

ACTION PLAN

REDUCTION OF CASE BACKLOGS

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ACTION PLAN FOR REDUCTION OF CASE BACKLOGS

Introduction

Dealing with the problem of case backlogs before the courts of Bosnia and Herzegovina (BiH) is a burning problem encountered by the BiH judiciary and other responsible institutions in BiH. As late as 2002, this problem issue was identified as „one of the major issues related to the BiH judiciary»¹ in the comprehensive report on the situation in the BiH judicial system (Justice in due time) drafted by the Independent Judicial Commission within the preparations for the comprehensive reform of the judiciary in this country. This is when it was concluded that the „existence of a huge number of unresolved cases is not only the *result* of the judicial inefficiency; but it can also be the *result* of the inefficiency; likewise it may be also the *cause* of inefficiency».² Unfortunately, the problem of unresolved cases poses even today a great obstacle to the establishment and building of efficient judiciary and confidence of citizens in the BiH judicial system, since the number of unresolved cases is increasing from year to year. «Thus, the Annual Report on the work of the Council for the previous 2006 year gives a detailed analysis of statistics indicating negative trend, which will most probably continue in the upcoming years, especially taking into consideration the dynamics of case filings and handling the so-called utility bill cases »,³ as emphasized in one of numerous HJPC-led initiatives, proposing that all relevant factors in the BH society should address the issue of case backlogs and contribute to finding solution to the problem which is not exclusively the problem of judiciary.

The Ministry of Justice of BiH, a body, which, to tell the truth, does not have an overall jurisdiction for finding solution to this problem, but has the mandate of the leading coordinating body (taking into consideration the authorities established by law and the Draft of the Justice Sector Reform in BiH), has recognised the importance of the case backlog problem and the necessity of a direct involvement of the Ministry in finding solutions to this problem.

In addition, the House of Peoples of the Parliamentary Assembly of BiH, by its Conclusion dated July 2006, while considering the Annual Report of the HJPC for 2005, tasked the Council of Ministers of BiH to propose the measures for their solution.

It is evident that the problem of case backlogs may not be resolved in any other way but by the coordinated action of the HJPC, Ministry of Justice of BiH, FBiH, RS and Cantons, Judicial Commission of the Brčko District, executive authorities and representatives of the legislative authorities at all levels.

This is the reason why the HJPC, the BiH Ministry of Justice and the Judicial Reform Project, funded by the Canadian International Development Agency (CIDA), launched the initiative for drafting a «joint action plan aimed at establishing a strategic approach to the whole

¹ Independent Judicial Commission. *Justice in Due Time*. Report of the Court Administration Reform Project. April, 2002., p. 64.

² Ibid.

³ Correspondence of the HJPC with the Conclusion on launching the initiative for establishment of the Coordinating Board for resolving the problem of case backlogs in the courts of Bosnia and Herzegovina, 8. Novembre 2007.

panoply of various unresolved issues with regard to the case backlogs in BiH». ⁴ This initiative was formalised by the *Memorandum of Understanding concerning drafting of the Action Plan for reduction of the number of case backlogs*, which was signed by the three above-mentioned institutions in January 2008, as the continuation of the already launched initiative of the HJPC for establishment of the Coordinating Board for resolving problems of case backlogs. ⁵ According to the HJPC Conclusion dated 24 October 2007, the representatives of the court, executive and legislative authorities at all levels are proposed to be the members of the Coordinating Board. ⁶ Moreover, it is proposed that the «Coordinating Board be tasked with rendering strategic decisions aimed at finding solutions to the problem of case backlogs and with ensuring their implementation», ⁷ while the HJPC would provide «support to the work of the Coordinating Board in coordination of the activities and issues of organisational nature». ⁸ The above initiative and the afore-mentioned *Memorandum of Understanding* are aimed at “achieving mutual understanding of various aspects of this problem between the main participants and institutions which are responsible to resolve this burning problem in the BiH judiciary and society, presenting different approaches towards the problem in question, establishing the coordination of donor activities and harmonizing the proposals of activities that will result in corresponding changes in practise, regulations and legislation where necessary, all with a view of handling different categories of case backlogs“». ⁹

To fulfil the tasks under the *Memorandum of Understanding* and to concretise the already launched initiatives and activities for establishment of the Coordinating Board, which is to determine a direction of strategic activities and render decisions as well as the tasks of professional commissions/groups, which will have the role of expert analysts and counsellors to the Coordinating Board, this document is offering the following contents:

1.	Definition of the problem of case backlogs in BH courts
1.1.	Scope of problem – number of unresolved cases per case category
1.2.	Causes of problems – brief analysis of legal, institutional and organisational framework
2.	Reduction of case backlogs – strategic objective
3.	Identification of main resources as the support to the problem of case backlogs
4.	Action Plan for reduction of case backlogs in BiH courts.
4.1.	Description of activities of participants in the implementation of the Action Plan
4.2.	Action Plan

⁴ Item 7. *Memorandum of Understanding of the HJPC, Ministry of Justice of BiH and Canadian Judicial Reform Project – Team for drafting the Action Plan for reduction of case backlogs*, February 2008.

⁵ *Memorandum of Understanding of the HJPC, BiH Ministry of Justice and Canadian Judicial Reform Project – Team for drafting the Action Plan for reduction of case backlogs*, **February 2008**.

⁶ Item I of the *HJPC Conclusion on launching the initiative for establishment of the Coordinating Board for providing solutions to the problem of the case backlog*, 24 October 2007.

⁷ Item II of the *HJPC's Conclusion on launching the initiative for establishment of the Coordinating Board for providing solutions to the problem of case backlogs*, 24 October 2007.

⁸ Item IV of the *HJPC's Conclusion on launching the initiative for establishment of the Coordinating Board for providing solutions to the problem of case backlogs*, 24 October 2007.

⁹ Item 7. *Memorandum of Understanding of the HJPC, BiH Ministry of Justice and Canadian Judicial Reform Project – Team for drafting the Action Plan for reduction of the case backlogs*, **February 2008**.

The aim of the document structured in such a manner is to provide the arguments for drafting the Action Plan and the survey of basic activities taken so far in providing solutions to the problem of case backlogs.

Such initial information should serve to the Coordinating Board, its commissions/groups and other participants in the process of implementation of the Action Plan, as basic information for organising the work, researches, making analysis and rendering the decisions. In addition, this information should help to avoid a possible duplicating of the activities.

Its special aim is to actualize the already proposed recommendations on the manners of reducing case backlogs and encouraging relevant institutions to take position and render the decision on the implementation of these recommendations.

The Action Plan is aimed at identifying the objectives to be achieved within a certain period of time in terms of providing solutions to the problem of case backlogs, identifying the activities to be undertaken for achievement of these objectives, identifying the bodies and institutions responsible for their implementation, identifying the existing and future resources and manners for monitoring and evaluation of the implementation of the Action Plan.

The introduction to the document and the Action Plan itself may also serve to the donor community as a concrete document on the needs demonstrated and plans of the BH judicial, executive and legislative institutions for possible planning of the activities and expressing interest in the participation in the implementation process of the prepared Action Plan.

1. Definition of problem of unresolved cases in BH courts

According to the HJPC Annual Report for 2006, a total number of unresolved cases in the BiH courts amounted to about 1, 9 million cases.¹⁰ This number significantly raised the alarm and urged the representatives of the judiciary and the BiH authorities, in particular the media and the public. The publication of the HJPC Report was followed by numerous media reports criticising the judiciary because of its inefficiency, resulting in the considerable lack of trust of BH citizens in the work of judicial bodies in this country.

Particularly distressing is the trend of the accrual of unresolved cases. Being the institution in charge of collecting data and keeping records on the efficiency of the work performance in the BH courts, the HJPC was sending a strong message about that problem on several occasions. For instance, the number of unresolved cases at the end of 1999 in the municipal/basic and cantonal/district courts were 273,534, at the end of 2000, it was 347,315 and at the end of 2001, it was 332,090.¹¹ At the end of 2005, the number of unresolved cases was 1,334,194,¹² and at the end of 2006, there were 1,934,163 unresolved cases.¹³ However, with the exception of the reports on a large number of unresolved cases, among the public there was no detailed analysis on the case backlog structure, excluding the professional public and professional legal community, which is why only little attention was paid to the fact that 56 percent of all unresolved cases in 2006 pertained to the utility bill cases, 20 percent to minor offence cases, 8 percent of them pertained to civil cases and 7 percent to enforcement cases. As for other categories of unresolved cases, they stand at about 4 per cent of land registry cases, 2 per cent of criminal cases and 1 per cent of administrative dispute cases (see Table 5). Therefore, the most significant problem is an «enormous number of unpaid bills»¹⁴, which are submitted to the courts as claims for enforcement – the so-called utility bill cases – at the end of 2006, there were 1,083,371 utility bill cases¹⁵. According to the analysis of the HJPC, during the last several years, the «Public Utility Companies submitted hundred thousands of enforcement proposals, completely preventing the court from even registering these motions, let alone from executing them. As a result of this enormous number of enforcement proposals, the court is not able to work on the enforcement proposals of some other categories. ».¹⁶ For instance, the most recent report of the Municipal Court Sarajevo mentions about 909,128 unresolved utility bill cases,¹⁷ while the significant, although five-figured backlogs were also recorded at the end of 2006 in the courts of other bigger towns in BiH.¹⁸ Without a comprehensive strategy, the courts are not capable to resolve such a problem. The representatives of judiciary, executive and enforcement authorities and the public utility companies would have to participate in its implementation.

¹⁰ HJPC. *Annual Report for 2006*, p. 73

¹¹ Indendant Judicial Commission. *Delivering Justice on Time*. Report of the Court Administration Reform, April 2002, p. 93.

¹² HJPC. *Annual Report for 2005*, p. 75

¹³ HJPC. *Annual Report for 2006*, p. 73

¹⁴ HJPC. Proposal of the public utility companies for better use of mechanisms for collection of outstanding debts and reduction of the number of enforcement claims submitted to the court, 19 July 2005, p. 1

¹⁵ HJPC. *Annual Report for 2006*, p. 73

¹⁶ HJPC. Proposal of the public utility companies for better use of mechanisms for collection of outstanding debts and reduction of the number of enforcement claims submitted to the court, 19 July 2005, p. 1.

¹⁷ Municipal Court Sarajevo. *Processing of cases in 2007*.

