



Justice Sector Future Reform Policy Instruments and Framework in Moldova

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Introduction

The Moldova Justice Sector Reform Strategy¹ and Action Plan² adopted in 2011 will expire by the end of 2016. In order to ensure continuity and consolidation of the reform process and to keep momentum there is a need to assess lessons learned and to identify the most appropriate format of further policy instruments and framework.

The report is based on a brief twenty day assessment carried out in October and November 2015 on the format, scope, timeframe and overall set-up of the Strategy and Action Plan for Justice Sector Reform in Moldova for the period 2011 to 2016 (further referred to as “the Strategy” and “Action Plan” respectively).

The assessment is based on the Strategy for Justice Sector Reform³, Action Plan⁴, reports on the implementation of the Strategy⁵, reports on the Implementation of European Neighbourhood Policy⁶, the National Development Strategy 2020⁷ and the Midterm Expenditure Framework for the Justice sector 2012-14⁸. It further included interviews with key stakeholders including the Ministry of Justice (MoJ), the Ministry of Finance, Ministry of Internal Affairs, the Secretary of the National Council for Law Enforcement Bodies Reform (NCLEBR), the Superior Council of the Magistracy, Supreme Court of Justice, General Prosecutors Office, State Chancellery, National Institute of Justice, Ombudsman, Legal Committee of the Parliament, Anti-corruption Centre, National Commission for Integrity, Council for Guaranteed Legal Assistance, Mediation Council, Bailiffs Chamber, the Bar Association, as well as international development partners and civil society organisations contributing to the reform, including UNDP, USAID/ROLISP Programme, OSCE, Council of Europe Office in Moldova, Embassy of Sweden, CRJM, NORLAM, PromoLex, Transparency International, SOROS and EU technical assistance projects in the justice sector. The semi-structured interviews covered particular stakeholders involvement in the process of preparation and consultation during drawing up the Strategy and Action Plan; their view on the scope of these documents ;challenges in the implementation related to the timeframe, capacities and set-up; their view on the efficiency of the current mechanism for monitoring and evaluation; and a discussion of different options for reform coordination and management during implementation. Objective of the interviews was to identify good practices and challenges related to the selected group of topics.

At the end of the mission a roundtable was organized with the same stakeholders to present the findings and discuss good international practices in designing and applying justice sector reform frameworks, proposals regarding the preparation and consultation process, scope of future policy instruments and mechanism for implementation, coordination and monitoring.

The findings are also based on author’s work on judicial reforms in Western Balkans countries and on experience in development of justice sector policy documents, implementation of the policy documents, assessment of achievements and establishment of effective mechanism for coordination, monitoring and evaluation.

¹ Enacted by Law no. 231 of 25 November 2011.

² Approved by Parliament Decision no. 6 of 16 February 2012.

³http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_pa_srsj/SRSJen.pdf

⁴http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_pa_srsj/PA_SRSJ_adoptaten.pdf

⁵http://www.justice.gov.md/public/files/RAPORT_implementare_PA_SRSJ_eng_red.04.03.13.pdf

⁶http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/rapoarte/2015/RAPORT_ANUAL_SRSJ_2014_ENGL.pdf

⁷http://eeas.europa.eu/enp/pdf/2015/repulic-of-moldova-enp-report-2015_en.pdf

⁸<http://www.imf.org/external/pubs/ft/scr/2013/cr13269.pdf>

⁸<http://mf.gov.md/en/middlecost>

The report contains a brief description of country sector context, a summary of the justice reform preparation and implementation process, a description of the current coordination and evaluation and monitoring mechanisms and mechanisms for justice reforms in other countries. The final chapter contains recommendations and the way forward and incorporates both the author's recommendations and the expressed views during the final roundtable.

1. Justice sector

Although the constitution provides for an independent judiciary, judicial and law enforcement officials have a reputation for politicization and corruption, as assessed by several sources, including Freedom in the World 2014,⁹ the Human Rights Report 2013¹⁰ and Implementation of the European Neighbourhood Policy in the Republic of Moldova Progress in 2014¹¹. This perception is supported by the Global Corruption Barometer 2013, which reports that more than three-quarters (80%) of surveyed citizens perceive the judiciary to be corrupt and one third (34%) reporting paying a bribe to judiciary, placing it among the most corrupt institutions included in the Moldova survey¹².

According to the Global Competitiveness Report 2014-2015¹³, companies in Moldova do not perceive the legal framework for settling disputes or for challenging regulations to be sufficiently efficient. In addition, the Investment Climate Statement 2015¹⁴ reports that the judiciary is considered have low level of efficiency and citizen trust.

According to the WB Doing Business 2015¹⁵ Moldova stands at 42 in the ranking of 189 economies on the ease of enforcing contracts. On average the enforcement of contract takes 567.0 days, costs 28.6% of the value of the claim and requires 31.0 procedures.

[The Global Competitiveness Report 2014-2015](#)¹⁶: Business executives give the independence of the judiciary from influences of members of government, citizens or company a score of 2.0 on a 7-point scale (1 being 'heavily influenced' and 7 'entirely independent').

When the performance of the justice sector is discussed as well as perception of corruption it is necessary to assess available resources within the system. According to the CEPEJ data from 2014¹⁷ Moldova has the twice lower number of judges per 100.000 inhabitants than the European median.¹⁸ The level of remuneration of judges in Moldova is below¹⁹ the available European benchmarks (2.1 - 3.9 x the average gross national salary). Moldova has between 1 and 2 courts per 100.000 inhabitants, what is in line with the European median.

According to the CEPEJ report 2014 the Republic of Moldova has to strengthen monitoring and evaluation system in order to strengthen policy making capacities.²⁰

⁹<https://freedomhouse.org/report/freedom-world/2014/moldova>

¹⁰<http://www.state.gov/j/drl/rls/hrrpt/2013humanrightsreport/index.htm?year=2013&dclid=220247%20-%20wrapper#wrapper>

¹¹http://eeas.europa.eu/enp/pdf/2015/repulic-of-moldova-enp-report-2015_en.pdf

¹²<http://www.transparency.org/gcb2013/country/?country=moldova>

¹³http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf

¹⁴<http://www.state.gov/documents/organization/241877.pdf>

¹⁵<http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Profiles/Country/ALB.pdf>

¹⁶http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf

¹⁷http://www.coe.int/t/dghl/cooperation/cepej/cooperation/Eastern_partnership/ENG_Efficient%20Judicial%20Systems%202014%20FINAL.pdf

¹⁸ In Moldova there are 12.6 judges per 100.000 inhabitants in comparison to 21.3 as European median.

¹⁹ It is from 1.5-2.2.

²⁰http://www.coe.int/t/dghl/cooperation/cepej/cooperation/Eastern_partnership/ENG_Efficient%20Judicial%20Systems%202014%20FINAL.pdf

2. Justice sector reform strategy 2011-2016 lessons learned

The Strategy, developed through consultative working group, was adopted by the Parliament in November 2011 and entered into force in January 2012. Accompanying Action Plan for its implementation was adopted by the Parliament in February 2012 and published in June 2012. The Strategy is the first broader reform policy document in justice sector, covering not only judiciary but also anti-corruption, human rights and penitentiary system. Both the Strategy and Action Plan address justice sector reform in the context of seven key pillars: I. The judiciary; II. Criminal justice; III. Access to justice and enforcement of courts' decisions; IV. Integrity of the players in the justice system; V. The role of justice in economic development; VI. Observance of human rights in the field of justice; and VII. Well-coordinated, managed, and responsible justice system.

The aim of the Strategy is to improve efficiency, impartiality, accountability and transparency of the judicial services, as well as to strengthen capacities of the self-regulation bodies and administration of justice system and to prevent and fight against corruption. The long term goal is to regain trust of the citizens in the judiciary.

The “determining factors” that define the need for reform are summarized in the strategy as follows: low level of confidence in the system; aspirations for EU integration; perception of corruption; need to create favourable environment for economic growth. Earlier reforms were not sufficient and only in fragmented manner tackle problems in the justice sector.

