SECTOR PLANNING DOCUMENT

BOSNIA AND HERZEGOVINA

Justice and Fundamental Rights

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PART ONE - SECTOR PROFILE

# 1. SECTOR CONTEXT

## 1.1. Description and problem analysis

**Rule of Law - Justice and Fundamental Rights**

The **rule of law** is the legal principle that law should govern a nation, as opposed to being governed by decisions of individual government officials. It primarily refers to the influence and authority of law within society, particularly as a constraint upon behaviour, including behaviour of government officials. [[1]](#footnote-2) The rule of law is intrinsically linked to human rights. It is the most essential ingredient of both a functioning market economy and a fair society based on equal rights, responsibilities and opportunities for all.

Thematically, the sector encapsulates strengthening the judicial system, organisation, independence and efficiency of the judiciary, including qualitative prison system that underpins the judiciary. The sector also focuses on effectiveness of the legislation in protecting fundamental human rights, while special attention is given to vulnerable and marginalised groups. Key policies of the justice sector entail fight against organised crime and corruption through enhanced cooperation between law enforcement agencies and prosecution.

Since the post-conflict period, overall, significant improvements have been made in Bosnia and Herzegovina (BiH) in relation to the judicial system (Annex, Table 1a and 1b). The European Commission (EC) Report 2016 reiterated recommendations from 2014 and 2015 reports indicating that further efforts are still needed as far as the independence, efficiency and effectiveness are concerned, as well as the importance of strengthening the integrity of the judiciary. While recognising the progress made over the past years, the 2016 Report underlines the urgent need for follow up on Justice Sector Reform Strategy and establishing a clear monitoring system. Further efforts are required particularly in the relation to introducing more qualitative criteria for appointment and appraisal of judges and prosecutors; continued developing training programs, notably for the initial level and managerial positions, including on ethical and disciplinary matters; as well as the reform of execution procedure laws to effectively reduce the utility-cases backlog in courts and introduce court-annexed mediation in selected pilot courts. Given the extensive number of bodies operating within the justice sector in BiH stabile and well-coordinated mechanism is essential.

The strategic framework of the Justice sector is additionally supported by the Structured Dialogue on Justice(Structured Dialogue) undertaken since 2011 between BiH and the European Union (EU)[[2]](#footnote-3); the Structured Dialogue is focused on the judicial reform, on issues related to processing war crimes cases as well as harmonisation of the national legislation with the EU *acquis*[[3]](#footnote-4). Due to the inter-links and sequencing of the process, the Structured Dialogue (in 2014) expanded the activities to additional rule of law (RoL) matters such as: anti-corruption, anti-discrimination, prevention of conflict of interest and measures to strengthen the integrity, accountability and efficiency of police forces within the existing legal framework[[4]](#footnote-5).

The court system in BiH

The court system in BiH ismulti-layered[[5]](#footnote-6) with diversity of functioning of court system(s)[[6]](#footnote-7) at the state and entity levels: the State level of BiH, the Federation of Bosnia and Herzegovina (FBiH), Republika Srpska (RS) and Brčko District (BD) (see Annex, Table 2 and 3). This diversity often leads to inefficiency due to frequent conflicts over jurisdiction, and a variety of practices related to investigations and trials[[7]](#footnote-8). Therefore, efforts have been focused on formulating draft laws aiming at a more coordinated legal framework (draft Law on the Courts of BiH, providing for establishment of separate State-level Appeal Court, draft Law on the Prosecutor’s Office of BiH). In this respect, the largest possible political consensus is a matter of priority[[8]](#footnote-9).

Sources of financing of judicial institutions and prosecution services[[9]](#footnote-10) are highly fragmented too. The distribution and development of the particular levels of the judicial system is uneven (due to the disharmonised funding priorities irrespective of horizontal or vertical actors’ needs) and opens room for influence by the executive power[[10]](#footnote-11). The budget allocated to courts and prosecutors’ offices throughout the country and the HJPC in 2016 was EUR 119.35 million (slightly higher in absolute terms than in 2015), i.e. 0.81 % of the country’s GDP, which is, however, slightly less than in 2015 when the allocation corresponded to 0.85 % of the GDP[[11]](#footnote-12).

Due to general economic situation in the country, although planned, 13,9% of the regular/reserve positions of judges and prosecutors remained empty and some of the investments, including prison facilities were postponed due to financial constraints[[12]](#footnote-13).

The prison system in BiH

The prison system in BiH is organised on entity levels. State level is in the process of establishment of its own prison, whilst BD has no facilities but under agreement utilise those of entity levels.

Most penal institutions in the country are struggling for resources, and are inadequate and unable to provide European and international standards and requirements. In the prison system in BiH there still exists at present a range of systemic organisational problems that erode the development of effective and efficient prison management. Prime amongst these are the introduction of effective performance management and devolved financial management systems, the development of coherent human resource management policies capable of giving effect to EU employment, health and safety norms and the development of a prisons estate that is fit for purpose. [[13]](#footnote-14) More over legislation on the prison system is not sufficiently harmonised throughout the country. Execution of criminal sentences was hampered by the lack of coordination and harmonisation of procedures across the country. The backlog in the execution of criminal penalties in the Federation entity was considerably reduced, with 196 cases awaiting execution[[14]](#footnote-15). Even though some evidence appear in terms of prison management it lacks coherence of data due to poor statistic ability and management.

The application of international standards are being monitored as far as the prisoners with special needs are concerned[[15]](#footnote-16) and a Framework plan of activities for improving the health care of the prison population has been developed. Additionally, as part of the monitoring system a prison inspection at all levels of government has been established but the implementation is progressing slowly[[16]](#footnote-17). The international obligation of establishing National Preventive Mechanism according to the Convention against torture is still to be fulfilled[[17]](#footnote-18)

The legal possibilities of applying alternative (non-sanction) sanctions exists but are not in regular use[[18]](#footnote-19).

Generally, some progress has been made as far as the prison system is concerned[[19]](#footnote-20) including a newly established prison administration in BiH[[20]](#footnote-21), re-categorisation of prisons and classification within prisons in BiH[[21]](#footnote-22).

Functioning of the justice and fundamental rights in BiH

As far as theefficiencyof the courts is concerned, a package of measures and technical reforms were introduced by HJPC tackling the reduction of the backlog of pending cases[[22]](#footnote-23) and structural solutions are necessary. The backlog for pending court cases by end of June 2016 was reduced by 5% compared with 2015 with a total of 356.019 pending cases. As a result of the implementation of their backlog reduction plans, courts completed 111.282 old cases out of the 187.118 cases that were planned in 2016, achieving 60% of the plans’ targets in the first six months of 2016[[23]](#footnote-24). By the end of the 2016, 33 out of 76 courts reached the planned targets[[24]](#footnote-25). However, the bulk of the case backlog was made up of over 1.7 million of unpaid utility bills cases as of June 2016[[25]](#footnote-26). Overall, the numberof these casesremains high at all levels due to limitations of the legal framework, as well as human and financial resources. Monitoring of the day-to-day activities of courts and prosecutors’ offices takes place through the ‘Case Management System’ used by all courts and prosecutors’ offices in BiH, which includes an individual and institutional quota system. In addition to biannual and annual statistical reports submitted to the HJPC, all courts and prosecutors’ offices produce an annual activity report, which is submitted to respective MoJs and the HJPC[[26]](#footnote-27). Judicial conciliation continues to be used more frequently than mediation. Only two cases went to mediation, compared with 6.280 cases adjudicated using judicial conciliation, meaning that barely 1% of cases were solved through alternative dispute resolution methods. A proposal was made for better court-annexed mediation, and the opening of pilot courts with this type of mediation is under way[[27]](#footnote-28).

The Prosecutor's offices in BiH had a total of 14.469 pending cases at the end of 2016, representing overall 7% decrease in backlog compared to the end of 2015[[28]](#footnote-29). The overall number of filed indictments in 2016 was 13.623, whereas 70% of indictments are related to general crimes, war crimes and economic crimes[[29]](#footnote-30).

Due to the complex structure of BiH, the harmonisation process of the legislation is rather complex and requires planning, human and financial resources, additional time and greater efforts. A positive development in this regard has been the May 2015 Council of Minister's (CoM) adoption of amendments and changes to the BiH Criminal Act [[30]](#footnote-31). Notwithstanding, the legal framework should be followed by uniformity of implementation, harmonisation with EU and international standards and capacity development of the courts and POs. The implementation of the National War Crimes Strategy (NWCS) of BiH needs to be hastened without delay, particularly regarding complex cases, where the foreseen 8-year timeframe has already lapsed, as well as for the so called “Category II” cases that the International Criminal Tribunal for the former Yugoslavia (ICTY) transferred to the BiH Prosecutor’s Office. The BiH Prosecutor’s Office reports on the processing of these cases on a regular basis. War crimes cases are a priority which is noticeable in the prosecutors' offices throughout BiH and thereafter the courts[[31]](#footnote-32). An effective and rigorous management of referred war crimes cases helps to determine the final and exact number of cases at each level of authority, and should serve to assess the capacity of relevant jurisdictions to implement their strategic goals[[32]](#footnote-33). The track record in effective investigation, prosecution and conviction of perpetrators of corruption and war crimes cases needs to be further improved and existent communications, coordination and cooperation among judicial institutions and law enforcement agencies need to improve.[[33]](#footnote-34).

The regional co-operation[[34]](#footnote-35) among courts and prosecutors’ offices of BiH, Serbia and Croatia is rather supportive as far as the fight against impunity, war crimes, crimes against humanity and genocide is concerned. On the other hand, there is an evident need for improving the status of victims of rape, sexual violence, victims of war crimes (sexual violence especially)[[35]](#footnote-36), gender based violence and discrimination and witness protection measures in general[[36]](#footnote-37). ‘Legislation on rights of victims of torture remains to be adopted’[[37]](#footnote-38) including the implementation of UN resolutions (like UNSCR 1325) and recommendations provided under the Committee on Elimination of Discrimination against Women (CEDAW)[[38]](#footnote-39), the Committee against torture (CAT) and others.

Overall, due to the complex structure of the justice sector – the implementation and harmonisation of the legal framework within BiH is difficult and leads to inefficiencies and ineffectiveness. Still, the existent technology (CMS, TCMS) allows rather accurate data collection and subsequent analysis in order to respond to the address and improve the implementation of various policies relevant to the EU acquis[[39]](#footnote-40).

Further to the functioning of the justice sector, the new JSRS recognises the need for further investment of efforts in the area of strategic planning, cost control, quantitative performance, and inter-institutional cooperation in order to harmonise the policy and strategy framework with the budgetary planning and the resulting services. [[40]](#footnote-41).

Access to justice

The legal framework on free legal aid (FLA) is still incomplete throughout the country. The country adopted a state level legislation on FLA[[41]](#footnote-42). The provision of FLA is weak and inconsistent throughout the country resulting in insufficient access to justice by the citizens.[[42]](#footnote-43). Consequently, an extensive free legal assistance system at all levels in BiH should be established in order to ensure that the economic status of an individual does not prevent her/him from exercising his/her rights before the law[[43]](#footnote-44). A comprehensive transitional justice strategy and unified legal basis for a compensation mechanism for wartime gross human rights violations across the country have yet to be adopted.[[44]](#footnote-45) A significant part of FLA is provided by Civil Society Organisations (CSOs) who are dependent on donor financing. Some CSOs are specialised in providing services of FLA, i.e. in the area of protection woman victim of violence, antidiscrimination and similar. As of 2010 in BiH is operational network of CSOs called “Justice Network” which operates in the area of rule of law and protecting human rights. Yet in 2012 Memorandum of Understanding was signed between 11 CSOs with support of UNDP establishing FLA network. This network serves as point of departure where one can find information on FLA. Although improvementshave been noted, additional efforts are needed in relation to equality of rights, criteria for receiving FLA as well as the procedures in place in order to guarantee an equal level of access. Therefore, legislation and funding for an effective system of FLA still need to be developed, especially in terms of improvement of implementation and monitoring capacities of the legal aid providers (e.g. cooperation with CSOs). Alternative modalities of dispute resolution as a concept within FLA should be considered. The status of the CSOs in the FLA system and their funding modality require changes, due to the importance of the role of CSOs when it comes to the categories such as asylum seekers, refugees, victims of trafficking and victims of discrimination.

