

Project Fiche – IPA Annual Action Programme 2007 for Bosnia and Herzegovina
Efficient Prison Management

1. Basic information

1.1 CRIS Number:

1.2 Title: Efficient Prison Management

1.3 ELARG Statistical code: 01.24 – Justice, Freedom and Security

1.4 Location: Bosnia and Herzegovina

Implementing arrangements:

1.5 Contracting authority: Delegation of the European Commission to Bosnia and Herzegovina

1.6 Implementing agency: Delegation of the European Commission to Bosnia and Herzegovina

1.7 Beneficiary (including details of project manager):

The main beneficiaries are the State and Entity Ministries of Justice, Judicial Commission of Brčko District and the individual prison establishment state - wide.

Project manager shall be appointed by the Ministry of Justice of Bosnia and Herzegovina.

Ministry of Justice of Bosnia and Herzegovina

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71000 Sarajevo

Tel: + 387 33 223 501

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Financing:

1.8 Overall cost: 600,000 EUR

1.9 EU contribution: 600,000 EUR (100%)

1.10 Final date for contracting: N+2

1.11 Final date for execution of contracts: N +4

1.12 Final date for disbursements: N + 5

2 Overall objective and project purpose

2.1 Overall objective:

The overall objective is to improve the provision of available resources aiming to create a sufficient and effective range of criminal sanctions to enforce court decisions and to contribute to the overall criminal justice system by making both communities and general society safer¹.

2.2 Project purpose:

The purpose of the project is to prepare the necessary preconditions for establishing a country- wide consistent and cost efficient prison management system and capacities for developing administration policy.

¹ Aforementioned DfID report, p.59

2.3 Link with AP/NPAA/EP/SAA

European Partnership under Section I - Political Situation:

"Reform the prison system of BiH and establish the State level prison and custody".

2.4 Link with MIPD

Section 2.2.1.3 entitled "Programmes to be implemented":

"Assistance (...) to the penitentiary system, which may include contribution to construction works of a high security state prison".

2.5 Link with national Development Plan (where applicable)

N/A

2.6 Link with national/sectoral investment plans (where applicable)

The BiH Ministry of Justice is preparing a national strategy on the justice sector. The reform of the penitentiary is included as one of the axis of the future strategy. It aims at conducting the reform in the area of criminal sanctions across the whole country.

3 Description of project

3.1 Background and justification:

The idea behind the project is to build on the achievements of the initial reform of the prison system and to seize the opportunity of establishment of the State prison facility for the purpose of maintaining the momentum for a more comprehensive and country-wide reform of the prison administration. The later will be largely based on the EC Functional Review of the Justice Sector and the DFID-funded report entitled "Examination of the Effectiveness and Efficiency of the Execution of Criminal Sanctions in Bosnia and Herzegovina".

In accordance with Article 1 of the BiH Law on enforcement of criminal sanctions, the Ministry of Justice of Bosnia and Herzegovina is responsible for enforcement of criminal sanctions imposed on the basis of judgements issued by the BiH Court, as well as enforceable judgements of foreign courts for criminal acts foreseen by the Criminal Code of BiH or in accordance with the international treaties signed by Bosnia and Herzegovina.

The Ministry of Justice of BiH is the key beneficiary due to the fact that Article 30 of the Law on enforcement of criminal sanctions gives responsibility to the Ministry in the area of professional training and education of institutional officers in BiH. It is also responsible for cooperating with Entity Ministries of Justice in setting the standards for each category of institutional officers. Part of this project referring to the adoption of a mental health law is necessary to be implemented at state level so to ensure setting up of identical standards during medical hospitalisation and treatment.

The overall criminal justice system² in BiH can be considered inadequate for several reasons:

- First, there is no coordination in development of policies between individual elements of the system (police, judiciary, enforcement of criminal sanctions) or individual layers of government (state, entity, cantonal and municipal). This results in duplication and uncoordinated efforts which again lead to the absence of an overall strategy that would initiate changes.
- Secondly, access to justice is not equal for all citizens but it depends on the territory in which the person became a victim of criminal offence or where a criminal offence has been committed. The dynamics in court's processing of a criminal offence and

² BiH Ministry of Justice Strategic plan 2006-2008, p.37

conditions for serving a prison sentence depend on the entity and location where criminal offence has been committed.