¹⁸ According to the Annual Report of the HJPC for 2006, at the end of 2006, Municipal Court in Zenica had 58,264 unresolved utility bill cases (p. 139) and the Municipal Court in Tuzli had 49.314 unresolved cases (p. 137).

1.2. Scale of a problem – number of unresolved cases per case category

However, as previously noted, the problem of the total number of case backlogs in the BH courts still remains a burning issue, but it is necessary to see the detailed picture of the structure of unresolved cases and to identify the causes of case backlogs which prevent the courts from acting promptly. A detailed analysis will show that only some categories of cases have huge backlogs, while almost all courts in BiH demonstrated efficiency in the work on other case categories. To figure out this difference, it is necessary to identify the objectives of the Action Plan for reduction of case backlogs and individual activities to be focused on solving the above problem in order of priority.

Court	Number of unresolved cases as of 1 January 2006	Number of cases received during 2006	Total number of pending cases during 2006	Number of resolved cases during 2006	Number of unresolved cases as of 31 December 2006
	I	II	III = I + II	IV	V = III - IV
Court of BiH Sarajevo	1,884	4,241	6,125	3,030	3,095
Supreme Court FBiH	8,025	3,122	11,147	4,614	6,533
Supreme Court RS	3,878	2,064	5,942	2,849	3,093
10 cantonal courts	20,852	57,746	78,598	54,869	23,729
5 district courts	11,741	16,694	28,435	20,817	7,618
28 municipal courts	324,272	307,671	631,943	331,189	300,754
19 basic courts	110,601	131,044	241,645	132,108	109,537
Basic Court Brčko District BiH	6,923	14,632	21,555	12,649	8,906
Appellate Court Brčko District BiH	280	1,081	1,361	1,070	291
TOTAL	488,456	538,295	1,026,751	563,195	463,556
Utility services					
28 municipal courts	827,360	373,013	1,200,373	146,503	1,053,870
19 basic courts	14,452	21,883	36,335	11,070	25,265
Basic Court Brčko District BiH	1,571	4,904	6,475	2,239	4,236
TOTAL	843,383	399,800	1,243,183	159,812	1,083,371
Minor offence departments					
28 municipal courts	257,711	27,433	285,144	15,114	270,030
19 basic courts	129,723	26,733	156,456	42,581	113,875
Basic Court Brčko District BiH	4,000	6,356	10,356	7,025	3,331
TOTAL	391,434	60,522	451,956	64,720	387,236
TOTAL all cases	1,723,273	998,617	2,721,890	787,727	1,934,163

Table 1 Processing of cases in 67 regular courts in Bosnia and Herzegovina during 2006. – per court level¹⁹

According to the above data, the greatest problem with unresolved cases is recorded in the municipal and basic courts in BiH, which is, among other things, the result of their broad competencies. It is necessary to note that the problem is particularly evident in bigger towns. It is also evident that the so-called utility bill cases represent a major part of unresolved cases. In addition, significant problems are also evident in the minor offence, enforcement and civil cases. However, there is a big difference noted in the number of

¹⁹ HJPC. *Annual Report for 2006*, p. 73.

unresolved cases in the FBiH municipal courts and RS basic courts (in the FBiH, the largest number of case backlogs pertain to enforcement cases and in RS, to civil cases). A significantly big difference is recorded in the number of utility bill cases (See Tables 3 and 4), although there is also an increase in the number of unresolved utility bill cases in some basic courts. For instance, at the end of 2006, the number of unresolved utility bill cases in the Basic Court Banja Luka was 6,549,²⁰ while at the end of 2007, this number amounted to 11,786.²¹

Case category	Number of case backlogs as of 1 January 2006	Number of received cases during 2006	Total number of pending cases during 2006	Number of resolved cases during 2006	Number of unresolved cases as of 31 December 2006
	I	II	III = I + II	IV	V = III - IV
Civil cases	158,283	91,890	250,173	104,452	145,721
Criminal cases	28,313	139,247	167,560	137,760	29,800
Administrative cases	18,140	9,492	27,632	12,005	15,627
Enforcement cases	132,085	74,177	206,262	71,326	134,936
Non-litigious cases	54,941	56,542	111,483	56,106	55,377
Land registry cases	92,320	143,429	235,749	156,231	79,518
Business registration.	4,309	21,682	25,991	23,865	2,126
Utility services	843,383	399,800	1,243,183	159,812	1,083,371
Minor offence departments	391,434	60,522	451,956	64,720	387,236
Other cases	65	1,836	1,901	1,450	451
TOTAL	1,723,273	998,617	2,721,890	787,727	1,934,163

Table 2. Processing of cases in BH courts during 2006 – per case category²²

Case category	Number of unresolved cases as of 1 January 2006	Number of received cases during 2006	Total number of pending cases during 2006	Number of resolved cases during 2006	Number of unresolved cases as of 31 December 2006
Civil cases	29,364	16,409	45,773	16,974	28,799
Labour disputes	17,186	9,231	26,417	9,433	16,984
Small claims disputes	21,083	9,189	30,272	11,550	18,722
Other cases	292	2,134	2,426	2,136	290
Civil cases - total	67,925	36,963	104,888	40,093	64,795
Commercial violations	7,774	2,958	10,732	4,098	6,634
Small claims disputes	5,535	3,370	8,905	4,693	4,212
Liquidation cases	1,016	608	1,624	666	958
Bankruptcy cases	214	105	319	84	235
Commercial violations	1,517	261	1,778	478	1,300
Other cases	110	160	270	247	23
Commercial cases - total	16,166	7,462	23,628	10,266	13,362
Criminal cases	9,261	11,567	20,828	11,880	8,948
Criminal preliminary	226	4,784	5,010	4,749	261

²⁰ HJPC. *Annual Report for 2006*, p. 141

²¹ Basic Court Banja Luka. *Report on the work of the Basic Court Banja Luka for the period from 1 January 2007 to 31 December 2007*.

Report on cases for 2007 pertaining to utility services debts.

²² HJPC. *Annual Report for 2006*, p. 79.

procedure cases					
Criminal preliminary hearing cases	1,988	7,148	9,136	6,724	2,412
Various criminal cases	20	25,783	25,803	25,778	25
Juvenile proceedings	925	916	1,841	898	943
Criminal panels	464	5,246	5,710	5,340	370
Amnesty cases	42	67	109	63	46
Enforcement of criminal sanctionss	1,674	3,000	4,674	2,422	2,252
Other cases	557	702	1,259	620	639
Criminal cases - total	15,157	59,213	74,370	58,474	15,896
Enforcement cases	80,279	35,164	115,443	39,785	75,658
Enforcement of criminal sanctions against legal entities	33,090	18,378	51,468	14,188	37,280
Other	102	464	566	550	16
Enforcement cases - total	113,471	54,006	167,477	54,523	112,954
Non-litigious cases	5,903	8,948	14,851	9,192	5,659
Probate proceedings	24,676	19,745	44,421	19,424	24,997
Other cases	315	7,337	7,652	7,342	310
Non-litigious cases - total	30,894	36,030	66,924	35,958	30,966
Business registration	1,374	14,645	16,019	14,878	1,141
Land registry cases	79,285	99,352	178,637	116,997	61,640
TOTAL	324,272	307,671	631,943	331,189	300,754
Cases of unpaid debts for utility services provided					
Civil cases	96,604	56,952	153,556	45,219	108,337
Commercial cases	23,278	10,051	33,329	9,721	23,608
Enforcement cases	707,478	306,010	1,013,488	91,563	921,925
Utility services	827,360	373,013	1,200,373	146,503	1,053,870
Minor offence departments	257,711	27,433	285,144	15,114	270,030
TOTAL	1,409,343	708,117	2,117,460	492,806	1,624,654

Table 3. Processing of cases in 28 municipal courts in the BiH Federation during 2006. – per case category²³

Case category	Number of unresolved cases as of 1 January 2006	Number of received cases during 2006	Total number of pending cases during 2006	Number of resolved cases during 2006	Number of unresolved cases as of 31 December 2006
	I	II	III = I + II	IV	V = III - IV
Civil cases	20,517	9,629	30,146	11,108	19,038
Labour disputes	8,573	1,623	10,196	4,677	5,519
Small claims disputes	8,267	3,439	11,706	2,652	9,054
Other cases	0	0	0	0	0
Civil cases - total	37,357	14,691	52,048	18,437	33,611
Commercial disputes	6,497	2,161	8,658	2,896	5,762
Small claims disputes	3,756	1,364	5,120	1,699	3,421

²³ HJPC. *Annual Report for 2006*, p. 120.

Liquidation cases	638	188	826	360	466
Bankruptcy cases	225	141	366	105	261
Commercial violations	0	0	0	0	0
Other cases	5	90	95	93	2
Commercial cases - total	11,121	3,944	15,065	5,153	9,912
Criminal cases	6,523	5,776	12,299	6,681	5,618
Criminal preliminary procedure	152	1,863	2,015	1,879	136
Criminal preliminary hearing	1,262	3,805	5,067	3,653	1,414
Various criminal cases	29	16,273	16,302	16,268	34
Juvenile proceedings	327	461	788	473	315
Criminal panels	105	1,641	1,746	1,634	112
Amnesty cases	17	155	172	153	19
Enforcement of criminal sanctions	666	1,504	2,170	1,496	674
Other cases	0	51	51	51	0
Criminal cases - total	9,081	31,529	40,610	32,288	8,322
Enforcement of criminal sanctions against individuals	12,072	11,091	23,163	9,726	13,437
Enforcement of criminal sanctions against legal entities	2,470	3,621	6,091	3,322	2,769
Other	0	0	0	0	0
Enforcement cases - total	14,542	14,712	29,254	13,048	16,206
Non-litigious cases	5,702	6,656	12,358	7,167	5,191
Probate cases	17,585	12,576	30,161	11,678	18,483
Other cases	269	293	562	380	182
Non-litigious cases - total	23,556	19,525	43,081	19,225	23,856
Business registration	2,847	5,697	8,544	7,606	938
Land registry cases	12,097	40,946	53,043	36,351	16,692
TOTAL	110,601	131,044	241,645	132,108	109,537
Cases of unpaid debts for utility services provided					
Civil cases	5,063	5,239	10,302	4,959	5,343
Commercial cases	791	861	1,652	784	868
Enforcement cases	8,598	15,783	24,381	5,327	19,054
Utility services total	14,452	21,883	36,335	11,070	25,265
Minor offence departments	129,723	26,733	156,456	42,581	113,875
TOTAL	254,776	179,660	434,436	185,759	248,677

Table 4. Processing of cases in 19 basic courts in Republika Srpska during 2006 – per case category²⁴

²⁴ HJPC. *Annual Report for 2006*, p. 122-3.