Although the reform program aimed at improving the performance of the court system and other dispute resolution institutions, there was also expectation to enhance sector contributions to higher level objectives such as improved governance (including greater political stability, and reduction of crime and violence) and enhanced economic performance (higher growth, reduced poverty, and equitable access by all citizens).

The justice sector reform required substantial investment programs with considerable financial support of donors. Moldova invested significant amounts in this reform program. The EU signed the Financial Agreement on the budget support²¹ to implement the Justice Sector Reform Strategy in Moldova in 2013, for a total amount of 60 million euro.²² Beside the European Union (EU), other donors that made substantial contributions to implementation of specific activities envisaged in the Strategy are: the Council of Europe (CoE), United States Agency for International Development (USAID), the Organization for Security and Cooperation in Europe (OSCE), the United Nations Development Programme (UNDP) and the other bilateral donors (Sweden, Norway, Germany, Romania) and foundations (Soros Foundation, Konrad Adenauer).

2.1. Preparation process

A variety of institutions are involved in the governance of the justice sector, and reform initiatives can be negatively (or positively) affected by any of them. At the same time, the

²¹ EU budget support is the main form of EU assistance in the Eastern Partnership region. It involves dialogue, financial transfers to the partner country, performance assessment and capacity development, based on partnership and mutual accountability. Budget support is used to support reforms in mutually agreed sectors.

²² The financial assistance provided by the European Union conditioned by meeting performance criteria specified in Policy matrix coordinated with the European Union. So far, 28.2 million Euros of total amount have been transferred into the state budget and have been allocated for the implementation of measures envisaged in JSRS and AP JSRS, respectively. Disbursement of next installment is put on the hold and condition with implementation of the prosecutors reform and fight against corruption.

service delivery chain is only as good as its weakest link yet it may be difficult for one part of the chain to influence another, as they have different incentive and governance structures (e.g. prosecutors' performance affecting court cases). It is therefore key to generate a minimal level of consensus around a strong reform leadership for reform initiatives so as not to be doomed from the outset.

Continuously involving the main stakeholders affected by the changes at an early stage in the reform process significantly enhances its chances for success. The good example is the Dutch reforms, which were initiated partly from within the judiciary itself and followed an inclusive bottom-up approach that was essential to build trust. This trust was critical to ensure the reforms' success. A sustainable process that effectively raises the quality of the justice services will need the support from court staff at all stages. Strong opposition among key institutional players (e.g. Judges vs. Ministry of Justice) diminishes the chances of success. During a participatory preparation process for the justice sector reform strategy each institutional player will have to acknowledge that the values pursued by the other are equally valid (e.g. Judges: fairness, Government: efficiency).

The Justice Sector Reform Strategy in Moldova was formulated by a working group in an intensive process which involved a prolonged retreat where the basic features of the strategy took form. Stakeholders, state institutions, CSOs and donors/international community were invited to participate. However the short period for consultation was planned (including the fact that it occurs during the summer holidays), which resulted with the stakeholders perception that the whole preparation process was not inclusive.

Stakeholders reported that in the phase of consultation process when was required to provide written comments there was lack of reasoning why specific comment was not accepted. The lack of reasoning caused perception among some stakeholders that consultation process was not conducted in good faith.

Short consultation process reflected on the quality and content of Strategy itself: ambitious activity plan, ambitious deadlines, lack of coherence in activities among pillars, improper identification of responsible institution and improper initial cost estimation.

Draft Justice Sector Reform Strategy was assessed by Council of Europe experts as „an ambitious plan to strengthen the rule of law and observance of human rights in Republic of Moldova“.²³

The Justice Sector Reform Strategy and the Action plan were adopted by the Parliament which present a good practice having in mind that justice sector involves independent institutions. Also commitment of the state is stronger if document is adopted by the legislative body.

2.2. Scope of the Strategy

The scope of the reform programme being undertaken varies from one context to another. Most justice sector reform programmes address both the criminal and civil justice systems – both of which are central to justice provision. Some reform programmes may be more limited and cover only certain institutions or functions of the system – for example, police or prison reform, or legal reform within specialised areas such as commercial law and labour law. Administrative law may be dealt with by both public administration institutions and the judiciary and could also be the focus for reform. Examples include immigration law, land law, social welfare law, labour law, and taxation law. In countries where justice institutions also

²³http://www.coe.md/images/stories/Articles/JP-Dem/demsp_expertise_on_jsr_strategy_2011-2015_by_t.tomashvili_en.pdf

provide administrative services such as civil registry (birth, marriage and death registration), land titling and business registration those issues are covered by justice reform strategies.

Context and stakeholder analyses provide the basis for deciding whether and how to reform justice sector. Possible scope for justice sector reform include: **constitutional and legal reform** - because the constitution provides the framework within which subsequent justice sector reform can be pursued, constitutional reform processes provide a crucial entry point for addressing foundational issues related to justice and the rule of law; **competitive environment for enterprise development** - where a country has prioritised growth and competitiveness, the authorities may champion reform of the justice sector to improve the investment climate (increasing the speed and efficiency of contract enforcement, developing best practice commercial laws, ensuring business registries function well); **anti-corruption activities** - anti-corruption activities often include an important element of strengthening the justice sector (legal reform, capacity development of the prosecution and the judiciary to investigate, prosecute and sentence corruption cases and the development of ethical codes and supervision measures to reduce corruption within the justice sector itself); **reform at the institutional level** - reform-minded institution may provide opportunities to develop the reform agenda by assisting with the piloting of new approaches; **sector wide approach** - sector approach involves a sector strategy with a set of objectives, a sector programme developed by a partner country (with the support of development partners), a medium-term financial framework for the delivery of reforms and other needs, and a network of development partners working together with the partner country to support reforms.

Although sector wide approach is encourage in the EU accession process and has its benefits there are some challenges identified in Western Balkan countries during the implementation of this approach: capacities of government institutions to implement and manage this process; lack of adequate capacity to ensure accountability; executive capacity to negotiate with other stakeholders; political risk due to change of administration; delays to implementation of priority activities, etc.²⁴

In 2011 Moldova decided to take sector wide approach in justice sector reform and, as discussed its Parliament adopted a comprehensive Strategy and subsequently Action Plan covering judiciary, anti-corruption, human rights and penitentiary. Comprehensive approach is justified for the first broad justice reform strategic document, especially having in mind sector budget support provided by the European Union.

After more than four years of implementation of comprehensive Strategy it is possible to identify challenges arising from the broad scope of the document like capacities of the institutions to manage process of implementation of Strategy; capacities to negotiate with other stakeholders; delays in implementation of priority activities, etc.

2.3. Coordination and monitoring mechanism

Comprehensive strategy requires complex coordination and monitoring mechanism. In Moldova several levels of the coordination and monitoring mechanism were established: **National Council, Working groups** for each Strategy pillar and **Secretariat** attached to the Ministry of Justice as a body that should provide technical support to the working groups.

A mechanism of cooperation with donors and development partners in the justice sector is facilitated by the Ministry of Justice and includes regular joint and individual meetings with all donors and development partners in the field of justice, involving donors and development partners in the activity of the Working groups and informing them on a regular basis on

²⁴http://ec.europa.eu/enlargement/pdf/projects-in-focus/donor-coordination/implementing_sector_approaches.pdf

progress in implementation of the Strategy and the Action plan. Besides that, since late 2013 the MoJ (with the support of the same EU Project) maintains an online platform for coordination of international development partners' and civil society organisations' contributions to the justice sector reform.²⁵

A directory of the Ministry of Justice website is dedicated to the mechanism for coordinating and monitoring the Strategy implementation.²⁶ This directory contains all documents deriving from its activity, including agendas and minutes of all meetings of working groups on Strategy coordination and monitoring.

In May 2011 the acting President of Moldova set up a National Council for Law Enforcement Bodies Reform, which includes high level public officials from all law institutions of Moldova and representatives of scientific and civil society. The Council is to supervise coordination between these various agencies to achieve consensus on the nature of the reforms and the manner and timetable of their implementation.