The treatment of juvenile offenders in all phases (starting from the time of conflict with the law, through the preparatory hearing to the main hearing and pronouncement of the verdict) provide an opportunity for the application of alternative forms of community work designed for their rehabilitation and reintegration into the society. A higher protection of the rights of juvenile offendersand higher quality of practical application through the specialisation of those working with the young, better working conditions and higher level of coordination of police, prosecutor's offices, courts, the bar and centres of social welfare should be applied[[45]](#footnote-46). Such alternative sanctions in the criminal justice system can be applied equally to adults.

Human resources in justice and fundamental rights in BiH

As a general remark related to justice, the bar exams require changes in order to adapt to the requirements of challenging and modern society and also considering the legal framework.

Competent authorities at all levels have to secure the financial and human resources necessary to properly investigate and process cases in a timely manner. In this regard, the systematised vacant posts throughout the judicial and prosecutorial network should be filled as a matter of priority[[46]](#footnote-47). In addition, there is the need for an improved mechanism for performance assessment of the judicial (and prosecutorial) staff. Also, the lack of motivation among judges, and other court employees needs to be addressed[[47]](#footnote-48).

In relation to integrity of judiciary officials, the personal financial statements of judges and prosecutors are regularly collected by the HJPC on an annual basis. The data from the financial statements are available for Office of the Disciplinary Council’s requests. Improvement of the system of recording and monitoring of the data from personal financial statements has commenced. As a preventive measure, annual integrity plans have been introduced, but monitoring thereof has yet to be performed. A functional system for submission and monitoring of assets' declaration of judges and prosecutors[[48]](#footnote-49) should contribute to the professionalism of the judicial sector. Any structural reform that reintroduces a strong role of the executive and legislative branches would determine a rollback, especially if specific safeguards are not introduced to prevent overexposure of appointments to influence of political parties for example in relation to the rules regulating both the appointments of the members of the judiciary by the HJPC and the procedure for the appointment of HJPC members itself[[49]](#footnote-50).

The number of complaints submitted to the Office of the Disciplinary Council regarding judicial office holders, particularly prosecutors, has increased in the last two years (see Table 3). In 2016, the Office of the Disciplinary Prosecutor registered 919 complaints against holders of judicial and prosecutorial functions and issued 922 decisions on merits, including the last years' remaining cases. It initiated 32 disciplinary proceedings (against: 22 judges, 2 court presidents, 2 chief prosecutors, 4 prosecutors and 2 legal associates), which resulted in 28 sanctions being imposed, mainly written/public reprimands or salary reductions and only one dismissal/resignation[[50]](#footnote-51).[[51]](#footnote-52).

The key to greater levels of accountability, as well as effective harmonization and coordination is establishing performance management system that enables decision-makers, as well as the public, to better assess progress achieved in reform initiatives and identify areas in which additional initiatives are needed[[52]](#footnote-53).

Entity Judicial and Prosecutorial Training centres (JPTCs) are conducting induction and continuous training for judicial officials and candidates for judicial officials[[53]](#footnote-54), extending the network of lectures and mentors, improving its curricula by evaluation of its trainings, technical equipping of its premises, strengthening of cooperation with national and foreign institutions and organizations (see Table 5). On-line trainings have been introduced, but require further development. Due to the decision of the minimum training days to be followed per judge and other judicial staff the standards and methodologies of the centres needs to significantly improve. Furthermore, institutional reforms to improve both the delivery and substance of trainings, as well as inefficiencies of the system have been identified as a shortcoming[[54]](#footnote-55). Also, adequate mechanisms for developing training of non-judicial staff[[55]](#footnote-56) at courts and prosecutors’ offices should be introduced.

As for the fundamental right there is still no overarching policy document on promotion and enforcement of human rights. The Ombudsman still lacks adequate human and financial resources to perform its functions as national human rights institution. Training on the ECHR and ECtHR case-law continued for judges, prosecutors, legal associates and advisers of the Constitutional Court and the Court of Bosnia and Herzegovina.[[56]](#footnote-57)

Fight against corruption

The fight against corruption has been a central element of the government's activities and a number of investigations have been launched, including into high level corruption[[57]](#footnote-58) (see Table 4). Nevertheless, track record in correlating actions (investigations, prosecutions and convictions) against perpetrators of corruption is missing positive outcome and a spill over effect in the society.

In 2009 the Anti-corruption strategy was introduced (2009-2014) and a new strategy for the period 2015 – 2019 has been adopted by CoM. A specialised Agency for Prevention of Corruption and Coordination of the Fight against Corruption (APCCFAC) has been established; still little progress has been achieved in reducing corruption which continues to affect the entire public sector[[58]](#footnote-59). Further efforts are needed in raising the awareness of the negative lasting effects of corruptive behaviour in the society. Having a preventive role, the APCCFAC as well as other bodies involved in the prevention of corruption should further develop their strategic and operational capacities. The anti-corruption and conflict of interest measures within the public sector, with strong reference for the justice sector should be reinforced in a more systematic way[[59]](#footnote-60) (procedures, preventive measures, monitoring and disciplinary measures).

Transparency of the justice and fundamental rights in BiH

Although a number of improvements have been made as regards the transparency and openness of the judicial system towards citizens (judicial web portal encompassing a number of informative web services, Judicial Documentation Centre and in particular the number of user logins to the web service ‘Online Access To Court Cases’ has quadrupled in 2016 compared to 2015[[60]](#footnote-61)), due to the political influence, the public perception in BiH still does not reflect high trust in the competence and independence of the judiciary. Full implementation of the Law on Free Access to Information seeks for improvements.

**Human rights**

In this relation, on general level, further steps in implementation of the Free Access to Information[[61]](#footnote-62) should be taken, enhancing accountability and active transparency of administration and work of public authorities, at the state level and the entity levels respectively.

Overall, theantidiscrimination policy in BiHis mainly in line with EU standards. However, further harmonisation with the *acquis* is required especially in terms of exclusion of age and disability as categories and, harmonisation of some of the provisions of the labour and higher education laws[[62]](#footnote-63). Prevention measures are essential. The number of registered complaints of discrimination is not accurate (unconsolidated data, collecting data as well as exchange of data needs to be improved[[63]](#footnote-64)). In that relation, awareness about antidiscrimination law remains low among the general public but also among law enforcement agencies and legal professionals[[64]](#footnote-65), although education on fight against discrimination has been introduced. As far as the ethnic and religious antidiscrimination is concerned, the implementation of the ECHR’s judgement in the Sejdić-Finci case is essential. The social, economic and political status of the Roma community is still rather weak[[65]](#footnote-66) and although significant financial and human efforts have been engaged, there is an increasing need for further support to the Roma community[[66]](#footnote-67). Elderly people, children, returnees and women and men victims of wartime sexual violence are put in focus as some of the most vulnerable groups.

Since 2013, BiH is signatory to the Convention on women, children and domestic violence[[67]](#footnote-68) and a Gender Action Plan for the period 2013-2017 has been introduced. Still, there is lack of implementation of the recommendations of the rights of women by CEDAW and other UN agencies[[68]](#footnote-69). Therefore, effective prevention of vulnerable and marginalised groups needs to be tackled further especially with regard to cases of hate speech, violence and discrimination[[69]](#footnote-70). Additional attention is needed with regard to children’s right to education, protection of vulnerable groups (especially women victims of sexual assaults), including defenders of human rights. Also, the need for promotion of human rights and prevention of torture and ill-treatment reaffirms the need for better coordination and performance of the relevant institutions.

The Revised Strategy for the Implementation of Annex VII of the Dayton/Paris Peace Agreement still lacks coordinated implementation and appropriate allocation of resources. There are problems related to the lack of infrastructure. In particular, lack of electricity and comprehensive de-mining activities continues to limit access to basic services for returnees, displaced persons and refugees[[70]](#footnote-71). Transparent and non-discriminatory criteria for allocating return assistance have yet to be established, despite the fact that the State Commission for Refugees and Displaced Persons became operational in 2012 and has met regularly ever since.

Although an Act on Personal Data protection[[71]](#footnote-72) is in place and a specialised agency exists, the need for further enhancement is essential, especially by the law enforcement bodies at the entity levels. Preparations for personal data protection are still at an early stage[[72]](#footnote-73).

The authorities need to pay special attention to freedom of expression since political and financial pressure on the media is high and there are cases of intimidation and threats against journalists and/or editors and media ownership.

As a result of intensified promotion of human rights and awareness raising among citizens in 2013 the work[[73]](#footnote-74) of Human Rights Ombudsman (HRO) has been intensified[[74]](#footnote-75). The majority (59,30%) of the complaints were related to the civil and political rights followed by economic and social rights (22,01%). More precisely, in 2014 the majority of the complaints related to civil and political rights were related to the judiciary (579), the administration (517), free access to information (218). The majority of complaints concerning economic, social and culture rights were related to labour rights, right to pension, social protection[[75]](#footnote-76). The least number of complaints are in the area of national, religious and other minorities rights which however does not seem to really reflect the actual situation. In the area of discrimination complaints have also been filed[[76]](#footnote-77). In 2014 the number of complains related to discrimination increased by 16,16 % comparing with 2013, especially in the area of mobbing[[77]](#footnote-78).

Overall, the implementation of the existing legal and strategic framework related to rule of law (justice sector and fundamental rights) needs to be further strengthened. Besides the needs for further strengthening the policy development and implementation, the capacities of the ministry of Human Rights and Refugees (MHRR) remain to be further strengthened as well as those of the HRO[[78]](#footnote-79) and the Agency for Gender Equality.

## 1.2. SWOT analysis

The sector overall description has been summarised through a SWOT analysis.