Struktura neriješenih predmeta u BH sudovima sa 31.12.2006. godine - po vrsti predmeta

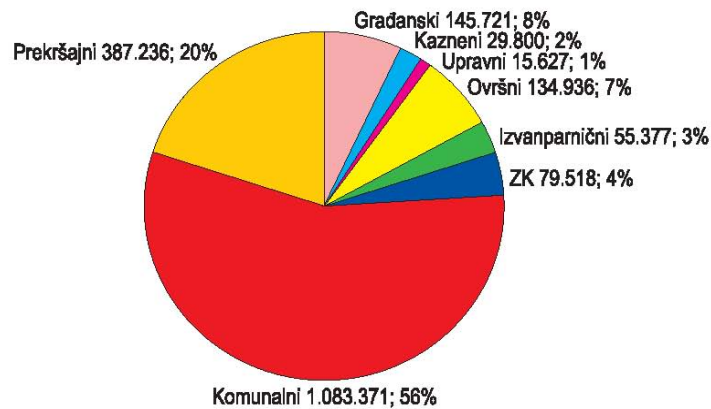


Table 5. Structure of unresolved cases in BH courts as of 31/12/ 2006 – per case category²⁵

According to a statistical definition, case backlogs occur when the number of unresolved cases exceeds a half of an average number of pending cases in one year.²⁶ However, the statistical definition should be combined with the qualitative definition according to which the case backlogs are the cases not resolved within the statutory deadline. According to the *HJPC Guidelines on status analysis and plans for the settlement of the backlogs at the courts of Bosnia and Herzegovina*, the «old cases» are defined per case category with regard to the deadlines foreseen under procedural laws.²⁷ These Guidelines figured out a number of years necessary to eliminate the case backlogs per case categories in the BiH courts (See Tables 6, 7 and 8).

Court cases	Change of the situation pertaining to unresolved cases*	Processing coefficient**	Number of years necessary for elimination of unresolved cases***
	I	II	III
Civil cases - total	-6.53%	113.31%	1.7
Commercial cases - total	-14.71%	135.18%	1.5
Criminal cases - total	-0.08%	100.02%	0.3
Enforcement cases - total	0.90%	98.33%	1.9
Non-litigious cases - total	0.68%	99.33%	1.0
Business registration cases - total	-50.75%	110.53%	0.1
Land registry cases - total	-14.28%	109.30%	0.5
Utility services - total	28.19%	39.90%	6.8
Minor offence departments	-0.91%	106.52%	1.2
TOTAL	12.57%	76.43%	2.0

Table 6. Relation between the percentage of received, resolved and unresolved cases in municipal and basic courts²⁸

²⁵ HJPC. *Annual Report for 2006*, p. 81.

²⁶ Joint State Project. *THE ELIMINATION OF COURT BACKLOGS. THE LUKENDA PROJECT. Operational Action Plan*. (Slovenian Action Plan for reduction of case backlogs). Ljubljana, 12 Decembre 2005, p. 1.

²⁷ HJPC. *Guidelines on status analysis and plans for the settlement of the backlogs at the courts of Bosnia and Herzegovina*, Sarajevo, 2005.

²⁸ HJPC. *Annual Report for 2006*, p. 116.

Court cases	Change of the situation pertaining to unresolved cases *	Processing coefficient**	Number of years necessary for elimination of unresolved cases ***
	I	II	III
Civil cases - total	-4.61%	108.47%	1.6
Commercial cases - total	-17.35%	137.58%	1.3
Criminal cases - total	4.88%	98.75%	0.3
Enforcement cases - total	-0.46%	100.96%	2.1
Non-litigious cases - total	0.23%	99.80%	0.9
Business registration cases. - total	-16.96%	101.59%	0.1
Land registry cases - total	-22.26%	117.76%	0.5
Utility services - total	27.38%	39.28%	7.2
Minor offence departments	4.78%	55.09%	1.5
TOTAL	15.28%	69.59%	2.5

Table 7. Relation between the percentage of received, resolved and unresolved cases in the municipal courts²⁹

Court cases	Change of the situation pertaining to unresolved cases *	Processing coefficient**	Number of years necessary for elimination of unresolved cases ***
	I	II	III
Civil cases - total	-10,03%	125,50%	1,8
Commercial cases - total	-10,87%	130,65%	1,9
Criminal cases - total	-8,36%	102,41%	0,3
Enforcement cases - total	11,44%	88,69%	1,2
Non-litigious cases - total	1,27%	98,46%	1,2
Business registration cases - total	-67,05%	133,51%	0,1
Land registry cases - total	37,98%	88,78%	0,5
Utility services - total	74,82%	50,59%	2,3
Minor offence departments	-12,22%	159,28%	0,9
TOTAL	-2,39%	103,39%	0,9

Table 8. Relation between the percentage of received, resolved and unresolved cases in basic courts³⁰

1.3. Causes of problem – brief analysis of legal, institutional and organisational framework

After the analysis preceding the reform of the judicial system in BiH had revealed that the existing procedural legislation and practices enabled endless proceedings, generating case backlogs and making the judiciary inefficient, the reform of the procedural legislation was aimed at shortening the duration of court proceedings, dealing with cases more efficiently and accordingly, ensuring an easier and better excess to justice. It was considered that the reduction of the number of judicial positions would result in a more efficient court administration and more efficient court procedures. After a certain period of evaluation, it was possible to conclude that the reform significantly contributed to the prompter dealing with

²⁹ HJPC. *Annual Report for 2006*, p. 121.

³⁰ HJPC. *Annual Report for 2006*, p. 123.

cases in some categories. However, some categories of cases still have huge case backlogs, as can be seen in Chapter 1.2. Therefore, this overview of basic solutions in the reformed legislation should identify basic legal, institutional and organisational causes of case backlogs as well as best practises of reduction of case backlogs through the use of efficient institutes in some laws.

1.3.1. Criminal procedure

This reform is probably the most revolutionary change in the BH judiciary. It started with the introduction of the adversarial system, that is, the equality of arms between the parties to the proceedings before the «silent» court. A classical example of «material truth» is abandoned to great extent by introducing new institutes which greatly contributed to the work efficiency of the criminal departments in the BH courts. These institutes are **warrants and plea bargain agreements**. Although there are different opinions and observations regarding the correct use of the above institutes, that is, the judicial economy pertaining to the efficiency of judgments pronounced according to warrants and plea bargain agreements,³¹ it is evident that these institutes contributed to the efficiency in criminal cases in a large number of courts. According to the HJPC Report for 2006, criminal cases in the municipal and district courts with the biggest inflows of criminal cases remained fully efficient in 2006³². In addition, dealing with criminal cases in cantonal and district courts was also efficient.³³ To be exact, new criminal procedure codes prevented remanding the criminal cases for renewed proceedings to the first instance courts upon the reversal of verdict by the second instance court. On the contrary, they order the second instance courts to take over the consideration of cases with reversed first instance verdicts.

The implementation of the Criminal Procedure Code was the subject of a detailed analysis in the past period. The OSCE Mission had a great role in this process. It organized a years-long program of monitoring the implementation through monitoring trials, local groups for implementation and support to the establishment of the Team for evaluation of the criminal legislation in BiH. In March 2003, the BiH Ministry of Justice established this Team as a central legal body responsible for the evaluation of the implementation and giving recommendations for improvement of the criminal legislation. These efforts resulted in the identification of the most significant problems regarding the practical application of the law and in concrete proposals for amendments to the BiH Criminal Procedure Code by the above Team. The procedure for consideration of the draft law is ongoing. The HJPC also established a working group which presented a whole range of proposals for the amendments to the Criminal Procedure Code. The objective of these changes was to reduce the number of unresolved cases by introducing a system for dealing with and eliminating the unresolved cases. Concretely speaking, the working group submitted several proposals with regard to the amendments to the criminal procedural legislation, such as, releasing from criminal prosecution those perpetrators of smaller criminal offences who compensate the injured party

³¹ OSCE Mission in BiH. *Report on the application of the Criminal Procedure Code in the BiH courts*. Decembre 2004 and OSCE Mission in BiH. *Plea bargain agreements in Bosnia and Herzegovina: Application before the courts of BiH and harmonisation with the international standards for protection of human rights*. May 2006.

³² HJPC. *Annual Report for 2006*, p. 118.

³³ Excluding unresolved second instance minor offence cases. HJPC. *Annual Report for 2006*, p. 100-1.

either during or before the investigative state of the procedure. This would mean that only fewer cases would enter the system and there would be a filter applied to those which should be dealt with as a matter of priority. The working group also suggested that the possibility be introduced of reaching a plea bargain agreement during the investigative or even the pre-investigative stages. In total the working group suggested twelve amendments to the Criminal Procedure Code.³⁴

1.3.2. Civil procedure

The reform of the Law on Civil Procedure is also one of the major novelties in the judicial reform. Although new laws are based on old laws, to improve the access to justice, significant changes have been introduced aimed at shortening the court proceedings. The Judicial System Assessment Program (JSAP) previously concluded that the civil proceedings in BiH generated considerable case backlogs.³⁵ For this reason, the adversarial system was introduced wherein a burden of proof is on the parties to present to the court all facts and evidence on which they base their requests. A concept of «material truth» has been abandoned. It is decided that a single judge may adjudicate all first-instance procedures. **Strict deadlines have been also introduced for the court and the parties to a proceeding. All cases should be decided within two hearings (preparatory and final), while a great number of possibilities of postponing the hearings are dismissed.**³⁶ According to experts from this field, the civil procedure codes are of high-quality. Theoretically speaking, they enable the administration of justice within the reasonable time. However, it is not possible to meet the deadlines foreseen under the new civil procedure codes because of the existing backlogs of civil cases. According to the experts, the entering of the new code into force should have been suspended pending the completion of the work on the case backlogs.

Unlike the criminal procedure codes, the enforcement of civil procedure codes was not a subject of detailed monitoring and analysis. And yet, to achieve better efficiency of the courts, within the HJPC initiative dedicated to the analysis of the causes of backlogs in courts, the Working Group gave certain recommendations within its activities of drafting the Guidelines³⁷ for the amendments to the civil procedure code aimed at achieving greater efficiency of the courts.³⁸ For instance, it was proposed that the parties be obliged to resolve their disputes through mediation prior to the filing of a request for scheduling of preparatory hearing. The Working Group also recommended³⁹ that parties only be allowed to come to court with an agent who is a graduated lawyer and who has passed the bar examination. According to the conclusions of the Working Group, „the practice which has developed of lay litigants presenting and defending cases in courts is a practice which needs to be discouraged if the courts are to operate in an effective and efficient manner.“⁴⁰ This is an additional reason

³⁴ HJPC. *Project Proposal «Reduction of case backlogs in courts»*. October 2006, p. 20.