Overall **responsibility for implementation** of the Strategy rests with the Ministry of Justice, but actual reform depends upon the actions by several institutions, many of which are not accountable to the Government. To coordinate participation of relevant stakeholders and to support Action Plan implementation seven working groups have been established one for each of the key pillars of reform.

Working groups have been established to monitor implementation of the activities defined in the Strategy and the Action Plan. The activity of the Working groups is governed by an operating Regulation²⁷ and a monitoring Methodology approved by order of the Minister of Justice. There was established a mechanism, by the same Regulation, for solving potential conflicts that may arise between implementing institutions. The Ministry of Justice adopted Communication plan to promote the outcomes of the Justice Sector Reform Strategy.

For each pillar a working group is nominated by the Minister of Justice with members from involved institutions, CSOs and International Organizations. Six working groups were established for first six pillars of the Strategy. Seventh working group was established for the seventh pillar of the Strategy and for overall coordination of the Strategy. The working groups are responsible for implementation of all activities identified under their pillars, monitor implementation and produce progress reports. Several institutions are involved in each pillar depending on their mandate.

During the interviews it was reported that the operation of working groups was too formal, only occasional there were discussion on substance of the activities. Working groups have monthly meetings. While organization of monthly meetings is good for encouragement of cooperation and exchange of information between representatives of different institutions, it could also become burden for members of the working groups since participation at the meetings require preparation and additional work. Second issue is twofold position of the working groups' members role. Namely, members of the working groups are representatives of the institutions and often they have to report on progress in implementation of the Strategy achieved in their institution. At the same time, they have to vote on achievements of Strategy activities (implemented, not implemented or partially implemented).

Level of representatives in the working groups is an open issue, should it be high level representatives' or mid-level representatives. Level of representatives influence on the mandate of the working groups as well as on frequency of meetings.

²⁵ <http://srsj.justice.gov.md>

²⁶ <http://www.justice.gov.md/category.php?l=ro&idc=155&nod=1&>

²⁷ Order on approving the Regulation on the operation of Working Groups to coordinate and monitor the implementation of the Justice Sector Reform Strategy for the years 2011-2016

It was reported that in spite of the adoption of relevant regulations, developing a uniform reporting templates, there is a need in improving coherence and quality in the reporting among institutions. Thus, there is a mitigation strategy and to standardize reporting quality for the next policy document, including increasing reporting skills of the involved institutions.

In establishment of the coordination and monitoring mechanism for the justice sector reform decision makers should have in mind a number of justice sector specific challenges. This does not necessarily mean that these challenges are entirely exclusive to justice sector, but rather that such challenges are more frequent, more pronounced and require coordination and monitoring mechanisms and processes to be adapted accordingly:

- **Complexity of the justice sector** – Justice system have many constituent parts and each sub-sector differs significantly in its purpose, functioning and orientation. It is thus hard to track and evaluate changes, especially as one sub-sector may be affected by several others. It is also a challenge to find monitors who have knowledge of both justice sector and monitoring and evaluation.
- **No ideal justice system** - There is no one international blueprint for what a justice system or its constituent parts should look like, and thus a lack of agreed international models against which to measure outcomes.

There are also a number of issues around coordination and monitoring. In some cases, monitoring mechanism can identify problems and suggest better policy and practice; in other cases, there are deeper, structural issues which monitoring systems can only acknowledge. Some of the issues that Moldova faced with in implementation of the Justice Sector Reform Strategy are:

- **Poor local ownership** - In development of the Justice Sector Reform Strategy the leaders of the preparation process did not pay sufficient attention to building stakeholders capacities for monitoring process, and thus the monitoring is seen as external obligation that representatives of stakeholders have to accomplish in parallel to their daily duties.
- **Staff turnover and workload** - High staff turnover, a lack of guidance and heavy workloads all dissuade or prevent staff from routinely collecting and analysing information on the progress in the justice sector. Problem of staff turnover is especially important for the Secretariat that should provide technical support to the working groups.

The Action Plan provides a **cost estimation** for the introduction of the Justice Sector Reforms over the period to 2016 of around MDL 1.9 billion (approximately EUR 125 million), compared to an annual budget for 2012 for the justice system of about MDL 384 million (EUR 24 million). Initial cost estimation was not properly identified and during the implementation of the Strategy it was corrected. Lessons from cost estimation should be included in the next policy document.

It is reported that there is a lack of direct link between planning of the implementation of activities and financial management which causes problems in practice. Mitigation strategy could be inclusion of persons responsible for financial issues in the work of the bodies responsible for the planning and implementation of the Strategy activities.

- Lack of commitment among institutions

The success of justice sector reforms depends on cooperation of a range of institutional actors that only strong reform leaders can build. Ownership of, and support for, the reform process by the judiciary is essential to avoid deadlock and to sustain the reforms in the long-term.

The Prosecution and the Judiciary however felt that they had been pushed and that they had not been listened to. This feeling included judges and prosecutors working in other institutions.²⁸

The MoJ felt that these groups had not been sincerely interested and active, and there seems to be a feeling that the Judiciary and Prosecution are closed clubs looking after their own interests and not looking after the interests of justice or the society.

Lack of commitment influenced on communication within institutions involved in implementation of the Strategy as well as on communication among institutions. It was reported that there were no reliable and defined exchange of information between representatives of one institution; especially if they are staff of different departments of one institution. Additional problem presents lack of communication between institutions and there is a need to define mechanism for information exchange beyond working groups meetings.

- Indicators were activity based instead of output based

The Action Plan provides a **framework for monitoring** implementation of reforms. Performance monitoring has not been well established through the sector or the sector institutions.

The elaborated set of activities is not furnished with an adequately developed system of **indicators, expected results** of the reform at the outcome and impact levels. Moreover, the Strategy lacks a coherent guidance on measures for assessment of its implementation.

When designing monitoring systems and planning evaluations, it is also necessary to be clear about the ‘dimensions’ of change which the reform is trying to achieve. Justice Sector Reform can seek change along a large number of different dimensions, each of which can be addressed at several result levels: impact, outcome, activity/process.

The Justice Sector Reform Strategy Action Plan does not allow to measure outcome of the implemented activity, e.g. amendments to law is activity and indicator is law adopted by Government and submitted to the Parliament without indicator in which direction the law will be amended and what type of change it will cause.

- Measuring level of implementation was a challenge

When working groups had to decide on the level of implementation of the specific activity of the Strategy it was a challenge to evaluate in the situation when activity is under implementation. It was necessary to develop sophisticated model for evaluation level of progress.

- Need for periodic review (short term, medium term)

Strategy envisaged monitoring mechanism on the basis of monthly meetings and annual reports however there is a need for period review of the whole Strategy toward the short term and medium term goals and priorities. Base on the review it is possible to adapt Strategy and Action plan.²⁹

- Role of CSOs in monitoring – need for institutionalized mechanism

²⁸Assessment report on coordination and management mechanisms for justice sector reform in Moldova by Thomas Thomsen, 2011, Council of Europe and EU joint programme „Democracy support programme in the Republic of Moldova“.

²⁹ The EU “Project to Support Coordination of Justice Sector Reform in Moldova” supported review of the Strategy and Action plan and preparation of amendments to both documents. However, financial constraints and political situation has prevented the adoption of the amended Strategy and Action plan.

The Regulation on the operation of the working groups envisage that each group includes from two to four permanent members, representatives of the civil society, while other civil society representatives are drawn into the Working Groups whenever necessary for the implementation of the Strategy. Civil society organizations are also encouraged to be involved in monitoring of the implementation of the Strategy.

Some civil society organizations prepared monitoring reports on the quarterly basis on implementation of the Strategy as alternative reporting to the Annual report prepared by the Ministry of Justice. However these reports are *ad hoc* supported by donors as a short term project activity that does not cover whole duration of the Strategy.³⁰ There is a need to develop mechanism that will enable CSOs to be encouraged, get support and increase their capacities to prepare reliable regular alternative reports during implementation on the Strategy.

