded with regards to implementation of activities from the sub-group:

- Action plan for M&E of aid effectiveness was adopted on the 1st MC. The BiH Ministry of Justice requested competent institutions to incorporate into their work plans activities from this AP. So far none of the institutions has done this.
- At the request of MoJ BiH, donor aid coordinators have been appointed in the justice sector institutions. They have completed initial training aimed at acquiring general knowledge on the strategic planning and donor aid coordination.

Expected outcomes of the strategic programmes: strategic and system approach to donor coordination at the sector level that will serve as a first step towards the Sector Wide Approach (“SWAP”) to donor programming and funding, and improved institutional and sector capacities to efficiently and effectively prepare, coordinate and implement harmonisation of the BiH legal system in the area of justice with the *Acquis Communautaire*, as part of the upcoming EU accession process for BiH.

2. ISSUES AND RISKS IDENTIFIED IN THE JSRS BiH IMPLEMENTATION

In the reporting period focus of the activities was on establishment of the mechanisms for monitoring implementation of the JSRS BiH at the institutional and sector level, harmonisation of the uniform reporting templates, strengthening of the institutional capacities for more efficient coordination and cooperation within the BiH justice sector and establishment of institutional capacities for donor aid coordination.

Implementation of these activities is marked by a series of risks and issues that for the purposes of this report will be divided into two groups.

The first group of risks and issues are functional and related to inadequate work of the FWGs for implementation of the JSRS BiH; reports of the competent BiH justice sector institutions on JSRS BiH implementation that are of varying quality and not submitted within specified deadlines; poor coordination and communication within some BiH justice sector institutions regarding issues relevant for JSRS BiH implementation; generally low level of commitment to the process and coordinated monitoring of the reform activities in some BiH justice sector institutions; failure of the Technical Secretariat for implementation of the JSRS BiH to start operating as a body, as well as failure to appoint donor aid coordinators in the BiH justice sector and set up coordination, and the fact that CSOs have not engaged actively in the process of monitoring JSRS implementation.

Out of a total of 10 FWG meetings planned to be held in 2 rounds over the past five months, nine took place. Second quarterly meeting of the FWG 1 – Judicial System, was not held in April 2009, as it was planned. Due to time constraints, it was not subsequently re-scheduled at a later stage. We would like to emphasize that only one meeting, FWG 5 meeting, was attended by all members. Other FWG meetings were held with majority of the members present (more than half). All this in spite of the fact that schedule of FWG meetings was announced to all institutions and FWG members as early as January 2009. Coordinating meetings of this type become pointless if representatives of the institutions, that have committed to closely cooperate and coordinate between themselves, do not attend the coordination meetings. This information is a cause of serious concern.

Recognizing the need to ensure coordination among institutions of different competencies and to monitor progress based on uniform standards and through uniform processes, special monitoring systems have been introduced aimed at facilitating overall evaluation of progress in the BiH justice sector reform processes.

Although the process and reporting formats were explained in detail to the FWG members and although the reporting deadlines were announced, the reports were submitted late or in some cases they were not submitted at all. In general, the reports were of very poor quality and did not contain the information agreed with the FWG members at the beginning of the process, with exception of some institutions and areas.

In addition, the progress, present in some areas, remains unrecorded through this process and one gets the impression that no progress has been achieved.

In FWG meetings, the impression was that very few of the institutions responsible for implementation have been treating JSRS BiH as a priority and coordinating implementation of activities within the institution.

The BiH justice sector institutions seem to have a low level commitment or have failed to demonstrate their commitment through work and engagement of their representatives in the FWGs. One of the main reasons

for such situation is persistent lack of capacity in most institutions. With re-allocation of the existing capacities, and more efficient planning and coordination within the institutions, these limitations could be overcome in the short term.

Technical secretariat has not been fully established as yet, thus is unable to carry out its primary function of sector wide coordination of monitoring of JSRS AP implementation. One of the key problems in this respect is the failure to appoint members to the TS who would, together with SSPACEI from MoJ BiH, carry out the technical secretarial function. The same problems are present with regards to implementation of the donor aid coordination. With the exception of three cantonal MoJs, donor aid coordinators have been appointed by all BiH justice sector institutions. Although one of their responsibilities is to produce reports on monitoring implementation of the Action plan for the Report on monitoring and evaluation of donor aid effectiveness in the BiH justice sector, most of the reports from this area have not been submitted. Preparations for a meeting of the Forum of practitioners for donor aid coordination in BiH justice sector are underway, with the aim of alleviating problems with regards to donor aid coordination through establishing and holding regular sessions.

Finally, due to the fact that efficient system for monitoring JSRS BiH implementation was not established in the administrative bodies at different levels, it was not possible to initiate more active involvement of the bodies outside government structures, i.e. the CSOs.

At this moment it is not possible to create a unified picture of the progress in JSRS BiH implementation for the entire sector, due to lack or insufficient data, as well as due to inconsistent participation of the institutions representatives in the FWG meetings.