The aim is to highlight key internal strengths and weaknesses of the sector and to correlate them with external (positive and negative factors). According to the specificity of the sector, the analysis has been divided into four most significant, inter-linked areas, such as: human resources, institutional framework, processes and infrastructure.

|  |  |
| --- | --- |
| **Strengths** | **Weaknesses** |
| ***Human resources*** | ***Human resources*** |
| * Increased capacities for fight against corruption and Integrity plans introduced * Well established system of capacity building for judicial and prosecutorial officials, incoming staff, civil servants, other staff * Specialised training bodies (institutions) for the judicial sector * Introduced quotas on mandatory training days for judiciary staff * Mandatory training for civil servants * Benefits of public sector employment security versus private uncertainty | * Limited human resources in institutions at all level of governance throughout the country in justice and fundamental rights * Lack of strategic approach to human resources management, change management and strategic planning * The Bar exams do not reflect current/contemporary needs in justice * Inadequate selection/systematic criteria for selection process related to recruitment process (judicial and non-judicial staff) * Lack of systematic training for non-judicial staff * Lack of specialised, peer-to-peer trainings * Certain level of risk in assuring adequate investigation due to the discretion of Chief prosecutor to delegate investigations to prosecutors |
| ***Institutional framework*** | ***Institutional framework*** |
| * Satisfactory level of participatory model of drafting JSRS (2008 – 2012; 2014-2018) and partial satisfactory level of implemented activities under JSRS and its Action Plan (2009 -2013) * Legal and institutional framework for the observance of human rights is in place * The existence of the independent judicial body – HJPC BiH * The existence of Human Rights Ombudsman of BiH and network of field offices throughout BiH | * JSRS monitoring and evaluation framework not in place mandated by not having JSRS Action Plan redrafted in 2016 and adopted in first quarter of 2017 * Inadequate organisational structure and competencies of the stakeholders involved in judiciary and fundamental rights * Inadequate co-operation between police and prosecution services * Lack of efficiency in implementation of legal and various strategy framework on human rights on different levels of government * Complexity of multi-layered court system and diversity of functioning of court system(s) * Unclear division of powers and competencies among different bodies established for combating corruption * Low level of coordination and communication amongst numerous stakeholders * Highly fragmented system of budgeting in judiciary * Inadequate coordination and cooperation system in the area of fundamental rights * Lack of support to HJPC BiH, political interference in judiciary |
| ***Processes*** | ***Processes*** |
| * New set of draft laws related to central State-level (on HJPC, Courts of BiH, Prosecutor’s Office of BiH) * Openness of judicial sector in data sharing with the public (judicial web portal) * Duration of criminal proceeding is reduced * Legal framework for execution of criminal sanctions at all levels of BiH introduced * Functional Case Management System in judicial system (courts and prosecutors’ offices) * Harmonised acts related to fight against corruption * Drafting annual action plans on resolving cases in courts and prosecutor offices * Introduced mediation into the courts’ practice * Established Working group on harmonisation of Anti-discrimination Law in BiH with the EU * National Preventive Mechanism designated to the Human Rights Ombudsman of BiH * Act on FLA in State, FBiH, RS, BD and 8 cantons * Established VWS mechanism and free legal Aid in certain courts (50% of jurisdiction/70% of territory)[[79]](#footnote-80). | * Different evolution of jurisprudence and incompatibility of the entity levels (and BD) legislation with the HJPC’s prerogatives * Slow and weak process of adoption of the new set of draft laws to central State-level * Weak access to justice, Insufficient good practice on Free Legal Aid and use of mediation and other alternative dispute resolution measures in courts * Lack of implementation of Constitutional court decisions and Ombudsman recommendations * Lack of implementation of Structured Dialogue recommendations and delayed adoption and monitoring of implementation of JSRS * Overall case backlog * Lack of financial resources for implementation of Antidiscrimination law of BiH and antidiscrimination policies * Delays in serving sentences of convicted persons * Lack/inconsistency of systematic planning documents, identified policies supporting planning financial resources * Inadequate number of processed and court decisions related to war crime cases, anti-corruption and anti-discrimination * Inadequate methodology and cooperation in data collection, processing and results related to fundamental and other human rights including preventive measures and awareness raising |
| ***Infrastructure*** | ***Infrastructure*** |
| * Videoconferencing system in judicial premises for distant testimony available * CMS/TCMS in place * Necessary material and technical preconditions for prison system existent | * Inadequate infrastructure of the court, prosecution and prison system * Low IT infrastructure in prison facilities * Inadequate material and technical conditions for operative Human Rights Ombudsman of BiH |
| **Opportunities** | **Threats** |
| ***Human resources*** | ***Human resources*** |
| * Strengthening the efficiency of judicial institutions through professionalism of the judicial staff * Availability of technical assistance from EU Member states and bilateral assistance * Strengthening the efficiency of implementation of antidiscrimination policies through capacity building of the Human Rights Ombudsman, MHRR and gender Agencies | * Politicisation of appointment procedures at the various levels for judicial system * Public trust lowered due to unsatisfactory results of the re-election of judicial officials * High index on corruption in rule of law with increase trend * Slowdown in EU integration and approximation process * Lack of impetus for reform due to insufficient reform results undertaken during previous programming period * Budgetary cutbacks |
| ***Institutional framework*** | ***Institutional framework*** |
| * The web portal may stimulate further development of Judicial Documentation Centre * Positioning a number of institutions dealing with justice sector and/or fundamental rights in the process of European integration * Strengthening the role of HJPC might accelerate the judicial reform process * FLA legal framework with its services almost in place and provided support of UNDP and EU lead to more access to justice * Achieving high standards in serving/executing criminal sanctions by NPM | * Political or media pressure on further development of institutional framework in the justice and fundamental rights * Weak institutions, unclear competencies and functions might lead to slowdown of the process of justice and fundamental rights reform and fulfilment of the obligations towards international obligations |
| ***Processes*** | ***Processes*** |
| * Improving the public confidence in judiciary * Promotion of clear impacts of justice sector on economic development * Promotion of clear impacts of antidiscrimination policies on security, democracy and economic development * Availability of financing from EU and bilateral funds | * Lack of impetus for reforms * Politicisation, inefficiency and corruption in judiciary undermines citizens status in regard to rule of law * Cancellation or delays in delivery of donor aid due to non-ratification of donor agreements |
| ***Infrastructure*** | ***Infrastructure*** |
| * Use of EU assistance in accelerating the fulfilment of infrastructure plans | * General economic crisis might block or delay the planned investments |

Source of information for the SWOT analysis:

* Bosnia and Herzegovina Progress Report, European Commission (2014-2016);
* Structured Dialogue on Justice and Additional Rule of Law Matters between the EU and BiH May 2014;
* other Country Strategies and Reports.

# 2. SECTOR APPROACH ASSESSMENT

## 2.1. Assessment criteria

The rule of law is at the centre of the enlargement strategy. As a potential candidate, BiH has to ensure that its judiciary is independent, impartial, efficient and accountable, and that its law enforcement agencies have the capacity and support to fight corruption and organised crime.

While there have been improvements in the judicial efficiency, a large backlog of civil and criminal cases remain. The fractured budgetary organisation and interferences by other branches of government undermine its independence. Similar there are concerns on the efficiency and independence of the law enforcement due to excessive political influence on operational policing, patronage and corruption.

Strategic orientation and vision for the development of this sector is described in sub-sector strategies. Although evidencing the practice of developing strategic documents, the existing strategies are somewhat overlapping. There is a need to improve training on strategic planning, especially in relation to integrating other sub-sector strategies under the main strategic framework. The justice sector coordination and donor coordination led by MoJ and HJPC is developing and functioning with perspective of further enhancing its role. Also, the financial applications follow the strategic documents. Monitoring and evaluation tools for strategy are to certain extent set with perspective for further development, especially in the area of performance assessment framework and automation of processes. The new JSRS 2014 – 2018 is reflecting these needs.

The weak cooperation between law enforcement agencies and prosecution services impairs their preparedness to fight corruption, economic and organised crime.

The protection of fundamental human rights needs to be further enhanced. Despite the legal framework being in place, its implementation and enforcement remains uneven throughout the country and remains a key priority for development. Special attentions needs to be given to the area of ensuring fundamental human rights including accessing the rights, access to information, free legal aid and similar. More notably, the national sector policies deployed among crucial strategies related to fundamental rights need for more coherent sector policy formulation. The mechanisms for sector coordination in planning and implementation of these policies need to be further reinforced. The monitoring and evaluation tools for the strategies need to be deployed evenly across the sector with clear focus on results, including a relevant performance assessment framework.

The focus of IPA II assistance is on enhancing the effectiveness, accountability and the efficiency of the judiciary, enhancing justice for citizens, enhancing capacity and quality of execution of criminal sanction, fighting against organised crime and corruption, prosecuting war crimes, and on the enforcement of fundamental rights.

Overall, the judicial efficiency should improve, in particular through the reduction of the backlog of civil and criminal cases. The independence of the judiciary should be assured and accountability improved. Every citizen should have access to justice, and in particular the vulnerable groups should be able to exercise their fundamental rights.

## 2.1.1. National sector policy(ies) /strategy(ies)

The rule of law is at the heart of the enlargement process. Therefore, issues such as judicial reform, fight against organised crime and corruption need to be tackled early in the accession process to demonstrate a solid track record of sustainable results. On the other hand, the respect of fundamental and other human rights present the opposite side of the process which verifies the real existence, efficiency and effectiveness of the rule of law.

The justice sector contributes to the fulfilment of the obligations related to the harmonisation of the legislation with EU Acquis under political criteria set in the SAA, as well as meeting BiH's other international obligations, such as the UN core human rights treaties and the European Convention for protection of human rights and fundamental freedoms.

So far, the policy approach related to this sector in priority setting has not been properly followed up. In fact, more efforts should be addressed to meet the need for adequate monitoring and evaluation of the sector reform and advancing towards a major integration with European standards and more specifically the Copenhagen criteria.

### Strategic framework - Justice

The *new JSRS* in BiH for the period 2014–2018[[80]](#footnote-81) has been prepared by the MoJ BiH in the course of 2014 in wide consultation with main stakeholders. The JSRS in BiH has been adopted at the 22. Session CoM held on September 8, 2015. CoM by its conclusion instructed that relevant institutions of the justice sector to prepare updated draft of Action plan (AP) for the implementation of JSRS in BIH. Draft AP has been prepared within requested deadline of 90 days and submitted to the CoM for the adoption. With a delay the CoM reviewed and adopted AP document on its 94. session held on March 15 2017. In respect to the structure, content and actors involved, the new draft strategy is a continuation of the previous one that covered the period 2008–2012 (Action Plan covered the period 2009–2013). The drivers for judicial reform in the draft of new JSRS are: fight against corruption, access to justice for citizens and their equality before the law, ensuring budgetary responsibility, support to economic growth and incentive for EU integration.

*National Strategy for Processing War Crimes*,adopted 2008, aims at finding a systematic approach to the problem of dealing with a large number of unresolved war crime cases. The strategy focuses primarily on the judicial aspects of solving war crime cases. In the beginning of 2017, the BiH Council of Ministers BIH has established the Working group for drafting the amendments of the National Strategy for Processing War Crimes.

*BiH Anti-Corruption Strategy* (2015–2019)aims at strengthening the legal framework for fighting against corruption and set-up models for prevention of corruption in public administration bodies. The strategy also targets capacity building to anti-corruption bodies at all governance levels. The majority of objectives outlined in the *Strategic Plan of the HJPC* BiH 2014–2018 are directed towards strengthening the position of the judiciary, and improving its much-needed efficiency, independence, transparency, quality, effectiveness, accountability and access to information.

The HJPC has adopted the draft Mid-term Action Plan covering the period 2018-2020 while the adoption of final version is envisaged for the end of 2017. The Plan covers several priority areas: improving independence, efficiency, accountability and transparency of the judiciary in BiH.

The 2017–2019 *Mid-term Strategic Plan of the Court* of BiH has a focus on strengthening of the rule of law and establishing the system for effective fighting of corruption and organised crime through advancing effectiveness of Court of BiH and strengthening their institutional and human capacities, effectiveness, economy of process cases in jurisdiction of the Court of BiH; development and strengthening of human and institutional capacities of the Court of BiH.

### Strategic framework – Fundamental rights

According to all parameters measuring and determining the status of any social group, the Roma are the most endangered national minority in BiH, although being the largest one. This subject is dealt with within the framework of the *Strategy of BiH for Addressing Roma Issues* *and the related Action Plans*.

The *Revised Strategy on implementation of Annex VII of Dayton Peace Agreement* (adopted in 2002 and revised in 2010) has the overall objective to engage national authorities and civil society at all levels and across all sectors in a coordinated and prioritised plan to implement the commitments made in the Dayton Peace Agreement (DPA) Annex VII, so to identify and resolve the remaining obstacles to solutions for the most vulnerable displaced and returnee families.