- Thirdly, there is no strategy under which the enforcement of criminal sanctions would be used as a positive influence in prevention of recidivism and teaching sentenced persons useful skills. Prison sentences and fines are the only types of sanctions used widely, although the law allows the use of community service as an alternative to imprisonment. However, the alternative sanctions are not used in practice as there are no mechanisms that would oversee their implementation. There is a clear need for the development of a wider range of alternative (non-custodial) sanctions.
- Fourthly there exists at present a range of systemic organisational problems that frustrate the development of effective and efficient management. Prime amongst these are the introduction of effective performance management and devolved financial management systems, the development of coherent human resource management policies capable of giving effect to EU employment, health and safety norms and the development of a prisons estate that is fit for purpose. None of the jurisdictions that exist at present is of a size capable of introducing and sustaining such management structures.

The prison system is an integral part of the chain of justice. Only a reform consistent with the restructuring of courts and prosecutors offices allows for an effective and efficient justice system to become a reality for BiH. The BiH Ministry of Justice, in working with such restructured courts and prosecutors offices, has an opportunity to develop an institutional set up and system of alternative criminal sanctions, which also represent its long term aims - to improve conditions of imprisonment and functioning of the system itself.

Problem 1: Conditions in prisons

Even though prisons are complex institutions, and often low in political priorities, they aim to provide safe and secure environments for both the prisoners and the staff as their first priority. In doing so, they must be assisted in developing regimes which provide meaningful activities for the prisoners and assist them in preparing for release back into the community.

The main problem is that the current provisions and regulations related to prisoners and enforcement of their sentences differ in various jurisdictions.

That this should not be the case in one country i.e. in one prison system has already been acknowledged by all three responsible assistant ministers on many occasions. As a consequence of various standards being used in practice, different measures are being applied to the similar groups of prisoners in the 4 different entities jurisdictions. Even where the criminal sanctions imposed in different entities are the same for an offence, the conditions under which the sentence is served and treatment of prisoners serving them can be very different.

These circumstances have to be incorporated with the long term planning, for example to develop a strategy dealing with the expected increase in prison population, a coordinated prison policy within both entities and throughout BiH as a whole, and the development of alternative correctional sanctions.

It is clear that these responsibilities ought to be developed and coordinated at BiH rather than entity level.

The Medium term strategic plan for 2006-2008 of the BiH Ministry of Justice also calls for the development of non-custodial sanctions, conditional release and, more generally, an *"efficient, effective and sustainable state-wide system for enforcement of criminal sanctions"*.

Currently, each jurisdiction in BiH provides for community service with supervision and for conditional release from prison (subject to supervision) in its legislation. Unfortunately, these are not implemented in practice to a satisfactory level. The progressive tradition in former Yugoslavian prisons of extensive post-penal treatment of those who have undergone sanctions provides a good basis for further work in this area. The current legal provisions envisage that Social Welfare Centres provide these services to offenders, however the services foreseen by the law to be provided by the Social Welfare Centres do not exist on the ground.

Proposed solution/Development of a strategy for making community sanctions available

This activity will, inter alia, entail the development of the organisational structure through which community based sanctions will be provided and the drafting of an appropriate legal framework.

In relation to above, it will be necessary to work on the reinforcement of the Social Welfare Centres, as well as to improve the cooperation of the prison establishments with these Centres:

- to ensure implementation of the relevant bylaws
- with the relevant authorities of those centres, to establish formal arrangements on finding possibility to draft contracts with local companies and organizations to employ released persons

This project will use results of the CoE previous projects in this area:

- A plan produced for the introduction of the range of community sanctions anticipated by the law
- Recommendations given to authorities on an overall structure of community sanctions and offender services that might be developed in a new legal framework
- A draft legal framework, including bylaws, authorising the agreed structure of sanctions and services and the organisation that would be capable of delivering them

Problem 2: Compliance with European standards

Bosnia and Herzegovina as a signatory to the European Convention on the Protection of Human Rights and Fundamental Freedoms³ and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment⁴ has the primary responsibility for ensuring that the State's obligations are met and jurisprudence of the European Court of Human Rights is respected. The responsibility of the State in all crucial matters has been the main argument in the lobbying for a standardised system of enforcement of criminal sanctions by international experts and domestic prison professionals.

Standardisation of regimes for prisoners regardless of which part of BiH they serve their sentence in would guarantee equality of their treatment and their being equal before the law.