³⁵ UNMIBH. Judicial System Assessment Program – JSAP). *Topical Report X. Serving the society. Delivery of Justice in Bosnia and Herzegovina*. Novembre 2000, p. 6.

³⁶ Independent Judicial Commission. *Final Report of the Independent Judicial Commission*. Novembre, 2004, p. 166.

³⁷ HJPC. *Guidelines on status analysis and plans for the settlement of the backlogs at the courts of Bosnia and Herzegovina*. Sarajevo, 2005.

³⁸ HJPC. *Project proposal «Reduction of case backlogs in courts»*. October 2006, p. 20-1.

³⁹ Ibid

⁴⁰ BiH Ministry of Justice is currently working on a free legal aid in civil matters

to pay great attention to the monitoring of the implementation of the Civil Procedure Code, particularly in the context of the possibility of adhering to the deadlines foreseen by the law, small value disputes and other factors affecting the work on case backlogs and preventing new case backlogs.

1.3.3. Law on administrative disputes

New law on administrative disputes were adopted in 2005. Although they are not absolutely identical, these two laws have introduced significant changes in the control of decisions of the administration bodies – out of which the most significant is the transfer of competences from the supreme courts to the cantonal and district courts, which means that the cantonal/district courts in the seats of the administrative bodies or their organisational units which issued the first-instance decisions, should have taken over the jurisdiction of court re-examination of administrative decisions issued by these bodies. Other changes pertain to the **reflection of the reform vision to rationalize the court time and funds** and to the achievement of prompter resolving of cases for the sake of efficiency. In that manner, new laws include: introduction of responsibility of a single judge to adjudicate the first-instance cases, restriction of evidence that are proposed to the court only to those that were used in the administrative procedure, reduction of the possibility to remand the cases to the administrative procedure (instead, adjudicating of cases by the court where it has been decided to revoke the decision of the administrative body), obligation of the prosecutor to address the competent administrative inspection in case of «administrative silence» prior to initiating the procedure before the court. The result of such legal solutions is a relatively small number of unresolved cases – in total, 7,380 in all cantonal and district courts at the end of 2006,⁴¹ 6,563 cases at supreme courts in the FBiH and RS,⁴² and 2,212 of unresolved cases at the Court of BiH,⁴³ amounting to 16,155 cases or 0.83 per cent of total number of unresolved cases in the BiH judiciary. According to the HJPC Report for 2006, the number of received cases was considerably smaller as compared with the previous year – even by 45 per cent.⁴⁴ The reform of the public administration is also greatly hoped. It is expected that this reform will result in the reduction of the number of requests for court re-examination of the decisions issued by the administrative bodies.

1.3.4. Enforcement procedure

Two entity laws on enforcement procedure were adopted in 2003.⁴⁵ In broader terms, the enforcement procedure is consisted of the following basic phases:⁴⁶

1. Initiation of the enforcement procedure based on the enforcement or authentic document, motion of the judgement creditor;
2. the Court decides upon the motion of the judgment creditor;
3. In case the Court orders enforcement, the enforcement is executed to settle the claims of the judgement creditor.

The courts in Bosnia and Herzegovina are also included into a direct enforcement of decisions issued in the enforcement procedure, all with a purpose of settling the claims of the judgment creditors through court referees in charge of making entries, inspection of

⁴¹ HJPC. *Annual Report for 2006*, p. 99.

⁴² HJPC. *Annual Report for 2006*, p. 90.

⁴³ HJPC. *Annual Report for 2006*, p. 86.

⁴⁴ HJPC. *Annual Report for 2006*, p. 101.

⁴⁵ There is also the Law on Enforcement Procedure in the Court of BiH (Official gazette of BiH 18/03).

⁴⁶ HJPC. *Project Proposal «Reduction of case backlogs in courts»*. October 2006, p. 6-11.

property or rights, appraisal of values and sale and through the court itself carrying out appraisal, sale, cashing and distribution of the proceeds from the enforcement executed, and the like. Taking into account the fact that the lack of efficiency in handling the enforcement cases poses a big problem for the BH judiciary and society as a whole, the enforcement procedure was the subject of numerous debates among legal and other relevant experts, in particular because the enforcement procedure by itself does not represent settling of any kind of dispute. A basic issue raised in the previous analysis of these problem issues is **whether or to which extent it is necessary to include the court into the execution of enforcement and authentic documents.**

1.3.5. Resolving of utility claims

The problem with cases of unpaid utility bills represents one of the biggest problems encountered by individual BH courts today (the biggest problems are present in big centres, in particular in Sarajevo). **This problem is generally reflected on three court case categories – civil, commercial and enforcement cases. However, the biggest problem of unresolved cases is recorded in enforcement cases.** For instance, only at the Municipal Court in Sarajevo, at the end of 2007, there were 909,257 unresolved utility bill cases (87.66 per cent of the total number of unresolved cases in this court), out of which number, there were 809,128 or 88.87 per cent in the enforcement cases.⁴⁷

⁴⁷ Municipal Court Sarajevo. *Annual case processing – 2007*

I

The problem of utility bill cases was discussed in detail on several occasions by the HJPC. The analysis commenced at the beginning of 2005 with the initiation of the **Court Administration Project in the Municipal Court Sarajevo**, which partly dealt with the identification of problem of the accumulation of unresolved cases, more concretely, with the claims for enforcement of unpaid utility bills. For this reason the **Round Table Project** was implemented with an aim of opening a dialogue between the most important protagonists in this process, the court and utility companies and relevant ministries of the Sarajevo Canton and the FBiH, making analyses of the problem and giving suggestions for short-term and long-term solutions. This process was supported by the USAID ALPS and FILE Projects and the HJPC representatives. Although the opinions and observations of the problem were exchanged at three round tables from the perspective of various factors, it did not prevent further submission of claims by the utility companies and did not result in reaching an agreement on possible changes to the law in practise.⁴⁸

II

And yet, the HJPC initiatives were not halted. The analysis of the problem causes were pursued as well as finding manners for a systematic solving of the above problems. Thus, **in July 2005, the analyses of the causes of the above problems was drafted, which also provided recommendations for the changes to the laws and practice,⁴⁹ which is supported to great extent by the USAID FILE Project, dated September 2005.⁵⁰** It is said in the analysis that the «Public utility companies are receiving thousands of enforcement proposals on a monthly basis against customers using their services without paying the bills».⁵¹ To collect their claims, they are currently using two possibilities:

- Discontinuation of providing services (telephone, electric energy and gas supply)
- **Initiation of court proceedings (civil or enforcement).**⁵²

However, not all the companies are able to discontinue providing their services because of unpaid bills for technical reasons (many customers in Sarajevo are using services of public companies through joint systems, without separate, individual meters necessary for the service they are using). These are the companies supplying water, heating and dealing with garbage removal. This is why these companies simply decide to submit all unpaid bills for enforcement to the courts instead of discontinuation of their services. These companies are not even obliged to prepare enforcement proposals but can instead simply submit a copy of the bills as an authentic document to the court. Nor they are obliged to show that the bill has been delivered or that they have sent any reminders to the customer in respect of the bill.

⁴⁸ HJPC. Court Administration Project. Municipal Court Sarajevo. *Final Report*, 1 November 2004 – 28 February 2005, p. 19-21.

⁴⁹ HJPC. *Proposal for better use of mechanisms for collection of outstanding debts by the public utility companies and reduction of the number of enforcement claims submitted to the court*. 19 July 2005

⁵⁰ USAID FILE. *Practical Solutions for Intractable Problems: FILE's Comprehensive Court Report and Recommendations for Bosnia and Herzegovina*. 30. septembar 2005. godine.

⁵¹ HJPC. *Proposal for better use of mechanisms for collection of outstanding debts by the public utility companies and reduction of the number of enforcement claims submitted to the court*. 19 July 2005, p.1

⁵² Ibid.

This generates a number of problems. In the first place the utility companies, in certain instances we understand, do not send the actual bill to the customer but simply send the bill (as an enforcement claim) to the court! ⁵³

According to the analysis of the HJPC, «the courts are not established to resolve cases of great scope and of small value so that they are unable to process the cases of public utility companies even if they had additional staff or resources. On the other hand, public utility companies must collect their claims or they will face losses. It is necessary to find solutions that will reduce the burden on the court as well as the number of unpaid bills for utility services.»⁵⁴ For this reason this analysis suggests a range of possible solutions pertaining to the assistance to the public utility companies to assume a primary responsibility for collection of unpaid bills through various debt collection mechanisms and the work on necessary reforms in terms of changes to some laws (Law on Obligations, Civil Procedure Code, Law on Enforcement Procedure) and adoption of new laws (for instance, the Law on Utility Services).

III

According to another analysis made by the HJPC,⁵⁵ one of the problems lies in the fact that the utility companies most often do not submit all data to the court necessary to proceed with enforcement. Even when they do send the data, it is often inaccurate as the utility companies do not appear to have established accurate systems of recording. This means that the courts are often given details of debtors who are dead or who no longer live at a given address and even of apartment blocks which are no longer in existence.

Finally, the utility companies submit claims for every amount and, in certain instances, even when the amount of the bill is zero! This means that the court needs to contact the utility company to ensure that this is accurate. This involves the court in unnecessary administrative work and expense, i.e. the drafting of the necessary letter to the utility company and the cost of postage.

The reasons for submission of the claims to the court by the utility companies also include the justification of debts of the utility companies to satisfy their supervisory boards as a basis for ensuring the subsidies by the companies' owners. The courts in the FBiH receive an enormous number of claims on a yearly basis. This is a particular problem in the Municipal Court in Sarajevo.

IV

To analyse this problem, at the beginning of 2007, it was established the **Initial Working Group for the analyses of the problem relating to unresolved utility bill cases, with the assistance of the Canadian Judicial Reform Project**. This Group is composed of the HJPC representatives, Judicial Reform Project and heads of the Civil, Commercial and Enforcement Department of the Municipal Court Sarajevo. This initiative is also supported by the BiH

⁵³ HJPC. *Project proposal «Reduction of case backlogs in courts»*. October 2006, p. 13.