Although there is no comprehensive strategy on anti-discrimination, still there are a number of strategies within the scope of the sector and several multi-sector strategies currently governing the related subjects such as: the *Strategy for Protection of Children and Prevention of Violence* (2008-2015) and the *Strategy for implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in BiH (2014 – 2018) (sent to the CoM for adoption),*  the Action Plan for children (2011 – 2014), the *Action Plan for Roma housing, health and employment,* Gender Action Plan (2013 – 2017)etc.All these strategies have the primary objective of combating discrimination and thereby promoting better functioning of the judiciary system. It is worth mentioning that an Anti-discriminatory strategy is planned for adoption (in the programme of the Council of Ministers of BiH) for 2015, and is expected to be adopted for the year 2016. The strategy against juvenile delinquency in BiH is no longer active but the Guidelines for data collection in the field of juvenile delinquency (jointly undertaken by MHRR and UNICEF) are one of the results of the Strategy.

At the level of entities there are the following strategies:

|  |  |
| --- | --- |
| FBiH | Strategy for equal opportunities for disabled persons (2011 – 2015)[[81]](#footnote-82)  Strategy for prevention and fight against domestic violence (2013-2017) |
| RS | Strategy for combating domestic violence 2014 – 2019,  Action Plan for children,  Strategy for improving the social status of disabled persons (2010 – 2015), |

However, despite their number, all these sector strategies do not provide a comprehensive coverage of all issues the sector faces, especially in the area of fundamental human and minority rights. Also, some of the strategies are overlapping(judicial reform includes the development of free legal aid; penal reform incorporates the reduction of prison overcrowding; there is a cross-over in the environment for domestic violence that affects both women and children, etc.) and in the meanwhile, there is no National Human Rights Action Plan that could synchronise existing strategies and set priorities in human rights.

National priorities in the area of judiciary and fundamental rights are deriving from the new draft JSRS:[[82]](#footnote-83)

* *Judicial system*  
  Further strengthening and maintaining independence, accountability, efficiency, professionalism and harmonisation of the judicial system which ensures the rule of law in BiH,
* *Execution of criminal sanctions*  
  Develop more harmonised system of criminal sanctions in BiH which, by respecting European standards, ensures humane and legal treatment and effective re-socialisation in BiH prisons,
* *Access to justice*  
  Advance the system of international legal assistance and establish, strengthen and maintain systems and processes that guarantee equal access to justice in BiH,
* *Support to economic growth*  
  Define and implement measures through which the justice sector will contribute to the creation of a more favourable environment for sustainable economic development in BiH,
* *Coordinated, well managed and accountable sector*  
  Coordinate and make roles and responsibilities of key justice sector institutions more efficient, with the aim of achieving more effective, accountable and transparent justice system in BiH.

## 2.1.2. Institutional setting and capacity

The BiH judicial system currently has 983 judges and 368 prosecutors. Also, executive is consisted from the MoJ at the state level, MoJs at the level of entities (in FBiH and RS) and Judicial Commission of BD, including 10 Cantonal MoJs.

### Institutional setting – State Level

As outlined in the above section, sector policies are formulated and led by the MoJ and HJPC, judicial institutions and independent government institutions. The roles of the MoJ and the HJPC are interlinked and complementary. More precisely, theinstitutional framework for the judiciary at the state level consists of following institutions: MoJ, HJPC, the Constitutional Court, the Court of BiH, the Prosecutor’s Office and Office of Attorney General of Bosnia and Herzegovina.

*MoJ BiH*[[83]](#footnote-84) has the administrative functions in terms of judicial authorities and Court police at state level including development of relevant laws and regulations. With the task of ensuring that the BiH legislation and implementation at all levels is aligned with the BiH commitments stemming from international agreements, the MoJ guides and monitors the sector in order to ensure inter-entity consolidation and conformity with the best standards; generally acting as a central co-ordination authority for ensuring consolidation of legislation and judicial system standards between the Entities, the MoJ is cooperating with the Ministry of Foreign Affairs and Entities in the drafting of international Bilateral and Multilateral Agreements; provides guidelines and monitoring legal education to ensure inter-Entity harmonisation and compliance with best practice, is in charge of extradition, the MoJ deals with administrative inspections of laws enforcement concerning civil servants and employees of administrative bodies, routine and special administrative procedures and office management, The MoJ is also in charge for execution of criminal sanctions, detention and other measures prescribed by the Court of BiH, and other tasks and duties which are not within the competence of other Ministries of BiH and which are related to the tasks and duties of this Ministry[[84]](#footnote-85).

*HJPC BiH*[[85]](#footnote-86) is an independent and autonomous institution (established since 2004 with specific Law) having a general mandate of setting-up and maintaining an independent, impartial, efficient and accountable judiciary in BiH along with equal access to justice and equality for all before the law. The Law establishes the Council competences, such as: the appointment of judges, prosecutors and legal associates, disciplinary accountability, judicial administration and statistics, judicial institution budgets, supervision of professional training, introducing information and communication technologies as well as taking the driving role in the implementation and coordination of reform-related activities and improving the efficiency of the judiciary of BiH.

*Constitutional Court* (CC) is the interpreter and guardian of the Constitution of BiH[[86]](#footnote-87) and it is considered to be the highest judicial authority of the State, since it has the appellate jurisdiction over issues under the Constitution arising out of a judgment of any other court in BiH. The CC consists of 9 judges, out of whom 4 are selected by the House of Representatives of the FBiH, two are selected by National Assembly of the RS, and the remaining three members are selected by the President of the European Court of Human Rights after consultation with the Presidency of BiH.

*The Court of BiH*[[87]](#footnote-88) is a judicial body established in year 2000 hands down verdicts in accordance with the laws of the State of BiH, such as the BiH Criminal Code and the BiH Criminal Procedure Code. The competencies of the Court are regulated by a specific Law and are related to criminal[[88]](#footnote-89), administrative[[89]](#footnote-90) and appellate jurisdiction. However, the Court does not act on appeals from decisions issued by Political divisions of Bosnia and Herzegovina courts. The HJPC appoints Judges including the President of the Court of BiH, lay judges and additional judges to the Court of BiH. There are 53 judges (including court president).

*The Prosecutor's Office of BiH* is a *sui generis* institution and it is not superior to the entity Prosecutor's Offices but its jurisdiction is limited to prosecution of crimes as indicated in the related laws. Other prosecutor's offices in BiH follow the current political and administrative structure of BiH. There are 59 prosecutors (including chief prosecutor and deputies).

Office of Attorney General of Bosnia and Herzegovina is institution established by the Council of Ministers Law on Attorney General of Bosnia and Herzegovina adopted by the Parliamentary Assembly BiH in 2002. This institution was established to ensure the possibility that the state of Bosnia and Herzegovina has an effective legal protection and representation relating to the protection of its constitutionally defined competence, interest and rights.

There are two Centres for Judicial and Prosecutorial Training in BiH, one is in Sarajevo for FBIH and second one is in the Banja Luka for RS. The object of the Centres is to ensure, under the supervision of the HJPC that training programmes for judges and prosecutors are designed and implemented in the light of requirements of open-mindedness, competence and impartiality, which are bound up with exercise of judicial and prosecutorial duties.

### Institutional setting - FBiH

*The Constitutional Court* of the FBiH, which was established pursuant to constitutional provisions, is composed of 9 judges. The jurisdiction of the Constitutional Court comprises resolving disputes between various levels of authority, protection of constitutionality, constitutional matters, national interest on both, federal and cantonal levels, immunity as well as deciding on removal of the President and Vice-Presidents pursuant to the Constitution of the FBiH. Proceedings before the Constitutional Court may be instituted only upon request of those explicitly entitled bodies. Decisions of the Constitutional Court are final and binding.

*The Supreme Court* of the FBiH is the highest court of appeals in the FBiH. There are currently 42 judges working at the Court. The Supreme Court has four divisions – Criminal Division, Civil Division, Administrative Division and Division for Registering and Monitoring of the Court Practice. Besides appeal jurisdiction that comprises deciding upon ordinary and extraordinary legal remedies against rulings of the cantonal courts, the Supreme Court has additional jurisdiction in line with the Law on Courts in the FBiH, which includes resolving conflicts of jurisdiction between cantonal and municipal courts from different cantons, deciding on transfer of territorial jurisdiction from one to another court and carrying other tasks. Recent changes of the law introduced new competencies of the Court. There are *10 Cantonal courts* in the FBiH. Their jurisdiction consists of first instance jurisdiction, appeal jurisdiction, as well as jurisdiction over some other legal matters prescribed by the Law. Second instance jurisdiction of Cantonal courts encompasses deciding on appeals against rulings of Municipal courts, as well as deciding on other ordinary and extraordinary legal remedies as provided by the law. Additionally, it falls within the jurisdiction of Cantonal courts.

*Municipal courts* are established for the area of one or more municipalities in the Canton. Pursuant to the Law on Courts in the FBiH, their jurisdiction comprises first instance jurisdiction in criminal and civil cases, as well as jurisdiction over some other matters prescribed by the Law. Criminal jurisdiction encompasses: adjudicating criminal matters for which the principal punishment of a fine or an imprisonment sentence of up to 10 years is prescribed by the law, adjudicating criminal matters falling within jurisdiction of Municipal courts in accordance with other laws etc.

*The Prosecutor's Office of the FBIH* is supreme Prosecutor's Office for ten Cantonal Prosecutor's Offices.

### Institutional setting - RS

The status of the *Constitutional Court* is defined by the Constitution of the RS. In addition, there is also the Law on the Constitutional Court of the RS which regulates issues related to the organization of the Constitutional Court, proceedings before the Court and legal force of its decisions. Responsibilities of the Constitutional Court encompass deciding on constitutionality of laws and both the constitutionality and legality of regulations and general enactments, as well as programs, statutes and other general enactments of political organizations. In addition to it, it falls within jurisdiction of the Constitutional Court to resolve conflict of jurisdiction between bodies of legislative, executive and judicial branch and conflict of jurisdiction between agencies of the RS, city and municipality.

The *Supreme Court* seated in Banja Luka is the highest court in the RS. Pursuant to the current Constitution, the Supreme Court is entrusted with ensuring unified enforcement of law. Additional jurisdiction of this Court is prescribed by the Law on Courts in the RS, and it encompasses: deciding on ordinary legal remedies against rulings of District courts, extraordinary legal remedies against final rulings of the courts, legal remedies against rulings of its own Panels, transfer of jurisdiction from to another court, resolving conflict of jurisdiction between courts etc.

*District courts* are responsible for adjudicating criminal matters falling within jurisdiction of the Court of BiH, transfer of jurisdiction to District court and adjudicating administrative disputes and requests for the protection of rights and freedoms set forth in the Constitution. Appeal jurisdiction encompasses deciding on appeals against rulings of Basic courts, as well as deciding on other ordinary and extraordinary legal remedies if provided by the law. Additionally, it resolves conflicts of territorial jurisdiction between Basic courts from the same area; it decides on transfer of jurisdiction from one Basic court to another one; it decides on the deletion of conviction, termination of security measures and legal consequences of a conviction; it acts upon motions for international legal aid in criminal matters etc.

*Basic courts* are responsible for adjudicating criminal matters as prescribed by the Law. First instance jurisdiction in civil cases includes adjudicating all civil disputes and extra-contentious matters. In addition, to their jurisdiction for criminal and civil matters, Basic courts also have jurisdiction over conducting enforcement proceedings, carrying out land register matters etc.

*District commercial courts* are established for the same areas as District courts. They are entrusted with first instance jurisdiction concurrent with that of those Municipal courts which have commercial division in their composition. Some of the responsibilities: adjudicating intellectual property matters, adjudicating disputes related to maritime law and aeronautical law, conducting bankruptcy and liquidation proceedings, deciding on issues related to unfair competition, adjudicating disputes arising from foreign investments, registration of legal entities and independent undertakers, other disputes arising from trade of goods, services, loan stocks, etc.