The current BiH provisions on mentally ill offenders is unhelpful in the range of options it provides for the mentally ill. Above all, it fails to meet the standards developed by the European Convention on Human Rights in a number of respects.

Furthermore, the case of Mr Fikret Hadžić brought before the European Court of Human Rights (Application no.11123/04) in which a friendly settlement was reached places an obligation on the State of Bosnia and Herzegovina to provide appropriate facilities for

³ Signed by Bosnia and Herzegovina on 24 April 2002 and ratified on 12 July 2002 but actually in implementation since enforcement of the Dayton Peace Agreement

⁴ Signed by Bosnia and Herzegovina on 12 July 2002 and ratified on 1 November 2002. The standards developed by the Committee for prevention of torture now represent the best practice with which the Council of Europe member states attempt to conform. Further, the standards developed by the Committee are being taken up by the European Court for Human Rights.

detention on offenders with severely diminished responsibility. In the ensuing consultations with the Council of Europe experts engaged in prison reform, it was felt amongst state and entity authorities that administrative arrangements would have to be developed between the jurisdictions as to how placements would be made in such a facility.

International and domestic experts have also drawn attention to inadequate legal safeguards against imposed loss of liberty; inadequate regard for the need to have the person give his prior consent to treatment when possible; lack of differentiation between compulsory hospitalisation and coerced treatment and absence of a legal requirement for regular and frequent independent review of the need for continued detention.

Serious deficiencies in functioning of the psychiatric facilities for mentally ill offenders and their administration have also been identified by the Committee for Prevention of Torture during both of their visits to Bosnia and Herzegovina over the past three years. The Committee's first regular visit to BiH (27 April – 9 May 2003) drew attention to this issue, which further on led to the visit (14-17 December 2004) with a specific aim to examine this situation in a detailed manner.

The Committee's recommendations and findings have been taken very seriously by the domestic authorities but now need to be acted upon.

Since delivery of the CPT's report, State authorities have been heavily engaged in drafting of the Law on Establishment of the Psychiatric hospital in Sokolac as a state level facility, and its accompanying bylaws. Arrangements have been pursued with local authorities in reference to the transfer of ownership on the facility and its final transition into the state competence.

Proposed solution/Drafting of a new BiH Mental Health Law

This project will use the best experiences from the following areas of preparatory work in this field undertaken by the Council of Europe:

- Review existing BiH Law and practice against established CoE standards.
- Policy paper for BiH Council of Ministers on the requirements of mental health law as developed by the case law of the ECHR and expanded in guidance by the CPT

3.2 Assessment of project impact, catalytic effect, sustainability and cross border impact (where applicable)

The activities of the project shall be carried out by the Ministry of Justice of BiH, the competence of which entails not only the management of custodial facilities (pre-trial and prison) but also the development of a consistent legislation governing custody at state, entity and Brčko District level in accordance with European standards and best practices. The BiH Ministry of Justice shall therefore closely coordinate its activities with the Entity Ministries of Justice, the Judicial Commission of Brčko District of BiH and individual prison establishments state-wide.

3.3 Results and measurable indicators:

Activity 1: Development of a strategy for making community sanctions available

- Analysis of the possibilities to introduce alternative sanctions in practice is developed
- Scheme for supervision of offenders in community is agreed and conditions for its implementation in practice are ensured

Activity 2: Drafting of a new BiH Mental Health Law

- Relevant authorities have an opportunity to consider the shortcomings of the existing framework of mental health legislation

- Proposals of principles that would underpin a new draft of the law from the drafting team are discussed and agreed
- The structural and managerial consequences of the adoption of a new framework of mental health legislation are considered and the provision of necessary structural and human resource requirements is discussed
- BiH Mental Health Law consistent with European standards is in the process of adoption
- Training for the health care professionals is organized for the implementation of the law in accordance with the current good psychiatric practice and guidance from CPT and the CoE Committee of Ministers

3.4 Activities:

Activity 1: Development of a strategy for making community sanctions available

Result: Analysis of the possibilities to introduce alternative sanctions in practice is developed

- Setting up of a working group (consisting of policy makers, prison professional and civil society) that will meet quarterly
- Policy paper developed earlier under the DfID initiative circulated, presented and discussed amongst members of the working group
- Study visit to another jurisdiction with a well developed strategy on community sanctions