⁵⁴ HJPC. *Proposal for better use of mechanisms for collection of outstanding debts by the public utility companies and reduction of the number of enforcement claims submitted to the court. 19 July 2005*

⁵⁵ HJPC. *Project Proposal «Reduction of case backlogs in courts»*. October 2006, p. 13.

Ministry of Justice, as one of the key partners to the Project. The Working Group made the analysis of key law provisions regulating the operations of utility services and the status of the public utility companies. The existing laws on utility services in the FBiH, adopted in four Cantons of the FBiH and Brčko District have been analysed. The RS Law on Utility Services has not been the subject of the analysis. The difference between the provisions of the FBiH and RS legislation has been identified within another initiative.⁵⁶ The laws on public utility companies of the Entities and the Brčko District were also analysed. After the analysis, the Group reached a conclusion that the «redefining of these provisions is a prerequisite for the reduction of the inflow of enforcement proposals based on authentic documents submitted to the courts»,⁵⁷ and suggested certain changes that correspond to great extent with the already presented recommendations by the HJPC consultants in July 2005. These proposals include:

- Identification of the minimum value of the unpaid bill to be submitted to the court for forcible collection, which would reduce the number of proposals for enforcement of very small bills
- Introduction of certain collection instruments through the legislation on utility companies, for instance, an automatic placement of the administrative ban on the regular income of the customer already on the occasion of establishment of subscription relation
- Planning of capital investments of public companies in terms of introducing the measuring instruments,⁵⁸ all with an aim of ensuring transparency in the work of public utility companies and restoring the confidence of their customers
- Introduction of defined internal procedures in the public companies aimed at an efficient and proper processing of bills for utility services delivered. It would increase the number of proper enforcement proposals submitted by the utility companies, which would represent another measure to relieve the courts.

V

In terms of other initiatives for addressing the problem of unresolved cases, it is important to mention the **decision of the Municipal Court Sarajevo to establish two new departments in this court – Enforcement Department for Authentic Documents Novi Grad and Civil Department for Small Value Claims Ilidža** (departments were established in May 2007). New departments employ legal associates who work only on the aforementioned cases. According to the Report of the Novi Grad Department for enforcement based on authentic documents for the period between May and December 2007, this Department took over 685,282 cases from the Enforcement Department as of 31 May 2007. During 2007, another 120,003 cases were received and 1,476 cases were resolved. At the end of 2007, it remained another 809,128 utility bill cases in the Enforcement Department.⁵⁹ However, replacement of utility bill cases into a separate department emphasized a conceptual difference between these and other cases in the Municipal Court Sarajevo as well as the need for systematic dealing

⁵⁶ Ibid.

⁵⁷ Initial Working Group for the analysis of unresolved utility ill cases. *Identification of key law provisions regulating utility services and the status of public utility services.*

⁵⁸ Article 35 of the Law on protection of Consumers in Bosnia and Herzegovina (Official gazette of BiH, number: 25-06) foresees that the sale of energy (electricity, heating, gas and the like) and water to consumers should be calculated based upon the actual deliveries shown on consumption meters.

⁵⁹ Municipal Court Sarajevo. Enforcement Department. Authentic documents – Novi grad. *Report for the period May-December 2007*

with these cases. This initiative is also supported by the Canadian Judicial Reform Project, which provided the necessary technical and expert support to the work of the department.

All analysis made so far about the problem of utility bill cases clearly show that there exist two options for resolving this problem. Relevant institutions should, among other things, adopt a general view about this issue and define the measures for activities:⁶⁰

Option 1 – continue to enforce utility bill claims through the courts

If this option is chosen, procedures will need to be put in place so that the utility companies establish internal collection mechanisms before actually sending them to the court for enforcement and deliver accurate details to the courts so as to make enforcement as easy as possible.

Option 2 – enforcement of utility bill claims outside the courts

This option may include the establishment of mechanisms outside the courts (an agency and the like), whose basic jurisdiction would be the execution of enforcement.

The relevant institutions should present their final positions about these options in the incoming period as well as start with their implementation.

With regard to the aforementioned, it is necessary to examine in detail the experiences of other countries which have significantly reformed their enforcement procedure (Slovenia, FYROM, Croatia, Norway, Sweden).

While developing an in-depth analysis, in the meantime it will be necessary to consider all measures that could contribute to the reduction of cases requiring forceful collection (ensuring that the utility companies introduce mechanisms and make efforts to enforce debt collection) and measures for improvement of the efficiency of the enforcement process.

In addition, it will be necessary to ensure avoiding negative impact on the socially vulnerable beneficiaries when the enforcements of such claims are efficiently executed.

1.3.6. Minor offence procedure

Minor Offence Court Restructuring Project was established on 1 October 2003 and successfully completed on 31 December 2006. Five main components of the strategy for the reform of minor offence courts were the following: drafting and adoption of new procedural laws on minor offences at the level of BiH and Entities, comprehensive reorganisation of the system for dealing with minor offence cases, appointment process for judges, introduction of Registry of Fines, training in the application of new laws and in the use of the Registry of Fines. This Project implied the termination of the activities of the existing minor offence courts and minor offence commissions and taking over of minor offence cases by the newly-appointed judges in the newly-established minor offence departments of municipal and basic courts in order to comply with the requirements of the European Convention on Human Rights, to rationalize time consumption and ensure an efficient work of judges. According to

⁶⁰ HJPC. *Project Proposal «Reduction of case backlogs in courts»*. October 2006, p. 15-6.

the *Final Report of the Minor Offence Court Restructuring Project*, **new procedural laws «created a completely new procedure which would enable the processing of minor offence cases in a much more efficient manner»**.⁶¹ It is achieved by the introduction of the so-called **minor offence order**. The minor offence cases are submitted to the court only if the offender does not accept a fine imposed on him by the minor offence order and if he requests for a minor offence decision.

In addition to procedural laws, entity **laws on amnesty of minor offences** have been proposed to grant amnesty for certain old minor offences and to render the minor offence departments capable of starting functioning more efficiently and effectively. However, so far this law has been adopted only in the RS but not in the FBiH. According to the initial information, this law had a great impact on the reduction of the number of minor offence cases in new departments. Data from February 2007 show that 89,664 minor offence cases were resolved through the application of this law, which is almost 50 per cent of unresolved cases as of 1 September 2006.⁶²

Minor offence cases at the end of 2006 made up 20 per cent of unresolved cases or 383,905,⁶³ out of which there were 119,342 in the Municipal Court Sarajevo.⁶⁴ According to the reports for 2007, the number of unresolved minor offence cases in the Municipal Court Sarajevo was significantly reduced and amounts to 34,573 cases, while this number in the Basic Court Banja Luka amounts to 19,121 cases⁶⁵ (as compared with the number of 24,778 cases at the end of 2006⁶⁶).

It is planned to monitor and evaluate the application of the Law on Minor Offences. In the RS, a Working Group has already been established while in the FBiH, it has not been established yet. It was necessary to form a working group at the level of BiH to review and carry out the harmonisation with the Law on Minor Offences and the existing substantive regulations stipulating very important areas such as traffic, indirect taxes, customs offences and the like.

1.3.7 Other cases

Land registry cases – There have not been any significant objections so far to the quality of new legal solutions passed at the entity level (laws on land registers). Recently the courts have become more efficient and recorded the increase of efficiency in their land registry offices, mostly because of the introduction of new work methods, staff education and digitalisation of land registers. The GTZ is continuously supporting the Land Administration Reform Project.

Business registration – Apart from the legislation reform, the reform of this area also introduces the method of electronic record keeping. This system has not been fully defined

⁶¹ HJPC. Minor Offence Court Restructuring Project, 1 October 2003 – 31 December 2006. *Final Report*. July, 2007, p. 30.

⁶² HJPC. Minor Offence Court Restructuring Project, 1 December 2003 – 31 December 2006. *Final Report*. July, 2007, p. 31.

⁶³ HJPC. *Annual Report for 2006*, p. 73.

⁶⁴ HJPC. *Annual Report for 2006*, p. 135.

⁶⁵ Basic Court Banja Luka. *Report on the work of the Basic Court Banja Luka for the period 1 January 2007- 31 December 2007*.

⁶⁶ HJPC. *Annual Report for 2006*, p. 141.

yet. The coordinating activities of the entity ministries of justice and the HJPC directed toward the solution of this problem are still underway.

Non-litigious cases – According to the HJPC Guidelines,⁶⁷ „taking into consideration the principle that the court should not deal with matters in which there is no dispute between the two parties and the fact that in some countries some cases are being very successfully conducted by the administrative bodies or some other specialized bodies“, in order to unburden the courts from non-judicial work, it is considered that it would be useful to choose the solution according to which the court should not be involved in probate cases any longer, a large part of non-litigious (deprivation of and reinstating of legal capacity, keeping of mentally ill persons in medical institutions, proclaiming missing persons dead, supplying evidence on death, permissions for entering into marriage, drafting and certifying contents of documents, keeping the documents, annulment of documents), and other cases that may be successfully conducted in their undisputed stage by the administrative or specialized bodies.⁶⁸

1.3.8. Institutional and organisational causes of the lack of efficiency of the courts

In addition to some imperfections in the procedural and other laws identified in the legal analysis, which are the causes of case backlogs in the courts, some institutional and organisational matters also affect dealing with case backlogs. There have been several analysis made during past years as well as some big steps toward finding solutions to basic institutional and organisational matters of the BH judiciary. Before the commencement of the judicial reform, the Report called „*Justice in Due Time*“, which is the result of the Court Administration Reform Project whose task was to „define causes of inefficiency in the courts and delays in the court process as well as to draft the concrete recommendations not requiring high budgets and sophisticated technology“,⁶⁹ identified basic problems leading to the lack of efficiency of judiciary. They are the following:⁷⁰

Institutional issues:

- Insufficiently defined responsibility for more efficient court operations
- Inexperienced or ineffective judges
- Counter-productive results due to established quotas
- Chronic shortage of funds: lack of equipment and working premises

Organizational problems:

- Judges are carrying out too many tasks that can be done by other employees
- Too detailed, out-of-date and inflexible Books of Rules on the work of courts
- Inadequate and mistakenly oriented reporting systems

⁶⁷ HJPC. *Guidelines on status analysis and plans for the settlement of the backlogs at the courts of Bosnia and Herzegovina*. Sarajevo, 2005., p. 19-20.