3. Western Balkans experience in justice reform

3.1. Preparation process

Preparation and discussion process is always challenging for justice sector policy documents. Having in mind number of stakeholders relevant for the justice sector as well as their position and independence from each other it is necessary to prepare in advance plan for preparation process. In drafting of the justice sector policy documents in the Western Balkans countries it is possible to separate few steps:

- Discussion all over country to agree vision and goals – in all countries Strategy drafting process was run mainly by Ministry of Justice which requires that all stakeholders must be consulted and involved in order to ensure ownership over the document. Main judiciary stakeholders were consulted not only in capital but also in all biggest courts in each country. High level representative of the Ministry of Justice leaded discussion over the country. In Serbia and Bosnia and Herzegovina Minister himself chaired whole process or at least majority of discussions.
- Establishment of Working group for drafting – working group for drafting document is usually established to include representatives of all relevant stakeholders. Working group is usually functioning as consensus reaching mechanism while technical writing of the text is conducted by the MoJ staff or with the donors support.
- Broad consultations – round tables and focus groups are organized with the representative of judiciary, judicial professions, civil society, business representatives, international community, etc. Aim of the consultations is to present draft policy papers and to collect comments and suggestions on the draft document.
- After round of round tables and focus groups the stakeholders were invited to provide written comments. In Serbia and Bosnia and Herzegovina the Ministry of Justice prepared list of the comments and table with the reasoning if some comment is not accepting. In Bosnia and Herzegovina the separate chapter of the Strategy contained whole Annex dedicated to consultations supporting the development of the Strategy.

³⁰<http://www.promolex.md/index.php?module=publications>

- Draft document and comments were available on the websites for discussion
- Adopted by the Parliament – in Croatia, Bosnia and Herzegovina, Serbia and Montenegro justice reform strategies were adopted in the Parliament (except the first Montenegro Strategy).

3.2. Scope of the Strategy

Scope of the justice reform strategies varied in the Western Balkans countries, even in the same country different justice strategies have different scope. Scope of the justice strategies was changed based on the lessons learned from previous strategy and reform needs (assessments of the implementation of the previous strategy).

Whole Western Balkan region is involved in EU integration process that significantly shaped scope of the justice sector reform policy documents.

3.2.1. Serbia

First Serbia Justice Reform Strategy was adopted in 2006 for the five year period. Scope of this first document was relatively narrowed with the main focus on courts. The Judicial Reform Strategy is primarily devoted to the reform of the Serbia's court system. It also addresses, to a limited extent, other parts of the justice system: the Ministry of Justice, the prosecutorial and penal systems, the law faculties, and independent judicial professions.

Main pillars of the Strategy were³¹:

- Independence (Self Governing Structure/Judicial Councils, Independent Budget, Independent Policy and Rule Making Authority)
- Efficiency (standardize system for education and training, modern court network, improved access to justice)
- Accountability (clear judicial productivity and performance standards, effective case management, effective use of judicial and prosecutorial resources)
- Transparency (open judicial selection, promotion, discipline and removal from office; appropriate access to court records and proceedings; enhanced public outreach and participation).

The initiatives are grouped according to **short-term** (2006-2007), **medium-term** (2008-2009) and **long-term** (2010-2011) implementation timeframes.

Reform of Prosecutors is very briefly regulated. Main guidelines are written in the Strategy: position of public prosecutors (improvement toward greater autonomy), organization of prosecution system toward decreasing hierarchical subordination; establishment of the State Prosecutorial Council on the same ground as High Judicial Council, etc. As a result of very short description of guidelines without specific activities for prosecutors the authorities were pressured to replicate courts activities to the public prosecutors and State Prosecutorial Council.

³¹Content of the pillars is also presented to ensure understanding.

Second Justice Reform Strategy was adopted in 2013³² for the five year period of implementation. Scope of the Strategy was broaden to include in details courts and judges, prosecutors offices and prosecutors, judicial and prosecutorial staff and judicial professions (notaries, bailiffs, mediators) including access to justice. Anti-corruption topic was covered only through integrity and discipline of judges, prosecutors and staff. In parallel to the adoption on Justice Reform Strategy the Parliament adopted separate Anti-corruption Strategy that regulates whole area of prevention and fight against corruption. Both documents were prepared with same vision and activities were coordinated between Strategies. Third Strategy that was adopted in 2013 and is linked with the Justice reform Strategy was Strategy for reform of penitentiary administration.

Pillars of the Justice Reform Strategy in 2013 were:

- Independence (transparent and independent function of State Prosecutorial Council and High Judicial Council; full independence in budgetary powers; strengthening the analytical capacities of the SPC and HJC; objective process of election, promotion and responsibility of judges and prosecutors; introduction of career system for judicial office holders)
- Impartiality and quality of justice (adherence to standards of professional ethics and integrity, introduction of transparent measures for prevention of conflict of interest, strengthening the autonomy and integrity in representing property interest of Serbia, Guaranteed right of the party to the “natural judge”, Improvement of the access to justice and strengthened protection of human rights and freedoms, Clear legal framework in accordance with the social development and international standards, uniformity of case law, Provided public access to legal regulations, case law, judicial records and proceedings databases, Establish pro-active relationship with the citizens, Establish assistance and support services for victims and witnesses)
- Competence (improvement of competence of judicial office holders, improvement of initial training of the Judicial Academy and increasing its importance in the process of election for judicial office holders, introduction of the overall access to training of judges and prosecutors assistants, improvement of competence of administrative staff in courts and prosecutors offices, Introduction of systemic approach to the training of judicial professions representatives, support to the reform of the education system at the law schools; Reform of the bar exam; Strengthening the capacities of JA with aim of fully integration of its activities in the judicial system)
- Accountability (Establishment of clear, objective and transparent standards for performance appraisal, Efficient and transparent instruments for applying standards and analysis of work performances, Functional and transparent mechanisms of accountability, Functional and transparent mechanisms of accountability of judicial professions` representatives, Enhancing accountability mechanisms of court and prosecutorial staff)
- Efficiency (Establishment of an effective and efficient network of courts` and prosecutors` offices, improvement of an internal procedures of work of the Ministry, courts and prosecutors` offices and enhancement of the infrastructure; Establishment of e-justice; Resolving cases within a reasonable time and establishment of an efficient and sustainable system for resolving old cases, based on the priority principle;

³²<http://www.mpravde.gov.rs/files/Nacionalna-Strategija-reforme-pravosudja-za-period-2013.-2018.-godine.pdf>

establishment of an effective and sustainable public notary system; Establishment of an effective and sustainable system for enforcement of the court decisions; Further development of international judicial cooperation).

3.2.2. Croatia

Development of the Justice Sector Strategies and scope of the documents were shaped with the EU integration process and accession of Croatia to the EU.³³

Croatia adopted the first Justice Sector Strategy in 2006 for the period till the end of 2010. The first strategic document covered **courts and judges, prosecutors' offices and prosecutors and anti-corruption. Pillars of the Strategy were:**

- Efficiency (judicial network, backlog, remove of non-judicial cases, Alternative dispute resolution, re-organization of court administration, harmonization of case law, free legal aid)
- Anti-corruption

Second Strategic document that Croatia adopted was revision of the Action plan of the Justice Reform Strategy from 2006. Revision of the Action plan was opening benchmark for the negotiation process with the European Union. Revised Action plan from 2008 significantly changed the Scope of the justice reform. **Action plan included courts and judges, prosecutors and prosecutors' offices, judicial professions and access to justice.** Anti-corruption was removed and regulated by the separate Strategy.

Pillars of the revised Action plan were:

- Independence
- impartiality
- professionalism and competence
- Efficiency
- Free legal aid
- Penitentiary
- War crimes

Next policy document Croatia adopted in 2011³⁴ for the period till 2015 as a requirement for the closing negotiation with the EU. New Justice Reform Strategy was focused on courts and judges, prosecutors and prosecutors' offices and judicial professions. Pillars of the Strategy were:

- Independence (elections of judges and prosecutor, role and capacities of Councils, strengthening of the Judicial Academy, role of school for judicial staff, integrity and ethic codes of judges and prosecutors, conflict of interest, control of assets declaration)
- Efficiency (backlog reduction, regulation of bailiffs and expert witnesses, alternative dispute resolution; organization of judiciary - court network, enforcement, administrative courts, misdemeanour courts, labour courts; infrastructure and equipment; IT – finalization of the Integrated case management system, Case tracking system, digitalization of Land registry, e-registry, etc.)