The *High Commercial Court* seated in Banja Luka has appeal jurisdiction over first instance rulings of District commercial courts. Additionally, it resolves conflicts of jurisdiction between District commercial courts; it decides on transfer of jurisdiction from one District court to another, it establishes legal postures in order to ensure unified enforcement of laws as well as to carry out other tasks stipulated by law.

*The Public Prosecutor's Office of RS* is a supreme Prosecutor's Office for six District Public Prosecutor's Offices.

### Institutional setting - Brčko District

JC BD is a special and independent judicial institutions of Brcko District, whose jurisdiction and authorisation are prescribed by the Statute of Brcko District[[90]](#footnote-91) and the Law on Judicial Commission of Brcko District of BiH[[91]](#footnote-92). According to Article 1 of the Law on Judicial Commission of BD, JC of BD provides for independent and impartial judiciary, prosecution, District Attorney's Office and Legal Aid, while under Article 2 of the above mentioned Law, Judicial Commission is an independent body from the others authorities of Brcko District, which mandates its authority within a framework defined by the Statute of Brcko District and the laws of Brcko District

The jurisdiction of the*Basic Court* comprises first instance jurisdiction in both criminal and civil matters. Criminal jurisdiction encompasses adjudicating all criminal matters, including those ones falling within jurisdiction of the Court of BiH, upon the Court’s decision to transfer its jurisdiction, acting in the course of investigative procedure and upon issuance of an indictment, deciding on the deletion of conviction and termination of security measures and legal consequences of a conviction, acting upon motions for pardon in accordance with the Law. Within jurisdiction of the Basic Court are also adjudications for all minor offence matters. First instance civil jurisdiction of the Basic Court comprises: adjudicating all civil, administrative and commercial disputes as well as disputes related to assessment of constitutionality and legality, bankruptcy and liquidation proceedings. Other matters include conducting enforcement proceedings and land register matters. Judges of the Basic Court are appointed and disciplined by the HJPC of BiH. Their mandate is unlimited, while the President of the Court has mandate of 4 years and is eligible for reappointment.

The jurisdiction of the *Appeal Court* comprises deciding on ordinary legal remedies against rulings of the Basic Court as well as deciding on extraordinary legal remedies against final court rulings. The judges are appointed for life subject to resignation, mandatory retirement and or removal from office for a cause by the HJPC of BiH. The President of the Appeal Court is elected from among the judges for six-year term of office, with a possibility of reappointment.

*The Public Prosecutor's Office of the BD* is competent for the area of the District.

### Institutional setting – Anti-corruption

The institutional framework in the field of fight against corruption consists of the APCCFC[[92]](#footnote-93), which is an autonomous public authority set at the state level with preventive competences in the following fields: conflicts of interest and asset declarations of public officials, controlling the funding of, political parties and electoral campaigns, corruption prevention, whistle-blowers protection, monitoring the implementation of the BiH Anti-Corruption Strategy/action plan, monitoring compliance with international obligations, providing guidelines on integrity plans and establishing cooperation with all public and non-governmental organizations in BiH. The Agency is submitting an annual report and the Report on the implementation of the National Strategy and related Action plan to the Parliamentary Assembly.

The FBiH has adopted, in May 2014, a set of anti-corruption laws, which aim to establish specific law-enforcement bodies tasked with pursuing perpetrators of organised crime[[93]](#footnote-94). Similarly, RS has a separate president and legislative body. It has a Special Prosecutor's Office against Organised and Economic Crime.

### Institutional setting – Fundamental rights

Besides the Constitution of BiH, the primacy of human rights is also provided in the Constitutions and institutions of the Entities, the Statute of the BD, and the Constitutions of 10 cantons in the FBIH.

The most relevant institutions involved in the protection and promotion of human rights are:

* the Human Rights Ombudsman of BiH,
* Ministry of Human Rights and Refugees (MHRR),
* Agency for Gender Equality of BiH( AGE)
* all commissions and committees that deal with human rights issues and are established within the BiH Parliamentary Assembly and
* the Assemblies of the entities and the BD[[94]](#footnote-95)

The *Institution of Human Rights Ombudsman of BiH*[[95]](#footnote-96) handles complaints related to poor functioning or to human rights violations committed by any organ of BiH, its entities and BD. Additionally, according to Anti-discrimination Law it is the central institution for fighting discrimination and according to the Law on Free Access to Information it is in charge for the monitoring of implementation of this Law. The cases are opened upon individual complaints filed by natural persons or legal entities, or ex officio with Anti-discrimination Law this mandate is even border and tackles private sector. The Seat coordinates functioning of Ombudsmen Institution in the entire territory of BiH, cooperates with the bodies of legislative, executive and judicial powers and international organizations, institutions and bodies, provides professional aid and ensures coordinated actions between regional (Sarajevo, Brčko, Mostar) and field offices (Livno), submits annual reports on human rights and freedoms situation and separately an Annual report on discrimination. Seat also as any other office receives and registers citizen’s complaints alleging human rights and freedoms violations protected by the Ombudsman.

*MHRR* was established in April 2000. The Law on the Council of Ministers states that the MHRR shall undertake actions and protection of human rights, emigration and refugees, in accordance with the Constitution of BiH and the General Framework Agreement for Peace in BiH, international conventions and laws and other acts of the competent institutions of BiH. The Ministry cooperates with entities.

MHRR is responsible for: monitoring and implementation of international conventions and other documents on human rights and fundamental freedoms; promoting and protection of individual and collective human rights and freedoms, designing and implementing activities related to application of the European Convention on Human Rights and its Protocols; monitoring, drafting and disseminating information on standards, achievements and activities in the area of human rights; co-operation with different institutions responsible for asylum issues and the rights of refugees coming to BiH, implementing Annex VII to the General Framework Agreement for Peace, data protection standards, immigration policy, reconstruction projects and ensuring other conditions for sustainable return.

According to the Law on Gender Equality, *AGE BiH* has the main coordination role in the area of gender equality. Some of the tasks performed are: to determine methodology for developing report on gender equality, to initiate and coordinate development of the Gender Action Plan in cooperation with entities’ gender centres as well as its implementation, to cooperate with institutional mechanisms for gender equality in institutions at the state level.

## 2.1.3. Sector and donor coordination

### Sector coordination

The sector coordinating institution can be identified in the MoJ BiH.

However, the HJPC has a clear and undisputable prominent role through proactive planning, identification, attraction and use of financial resources to meet the needs of the judicial institutions and its reform processes.

The Law on Ministries and other bodies of administration has set the MoJ BiH as a central coordinating body for the policies in the justice sector for developing policies, drafting laws and by-laws, providing international legal assistance and realisation of international cooperation within its jurisdiction, providing services to other BiH institutions in the processes of reform and negotiations of BiH with the European Union (EU) and NATO.

The HJPC BiH strategic planning is supported by the capacities of HJPC Secretariat and its Department for European Integrations and Strategic Planning. There is a Strategic plan of the HJPC for the period 2014-2018 in place along with the Action plan for its implementation. The monitoring and reporting system is in place with the reports being prepared biannually. In addition, the HJPC, in line with the Decision from the Council of Ministers, prepares a Mid term Action Plan for a three years period. The reports are being prepared annually. In addition to this, the HJPC holds sufficient resources (CMS) to monitor the work of the courts and POs. The strategic planning in the MoJ BiH is considered as a team work and there are 4 positions on planning. There were trainings organised on strategic planning over the last years. There is a certain monitoring system in place and manual for implementation. Further improvements are needed to the system on planning, monitoring and evaluation. The reports are prepared on a quarterly, biannual and annual basis.

The JSRS is organised in 5 pillars whose implementation is supported and guided by 5 working groups (WGs). These working groups meet quarterly and monitor progress and ongoing activities. The WGs consist of a variety of stakeholders. The Technical Secretariat coordinates the implementation of the strategy on a technical basis; it prepares and manages the Ministerial conferences and prepared quarterly, bi-annually and annual reports on the implementation. The annual reports are part of the CoM agenda. Twice a year, there are regular Ministerial conferences for the sector strategy. It is a political forum consisting of 13 Ministers of justice along with presidents of HJPC and BD Judicial Commissioner[[96]](#footnote-97). Due to its political nature, the Ministerial conferences seek for a political agreement to being established and called to review the current strategy and draft the new one. Additional, there is Policy Forum consisting of the MoJ BiH and HJPC and possible to be expanded to other institutions in the future: it is a particular kind of body organised for the development of policies.

Also, important and highly supportive platform operative since 2011 is the Structured Dialogue on Justice between BiH and the EU; it is focused on the judiciary reform, issues related to processing war crimes as well as helping BiH to move further along its path towards the EU (harmonisation of the national legislation with the EU *acquis*)[[97]](#footnote-98).

Due to the inter-links and sequencing of the process the Structured Dialogue has been broadened to additional rule of law matters such as: anti-corruption, anti-discrimination, prevention of conflict of interest and measures to strengthen the integrity, accountability and efficiency of police forces within the existing legal framework[[98]](#footnote-99).

### Donor coordination

Currently, the donor assistance is monitored by Ministry of Finance (MoF) and Treasury and then adopted by the BiH Council of Ministers. Out of the 60-70 donors active in BiH, around 30 are present in the rule of law. Besides the EU, the main donors in the rule of law area include Sweden, Norway, USA, UN, OSCE, Council of Europe, Switzerland and the United Kingdom[[99]](#footnote-100). Donors’ meetings are organised/coordinated by BiH institutions: MoJ, HJPC, MoFT and DEI. Donor coordination can be tracked on the MoF website; also, annually donor-mapping reports showing the donors active in BiH and their contribution by sector are published.

The international community frequently exchanges information and data on its activities through coordination fora dedicated to justice sector dialogue and anti-corruption. In addition, a coordination mechanism chaired by the MoJ of BiH follows the progress in the implementation of the JSRS; the HJPC maintains continual contact and coordination with donors involved and interested in providing support to the judiciary. So far, this approach has effectively allowed the HJPC to ensure regular provision of assistance to the judiciary.

The EU support for the judiciary has deepened and broadened over the past years, gradually moving from criminal law, particularly war crimes case processing, to encompass aspects of civil law, not least on judicial efficiency and the reduction of the case backlog. With a significant amount of support from the EU, courts and prosecutor offices throughout BiH benefitted from information technology investments, as well as a Case Management System (CMS) available to over 5000 judicial users. An online judicial document system was established providing access to over 10.000 judicial acts.

## 2.1.4. Mid-term budgetary perspectives

There is no mid-term, sector-based, budgetary planning process in BiH that could be used to develop mid-term expenditure framework across the whole sector.

Currently, the mid-term budgetary perspective functions depending on the financial requests submitted by the budgetary users based on economic classification of expenses, in programme format including goals and expected impacts of mentioned programmes and in accordance with the programme budgeting methodology.

The funding position of the sector has to be set against the overall financial situation across the 14 governments. All levels of government in BiH will have to cover salary increases, increase in material costs and capital expenditure in the proportion that can be financed. There is high competition for the limited additional resources at all levels, with several other sectors also having very strong claims for priority funding growth.

*Budget Framework Paper* (BFP) approved in July 2016 offers some clear indications on the overall budget prospects for the next three years.

The 14 governments with sector responsibilities have completed adoption of BFP's for the period 2017-2019. These BFP’s take the form of preliminary budgets and set the framework for the annual budget determination by each government. These latest BFP’s provide a guide for the implementation of JSRS as they set out the current expectations for spending in the sector across all 14 governments.

A brief analysis of the BFP’s, from the justice sector perspective, shows that there are a number of factors underpinning the demand for extra resources in the sector:

1) the need to provide replacement funding for projects and activities initially funded by international donors;

2) the need and commitments to complete funding of the sector institutions according to the approved rulebooks on internal organization and systematization of working positions;

3) the need to fund new activities to fill gaps in the framework of services within the sector.