⁶⁸ Ibid.

⁶⁹ Independent Judicial Commission. *Justice in due time*. Report of the Court Administration Reform Project, April, 2002., p. 6.

⁷⁰ Independent Judicial Commission. *Justice in Due Time*. Report of the Court Administration Reform Project. April, 2002., p. 16-22.

Operative problems:

- Too high number of ineffective hearings
- Ineffective actions of the second-instance courts
- Nonappearance of parties and lawyers
- Problems with serving summonses to the parties
- Bad usage of time and ineffectiveness of judges and staff
- Problems with case backlogs

Some of the recommendations from the Report *Justice in due time* were implemented in the period of the comprehensive judicial reform in BiH. It resulted in the passing of new procedural laws, whose overview is given under chapter 1.3, a complete reorganisation of the network of courts and prosecutor's offices, the process of reappointment of judges and prosecutors and in a whole range of court administration reform projects aimed at improving organisational and operative processes and finally, increasing of efficiency of the BiH judiciary. Thus, *Judicial Reform Index for BiH* in 2006 was highly acclaimed with reference to 13 out of 30 analysed factors as compared with the Index for 2001, while none of the factors recorded a negative trend as compared with the trends in 2001.⁷¹ In view of the above, it can be concluded that there exist «optimistic signs of progress and awareness of the need for further steps in the reform».⁷²

However, the HJPC Reports as well as many other analytical documents and the *Judicial Reform Index* for BiH in 2006, emphasize a continuous negative assessment (in 2001 and 2006) of 6 factors mostly pertaining to the efficiency in judiciary unlike the positive assessment pertaining to the establishment of mechanisms for independence, education, ethics and salaries in judiciary. The following are negative aspects of the system in/efficiency:⁷³

- An enormous number of unresolved cases, which are brought into connection with a great number of strategies and attempts to reduce this number but also with the unsuccess of these methods because of the lack of funds
- Problems linked with the procedures of court decisions enforcement – it is estimated that it would take five years to resolve all enforcement case backlogs provided that the court does not receive any new case in that period of time
- Lack of an efficient court management and procedures regarding registration and keeping track of cases through the court registries.

Apart from these negative aspects, there are also those of financial nature:⁷⁴

- Fragmented and outsize system of funding of the courts causing inefficiency and frustrations because of poor communication and lack of trust between participants deciding on 14 different budgets
- Insufficient funds to cover operational costs
- Lack of planning by domestic authorities of funds necessary for capital investments and computerisation and relying of the HJPC on international donors.

⁷¹ CEELI. *Court Reform Index for Bosnia and Herzegovina*. Second issue, February 2006, p. 1.

⁷² Ibid.

⁷³ CEELI. *Court Reform Index for Bosnia and Herzegovina*. Second issue, February 2006, p. 3-4.

⁷⁴ CEELI. *Court Reform Index for Bosnia and Herzegovina*. Second issue, February 2006, p. 5.

From the beginning of its activities, in the capacity of a single BiH institution as of 1 June 2004, the HJPC has been working on a detailed analysis of the problem of old cases and case backlogs and intensively since 2005 when the problem of a huge number of old cases and case backlogs was indisputably indicated as the greatest problem of the Bosnia and Herzegovina judiciary together with an unresolved issue of funding of judiciary and judicial institutions after „the analysis of the situation regarding old unresolved cases made at the session of the BiH HJPC held on 22 August 2005“ ».⁷⁵ This is why, the Strategic Plan for the period March 2005 – December 2006, under activity 4.5., has foreseen the drafting of the system for registration of current case backlogs, collection of data on these cases from the BiH courts and drafting of Programs for settlement case backlogs. The task of the HJPC expert group is to define the causes of the backlog problem and to draft uniform and binding solutions and rules of procedure in regard to the settlement of the backlog cases for all courts.⁷⁶ On this occasion, the identified causes were divided into two groups, external and internal causes, wherein the external causes pertain to the context in which the BiH judiciary operates and the internal ones pertain to organisational and operative context existing within the courts. The following causes have been identified:⁷⁷

1. External causes

- Quality of legal solutions
- Bad work of other bodies and institutions
- Effects of war

2. Internal causes

- Determination of the necessary number of judges
- Bad use of working time
- Absence of quality and proper criteria and norms for the work performance of judges
- Lack of competence of judges and court presidents
- Lack of skills of judicial staff
- Material work conditions
- Inexistence of informatics structure

Although this analysis was made in 2005, similar causes of case backlogs may be considered valid even today. **Major breakthrough has been made in the computerization of judiciary**, although it is a long-term process in technical and material sense but also in the context of admission of new work methods by judges and court administration. Ongoing is the **implementation of the project for establishment of quality criteria and norms for the work of judges** as well as **the education of judicial and administration staff**. The HJPC has done the following in respect of handling old cases and backlogs:⁷⁸

- In 2005, the HJPC required from the courts to draft plans for the reduction of case backlogs; The Council is monitoring the realisation;
- In 2005, the HJPC appointed 41 additional judges for the period of two years;

⁷⁵ HJPC. *Guidelines on status analysis and plans for the settlement of the backlogs at the courts of Bosnia and Herzegovina*, Sarajevo, 2005, p. 3.

⁷⁶ Ibid.

⁷⁷ HJPC. *Guidelines on status analysis and plans for the settlement of the backlogs at the courts of Bosnia and Herzegovina*, Sarajevo, 2005, p. 4-8.

⁷⁸ HJPC. *Project Proposal «Reduction of case backlogs in courts»*. October 2006, p. 4.

- In summer 2006, the HJPC introduced a new quota system for judges⁷⁹; it is expected that it will result in a more efficient work performance of judges which will also reduce the number of case backlogs;
- The HJPC has increased the number of judicial associates⁸⁰ to assist judges in handling new cases and case backlogs;
- Since 2004 the computerization of courts has been underway; it will have an impact on the efficiency of courts given that the courts will be in a better position to deal with a huge number of cases, including cases already registered in the system;
- The HJPC launched an initiative for management of education, which will be initiated by entity education centres in future;
- The laws on introduction of higher court fees, which will have an impact on the reduction of unfounded complaints, are being prepared;

In addition to these activities, court managers were given training in the court management.⁸¹

⁷⁹ The new system is based on the analysis made by the working groups composed of experienced judges, which pertain to the available „working hours of one judge“ and the total number of working hours necessary for dealing with a specific case category and to the number of cases from each category a judge may handle within the „working hours“.

⁸⁰ In January 2007, 140 legal associates started performing judicial function (unlike those who are not legal associates) in the first-instance courts. All judicial associates are selected and appointed by the HJPC.

⁸¹ *Manual for court management*, which is the result of the project «Improvement of skills in managing the first and second-instance courts“ implemented by the HJPC, financially assisted by the Government of the Kingdom of Netherlands during 2006.

2. Reduction of case backlogs – strategic objective

European partnership

In addition to the above-mentioned concrete initiatives of the HJPC aimed at resolving case backlogs in courts, which have not always achieved desirable affects,⁸² it is necessary to point out the continued dedication of the HJPC and BiH Ministry of Justice to finally resolve the problem of case backlogs through a systematic approach, as a strategic priority, but also to prevent generating new backlogs in future. Among other things, this is also a priority identified in the ***European Partnership with BiH*** under Article 3.1 called “***Short-term priorities – political conditions – democracy and rule of law – judicial system***”. The following is particularly stated as a short-term priority (to be achieved within 1-2 years):⁸³

“Achieve a progress in solving pending cases in courts”.

Strategy for the Justice Sector Reform

The establishment of an efficient judiciary is identified as one of the basic priorities in the proposed Strategy for justice sector reform in BiH for the period from 2008 to 2012. In this respect, one of the strategic objectives of this Strategy is dedicated to «Further strengthening and maintenance of independence, responsibility, efficiency, professionalism and harmonisation of the judicial system ensuring rule of law in BiH»⁸⁴. Within this objective, «efficiency and effectiveness» are emphasized as prerequisites for achieving it. According to this document, «A huge number of case backlogs among which are mostly civil cases, endanger all activities taken so far for the furtherance of court administration improvement. The presence of case backlogs affects the duration of court procedures for newly-arrived cases, influencing in this manner the entire capacity of the courts to process the cases within the reasonable time».⁸⁵ To implement the strategic program, the following activities are proposed for the above reasons:⁸⁶

1. To conduct an analysis of necessary legal changes aimed at reduction of case backlogs in the enforcement case category based on authentic documents and propose corresponding measures
2. To analyse the efficiency in resolving cases in the prosecutor's offices and propose necessary measures for the solution of the problems (legal and others)
3. Introduction of criminal prosecution alternative mechanisms to diminish pressures on courts
4. Development and adoption of plans for the financing the reconstruction of courts from domestic, credit and donor funds based on the architectural-technical plan of the HJPC
5. To fully implement the Informatics and Communication Strategy of courts and prosecutors' offices developed by the HJPC
6. To ensure continuous training in the management area for management staff in judicial institutions of BiH

⁸² HJPC. *Strategic Plan for the period 2007 – 2012. godine*, p. 30.

⁸³ European Commission. *European Partnership with Bosnia and Herzegovina. Proposal for the decision of the Council*.

(translation made by the Direction for European Integrations BiH), 2005., p. 8.

⁸⁴ Draft of *Strategy for Justice Sector Reform in BiH 2008 – 2012*, Decembre 2007, p. 14.

⁸⁵ Draft of *Strategy for Justice Sector Reform in BiH 2008 – 2012*, Decembre 2007, p. 47.

⁸⁶ Draft of *Strategy for Justice Sector Reform in BiH 2008 – 2012*, Decembre 2007, p. 49-50.

7. Develop a policy and pass corresponding regulations stipulating the issue of administration in courts and prosecutors' offices
8. Draft an analysis of the necessary number of judges and prosecutors in light of social changes.

Ministries of justice of BiH, Entities and Cantons, Judicial Commission of Brčko District, HJPC and centres for education of judges and prosecutors in the FBiH and RS are in charge of these measures.