³³Croatia became EU member state in July 2013.

³⁴<http://zakon.poslovna.hr/public/strategija-reforme-pravosuda,-za-razdoblje-od-2011.-do-2015.-godine/534533/zakoni.aspx>

- Croatia Judiciary as part of EU judiciary (training, establishment of special departments, international legal assistance)
- Access to justice (free legal aid, vulnerable groups, transparency of work)
- Criminal legislation and enforcement of criminal sanctions (amendments to the Criminal Code and Criminal Procedure Code, establishment of probation service, improvement infrastructure of the prisons, improvement of the IT system in prisons, inspection oversight in prisons, etc.)

The next policy document Croatia adopted two years later in 2013 when it became member of the EU. 2013 Strategy³⁵ were focused on courts and judges, prosecutors and prosecutors' offices and judicial professions.

Pillars of the Strategy were:

- Independence, impartiality and competence (elections, Councils, accountability, evaluation, ethics, conflict of interest, Judicial Academy)
- Efficiency (backlog, alternative dispute resolution, IT, court network, procedural laws, administrative justice)
- Part of EU justice (trainings, mutual legal assistance)
- HR Management (Human resource plan, specialization, re-organization)
- IT (Upgrade of Case management system, e-registries)

3.2.3. Montenegro

Montenegro adopted first Justice Reform Strategy in 2007 after declaration of independence. First Justice Reform Strategy was adopted for the five year period and covered in details **courts and judges, prosecutors and prosecutors' offices. Short part of the Strategy contained measures that are related to the judicial professions, anticorruption and organized crime and reform of penitentiary system.**

Pillars of the Strategy were:

- Independence and autonomy (elections, Councils, evaluation, budget, disciplinary procedure)
- Efficiency (backlog, alternative dispute resolution, court network, case law uniformity, non-judicial cases)
- Access to justice (free legal assistance, information, signing in courts, physical access to courts)
- Public trust (communication, complaints, public case law database)

It is important to highlight that the first Montenegro Strategy was adopted by the Government.

Second Justice Reform Strategy Montenegro adopted in 2014³⁶ till the end of 2018. Scope of the Strategy was on courts and judges, prosecutors and prosecutors' offices and judicial professions.

Pillars of the Strategy were:

³⁵http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3085.html

³⁶<http://www.pravda.gov.me/ResourceManager/FileDownload.aspx?rid=170120&rType=2&file=STRATEGIJA%20REFORME%20PRAVOSU%C4%90A%20%202014-2018.pdf>

- Independence, impartiality and accountability (elections, evaluation, promotion, Councils, budget, initial and continuous training, random allocation of cases, integrity, discipline)
- Efficiency (backlog, alternative dispute resolution, court network, procedural laws, IT-Case management system, court management)
- Part of EU justice (trainings, mutual legal assistance)
- Access to justice, transparency and public trust (communication, complaints, public caselaw database and uniformity, infrastructure, vulnerable groups)

3.2.4. Bosnia and Herzegovina

Bosnia and Herzegovina adopted first Justice Reform Strategy in 2008³⁷ for the five year period. Strategy was focused on **courts and judges, prosecutors and prosecutors' offices and execution of criminal sanctions.**

Pillars of the Strategy were:

- Judicial system (independence, harmonisation, efficiency and effectiveness, accountability and professionalism)
- Executions of criminal sanctions (management over system, overcrowding, international standards)
- Access to justice (Mutual legal assistance, free legal assistance, court users and CSOs)
- Support to economic growth (alternative dispute resolution, reform of land registry system)
- Well-coordinated system

Second Justice Reform Strategy was adopted in 2015³⁸ with the delay. Adoption of the Strategy was a precondition for EU budget support for Bosnia and Herzegovina and was one of the recommendations from the Structured Dialogue. The Structured Dialogue on Judicial issues between the EU and Bosnia and Herzegovina is a unified platform for dialogue, which led local authorities to ensure that reforms correspond to the legal system of BiH and comply with the European perspectives of BiH.

Scope of the second Justice Reform Strategy is the same as the scope of the first one: **courts and judges, prosecutors and prosecutors' offices and execution of criminal sanctions.**

Pillars of the Strategy are the same, however new activities were included in the pillars:

- Judicial system (independence, harmonisation, efficiency and effectiveness, accountability and professionalism, **transparency**)
- Executions of criminal sanctions (management over system, **alternative sanctions**, international standards)
- Access to justice (MLA, FLA, **vulnerable groups and witness support**)
- Support to economic growth (**commercial jurisprudence, land administration**)
- Well-coordinated system

³⁷http://www.mpr.gov.ba/web_dokumenti/SRSP_u_BiH_-_BJ.pdf

³⁸<http://www.mpr.gov.ba/aktuelnosti/propisi/konsultacije/SRSP%20u%20BiH.pdf>

3.2.5. Chapter 23 of the EU negotiation process – judiciary, anti-corruption and human rights

Negotiations with Croatia were open once the country met the political criteria as well as the Stabilization and Association Process conditionalities established by the Council. The *introduction of the benchmarking system* was another novelty in the Croatian accession process, although they did not exist in the initial phases of the negotiations. The benchmarking system defines measurable outcomes for closing benchmarks for each of the chapters, and in some cases opening benchmarks. Once closing benchmarks are met, a specific chapter can be provisionally closed. The establishment of this system made the negotiation process more personalized and gave the Commission the opportunity to develop tailor-made, country specific targets which will provide sufficient guidance to the accession country concerning the challenges which have to be addressed.

Opening benchmark 1 for Croatia was - **revised Action Plan for the Reform of the Judiciary including timeframes, bodies responsible and budget necessary for its implementation with specific emphasis on (a) the appointment; (b) improve the efficiency of the judiciary including the rationalisation of the court network; (c) the introduction of a comprehensive system of legal aid; (d) the integrity of proceedings as regards war crimes.**

Second opening benchmark was revision of the National Anticorruption program and Action plan. From that reason Croatia revised in 2008 Action plan of the Justice Reform Strategy and adopted separate Anticorruption strategy.

It is clear that Croatia EU integration process influenced strategy development in the justice sector. Since the opening benchmark 1 was revised Action Plan for the Reform of the Judiciary, Croatia updated Action plan in 2008. Same situation was with the closing benchmarks.

Croatia closing benchmarks directly shaped content of the 2011 Justice Reform Strategy:

- CB 1 - Updates its Judicial Reform Strategy and AP and ensures effective implementation. (Sub-benchmark: sufficient institutional capacity)
- CB 2 - Strengthens the independence, accountability, impartiality and professionalism of the judiciary (track record)
- CB 3 - Improves the efficiency of the judiciary
- CB 4 - Improves the handling of domestic war crimes cases.

Montenegro commenced its accession negotiation with the EU on June 2012, although the screening process began before opening the negotiations for the Judiciary and Fundamental Rights chapter. In contrast to the Croatian case where the screening process for chapter 23 was among the last to be conducted the screening for this specific chapter in the case of Montenegro was conducted first. This was due to the particular interest of the Commission for the policies covered in this chapter in addition to the centrality placed on the rule of law issues in the latest EU Enlargement Strategy, as well as the previous experience with Croatia.

Chapter 23 Opening Benchmarks for Montenegro was adoption of the Action plan for Chapter 23. Action plan for Chapter 23 contains specific activities related to the judiciary, anti-corruption and human rights, however in parallel to the Action plan for Chapter 23 Montenegro adopted specific Justice sector Strategy since the Chapter 23 Action plan is too broad and relies on the Screening report so it does not cover whole issues relevant for the justice sector. Also there is a mid-term actions in the Action plan for Chapter 23 that ensure mid-term evaluation of the implementation of the Action plan.

3.3. Coordination and monitoring mechanism

Assessment of comparative experience related to the coordination and monitoring mechanism includes: coordination Level of the monitoring group and decision making powers, technical / expert support, reporting mechanism, monitoring and funding.