Table 7: Three-year strategic and budgetary planning by the BiH institutions (2017 – 2019) – indicative upper expenses limit

|  |  |  |  |
| --- | --- | --- | --- |
| **Institution** | **2017** | **2018** | **2019** |
| Ministry of Justice | 22.992.000 | 18.168.000 | 18.034.000 |
| High Judicial and Prosecutorial Council | 4.876.000 | 5.007.000 | 5.073.000 |
| Constitutional Court BIH | 5.443.000 | 5.548.000 | 5.625.000 |
| Court of BiH | 17.207.000 | 17.430.000 | 17.571.000 |
| Prosecutor’s Office | 12.862.000 | 12.979.000 | 13.232.000 |
| BiH Attorney | 1.600.000 | 1.777.000 | 1.761.000 |
| Ombudsman for HR | 2.394.000 | 2.417.000 | 2.381.000 |
| Ministry for Human Rights and Refugees | 11.226.000 | 11.248.000 | 11.230.000 |
| Units for implementation of the project on building the BiH Institute for Execution of Criminal Sanctions, Detention and other Measures | 180.000 | 0 | 0 |
| Ministry of Security | 9.171.000 | 8.470.000 | 8.545.000 |
| State agency for investigation and protection | 31.955.000 | 30.587.000 | 31.142.000 |
| Institute for Missing Persons | 3.342.000 | 3.020.000 | 3.027.000 |
| Personal Data Protection Agency | 1.377.000 | 1.335.000 | 1.340.000 |
| Agency for Prevention of Corruption and Coordination of Fight against Corruption | 1.355.000 | 1.348.000 | 1.360.000 |
| **Total** | **125.980.000** | **119.334.000** | **120.321.000** |

## 2.1.5. Performance assessment framework

There is no Sector Performance Assessment Framework (PAF) yet and for the time being it is based only on two key mechanisms:

1. system of indicators for period 2014-17 and revision for period 2018-2020 and,
2. periodical review of the strategies, action plans and legal framework implementation.

The indicators for the period 2014-17 and 2018-20 are part of the IPA II Indicative Strategy Paper for BiH. They are split into three groups:

* *context indicators* such as: public debt, real GDP growth rate, unemployment rate, GDP per capita prices, FDI per capita etc.
* *outcome and impact indicators* such as: progress made in reaching the political criteria, progress made on implementation of *acquis*, meeting economic criteria, employment etc.
* *sector indicators:* such as: progress made towards meeting accession criteria (in the areas of judicial reform, fight against corruption and organised crime and fundamental rights, refugees) baseline being 2010 data and access to justice and judicial independence, average of corruption perception and control of corruption, average of freedom of press and press freedom etc.

Given the complex legislative and governance arrangements, BiH has no comprehensive system of collecting, sharing and analysing performance management information for the justice and fundamental rights sector [[100]](#footnote-101).

Although there are shortcomings in indicators, still, in general terms, monitoring and evaluation of the current strategies, action plans and law implementation is being performed.

Periodical reviews (twice a year) of the implementation of the measures, actions and/or activities, including obligations arriving from the legal framework have simplified methodology of assessing processes in question based on inputs received from individual institutions (responsible for the measure/action/law implementation) or via focus working groups. Additionally, this process is being supported by an IT application which enables institutions to monitor and evaluate strategy/action plans implementation as well as the implementation of the law.

## 2.1.6. Public finance management

The most relevant document assessing PFM in BiH is the PEFA Assessment (May 2014) developed by the World Bank, through the SAFE (Strengthening the Accountability and the Fiduciary Environment) funded by the EU.

In a nutshell, the Assessment describes PFMs systems in BiH as being characterised by a lack of fully adequate internal controls (especially in public procurement); therefore the different PFM systems are considered vulnerable to inefficiency and waste. More precisely, in budget reporting, the fact that the charts of account of the four main government levels are not harmonized hampers access to consolidated data.

Moreover, within the Entities (primarily in FBiH), consolidation of data for all general government levels—government, cantons, local self-governance units, and EBFs—is also complex, and data are generally not used to inform policy decisions. In the context of budget scrutiny, better follow-up on external audit findings and recommendations is missing. Furthermore, the coverage/quality of internal audits and of performance audits performed by the SAIs is not comprehensive.

Another important contribution to assess PFM in BiH is represented by the Report of the EC DG Budget fact – finding mission to BiH held in late 2014 on PIFC and External Audit.

The mission confirmed largely the findings of the PEFA assessment and in particular it highlighted that the development of PIFC is still at an early stage.

Recent activities have focused on the establishment of Internal Audit and the drafting of secondary legislation on FMC. However, the major concepts are not yet widely known, accepted and integrated in the internal control system. Currently, there is no functioning coordination mechanism among the four administrative levels within the country, although the legislation requires it, and so the results and speed of development significantly vary in the various levels.

Unlike other aspects of PFM in the BiH, the Public Procurement Law is unique in being enacted at the level of the BiH. All governments regulate their public procurement matters in compliance with this law; there is no separate procurement law at the level of the Entities or DB. The Law mostly aligned with the EU acquis and the authorities have committed to adopt new measures to strengthen governance, enhance transparency, and bring procurement practices in BiH more in line with those in the EU. However, concerns relate to the possibility of assessing performances of each individual government in conducting public procurement in line with the law and regulations, especially when it comes to the principles of competition and transparency.

## 2.1.7. Macro-economic framework

The overall macroeconomic framework assumes sustained fiscal consolidation through the implementation of the planned reforms.

There are external and internal risks to the macroeconomic outlook and the reform programme. External risks are related to possible delays in Europe’s overall economic recovery. Since the EU countries continue to be BiH’s largest trading partner, delays in Europe’s recovery would affect BiH’s economic outlook through their adverse impact on exports, remittances, and capital flows. External economic developments and the pace of economic recovery in the key export markets are both uncertain and beyond the control of the authorities.

However, internally, political risks are the largest cause for concern. BiH’s challenging political environment presents clear risks for implementation of required reforms—including fiscal measures that are needed and that may even have to be further adjusted over time.

Although still below the legal limit for entities, the government debt (domestic and external) is constantly growing during the last few years and in 2013 it reached 46.2% of GDP, according to national data. This is mainly due to an increase in foreign loans, which reached 28.2% of GDP at the end of 2013, but with a favourable average interest rate of 1.44%. At the same time, in 2013 both entities and the Brčko District were issuing short-term treasury bills and long-term government bonds, which are secured relatively favourable conditions due to high demand. Issuance of government securities in the first half of 2014 increased, due to a temporary stagnation of the program with the IMF and increased need for refinancing, which is estimated to increase in 2014 to 4.5% of GDP. In addition, the 2014 spring floods added pressure on public finances.

## 2.2. Overall assessment

The Justice and Fundamental Rights sector in BiH is perceived as being mature enough for absorbing assistance through sector approach. Although with significant weaknesses, the sector is able to cope with systematic use of external assistance through sector approach.

There are specific sub-sector policies, which are in general supported by a suitable strategic framework in line with the EU accession requirements. In general, the process of developing sub-sector policies tends to involve a number of different sub-sector actors. Therefore, sub-sector policies are endorsed by domestic actors (Including Civil Society Organisations at a certain extent). Policy objectives are in line with the accession agenda and, at a certain extent, political support ensures necessary ownership and the sustainability of the overall reforms. Sector planning is theoretically linked to resources allocation; however financial resources adjustments are frequently made.

The institutional setting is quite complex and articulated due to the decentralisation characterising BiH, but sound institutional coherence is present at both the State and entities levels. Institutions that are coordinating the sub-sector reforms are well identified and there are suitable institutional arrangements, allowing clear lines of communication and responsibilities. While both key sector organisations (HJPC and MoJ) in the justice sub-sector have enough capacities to undertake the reform process, MHRR and HRO are struggling: in all cases, no workload and functional analyses are guiding the building of capacities in the whole sector. Cooperation with Civil Society Organisation is regular, especially in the case of fundamental rights; Donor coordination is rather satisfactory and allows necessary complementarity of assistance.

The sub-sector budgets are easily traceable in the State and Entities budgets and there is a three year strategic planning to clearly indicate the scope of the sub-sector, which is not the case with the financial allocations; however, it is possible to state that the budget reflects quite fairly the sector policy and objectives. MTEF is still not in place although preparatory works are carried out. At the current stage, it is not possible to assess at which extent external assistance contributes to the sub-sectors reforms.

Although there are possibilities to monitor the implementation of reforms, there is not a proper performance assessment framework in place: Justice as a sub-sector has a monitoring system with indicators, but the assessment of impact of reforms is not yet developed. However, the whole sector is periodically monitored by International Organisations and meaningful indicators are available and rather reliable.

There is a PFM reform programme in place and implemented at all levels, DG Budget and PEFA assessment clearly identified areas where support can be considered.

The strategic framework is in line with the EU accession requirements and investment perspectives indicated in the Country Strategy Paper for BiH (2014 – 2017 and revised 2018-2020). In general, the process of developing sub-sector policies tends to involve a number of different sub-sector actors (including CSOs). Policy objectives are in line with the accession agenda and political support ensures necessary ownership and the sustainability of the overall reforms. Sector planning is theoretically linked to resources allocation but readjustments of financial allocations are frequent. Sub-sector policies are mapped, supported by a strategic framework that in general is in line with the EU accession requirements. Some of the significant sector strategies at the state level are: Justice Sector Reform Strategy (2014 – 2018), National Strategy for Processing War Crimes (adopted in 2008), BiH Anti-Corruption Strategy (2015 – 2019). At the entity levels and Brcko District (BD) a number of related strategies are currently in use (see Annex 2, Sector Specific documents).

The institutional setting is quite complex and articulated due to the decentralisation characterising BiH, but sound institutional coherence is present at both the State and entities levels. The Constitution of BiH provides standards for the mutual institutional cooperation. The coordinating institutions (MoJ BiH and HJPC) are suitably identified and institutional arrangements and capacities allow a satisfactory degree of communication and cooperation within the sector.

Donor coordination is stronger than in other sectors in BiH for two main reasons: under the JSRS a donor coordination mechanism is led by the MoJ of BiH, and aims to meet at least semi-annually; in addition, an EU led (EUD & EUSR) International Justice Sector coordination group gathers quarterly and invites all EU member states, international organisations and UN implementing agencies working in the justice sector to convene to discuss policy and technical issues, whilst also sharing an overview of their respective projects.

The sub-sector budgets are easily traceable in the State and Entities budgets and a three year strategic planning clearly indicates the scope of the sub-sector, unlike the financial allocations. Still, the budget reflects quite fairly the sector policy and objectives. At the current stage, it is not possible to assess at which extent external assistance contributes to the sub-sectors reforms.

The performance assessment framework has been set up but is not operational - the monitoring system with indicators exists, but the assessment of impact of reforms is not yet developed. However, the whole sector is periodically monitored by International Organisations and meaningful indicators are available and rather reliable.

# 3. RELEVANCE WITH OTHER POLICIES AND STRATEGIES

## Stabilisation and Association agreement (SAA)

The SAA stresses the importance of strengthening democracy and the rule of law with specific emphasis on the improvement of independence, impartiality, professionalism and efficiency of the judicial system, anti-corruption policy and human and minority rights[[101]](#footnote-102).

Title VII: Justice, Freedom and Security, Article 78, Reinforcement of institutions and rule of law stresses:

In their cooperation on justice and home affairs the Parties shall attach particular importance to the consolidation of the rule of law, and the reinforcement of institutions at all levels in the area of administration in general and law enforcement and the administration of the justice in particular. Cooperation shall notably aim at strengthening the independence of the judiciary and improving its efficiency and institutional capacity, enhancing access to justice, developing adequate structures for the police, customs and other law enforcement bodies, providing adequate training and fighting corruption and organised crime.