According to informal information, the achieved progress in some cases remains unrecorded though this process.

Implementation of the activities from JSRS BiH remains uncoordinated and inconsistent, which disrupts the basic purpose of developing and adopting the JSRS BiH.

The impression is that the entire process, agreed and adopted by the local institutions, still cannot be independently lead by them and that intervention and engagement of the international institutions in order to drive the process is necessary.

This creates a very bad image of the overall situation in the BiH justice sector among the members of the wider public and international community, which is faced with uncoordinated and untimely implementation of the reform processes and significantly decreased possibilities for continued donor aid to the BiH justice sector.

Responsibility for progress and delays in the justice sector reform is shared by all the institutions within identified competencies. It is essential to invest additional efforts to enable efficient coordination and cooperation among BiH justice sector institutions, to implement the joint mission statement for the justice sector in BiH, i.e. establish efficient, effective and coordinated justice system in BiH that is accountable to all citizens and fully aligned with EU standards and best practices, guaranteeing the rule of law.

The second group of risks and issues are substantial whose effects put at risk or slow down implementation of the identified strategic programmes and activities. A detailed review of the risks and problems in JSRS BiH implementation is enclosed in Annex 2 of the Report.

3. CONCLUSIONS OF THE SECOND MINISTERIAL CONFERENCE

In line with its mandate and the role in monitoring implementation of the JSRS BiH, the Second Ministerial Conference of the Justice Ministers in BiH and the Presidents of HJPC BiH and JC BD BiH, held on 29 May 2009, adopted the following conclusions:

- Report on Implementation of JSRS BiH for the reporting period January - May has been adopted 2009.
- Report considered at the Second Ministerial Conference will be delivered to BiH justice sector institutions, for submission of additional information, comments and suggestions, within 15 days from the date of delivery, after which they will be incorporated in the report.
- With regards to the strategic programme 1.1.4. and conclusion of the FWG which requested the opinion of the MC regarding this strategic programme aimed at harmonising the process of appointment of judges to the BiH Constitutional Court with the process of appointment of judges in the entity constitutional courts, the MC has requested the FWG 1 to prepare an analysis for the following MC, as provided for in the adopted JSRS AP, so that the MC is able to review the provided material and set direction for further activities regarding this strategic programme.
- With regards to the strategic programme 2.1.2. which provides for establishment of prison administrations and whose implementation has been brought into question by lack of political will at the level of Governments and the Parliaments, Ministers of Justice from the state and the entity levels have been invited to undertake further steps in terms of explaining the benefits of prison administration establishment to their respective governments and MPs, and to inform the 3rd MC on the results of those discussions. Subsequently, a final decision on the future of this strategic programme will be taken.
- By the 3rd MC, scheduled for December 2009, all BiH justice sector institutions in the MC are obliged, unless they have already completed this activity, to develop and adopt institutional medium-term strategic plans, which are fully harmonised with priorities and activities set forth in JSRS BiH and relevant action plans, and to translate these plans into concrete activities through annual programmes of work based on which budgets are planned and approved.
- The 2nd MC has adopted the calendar of activities regarding monitoring of JSRS BiH implementation by the end of 2009, including the date of the 3rd MC. If any of the institutions are unable to comply with the calendar, they are obliged to inform the Technical Secretariat or the MC Chairman in time. There will be only one FWGs meeting, and reports will be submitted for both reporting periods. Top management of all the institutions must send a clear message to their employees that implementation of JSRS BiH is a priority and that consistency and quality of engagement in this regard must be ensured.
- Top management of all the institutions have also committed to, as much as possible, within the existing limitations, advance the institutional and intrainstitutional cooperation, planning, coordination, including donor coordination, and that it will ensure timely and good quality reporting by representatives of their institutions in this process.
- By the end of June 2009, BiH and entity MoJs, HJPC BiH and JC BD BiH will intensify the efforts for the Technical Secretariat to start functioning in its full capacity, which is very important because it not only ensures unhindered and high-quality of FWG and MC work, but also improved coordination among and within the institutions themselves.
- By the 3rd MC, at the end of 2009, all institutions will ensure establishment of mechanisms for a more active involvement and engagement of civil society organisations in monitoring the JSRS BiH implementation.
- Report on Implementation of Action Plan for the Report on Monitoring and Evaluation of Aid Effectiveness in BiH Justice Sector, with the suggested conclusions, has been adopted.
- The following documents have also been adopted: Information on activities on the establishment of a Joint Donor Fund for the implementation of JSRS BiH, Document on initiation of the establishment of JSRS Fund, Document

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on JSRS Fund management mechanisms, as well as proposed activities and conclusions contained in the information.

- All BiH justice sector institutions have been invited to invest additional efforts to meet the requirements of the Road Map in order to introduce visa free regime for Bosnia and Herzegovina.