3.3.1. Serbia

The responsibility for the implementation of the goals and activities envisaged in 2006 Judicial Reform Strategy and Action Plan was entrusted to the 10 member Strategy Implementation Commission.

The Commission membership included high level representatives of all relevant judicial institutions: the Ministry of Justice representative was nominated by the Minister, the Supreme Court representative was nominated by the Supreme Court President, the representative of the National Assembly Judiciary Committee was nominated by the Committee Chairman, the Public Prosecutor's Office representative was nominated by the Republic Prosecutor, the Judges Association representative was nominated by the Managing Board, the Prosecutor's Association was nominated by the Managing Board, the representative of the Bar was nominated by the Managing Board of the Bar Association of Serbia, the representative of the Judicial Training Centre was nominated by the Managing Board, the representative of Belgrade University Law Faculty was nominated by the Dean. Apart from the representatives of the judiciary institutions, the Ministry of Finance had one representative in the Commission to serve as a link and guarantor of the sustainability of the Strategy implementation in accordance with the budgetary capacity of the Republic of Serbia. All judicial institutions nominated the highest level representatives (minister itself, president of the Supreme Court, etc).

On the basis of the nominations, the Government appointed the Commission's members for renewable two-year terms. The Commission within the scope of its competence established separate working groups in charge of the implementation of individual Strategy principles and goals. The Commission held monthly meetings since that was a period of intensive legislative activities (adoption of law and establishment of High Judicial Council and State Prosecutorial Council, Judicial Academy, new Law on Judges, new Law on Prosecutors, new Criminal Procedure Code, new Civil Procedure Code, new Law on organization and seats of court and prosecutors' offices, etc.).

Strategy Implementation Secretariat was established to provide administrative and expert assistance to the Commission. Secretariat was composed of 12 experts: legal advisers, experts in financial impact assessments, public relation expert and expert for coordination of donor assistance. Secretariat was funded for 18 months through the EU CARDS project and later by the OSCE.

For the implementation of the second Justice Reform Strategy Serbia decided to take same approach and established Strategy Implementation Commission. The Strategy Implementation Commission composed of 15 members (and fifteen deputy members), representatives of all the relevant institutions in charge of the implementation of the judicial reform: the Ministry of Justice, the Republican Public Prosecutors' Office, the Supreme Court of Cassation, the High Judicial Council, the State Prosecutorial Council, Judiciary Committee of the National Assembly, professional association of judges, professional association of prosecutors, the Bar Association of Serbia, the Judicial Academy, common representative of law schools, the Ministry of Finance, joint representative of the Chamber of Bailiffs, Public Notaries and

Mediators, Serbian European Integration Office and Government Office for Cooperation with Civil Society.

Strategy Implementation Commission is the Government occasional working body for the monitoring of progress and for directing and planning of future activities.

Upon the proposals of institutions, the Government of the Republic of Serbia appointed members and deputy members of the Commission for a period of five years, with possible extension of their term of office. The Commission established special working groups responsible for the implementation of specific principles and objectives of the Strategy.

The Strategy Implementation Secretariat provides administrative, expert and technical support to the work of the Commission. Establishment, management and supervision of the Secretariat is under competence of the Strategy Implementation Commission. Until the establishment of the Secretariat, the Ministry provides administrative, expert and technical support to the Commission.

For the implementation of the second Strategy Commission composes of second level of decision makers (e.g. assistant minister). However dynamics of the meetings of the Commission continue to be organized once a month.

Strategy Implementation Secretariat has never been established but Reform and accession facilitation unit (experts attached to the MoJ and from 2015 also to Supreme Court and State Prosecutorial Council) provides support to the work of the Commission. The Reform and accession facilitation unit (RAFU) composed of 12 positions in the Ministry of Justice, three in Supreme Court of Cassation and one in the State Prosecutorial Council and is supported through World Bank Multi-donor trust fund for the justice sector in Serbia³⁹.

The RAFU was planned to have a double purpose: (1) to provide technical assistance to the justice sector to implement the Justice Sector Strategy and Action Plan, and (2) to build capacity within Ministry of Justice and Judiciary (Supreme Court and State Prosecutorial Council) so that in future they can operate sustainably without external gap-filling. A narrow focus on capacity building of Serbia civil servants in Ministry, Supreme Court and Prosecutorial Council is a deliverable which will be part of each consultant's tasks. Consultants are providing support in following areas: Consultant for the Reform of Criminal Justice System, Consultant for the Reform of Civil Law System, Consultant for Access to Justice, Consultant for the Reform of the Judicial Network, Consultant for Judicial Academy Competency/Education, Consultant for Constitutional Framework, Consultant for Outreach and Communication, Consultant for the Reform of Legal Professions, Consultant for Human Rights, Consultant for Anticorruption, Consultant for Justice Sector Data Analysis/Budgeting, Consultant for Administrative Courts System, Statistician analysis (SCC), Consultant for monitoring and evaluation expert for backlog (SCC), Consultant for unification of court practice (SCC), and Consultant for (SPC).

3.3.2. Croatia

Croatia adopted several policy documents. The first Strategy was adopted in 2006 and the Action plan was revised in 2008 and Strategy from 2011 and 2013.

From the first Strategy Croatia worked on developing of internal capacities of the Ministry of Justice to ensure monitoring of the strategy implementation. In that regard coordination and monitoring mechanism for all justice reform initiative in Croatia was:

³⁹<http://mdtfjss.org.rs/en/about-us#.VloTN3arTIU>

- Council for monitoring of the Strategy implementation as policy body composed of Minister of Justice, president of the Supreme court, General Prosecutor, chairmen of the Judicial Committee of the Parliament, president of the Judicial Council, president of the Prosecutorial Council, president of Bar chamber, president of Bailiffs, deputy minister of justice, assistant ministers of justice and director of Judicial Academy; and
- Department for strategic development of the Ministry of Justice as technical and expert support to the Council.

3.3.3. Montenegro

For 2007 Justice Reform Strategy there was no envisaged establishment of the special mechanism for monitoring of the Strategy. Only issue identified in the Strategy was responsible institutions: Ministry of Justice, Supreme Court, General Prosecutor, Judicial Council and Prosecutorial Council.

However Commission for implementation of the Action plan was established composed of the representatives of the Ministry of Justice, heads of judicial institutions, presidents of Bar chamber, Judges Association and Prosecutors Association.

One of the shortcomings of the first Montenegro Strategy was activity based assessment.

In 2014 Justice Reform Strategy it was envisaged establishment of the Council. Council is composed of judicial institutions, CSOs, MoJ, Judicial Council, Prosecutorial Council, Judicial Training Centre, presidents of Bar chamber, Notaries chamber, Bailiffs chamber, Expert witness chamber and Interpreters chamber. Minister of Justice is chairing Council.

As a technical support the Council Strategy envisaged secretary general who manages Operational team. Operational team is administrative and technical body. Secretary general is selected among MoJ staff.

Action plan accompanying 2014 Justice Reform Strategy is adopted for two year period – 2014-2016 in order to have mid-term evaluation of the implementation results of the Strategy and to adjust next Action plan for period 2017-2018 to the evaluation results and needs.

In order to ensure smooth communication with all relevant stakeholders the Strategy established obligation to all institutions to appoint contact persons for communication with the Operational team.

3.3.4. Bosnia and Herzegovina

Political and strategic oversight of 2008 Justice Sector Reform Strategy implementation was provided by Ministerial Conferences that will take place on a bi-annual basis. The members of the Ministerial Conferences would be the ministers of justice of BiH, entity, and cantonal levels, as well as the President of the Brčko District Judicial Commission. The President of the HJPC should also attend and participate in all Ministerial Conferences.

For all the pillars of the JSRS each Ministerial Conference will firstly review progress of the previous six months against proposed joint annual work plans and decide upon any needed changes for the following six months. If programmes need to be re-modified or changed the members attending the ministerial conference will have a mandate to do so. **Sector for Strategic Planning, Aid Coordination and European Integration (SSPACEI)** of the Ministry of Justice of BiH will be in charge of organising these conferences and performing the role of technical secretariat and adviser to them.