Result: Scheme for supervision of offenders in community is agreed and conditions for its implementation in practice are ensured

- High profile conference on benefits of introduction of community sanctions in practice with practitioners and local communities
- Proceedings of the Conference compiled, published and authorities and public informed
- Contract with a foreign and local experts on training sessions
- Training sessions organized for judicial authorities and prison professionals on legislative amendments

Activity 2: Drafting of a new BiH Mental Health Law

Result: Relevant authorities have an opportunity to consider the shortcomings of the existing framework of mental health legislation

- Contract with foreign experts to act as policy advisors
- Setting up of a working group (consisting of policy makers, prison professional and civil society) that will meet regularly
- Study visit to two jurisdictions, one with better and the other with less developed framework on mental health legislation

Result: Proposals of principles that would underpin a new draft of the law from the drafting team are discussed and agreed

- Regular meetings of the working group on mental health law

Result: The structural and managerial consequences of the adoption of a new framework of mental health legislation are considered and the provision of necessary structural and human resource requirements is discussed

- Regular meetings of the working group on mental health law

- Seminars and workshops organised with professionals with a view of informing the necessary structural and human resources changes

Result: BiH Mental Health Law consistent with European standards is in the process of adoption

- Regular meetings of the working group on mental health law

Result: Training for the health care professionals is organized for the implementation of the law in accordance with the current good psychiatric practice and guidance from CPT and the CoE Committee of Ministers

- Contract with foreign and domestic experts to deliver training to health care staff in the institutions
- Contract with foreign and domestic experts to deliver training to judicial authorities and policy makers

3.5 Conditionality and sequencing:

No conditionality.

3.6 Linked activities:

Purpose of this project is adoption of the Law on mental health, consideration of new experiences in terms of implementation of alternative criminal sanctions, community service at liberty, as well as delivery of the proposed training programmes with a view of further professional advancement of institutional officers.

This project will use results of the CoE previous projects in this area:

- A plan produced for the introduction of the range of community sanctions anticipated by the law, whose main beneficiaries are minor offenders.
- Recommendations given to authorities on an overall structure of community sanctions and offender services that might be developed in a new legal framework
- A draft legal framework, including bylaws, authorising the agreed structure of sanctions and services and the organisation that would be capable of delivering them. Beneficiaries are legislative authorities in BiH.
- Review existing BiH Law and practice against established CoE standards.
- Policy paper for BiH Council of Ministers on the requirements of mental health law as developed by the case law of the ECHR and expanded in guidance by the CPT. Beneficiaries are legislative and executive authorities in BiH.

3.7 Lessons learned:

This project will also provide a follow up to the ongoing activities of the "Assistance to the Reform of the Prison System" project implemented by the Council of Europe and financed by the Canadian International Development Agency (CIDA).

Success in the implementation of different initiatives within this project has provided firm ground for continuing the momentum:

- The legal framework has been developed so to confront the challenges in the area of management of prisoners and in reorganising the administration in order to enable more thorough reform.
- Development of staff training skills and knowledge has to an extent compensated for the poor development of management guidance to staff on their duties and the extent to which practice varies both in content and quality between individuals and prison establishments.

- Introduction of a system of individualized risk and needs assessment for prisoners resulted in more data that can be valuable in planning of the activities for prisoners.
- Development of modern systems of appeals, investigation and inspection that can withstand critical scrutiny helped to meet the challenge of managing a prison population that accepts authority more easily.

In addition, this project will build on the results and recommendation of the Twinning light project " Support to Penitentiary Management Reform in BiH" being implemented in Bosnia and Herzegovina by Austria on behalf of the European Commission.

4 Indicative budget (amounts in Euros)

Activities	TOTAL COST	SOURCES OF FUNDING										
		EU CONTRIBUTION				NATIONAL PUBLIC CONTRIBUTION					PRIVATE	
		Total	% *	IB	INV	Total	% *	Central	Regional	IFIs	Total	% *
Activity												
contract 1	600.000	600.000	100	600.000		0	0					
TOTAL	600.000	600.000	100	600.000		0	0					

* expressed in % of the Total Cost

5 Indicative implementation schedule (periods broken down per quarter)

Contracts	Start of Tendering	Signature of contract	Project Completion
Contract 1	Q1/2008	Q2/2008	Q2/2010

6 Cross cutting issues (where applicable)

6.1 Equal opportunity

Equal opportunities are considered an integral part of all BiH Ministry of Justice policies and projects. This Ministry has a crucial role to play in promoting equal opportunities amongst other ministries in the BiH government, for example by defining common principles and standards to promote full participation of women and men in the society, minorities and vulnerable groups of population.