Strategic Plan of the HJPC

This strategic program is also coordinated by the HJPC Strategic Plan for the period between 2007 and 2012, applying its key principles and priorities – Independence, Responsibility, Efficiency, and Quality. The HJPC identified the following measures to achieve the efficiency of judicial system in BiH.⁸⁷

1. Significantly reduce the existing number of unresolved cases
2. Improve the system of debt collection for utility services
3. Develop and implement CMS in all courts and prosecutor's offices
4. Install and maintain judicial wide area network (WAN)
5. Organize a functional ICT support to judiciary
6. Ensure and install the necessary ICT equipment
7. Establish internal capacities and mechanisms in the HJPC for improvement of managerial techniques and skills
8. Improve physical conditions and physical planning of courts
9. Introduce mandatory out-of-court mediation for certain categories of civil cases
10. Improve procedural laws
11. Ensure more often use of court settlement
12. Improve statistical systems and reporting systems
13. Determine an optimum number of judicial function holders
14. Determine an optimum number of employees in judiciary
15. Regulate rights of the judicial staff under labour relations in a unified manner
16. Improve the system of monitoring and assessing the judicial management work performance.⁸⁸

To implement these measures, the HJPC emphasised the necessity of close coordination with the ministries of justice, changes to specific laws, political support and additional funds.

⁸⁷ HJPC. *Strategic Plan for the period 2007 – 2012*

⁸⁸ The first 11 measures directly refer to achieving efficiency of the BiH judiciary, while the other measures may indirectly affect the achievement of this objective.

3. Identification of main resources for the support to the process of solving case backlogs

Both the above-mentioned strategies serve as a basis for drafting of the Action Plan for reduction of case backlogs, as a proof of dedication of the BiH Ministry of Justice, Judicial Commission of the Brčko District and the HJPC to resolve the problem of case backlogs including other problem issues in the BiH justice sector. However, even prior to the adoption of these strategies, the HJPC initiated a whole range of projects aimed at addressing the problem of unresolved cases. This Action Plan intends to actualise the above analysis and recommendations as well as to remind the experts of the already completed tasks. It is more than sure that this information can save a lot of time in the implementation of the Action Plan and serve as a resource for avoiding the repetition of the activities and the continuation of the process from the point where there was a stoppage.

This part also contains an overview of the international projects activities, which may serve as a resource for the continuation of the work on case backlogs. The survey does not represent a detailed list of all potential resources, which is why it would be desirable to undertake the activities directed toward ensuring additional resources.

3.1. Previous projects of the HJPC

To date the HJPC has prepared three project proposals for the improvement of the judicial efficiency,⁸⁹ resolving of case backlogs and reduction of case inflows in the courts. **In 2006 and 2007, these projects were proposed to donors. However, there were no funds provided for their implementation.** In addition, the project documents by themselves are of great importance since they contain detailed analysis of problems and recommendations for the approach to resolving the problem of case backlogs. The recommendations of these projects had two objectives:

- 1. to increase the efficiency in the BiH courts**
- 2. to assist the process of reduction of case backlogs in the courts and the prevention of generating new backlogs in future.**

To achieve these objectives, the following instruments were proposed. They mostly derive from the Guidelines on status analysis and plans for the settlement of the backlogs at the courts of Bosnia and Herzegovina. The realisation of the following measures has been proposed in the following areas:

- Procedural legislation
- organization of work
- human resources policy
- education
- space capacities
- other special measures.

It is necessary to emphasize the importance of the above Guidelines as a comprehensive document defining causes of backlogs in the courts (see the survey above), defining «old cases

⁸⁹ «*Delivering Justice on Time*», March 2006; «*Reduction of case backlogs in courts*», October 2006.; «*Reduction of case backlogs in courts*», August 2007

and backlogs» and a critical degree of the lack of efficiency in all departments, proposing concrete measures for resolving case backlogs. These measures also include concrete recommendations for changes to procedural laws as well as institutional and organisational changes as external measures including a number of internal measures. Taking into consideration the value of these recommendations and the importance of familiarizing all stakeholders in the implementation of the Action Plan with them, the following is a survey of recommendations from the above Guidelines.⁹⁰

External measures:

- Changes to the criminal and civil procedural legislation
- Hiring of trainees and legal associates
- Increase of court fees
- Affirmation of mediation and notary institution
- Delegating cases from the inefficient to the efficient courts
- Introduction of «flying brigade» - group of judges and staff to be delegated to the courts having an alarming number of case backlogs
- Introduction of the institute of mentor (advisor) for judges of lower courts and younger inexperienced judges
- Introduction of obligatory periodical inspections of lower courts by higher courts
- Issuing a new book of rules on judicial quotas
- Establishment of the system of promotion of judges
- Realization of the program of information technologies introduction in judicial institutions
- Finding solution to the problem of funding of judiciary
- Finding solution to the problem of the work premises in the courts
- Introduction of collective annual leave for judges
- Consideration of completely new solutions to relieve the courts to work on non-judicial activities (inheritance, large number of non-litigious cases, land books, various registries, enforcement cases, bankruptcy and liquidation, including all cases in which there is no dispute between the parties)

Internal measures:

- Relieving of judges to work on administrative and everyday activities and their transfer to the administrative staff
- All courts (court presidents) are obliged to immediately determine the number of backlog cases per certain case categories and establish on which case category there is a critical inefficiency of the court and undertake some of the proposed operative measures (resolving of cases according to the year of submission, urgency, separating „typical cases“, uniform assignment of cases to judges, specialization of judges, more efficient use of working time, increasing quota, regular assessment of work performance, etc.)

⁹⁰ HJPC. *Guidelines on status analysis and plans for the settlement of the backlogs at the courts of Bosnia and Herzegovina*. Sarajevo, 2005.

3.2. USAID Justice Sector Development Project

Based upon the aforementioned Guidelines, the USAID Justice Sector Development Project has also modelled some of its activities in the past period. These activities pertain to:⁹¹

- Assistance to the first circle of «model courts» to make their own plans for the settlement of case backlogs based on the HJPC Guidelines. The integral part of the plans are two Tables created by the JSDP including one collective table showing all backlog cases per case category and year of submission of the initial document. This Table gave a clear picture of cases which should be handled as a priority based on which the court presidents carried out the internal assignment of staff and judges, requiring the engagement of additional judges. The other Table showed the statistics of resolving the case backlogs for a foreseen period of time, number and structure of cases which became backlogs, pursuant to legal provisions and HJPC Guidelines on internal and external measures for resolving case backlogs. The result of plans designed in such a manner is the reduction of case backlogs by 45 percent in the District Court in Banja Luka in 2005 and in the Municipal Court in Zenica by 34 per cent.
- The JSDP suggested to the Model courts to employ as many trainees and volunteers as possible (who are not an integral part of judicial or non-judicial staff), and to use them for the work on cases making the highest percentage of case backlogs. This is the case in the Municipal Court in Zenica which employed new nine trainees volunteers in 2005 to enable an efficient implementation of the Plan for the settlement of case backlogs.
- Relieving of judges to work on administrative and procedural aspects of cases; The JSDP suggested to the cantonal courts Mostar and Zenica a new assignment of cases within the departments for administrative disputes where the legal associates were given a new description of activities directed toward relieving the judges from any kind of work on cases except from adjudicating, that is, the work on case meritum. Such a work organisation which was also accepted by other courts (Cantonal Court Tuzla and District Court Doboje), very quickly resulted in better work performance of judges in the quantitative and qualitative aspect of the decisions, which directly affected the reduction of case backlogs in this case category.
- Training of judges in terms of a more efficient case management; the JSDP provided training in terms of an efficient case management from the moment of receiving the case until the issuance of decisions for judges working on criminal and civil cases.
- The Manual for judges working on civil and criminal cases; the purpose of this Manual is to compile all regulations, procedures, typical solutions and forms and controls used in everyday practise in the work on cases and at the hearings, which would enable to the judges to conduct the proceedings in a more efficient manner and make decisions more quickly and in a higher-quality manner.

In addition to the activities within the initiative of Model courts, the JSDP has also made some other efforts which may affect either directly or indirectly the reduction of unresolved cases and generating of case backlogs (for instance, the activities pertaining to the **reform of court fees**, opening a dialogue between the representatives of three branches of authorities and the like).

⁹¹ USAID JSDP Information, January 2009

3.3. Open Regional GTZ Fund Project

There is another project which might be considered as a resource in terms of the approach to resolving the problem of unresolved cases in the BiH judiciary through the implementation of the Action Plan. This is a Regional Project GTZ under the name «Open Regional Fund». This project was initiated at the end of 2007 and has a regional approach for the purpose of exchange of knowledge and experiences and joint initiatives of the countries of the South-Eastern Europe region in the processes of free market development and harmonisation of regulations and practises with the law of the European Union. In this sense, it has been identified five initiatives for two next years. Two of them which are of particular interest for the implementation of the Action Plan for the reduction of case backlogs pertain to the:

- Protection of consumers
- Registration of business subjects into the court registry, bankruptcy and legislation on enforcement procedure.

Given that this project is being implemented through regional seminars several times a year gathering relevant experts from specific areas, it is considered that the participation of BH experts at these seminars would be of great importance for the acquisition of knowledge on comparative solutions to specific issues in the neighbouring countries and for the use of this knowledge in the process of finding solutions for reduction of case backlogs through possibly better solutions in BiH.

3.4. Land Administration Reform Project GTZ

Second GTZ Project dealing with the reform of the land administration for a couple of years, shall continue working on its priorities in the incoming period and in particular on digitalization of land books, which should be completed by the end of 2009, as well as on the improvement of work conditions and the equipment of land registry offices and staff education. According to the Project, such activities would enable an immediate promptness in resolving of land registry cases.

3.5. Canada- BIH Judicial Reform Project

This Project represents an important resource for the implementation of the Action Plan. It was formally initiated in BiH on 20 November 2006, funded by the Government of Canada through the Canadian International Development Agency (CIDA) and implemented by the Konzorcij Genivar – University in Ottawa.

Within three components, the Project supports capacity building and methodologies of the BiH institutions/organisations in the areas which can either directly or indirectly contribute to a more efficient solving of case backlog problem. Among other things, in the area of:

- ***Supervision and evaluation of judicial reform initiatives and institutional reporting*** – The objective of these activities is to establish a coherent mechanism of exchange of information between the judicial institutions and

the Ministry of justice (HJPC, MPBIH, Judicial Commission of the Brčko District and entity ministries), and to improve the institutional capacities in the collecting, analysing and reporting area. With the support of the Project, the Working Group was established ... (composed of the representatives of these institutions).