For each of the strategic pillars, permanent functional working groups will be established. These will be responsible for developing annual joint work plans and be in charge of taking forward all the activities identified within a particular strategic pillar. The Steering Board responsible for overseeing the development and approval of this strategy is responsible for appointing these working groups before its mandate expires. Ministries of justice of BiH and the Brčko District Judicial Commission, represented by their respective secretaries or assistant ministers or other relevant positions in the case of the Brčko District Judicial Commission (depending on the strategic pillar in question), should be members of these working groups, together with other key justice sector stakeholders (such as the HJPC and others).

It is recommended that the permanent working groups meet at least quarterly and that this forum be used by its attendees to discuss other matters of relevance for the justice sector, aside from those set by the JSRS. SSPACEI will perform the role of the technical secretariat for the work of the functional working groups making certain that identified appropriate activities are undertaken, monitored and reported within the designated timeframe and achieve the anticipated outcome.

In addition to providing secretariat support to the above bodies, SSPACEI will be responsible for overall coordination of all activities envisaged in the JSRS, including collection of data for monitoring and evaluation purposes. Once the strategic planning units are established in the entity Ministries of Justice (as planned within this Strategy), they will be a major support to the SSPACEI in overall coordination and implementation.

Given the critical nature of the coordination role to the successful implementation of the JSRS, it is of utmost importance that SSPACEI of the Ministry of Justice of BiH is fully staffed and that entity ministries of justice create smaller but similar units which will assist in the process of managing the implementation and making future strategies.

Related to the evaluation of the process it is possible to take into consideration Bosnia and Herzegovina experience and indicators for ensuring success:

- **progress:** Green (on time in line with indicators), Amber (delays which require remedial actions), Red (has not even been initiated)

During the implementation of the Strategy in 2010 Memorandum on establishing mechanism for monitoring and evaluation of the implementation of the Action Plan was signed with 5 CSOs to ensure CSOs involvement in the monitoring process.

The Justice Sector Reform Strategy 2015 took the same approach from 2008 Strategy:

- Ministerial conference (twice a year)
- Permanent working groups for each of the pillars, comprising the managerial civil servants of the relevant justice sector institutions and other participants (BiH minister of justice on proposals of institutions)
- MoJ Sector for Strategic plan and Council sector for strategic planning will provide technical support Quarterly progress reports
- **Progress evaluation was amended:** completed, underway, postponed, stopped

4. Options for further reform of justice sector in Moldova

A second generation (stage) of justice reform is ready to begin which is based on the lessons learned from the first generation. The new approach would reposition the program as long-

term institutional development efforts with potential quick gains in the short-term. The new approaches are to promote a wide focus in which country needs and priorities will take priority and the learning process will continue. Reference to the experience of other countries will continue to inspire a number of reform efforts.

Holistic strategy in the first generation justice sector reform did not accomplish their ambitious goals; prioritization of more modest objectives is critical for the success of the second generation. While strengthening of institutional capacities continues, second generation instrument(s) have to be embedded into the broader national development goals. Not only because of the high level ends of justice reforms (economic growth, poverty reduction, political stability) but also because some objectives crucial for the justice sector's principal mandate (e.g. crime control, conflict reduction, contract enforcement) cannot be pursued without a broader policy framework, and the cooperation of other agencies. However, the broader a program is, the more critical the identification of institutional responsibilities becomes. Crime prevention and law enforcement, for instance, includes prevention and rehabilitation aspects that fall outside the scope of the judicial sector but should be coordinated with the actions of the police, prosecutors, courts and public defenders. The experience of OECD countries in this area confirms that these reforms face formidable obstacles that cannot be tackled through short-term and narrow initiatives.

Justice reform strategies have to be more modest in their objectives and more realistic in the appraisal of likely impacts. Stakeholders have a better understanding of the sector issues, and the areas most critical for performance improvement. Justice sector reform is not seen as a short term initiative but rather a continuous effort to match institutional performance with societal needs. A more realistic appraisal of the likely impacts of reform efforts also provides a better basis for achieving results and for assessing the feasibility of reform programs. Lessons learned from current Justice Sector Reform Strategy should allow the country to design performance based Strategy.

4.1. Preparation process

Good planning is essential to successful preparation and consultation with the stakeholders. A consultation plan should ideally cover the whole policy making process and identify the objective of consultations, relevant target groups, appropriate forms of consultation and consultation times.

It is a good practice to publish a consultation plan. Publication of the plan provides information to stakeholders about future consultation opportunities. This improves the transparency of policy development and gives stakeholders early warning so they can contribute more effectively to the process. Consultation plans should cover the following points: objective of each consultation round, group that will be consulted in each round, form of consultation for each round and timeframe for each round of consultation.

When developing a consultation plan with stakeholders, it is necessary to consider: tailoring the consultation process to available resources and political expectations (time, expertise and budgets); involving people who are committed; proactively thinking about any potential cross-over with any consultation occurring around the same time; the form and type of feedback needed in responding to input from consultation; having a strategy to manage media involvement in consultation.

From the previous preparation and consultation process it is learned that: the consultation process should **start early enough** to scope key issues and have an effect of the future policy paper content; should be **two-way** so that both sides have the opportunity to exchange views and information, to listen, and to have their issues addressed; **localized** to reflect appropriate local needs (not only to organize consultation in Chisinau but throughout whole country); **documented** to keep track of who has been consulted and the key issues raised; **reported back in a timely way** to those consulted, with clarification of next steps.

Consulting stakeholders entails an implicit “promise” that, at a minimum, their views will be considered during the decision-making process. This does not mean that every issue or request must be acted upon, but it does mean being clear with stakeholders about which aspects of the Strategy/policy paper are still open to modification based on their input, and which are not. It also means taking feedback received during the consultation process seriously and making best efforts to address issues raised through changes to draft Strategy. Inevitably there will be limitations in the degree to which stakeholder demands can be met. At other times, making modifications as a result of stakeholder feedback will make good sense and contribute to development of ownership over the document and future reform activities.

Stakeholders sometimes express concern that they were consult on an issue and then are not heard from again. It is both good practice to follow up with stakeholders whom were consulted, to let them know what has happened and what the next steps in the process will be. Apart from this, there are also practical benefits of follow-up, such as double checking information, and testing or refining proposed approaches before including them in the draft Strategy/policy paper. In addition, **the process of reporting back to stakeholders on which of their concerns will be addressed and how, as well as explaining what suggestions were not taken on board and the reasons why, can help establish credibility, manage expectations, and reduce consultation fatigue.** All of these are important when taking a long-term view of stakeholder engagement.

In order to achieve the best results from the preparation and consultation process including the ownership over document it is necessary to plan several phases:

- Development phase –organization of inclusive discussion process during first half of 2016 **lead by MoJ, SCJ, GPO and Councils / round tables** throughout country to discuss: methodology, strategic framework and governance (vision, scope, pillars, coordination and monitoring mechanism)
- **In parallel with the development phase to conduct Comprehensive assessment of the achievements (output based or functional review of justice sector) accompanying with Multi-stakeholder perception survey**
- **Establishment of broad working group** for drafting (all relevant authorities) with an attached technical (expert) group responsible for developing a text of policy instruments designed
- **Second half of 2016 public consultation process** including round tables, focus groups
- Improvement of written comments (including written answers with the reasoning for adoption or exclusion or recommendation)

- Special attention on feasibility of the activities, deadlines, responsible institutions, funding, outline based indicators and outcomes
- Comprehensive risk assessment and mitigation strategies
- Adopted by the Parliament by the end of 2016

4.2. Scope of the future policy document

Related to the scope of future policy document there are **three possible options**:

OPTION 1 – New Strategy	OPTION 2 – New Action plan	OPTION 3 – Umbrella document
<ul style="list-style-type: none"> • Narrowed scope on courts, prosecutors offices and judicial professions (alternative penitentiary) • Separate policy documents for anti-corruption, human rights and penitentiary • Same vision and coordination in drafting separate policy documents 	<ul style="list-style-type: none"> • Keep the current Strategy • Update the Action plan including new activities, timeframe, responsible institutions, new output based indicators (as Croatia did in 2008, similar was done in Bosnia in 2015) 	<ul style="list-style-type: none"> • Adopted new comprehensive policy document as umbrella document (like AP Ch 23): courts, prosecutors offices, judicial professions, penitentiary, human rights and anti-corruption • Separate strategic plans for judiciary (alternative penitentiary), anti-corruption, human rights

All three options are applicable and justifiable for Moldova circumstances. However experience in the implementation of the current Justice Sector Reform Strategy showed that institutions lack capacities to monitor implementation of comprehensive strategic document.