Therefore, within this project, the MoJ will work with other authorities at all levels and in particular with individual prison establishments to ensure that equal opportunities are incorporated in all aspects of their work, training and career advancement. It will also take full account of equal opportunity perspective when regulations or policies are being planned or revised.

ANNEX I: Logical framework matrix in standard format

LOGFRAME PLANNING MATRIX FOR Project Fiche	Programme name and number: Efficient Prison Management	
	Contracting period expires	Disbursement period expires
	Total budget : 600,000 EUR	IPA budget: 600,000 EUR

Overall objective	Objectively verifiable indicators	Sources of Verification	
To improve the provision of available resources aiming to create a sufficient and effective range of criminal sanctions to enforce court decisions and to contribute to the overall criminal justice system by making both communities and general society safer.	Report of the State MoJ Report of the Council of Europe Positive opinion of the Council of Europe on BiH penitentiary system reform in 2009 CoE report	The information will be provided in the relevant publications.	
Project purpose	Objectively verifiable indicators	Sources of Verification	Assumptions
To create a state Law on Mental Health that will be applied all around BiH Reduce overcrowding in prisons by the implementation of the community sanctions	Reports made by the Council of Europe and other relevant international organizations; by the media and the civil society in BiH over the criminal justice sector performance; statistical reports on prisons population; coordinated enactment of legislative amendments in relation to the substance of the project	The information will be provided in the relevant publications.	
Results	Objectively verifiable indicators	Sources of Verification	Assumptions
Analysis of the possibilities to introduce alternative sanctions in practice is developed Scheme for supervision of offenders in community is agreed and conditions for its implementation in practice are ensured Relevant authorities have an opportunity to consider the	New BiH Law on Mental Health sent to the Parliamentary Assembly Proceedings of the Conference compiled, published and authorities and public informed Contract with a foreign and local experts on training sessions Policy paper developed earlier under the DfID initiative circulated,	Publications and websites of the BiH Ministry of Justice, Council of Europe, BiH and Entities Official Gazettes	

shortcomings of the existing framework of mental health legislation The structural and managerial consequences of the adoption of a new framework of mental health legislation are considered and the provision of necessary structural and human resource requirements is discussed BiH Mental Health Law consistent with European standards is in the process of adoption Training for the health care professionals is organized for the implementation of the law in accordance with the current good psychiatric practice and guidance from CPT and the CoE Committee of Ministers.	presented and discussed amongst members of the working group Contract with foreign experts to act as policy advisors		
Activities	Means	Costs	Assumptions
Meetings to be organised in various jurisdictions between policy makers (ministers and assistant ministers), prison professionals (prison directors) and civil society (academia-law professors, professional associations-penologists) Setting up of working groups (consisting of policy makers, prison professional and civil society) Study visit to another jurisdiction with a well developed strategy on community sanctions Organizing a high profile conference on benefits of introduction of community sanctions in practice with practitioners and local communities Training sessions organized for judicial authorities and prison professionals on	Ministry of Justice – Sector for execution of criminal sanctions A project team – working group – will be established comprised of a project leader, national experts and international experts. Grant agreement with Council of Europe	600,000 EUR	

legislative amendments Study visit to two jurisdictions, one with better and the other with less developed framework on mental health legislation Regular meetings of the working group on mental health law Seminars and workshops organised with professionals with a view of informing the necessary structural and human resources changes in relation to the substance of this project Contract with foreign and domestic experts to deliver training to health care staff in the institutions, judicial authorities and policy makers			
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Pre-conditions

ANNEX II: amounts (in €) Contracted and disbursed by quarter for the project

Contracted	Q1/2008	Q2/2008	Q3/2008	Q4/2008	Q1/2009	Q2/2009	Q3/2009	Q4/2009	Q1/2010	Q2/2010	Q3/2010	Q4/2010	Q1/2011	Q2/2011	Q3/2011
Contract 1		600,000													
Cumulated		600,000													
Disbursed															
Contract 1			400,000		200,000										
Cumulated			400,000		600,000										