Article 113 also highlights that:

Financial assistance, in the form of grants, may be provided in accordance with the relevant Council Regulation within a multi-annual indicative framework based on annual action programmes, established by the Community following consultations with BiH. Financial assistance may cover any sector of cooperation, paying particular attention to Justice and Home affairs, approximation of legislation and economic development.

## –Bosnia and Herzegovina 2016 Report -

## Rule of Law

Bosnia and Herzegovina’s justice system has **some level of preparation. Some progress** was made in addressing some of last year's recommendations on accountability and integrity in the judiciary, namely through the adoption by the High Judicial and Prosecutorial Council of a set of guidelines on conflict of interest, drafting of integrity plans and disciplinary measures. However, a number of recommendations were not fulfilled. The action plan needed to implement the 2014-2018 justice sector reform strategy was not adopted. The slow reduction of the utility-cases backlog in the courts and inadequate procedures for execution of court decisions continued to harm judicial efficiency. Sanctions for breaching disciplinary and ethical rules were not yet much of a deterrent. Politically motivated threats on the judiciary continued. Judicial independence, including from political influence, remains to be strengthened.

There are no established procedures carrying penalties against undue influence or threats to judicial independence. Politically motivated threats against courts and prosecutor’s offices continued, particularly at state level. Such practices need to be addressed forcefully. Shortcomings remain in the law on the HJPC, notably concerning appointment and disciplinary procedures, conflict of interests, declaration of assets as well as the right to appeal HJPC final decisions. Very loose regulations on **declarations of assets** require some financial statement from judges and prosecutors, but no publicity or verification mechanism exists. This has yet to be adequately addressed through the improvement of the legislative framework. On **alternative dispute resolution methods,** the use of in-court and out-of-court mediation requires qualitative improvement. To achieve greater transparency, the conditions for recording court proceedings need to be improved and selected court decisions need to be made available to a larger number of parties, while also fully complying with data protection legislation.

**Monitoring and measuring** of the day-to-day activities of courts and prosecutors’ offices take place through the ‘case management system’, which evaluates the performance of judges based on the annual workload. All courts and prosecutors’ offices regularly produce statistical reports for the HJPC and an annual activity report,

The **backlog for pending court cases** by end of June 2016 was reduced by 5 % compared with 2015. The average duration of pending non-utility-related civil cases before first instance courts in Bosnia and Herzegovina in the first half of 2016 was 511 days, a fall of 10 days compared to end of 2015. These achievements are the direct result of the HJPC’s attempts to improve judicial efficiency.

The HJPC launched a system to improve registration of unpaid utility bills cases in 22 municipal/basic courts and 14 utility companies. To make serious inroads into this specific backlog, the system will need to be supplemented by more comprehensive legislative and institutional measures, in particular with regard to amending execution procedure laws in the entities and making the debt collection more efficient.

**Human rights and the protection of minorities**

Some progress was achieved over the reporting period in addressing last year’s recommendations on effectively addressing human rights and minorities’ issues, in particular with the adoption of relevant amendments to the anti-discrimination law. The strategic, legal, institutional and policy frameworks for the observance of human rights are in need of substantial improvement. The provision on the death penalty in the constitution of the *Republika Srpska* entity still needs to be repealed.

No progress was made in implementing the Court’s judgments on the *Sejdić-Finci and Zornic* cases.

There is still no overarching policy document on **promotion and enforcement of human rights**. The Ombudsman still lacks adequate human and financial resources to perform its functions as national human rights institution. Legislation on the **prison system** is not sufficiently harmonised throughout the country. While religious tolerance was symbolically promoted on some well-publicised occasions, cases of discrimination on religious grounds continued to occur, as well as incidents targeting religious sites.

## South East Europe 2020

Key strategy issues are:

1. Improve efficiency and competence: review the quality, efficiency and competence of judges and the courts,
2. Improve judicial cooperation in free access to information, cross-border enforcement and cross-border proceedings and take-over and mergers and
3. Support alternative dispute resolution (ADR): Introduce or improve the legislation on ADR and enable proper legal and institutional cooperation with judiciary and the enforcement system.

## The EU Justice Agenda for 2020 – Strengthening Trust, Mobility and Growth within the Union

The key issues are set as political priorities that should be pursued in order to make further progress towards a fully functioning common European area of justice oriented towards trust, mobility and growth by 2020.

Areas in focus of the EU Justice Agenda for 2020 are: Enhancing mutual trust, Justice for Growth, Justice for citizens and Protecting Fundamental rights.

1. Web source: https://en.wikipedia.org/wiki/Rule\_of\_law [↑](#footnote-ref-2)
2. Web source: http://europa.ba/Default.aspx?id=87&lang=EN [↑](#footnote-ref-3)
3. The range of flexibility of the set operating framework of the Dialogue, in relation to the structure and content, partners involved, as well as the monitoring tools, are rather suitable for the complexity of the sector in question as well as the specificity of the BiH political and administrative structure [↑](#footnote-ref-4)
4. EC Progress Report 2014 [↑](#footnote-ref-5)
5. ‘Fragmentation of the judicial and prosecutorial systems’ (Source: Opinion on legal certainty in BiH adopted by Venice Commission, June 1012) [↑](#footnote-ref-6)
6. Freedom House https://freedomhouse.org/report/nations-transit/2014/bosnia-and-herzegovina Structured dialogue [↑](#footnote-ref-7)
7. This is closely related to the issue of case backlog and especially in the case of war crime cases. Source HJPC. Additional source: Freedom House <https://freedomhouse.org/report/nations-transit/2014/bosnia-and-herzegovina>; Structured dialogue [↑](#footnote-ref-8)
8. EC Progress Report 2014; additionally, the draft law on HJPC was reviewed by the Council of Europe’s Venice Commission with the strong recommendation related to the (de)politicisation of the appointment procedures for the HJPC’s members and that of the Chief Prosecutors at all levels (Structured Dialogue, Thematic Plenary Session of April 2014) <http://europa.ba/News.aspx?newsid=6868&lang=EN> [↑](#footnote-ref-9)
9. Judiciary in BiH is financed by ten cantonal budgets, two entity budgets, the state budget and by the BD budget [↑](#footnote-ref-10)
10. EC Progress Report 2014 [↑](#footnote-ref-11)
11. 2016 EC Report on BiH [↑](#footnote-ref-12)
12. Source: HJPC [↑](#footnote-ref-13)
13. Report of the Functional WGs on implementation of the Action plan of justice Sector Reform Strategy in BiH for period 2009 – 2013, p 14 [↑](#footnote-ref-14)
14. 2016 EC Report on BiH [↑](#footnote-ref-15)
15. A special department for high-risk prisoners was built in Zenica Prison, department with special regime in Foča Prison, medical department in Zenica Prison, additional pavilion in Banja Luka Prison, separate building for accommodation of women and juveniles in East Sarajevo Prison and facility for accommodation of juvenile perpetrators in Orašje Prison - Report of the Functional WGs on implementation of the Action plan of justice Sector Reform Strategy in BiH for period 2009 – 2013, p. 15 [↑](#footnote-ref-16)
16. Report of the Functional WGs on implementation of the Action plan of justice Sector Reform Strategy in BiH for period 2009 – 2013, p. 16 [↑](#footnote-ref-17)
17. Council of Ministry of BiH in 2012 made a conclusion that NPM should be established within The Human Right Ombudsmen of BIH according Paris principal [↑](#footnote-ref-18)
18. Report of the Functional WGs on implementation of the Action plan of justice Sector Reform Strategy in BiH for period 2009 – 2013 [↑](#footnote-ref-19)
19. Report of the Functional WGs on implementation of the Action plan of justice Sector Reform Strategy in BiH for period 2009 – 2013, p. 12 It is also important to note that the laws regulating the execution of criminal sanctions applied in BiH are not fully in line with existing international standards and Council of Europe Recommendations, as well as the standards stemming from court practice of the European Court for Human Rights in Strasbourg and other regulations related to execution of criminal sanctions. While the RS Law on the Execution of Criminal Sanctions is partially harmonized with the international standards and regulations of the European Union, the BiH Law and FBiH Law still need to undergo the procedure of aligning these laws with the above mentioned, and other relevant European regulations in this area. [↑](#footnote-ref-20)
20. Report of the Functional WGs on implementation of the Action plan of justice Sector Reform Strategy in BiH for period 2009 – 2013, p. 12 - 13 [↑](#footnote-ref-21)
21. Laws on Execution of Criminal Sanctions, Detention and other Measures in BiH regulated categorisation of correctional-penal institutes in BiH and by-laws of the entities regulated classification and manner of re-classification of the prisoners. [↑](#footnote-ref-22)
22. EC Progress Report 2014 [↑](#footnote-ref-23)
23. 2015 EC Report on BiH [↑](#footnote-ref-24)
24. HJPC BiH [↑](#footnote-ref-25)
25. 2016 EC Report on BiH [↑](#footnote-ref-26)
26. 2015 EC BiH Report [↑](#footnote-ref-27)
27. 2016 EC Report on BiH [↑](#footnote-ref-28)
28. Out of 22.909, 16.920 filled complaints (out of which 10.649 in last two years) and 5.989 investigations (out of which 3.787 in last two years). Out of the total number, 3.941 cases were older than three years (complaints 2.624, investigations 1.317), Source: Structured Dialogue2016 HJPC Annual report, Plenary Session, 2014p. 101) [↑](#footnote-ref-29)
29. 2016 HJPC Annual report, p. 101-103 [↑](#footnote-ref-30)
30. Team for monitoring and evaluation of Criminal acts application has worked throughout 2014 which has made possible development of analysis of criminal and misdemeanour acts considering improvements in advancing efficiency of investigations, demarcating competencies for certain criminal acts, resolving conflict of competencies between Law Enforcement and Judicial institutions, and harmonising legislation with international law, following to recommendations of GRECO, MONEYVAL and FATF. Work on improvement of Criminal legislation was part of MoJ BiH programme for 2014. [↑](#footnote-ref-31)
31. Structured Dialogue, May 2014 [↑](#footnote-ref-32)
32. EC report; SD Plenary meeting of the "Structured Dialogue on Justice and Additional Rule of Law Matters between the EU and BiH", Sarajevo (13-14 May 2014) [↑](#footnote-ref-33)
33. Structured Dialogue, May 2014 [↑](#footnote-ref-34)
34. EC Progress Report 2014, p. 22 [↑](#footnote-ref-35)
35. EC Progress Report 2014, 14, [↑](#footnote-ref-36)
36. EC Progress Report 2014, p. 14, including adequate funding for Witness Protection Programme, ensuring adequate facilities at courts and POs for implementation of Laws on Protections of Witnesses under Threat and Vulnerable Witnesses as well as more proactive use of these tools in coordination with witness support mechanisms established at courts and prosecutors’ offices. [↑](#footnote-ref-37)
37. EC Progress Report, 2014, p. 22, [↑](#footnote-ref-38)
38. Committee on Elimination of Discrimination against Women; web source: <http://www.wilpfinternational.org/cedaw-and-womens-rights-in-bosnia/> [↑](#footnote-ref-39)
39. E.g. Directive 29/2012/EU, etc. [↑](#footnote-ref-40)
40. Financial Plan for SRJC 2012 [↑](#footnote-ref-41)
41. Official Gazette BiH nr 83/16. [↑](#footnote-ref-42)
42. EC Progress Report 2014 - Structured Dialogue, Recommendations to the third meeting: i) welcomes the Draft Law on Free Legal Aid of BiH, thus providing the minimum standards required for the alignment with the ECHR, ii) urges the MoJ of BiH to ensure that the Draft Law has the largest possible support in the parliamentary procedure, including introducing subsequent amendments, if necessary, iii) reminds all relevant authorities of the importance to ensure that free legal aid is guaranteed for all citizens based on equal standards, provided through a professional, qualified and accountable system and calls those that have not adopted their own free legal aid legislation to do so. http://europa.ba/News.aspx?newsid=5389&lang=EN [↑](#footnote-ref-43)
43. Structured Dialogue 3rd meeting [↑](#footnote-ref-44)
44. 2016 EC Report on BiH [↑](#footnote-ref-45)
45. Web source: http://www.unicef.org/tdad/5hajrijasijercic.pdf [↑](#footnote-ref-46)
46. Structured Dialogue Third Meeting [↑](#footnote-ref-47)
47. Strategic plan of the Court of BiH 2014 - 2016 [↑](#footnote-ref-48)
48. Structured Dialogue, May 2014 [↑](#footnote-ref-49)
49. Structured Dialogue April 2014 [↑](#footnote-ref-50)
50. 2016 EC Report on BiH, 2016 HJPC Annual Report [↑](#footnote-ref-51)
51. EC Progress Report 2014 [↑](#footnote-ref-52)
52. Structured Dialogue April 2014, and JSRS [↑](#footnote-ref-53)
53. In 2013 - 2375 training days have been conducted: 1907 for 361 judges and 468 for 92 prosecutors. Induction courses for new employees: 6 trainings [↑](#footnote-ref-54)
54. Also the EC Progress Report supports initial and continuous capacity building for judicial and officials and candidates for judicial officials. [↑](#footnote-ref-55)
55. In general, this specific target group is not covered by Judicial and Prosecutorial Training Centres but left asaid [↑](#footnote-ref-56)
56. 2016 EC Report on BiH [↑](#footnote-ref-57)
57. Annual Report by Court of BiH (18 verdicts and 1 vindications) [↑](#footnote-ref-58)
58. It remains most acute in the areas of service delivery and access to employment. 2013 Progress Report on the activities of the Agency for Prevention of Corruption shows that most of the corruption cases are related to the bodies having vested authorities in the business, health, education and sport sectors. [↑](#footnote-ref-59)
59. The Gender dimension of anti-corruption should be treated [↑](#footnote-ref-60)
60. 2015 and 2016 EC Reports on BiH [↑](#footnote-ref-61)
61. Freedom of Access to Information Act of BiH and at the entity level: Freedom of Access to Information Act for the RS and Freedom of Access to Information Act for the FBiH. Changes to the law on access to information are pending the appointment of a new Working Group by the Council of Ministers (EC Progress Report) [↑](#footnote-ref-62)
62. EC Progress report p.20 In the RS progress has been made in the field of protection of persons with disabilities and the new Law on Vocational Rehabilitation, Training and Employment of Disabled Persons. In the Federation of BiH adopted amendments to the Law on the Protection of Persons with Mental Disorders (2013) and Bill of Rights, obligations and responsibilities of patients, which are defined in accordance with international documents in particular the rights of vulnerable groups. Pursuant to the Act on the Protection of Persons with Mental Disorders called the Committee for monitoring the protection of the rights of persons with mental disorders that the focus of his work has respect for the provisions of the Convention on the Rights of Persons with Disabilities, the Law on the Protection of Persons with Mental Disorders ("Official Gazette of FBiH" no. 37/91, 40/02, 52/11 and 14/13). Regulations on the election, organization and work of the Commission to monitor the protection of the rights of persons with mental disorders FBiH ("Official Gazette of BiH", No. 44/13), Bill of Rights, obligations and responsibilities of patients ("Official Gazette of FBiH" No. 40/10). Source: LNG situation HR, 2014 [↑](#footnote-ref-63)
63. Annual Report of the Council of Minister [↑](#footnote-ref-64)
64. EC Progress report [↑](#footnote-ref-65)
65. Information on grants dedicated to the realisation of the Action Plan on solving Roma problem in the areas of employment, housing and health (2013), source: Ministry of Human Rights and Refugees. Special Report on status of Roma in BiH (2014), http://www.ombudsmen.gov.ba [↑](#footnote-ref-66)
66. Human Rights Watch, Country Report 2013, 'Roma, the most vulnerable minority group continue to face widespread discrimination, high unemployment, low levels of school enrolment, political representation and standards of living. Many Roma are not on the national public registry, impeding their access to public services, including health care.' [↑](#footnote-ref-67)
67. Annual Report to CoM, [↑](#footnote-ref-68)
68. United Nations Committee on the Prevention of Torture in its 2011 report. The report places particular emphasis on the disjunction between the definition contained in the Bosnian Criminal Code, in particular in Article 172 and 173, and the definition set by international standards and jurisprudence.