Option 1 – adoption of the new Justice Sector Reform Strategy with the narrowed scope and focus on courts and prosecutors’ offices as well as judicial professions that are directly linked with the work of courts. It is necessary to conduct assessment of the justice sector before it is finally decided if e.g. alternative sanctions and penitentiary should be covered in the next policy document.

To achieve coherence in the whole reform of rule of law area it is advisable to adopt Anti-corruption and Human Rights strategy in the same period when the Justice Reform Strategy is adopted. Adoption of all relevant policy documents in the same period of time will enable harmonization of all relevant documents, definition of same general goals and planning of financial resources.⁴⁰

Option 2 would not be advisable since the previous justice reform strategy was adopted in 2011 so there is a need for full update of the Strategy document not only Action plan. Croatia took this approach in 2008 however revision of the Action plan in fact influence on the content of the Strategy since new specific goals were introduced and some parts of the Strategy (like anticorruption) were transfer to another policy document.

4.3. Coordination and monitoring mechanism

⁴⁰Serbia took that approach in 2013.

Implementation of the next justice reform policy document would benefit from remedying weaknesses of current formulation of indicators. These shortcomings are to be remedied in the course advancement of the monitoring and coordination mechanism.

It would be necessary to carry out at least a mid-term evaluation exercise that would formally reassess the Strategy and the Action Plan in the light of the changes occurred, experience of their implementation, etc.

OPTION 1	OPTION 2
<ul style="list-style-type: none"> • Strengthening Secretariat (increase number of staff, competences, expertise, funding) - position of the Secretariat (attached to the MoJ, high-level commission or develop internal policy units) • Keep the current Working group mechanism with improved mandate of the WGs, smaller WG, strong leadership and quarterly meetings 	<ul style="list-style-type: none"> • Envisage establishment of high-level Commission or Monitoring team (e.g. Monitoring group - good practice from the Anti-corruption strategy) supported by internal policy unit • Focal points in responsible institutions • <i>Ad hoc</i> working groups for specific activities, leading institution is responsible for coordination

Option 1 would be preferable situation for Moldova stakeholders. It is clear after consultation with all relevant stakeholders but also from the comparative experience that there is a need of strengthening the Secretariat in relation to the mandate of its work (to provide expert advices, prepare comparative legal analysis, conduct fiscal impact assessments, coordinate donor assistance and prepare project proposal, organize and maintain communication with general and expert public), human resources (including number of staff and their competences and skills) and financial resources (think on fund raising for the support of the Secretariat work). As an example of the possibilities for funding of Secretariat is Serbian experience with the Multi donor trust fund (MDTF) managed by the World Bank. MDTF has flexibility to provide needed assistance in the short period of time, but also to ensure engagement of higher number of local consults that will work directly with justice institutions (Ministry of justice and judiciary) and enable transfer of knowledge and skills to other staff working in those institutions.

Composition of the Working groups should be discussed – is there a need to have high level political group (Council/Commission/Board) that will meet quarterly and parallel to this high level group to have working groups on permanent or ad hoc level. Permanent Working groups as the mid-level bodies could meet monthly to keep informed and to discuss implementation. *Ad hoc* working groups could be expert bodies that will be established ad hoc for specific tasks (e.g. drafting of the law) and should report to the high level political group.

In the next policy document it is advisable to consider:

- Actively include Parliament - Many stakeholders reported that there is a need to strengthen role of the Parliament in the implementation of next justice sector policy document. Also there is positive experience from Moldova on stronger role of Parliament in justice reform process. Namely, in Moldova during 1994-98 some of reforms were undertaken coordinated by the Parliament’s Legal Commission. The experience from this exercise was by some of the interviewees considered relevant to remember, as it included strong involvement by the Parliament which at the time had many justice sector professionals in the Legal Commission.

- Active inclusion of the Ministry of Finance to establish link between planning of activities and their financing; Link financial management with implementation in order to ensure financial feasibility of the activities.
- Timeframe in the next policy document should be organized as Short term / Medium Term / Long term priorities in order to enable regular review of the Strategy implementation update of the Action Plan after each term.
- Establishment of the focal points in all relevant institutions that will be accountable for communication with the specific institution and providing all necessary data and reporting.
- Training of focal points and/or Working Groups members in the responsible institutions. Trainings should be organized on communication and reporting, providing templates for the reporting, etc.
- Alternative reporting by the CSOs should be institutionalized (e.g. commitment by several donors that they will support preparation of alternative reports during the implementation of the next policy document). In order to ensure quality of the alternative reporting and focus of the reports on the outcome there is a need to organize training of the CSOs for monitoring and increasing their skills to ensure the highest quality of the reports. Funding for alternative reporting should be ensured in advance.
- Software for monitoring should be considered as option for simplification of the reporting (already in pilot phase in Moldova, exists in Bosnia)
- Indicators of the next policy document should be output based to ensure measuring of progress.

Whatever the monitoring and evaluation framework employed, certain elements are common to them all. Both big-picture objectives are set out, as well as low level, more specific objectives. These goals are then linked to a particular activity, the idea being that the activity leads to the specific objective, which leads to the big-picture objective.

The Strategy goals and objectives need to be measured to see whether they have been achieved and, if they have, to what degree. Goals and objectives are measured by developing “indicators.” An indicator is “a measure that helps answer the question of how much, or whether, progress is being made towards a certain objective.” Careful consideration should be given to the indicators and data sources that are chosen.

To ensure that indicators can measure achievements of the identified goals the indicators should be output based not activity based.

An indicator is generally accompanied by data source, by which to measure progress against the indicator. Data sources include surveys, focus groups, observations and interviews, statistics, and data from institutions, etc.

Sample indicators and data sources

The following is an example linking a goal to an appropriate indicator and means to measure

this indicator:

- Specific Goal: Strengthening the state-guaranteed legal aid system to ensure access of poor citizens
- Activity: Amendments to the Law adopted that ensure access to the legal aid by poor citizens in line with the best European practice
- Indicator: Number of poor citizens who received legal aid and express satisfaction with the legal aid system
- Data source: Statistics on legal aid and national public opinion surveys

- Improved grade system on implemented activities and of progress evaluation could be done in line with the best European practice. Bosnia experience could be used.
- Communication with public and professionals should be improved with organization of public meetings of the Working Groups, press releases should be well planned and provided after each session of the working groups, especially communication with the professional public should be well planned.
- Users survey should be planned in order to measure quality of the service delivery. As an example Serbian multi-stakeholder perception survey 2014⁴¹ could be used since it included high number of participants (around 10.000) from several groups of stakeholders: judges, prosecutors, attorneys, business – with the experience and without experience and citizens – with the experience and without experience.

⁴¹<http://mdtfjss.org.rs/archive//file/Serbia%20Perceptions%20of%20the%20Judiciarys%20Performance%20FIN%20EN.pdf>

ANNEX 1**OPTIONS FOR THE ACTION PLAN**

Serbia

1. INDEPENDENCE				
RECOMMENDATIONS FROM THE SCREENING REPORT		OVERALL RESULT		IMPACT INDICATOR
ACTIVITIES	RESPONSIBLE AUTHORITY	TIMEFRAME/ DEADLINE	FINANCIAL RESOURCES	RESULT

Montenegro

1.1. INDEPENDENCE OF JUDICIARY						
No.	Measure / Activity	Responsible authority	Deadline	Required funds / Source of financing	Indicator of result	Indicator of impact
Recommendation						