- ***Creation of concrete reform policies*** – in this context, the policy for reduction of case backlogs with the focus on the „utility bill cases“. This Action Plan is the result of the part of the activities of the JRP. In addition, the JRP fully supported the work of the Initial Working Group for analysing the problem of the „utility bill cases“ (composed of the representatives of the Municipal Court Sarajevo, HJPC and the Project). The Report on the analysis and recommendations for resolving utility bill case backlogs in the courts provides an up-dated survey of the situation, summary of the so far analysis, analysis of the Working Group as well as provides a list of questions together with appropriate recommendations that should be considered while resolving problems of case backlogs.

- ***Capacity building support to the targeted courts*** (human resources, organisation, management and the like) – Within a whole range of the JRP activities, starting from March 2007, it has been providing a continuous support to the Municipal Court Sarajevo (two newly-established Departments for enforcement of small value claims according to authentic documents) and to the Basic Court Banja Luka. As a result of these activities, legal associates assigned to work on these cases considerably improved the work results, which contributed to the increase of resolved cases as compared with 2006. During last year, the JRP provided a valuable computer and supporting equipment, organised training for legal associates working on enforcement cases pursuant to authentic documents and ensured one court administrator/advisor to the Court President in each court. In coordination with the JSDP Project, a continuous support is provided to the activities of the Teams for changes, which assist the court presidents in finding new methodological approaches for an efficient action of the institutions.

- ***Capacity building of the BiH Association of Mediators*** – JRP is continuously carrying out the activities on the promotion of the mediation being one of the methods to resolve the case backlogs. In that sense, the JRP, inter alia:

- created a collection of all relevant regulations, international instruments and forms for the complete implementation of the Law on Mediation „Guideline through mediation in BiH“ (distributed to judges, legal associates, lawyers and mediators).;
- created a Manual and education for mediators in the area of enforcement pursuant to authentic documents and the like.

3.6. Support of the Kingdom of Norway to the Project of reduction of case backlogs in the courts

The Government of Norway decided to support the HJPC in resolving the problem of case backlogs in courts. Concretely speaking, the Backlog Reduction Project - BRP has been established and launched on 1 February 2008.

The donor has already provided support for the first year by sending an expert in enforcement, an international consultant and a local legal assistant. The primary task of the Project shall be giving support to the implementation of this Action.

The continuation of the activities is foreseen for the period of this Action Plan duration.

4. Action plan for reduction of case backlogs

4.1. Description of the activities to be undertaken by the participants active in the implementation of the Action Plan

The objective of the Action Plan is to establish a coordinated approach to finding solution to this problem through the joint work of interest groups, primarily, the representatives of judicial, executive and legislative authorities as well as the representatives of public enterprises, professional associations and non-governmental organisations.

The implementation of the Action Plan should achieve the following five basic objectives:

1. Mechanism established for the coordination between the institutions competent for the reduction of case backlogs
2. Capacities established for the expertise and providing of the recommendations for reduction of case backlogs
3. Defining of policies for finding solutions to the problem of case backlogs per category
4. Defined action policies and envisaged activities implemented

Institutionally speaking, the implementation of the Action Plan shall be based on the establishment of the following bodies:

A. Coordinating Board for funding solutions to the problem of case backlogs in courts

The Coordinating Board is a body that is established by the BiH Council of Ministers upon the motion of the BiH Ministry of Justice. The composition of the Coordinating Board is also appointed in accordance with the decision of the Council of Ministers. The following Board Members shall be assigned per their functions:

- BiH Minister of Justice
- FBiH Minister of Justice
- RS Minister of Justice
- President of the HJPC
- President of the Brčko District Judicial Commission
- Prime Minister of the Sarajevo Canton

The Coordinating Board shall maintain close connections with the competent bodies of the legislative authorities (Collegiums, presidents of the houses of representatives, competent commissions), submit the minutes of its meetings, and inform the above bodies of its objectives and activities for the purpose of ensuring timely consideration of law initiatives before the parliaments.

The following shall be the duties of the Coordinating Board, among other things:

- to adopt the action objectives on the basis of the Action Plan for 2008 and 2009,
- to adopt the rules and work procedures for the coordination with the other institutions,
- to adopt the decision on the number, composition, principles and procedures for the activities of the expert working groups,
- to delagate options of policies and measures for reduction of case backlogs to the Working Groups for their analyses and recommendations as well as to task the Working Groups with specifying the proposals of policies and measures agreed upon the Coordinating Board,
- to adopt final proposals of policies and measures,
- to entrust the members to ensure the implementation of the adopted recommendations in their institutions,
- to meet every four months or more often if necessary
- to inform the public at least once a year on the progress achieved in the implementaion of the Action Plan,
- to make conclusions on the success achieved, inform the public and plan the new activities depending on the evaluation results,
- to establish mechanisms for monitoring of effectiveness of the adopted and implemented policies and measures for reduction of case backlogs in BiH courts. While making such a decision, it shall take into account the necessity of liasing with the body that monitors the implementation of the Strategy for the reform of the justice sector in BiH.

The members of the Coordinating Board shall be committed to:

- participate personally and regularly in the sessions of the Coordinating Board,
- ensure the participation of its institutions in the work of the Working Groups,
- ensure regular and transparent reporting in the institutions they represent
- regularly inform the collegiums of the competent parliaments on the conclusions and decisions of the Coordinating Board,
- ensure the implementation of the recommendations of the Coordinating Board in the competent institutions, by proposing the inclusion of the decisions into the agenda of competent governments and parliaments as well as by establishment the additional mechanisms for the implementation of the recommendations (for instance, new working groups for the specific work on the implementation of defined policies and measures),
- regularly inform on the implementation of the recommendations.

B. Working Groups

Working Groups are expert bodies of mixed composition, tasked with making the analysis o the existing problems, possible options of policies and measures for finding solutions to the problems and drafting of specific recommendations and proposals of changes in the legislation and practice. Based upon the previous research, as a priority, it is proposed to establish the following Working Groups:

Working Group for enforcement procedure:

- one judge for enforcement procedure and one employee
- representatives of the Association of Banks

- representative of the Association of Employers
- representative of the Association of Notaries
- representatives of the ministries of justice
- international enforcement expert (within the project of the HJPC)
- HJPC

Working Group for utility bill cases:

- an appropriate number of judges to work on enforcement cases based on authentic documents
- an appropriate number of judges to work on cases of small value claims (Mals and Mal)
- representatives of the ministries of justice
- representatives of the public utility enterprises
- representative of the Association of Customers
- representative of the ministries for social affairs
- representative of the Canadian Judicial Reform Project
- international enforcement expert (project of the HJPC)
- HJPC

Working Group for civil procedure:

- 2 judges to work on civil cases
- representatives of bar associations
- representative of the non-governmental organisation providing free legal aid
- representative of the trade unions
- representative of the BiH Association of Mediators
- representative of the Canadian Judicial Reform Project
- representatives of the ministries of justice
- HJPC

All the above institutions should ensure the presence of their representatives at the workshops of the Working Groups. It includes permitting the leaves of absence and ensuring financial means intended for daily allowances and travel expenses. The international projects included into the activities of the Working Groups shall support holding of the workshops.

Working Groups shall be committed to:

- appoint the head of the Working Group, who will have the role of a contact person for the communications with the competent institutions and the Administrative Support Unit as well as the role of the referee to the Coordinating Board,
- determine the work plan according to the assignments,
- maintain an efficient contact with the Administrative Support Unit (recommend the communication via electronic mail) to provide documents and other sources of information necessary for their work and coordination with other institutions,
- use the expert and technical assistance of the international projects being the sources of knowledge and information,
- hold the determined number of workshops for the problem analysis, options of policies and measures and drafting of recommendations for the Coordinating Board,
- comply with the obligations established by the work plan with regard to the preparation of the workshop materials,
- comply with the deadlines envisaged by the Action Plan and their own established dynamics,
- report the Coordinating Board and submit the materials according to the established dynamics.

The expertise of the Working Groups should be based on the following postulates:

- Working Groups shall base their work on the options proposed by the Coordinating Board, in accordance with the strategic decision or their own researches,
- Working Groups shall base their work on the analysis already made as well as establish their attitudes towards the above analysis or new proposals in order to redefine the best and most effective solutions,
- The analysis of the Working Groups shall include: statistical data on the number of unresolved cases and their structure, the existing legislation, the existing institutional and organisational solutions of the courts and other institutions and the evaluation of the feasibility of solutions and necessary financial means,
- Analysis and recommendations of the Working Groups shall be based on the established good practices and comparative analysis of solutions in the neighbouring and other countries,
- Analysis and recommendations of the Working Groups shall also include potential risks and contradictions with regard to the existing or planned rules and practices,
- Working Groups shall determine specific changes and amendments to the legislations, institutional and organisational solutions.

Members of the Working Groups shall be committed to:

- regularly attend all workshops of the Working Groups
- actively participate in the activities of the workshops
- prepare necessary materials and opinions for the workshops
- give presentations of their findings during the workshops
- represent the interests of their institutions/organisations in coordination with the other participants in the workshops as well as to work on finding efficient solutions, suitable for all interest groups
- comply with the deadlines established by the work plan of the Working Groups.

The representatives of the same institutions may be the members of more than one Working Group in case their professional orientation and qualifications are in accordance with the tasks of the Working Groups. As necessary, it is possible to establish the sub-groups whose referee shall regularly inform the heads of the Working Groups or at least every fifteen days. The proposals of the sub-groups shall be analysed at the meetings of the Working Groups before their submission to the Coordinating Board. The meetings of the Working Groups may be also attended by the representatives of other institutions (for instance, Ministry of Finances), if required.

C. Administrative Support Unit

The tasks of this Unit shall be carried out by the HJPC Project for reduction of case backlogs.

The Administrative Support Unit shall have the obligation to:

- perform the tasks of communication and coordination with the members of the Coordinating Board,
- maintain regular contacts with the heads of the Working Groups for the purpose of coordinating the activities,
- provide administrative and expert support to the Coordinating Board and Working Groups,

- prepare relevant materials for the work of the Coordinating Board and Working Groups,
- give proposals for the work of the Coordinating Board and Working Groups,
- participate in the work of the Working Groups,
- ensure contacts between the Coordinating Board and the heads of the Working Groups,
- ensure the coordination with the Working Group „Judiciary“ in the implementation of the Strategy for the Reform of the Justice Sector in BiH, together with the Sector for Strategic Planning, Coordination of Assistance and European Integrations (SSPKPEI) of the Ministry of Justice of Bosnia and Herzegovina,
- ensure the coordination with other relevant institutions and international projects for the purpose of ensuring the support to the implementation of the Action Plan.

4.2. Action Plan

The Action Plan covers the period from 7 March 2008 to 1 March 2010.