    The Committee recommended the amendment of all relevant Criminal Codes “to include a definition of wartime sexual violence in line with international standards, including a specific definition of rape as a war crime and as a crime against humanity, in order to adequately reflect the gravity of the crimes committed.” It also asked BiH to “intensify its efforts to harmonize the jurisprudence and sentencing practices of its courts […] by establishing effective cooperation mechanisms between prosecutors and courts competent to deal with war crimes at all levels of the State party.”; http://www.wilpfinternational.org/cedaw-and-womens-rights-in-bosnia/ [↑](#footnote-ref-69)
69. LGBTI persons, EC Progress report [↑](#footnote-ref-70)
70. Over 8.600 persons are still living in difficult conditions in collective centres. With specific regard to refugees and internally displaced persons(IDPs)*,* there are still 84.500 IDPs and 6.853 refugees in BiH. In March 2014, the Parliament of the FBiH adopted a law allowing returnees from the RS to access pension benefits and healthcare in the FBiH; however, access to social rights for returnees remains an issue of concern. [↑](#footnote-ref-71)
71. Official Gazette BH nr. 49/06 [↑](#footnote-ref-72)
72. EC Progress report 2014. More precisely, this should be taken into relation public intrest – transparency vs data protection. [↑](#footnote-ref-73)
73. Platform for the cooperation of the Ombudsman and CSA has been passed in October 2010, as well as guide and criteria for cooperation with Ombudsman – these two documents define methods of communications and cooperation of Ombudsman and CSOs [↑](#footnote-ref-74)
74. In relation to 2012 it has been registered a 12,23 % increase of citizens addressing the OHR [↑](#footnote-ref-75)
75. Web source: http://www.ombudsmen.gov.ba/documents/obmudsmen\_doc2015051514434319eng.pdf [↑](#footnote-ref-76)
76. 3,95 % decrease of complaints in the area of exercise of rights on the basis of disability; 2,56 % increase of the complaints on the basis of HR violation, 5.137 opened cases on violation of human rights (2,56 % increase) out of which only 3.158 registered in 2013, 2.531 cases competed (69,73% out of the total number of processed cases in 2013).Source: Annual Report of the HR Ombudsman for 2013 [↑](#footnote-ref-77)
77. Web source: http://www.ombudsmen.gov.ba/documents/obmudsmen\_doc2015051514434319eng.pdf [↑](#footnote-ref-78)
78. Difficulty in functioning of these institutions is also due to the reduction of budget funds. As a Conclusion of the BiH Council, the Institution of Ombudsman is entrusted with the establishment of national preventive mechanism pursuant to the Optional Protocol (NPM) to the UN Convention against Torture and Inhuman or Degrading Treatment or Punishment. Source: UPR 2014 on HR [↑](#footnote-ref-79)
79. in accordance with Directive 29/2012/EU [↑](#footnote-ref-80)
80. As the strategy and action plan expired, there is a need to prepare and develop a new strategy and action plan. The Ministry of Justice started the preparatory activities. [↑](#footnote-ref-81)
81. Source: NIPAC Office (Overview prepared based on the list of strategies sent by FBiH to the NIPAC Office) [↑](#footnote-ref-82)
82. New JSRS 2014 - 2018 [↑](#footnote-ref-83)
83. Official Gazette of BiH, No. 5/03 of March 07, 2003 http://vijeceministara.gov.ba/ [↑](#footnote-ref-84)
84. http://vijeceministara.gov.ba/ [↑](#footnote-ref-85)
85. Law in HJPC, Official Gazette No 25/04, 93/05, 48/07, 15/08. [↑](#footnote-ref-86)
86. as stated in Article VI, paragraph 3 of the Constitution [↑](#footnote-ref-87)
87. http://www.sudbih.gov.ba/ [↑](#footnote-ref-88)
88. Within its criminal jurisdiction, the Court of BiH tries cases pertaining to the crimes laid down by the laws of BiH, which include war crimes, organized crime, economic crime and corruption cases. [↑](#footnote-ref-89)
89. Administrative jurisdiction means that the Court of BiH adjudicates cases pertaining to the decisions issued by BiH institutions and other organizations in charge of public functions, such as property disputes related to the performance of public functions between the States and the Political divisions of Bosnia and Herzegovina, breaches of the election law, etc. [↑](#footnote-ref-90)
90. Official Gazette BD -revised text-No: 02/10. [↑](#footnote-ref-91)
91. Official Gazette of Brcko District No. 19/07, 20/07 and 08/02. [↑](#footnote-ref-92)
92. Agency for Prevention of Corruption and Coordination of the Fight against Corruption - Official Gazette" No. 103 / 09 https://www.acauthorities.org/country/ba [↑](#footnote-ref-93)
93. The new bodies would be similar to Croatia's Bureau for Combating Corruption and Organized Crime (USKOK), a state attorney-linked body that focuses on corruption and organized crime. [↑](#footnote-ref-94)
94. the councils of national minorities in BiH Parliamentary Assembly and the parliaments/ assemblies of entities, BiH Council for Children, the Inter-religious Council and the independent Commission for monitoring of prisons and residential institutions, the Committee for Roma, youth associations, and activities on formation of the Council for people with disabilities in also ahead in BiH. National report submitted in accordance with Para. 15 (A) of the Annex to Human Rights Council Resolution 5/1, 2010 [↑](#footnote-ref-95)
95. http://www.ombudsmen.gov.ba/Default.aspx?id=10&lang=EN [↑](#footnote-ref-96)
96. Mapping of Sector Strategies, Final Report (BiH), European Commission [↑](#footnote-ref-97)
97. The range of flexibility of the set operating framework of the Dialogue, in relation to the structure and content, partners involved, as well as the monitoring tools, are rather suitable for the complexity of the sector in question as well as the specificity of the BiH political and administrative structure [↑](#footnote-ref-98)
98. EC Progress Report 2014 [↑](#footnote-ref-99)
99. Indicative Strategy Paper for BiH [↑](#footnote-ref-100)
100. The key to greater levels of accountability, as well as effective harmonization and coordination is establishing performance management system that enables decision-makers, as well as the public, to better assess progress achieved in reform initiatives and identify areas in which additional initiatives are needed. Source: Structured Dialogue, April 2014 and new JSRS [↑](#footnote-ref-101)
101. The SAA (Title I, General principles, Article 2) specifies “Respect for the democratic principles and human rights as proclaimed in the Universal Declaration of HR and as defined in the Convention for the Protection of Human Rights and Fundamental Freedoms, in the Helsinki Final Act and the Charter of Paris for a New Europe”. Also, SAA (Title VII, Justice, Freedom and Security, Article 80 – Reinforcement of institutions and rule of law) stipulates that “the Parties shall attach particular importance to the consolidation of the rule of law, and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Cooperation shall notably aim at strengthening the independence of the judiciary and improving its efficiency, improving the functioning of the police and other law enforcement bodies, providing adequate training and fighting corruption and organised crime”. [↑](#footnote-ref-102)