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## Law Program

In the year 2001 the main goal of the Law Program was promotion of democratic institution building in Bulgaria, focusing on legislative and judicial reform. As a result of CSD's efforts in this respect the Law on Electronic Document and Electronic Signature was adopted by the Parliament and the Draft Law on Civic Defender and Local Civic Mediators was further elaborated and prepared for consideration by the legislators.

### 2001 Highlights

- The expert group with the Law Program related to information society development in Bulgaria focused on the Draft Law on Electronic Document and Electronic Signature. The draft Law developed by its experts was adopted by the National Assembly in March 2001. The Law regulates electronic document and electronic signature as well as the conditions and the procedure for providing certification services. It makes Bulgaria among the first countries in Europe with modern legislation in this area corresponding to EU Directives.
- Further efforts of the Law Program in the field of the electronic document and electronic signature regulation are focusing on the development of the secondary legislation necessary to finalize the legal framework for electronic signatures. Law Program experts actively participated in the State Telecommunication Commission task force, which elaborated the draft regulations for the implementation of the Law on Electronic Document and Electronic Signature, which have been completed in the end of 2001 and were submitted to the Council of Ministers for adoption.
- Following the priorities of the Program for Judicial Reform developed within the framework of the *Judicial Reform Initiative*, the Law Program started to work on introducing modern registration system in Bulgaria. A task force of experts to elaborate a Concept Paper on the reform of the Bulgarian registration system was formed in 2001. The Concept Paper is being developed based on a comprehensive analysis of the possibilities for reforming the existing system of official registers and proposals for legislative amendments necessary to facilitate its introduction. The objective is to introduce an out of court centralized electronically based registration system providing for faster and more effective operation.
- The Law Program continued its work on further developing the Draft Law on the Ombudsman. The improved Draft Law on Civic Defender and Local Civic Mediators was presented to the European Ombudsman Mr. Jacob Soederman, to the Chair of the newly elected Parliament and respective Parliamentary Committees as well as at several international and domestic events.

## I. Legislative Reform

### 1. Creation of an Appropriate Legal Environment for Introduction of Electronic Documents and Electronic Signatures

*Over the last a few years there have been strong efforts to set up a global regulatory framework for the use of electronic means of communication, including both general rules and regulations of specific fields, such as electronic commerce, digital signatures, electronic documents, etc. A number of international instruments, for instance, the Model Law on Electronic Commerce of the United Nations Commission on International Trade Law, the Guidelines on Cryptography of the OECD, Directive 1999/93/EC of the European Parliament and of the Council of December 13, 1999 on a Community Framework for Electronic Signatures, Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market (Directive on Electronic Commerce, have been adopted or are in the process of adoption. Nearly all industrialized countries in Europe, America and Asia have taken steps for drafting and introducing legislation on the use of electronic means of communication.*

#### **Completion of the Legislative Procedure**

The work on the legal framework for the use of electronic documents and electronic signature in Bulgaria marked a significant progress in 2001 with the adoption of the Law on Electronic Document and Electronic Signature. The drafting process was initiated by the

Law Program of the CSD in early 1999 - it started with comprehensive research of the most important foreign and international instruments already in place or in the process of preparation. A Task Force was set up to work on a Concept Paper and a Draft Law on Electronic Document and Electronic Signature; an Expert Advisory Board consisting of representatives of the major interested parties (business associations, government regulatory bodies and ministries, legal and IT experts) was established to ensure the quality of legislative proposals. In 2000 the Concept Paper and the Draft Law on Electronic Document and Electronic Signature were finalized; on September 28, 2000 the Council of Ministers approved the Draft and submitted it to the National Assembly. In the Parliament this Draft Law was discussed in the Committee on Legal Issues and Anticorruption Legislation and in the Committee on Economic Policy. The Law on Electronic Document and Electronic Signature was adopted by the National Assembly on March 22, 2001 and promulgated in the State Gazette No. 34 of April 6, 2001; it entered into force on October 7, 2001.

*The Law on Electronic Document and Electronic Signature was drafted after extensive consultations and discussions held with representatives of the stakeholders, legal and IT experts; most of the opinions, suggestions and recommendations made in the course of these discussions were taken into account. The text is based on the principles of Directive 1999/93/EC and on a number of international acts and on successfully implemented national provisions in other countries.*

During 2001 the Law Program experts working on the Law actively participated at all stages of the legislative process

in the National Assembly; they also took part in the dissemination activities after the adoption of the Law as lecturers at a number of seminars and workshops discussing the newly adopted legal provisions.

The Law includes provisions on electronic document and electronic signature as well as on the conditions and procedures for providing certification services. It regulates the application of electronic signature not only in the area of contracts and obligations but also in other legal fields. The Law does not include an obligation for anyone to use electronic documents and electronic signature but it provides such an opportunity to everyone which means that without additional state involvement the area of applicability of this Law will be in fact limited only to obligations and contracts.

### *Drafting Secondary Legislation*

The preparation of the regulations on the implementation of the Law on Electronic Document and Electronic Signature was assigned to the State Telecommunications Commission\* – this process was completed by November 2001 and draft ordinances were submitted to the Council of Ministers for consideration.

The members of the Law Program Task Force provided expert assistance and participated in the Working Groups to the State Telecommunications Commission charged with this task. They contributed substantially in drafting the regulations on the implementation of the Law – the Regulation on the Requirements to the Algorithms for Advanced Electronic Signature, the

Regulation on the Procedure for Registration of the Certification-Service-Providers and the Regulation on the Activities of the Certification-Service-Providers, the Procedure for Termination of their Activities and on the Requirements for Provision of Certification Services.

### *Preparing Comments on the Law*

Following the adoption of the Law on Electronic Document and Electronic Signature, the CSD Law Program set up a Task Force to prepare Comments on the Law including the following experts: Dr. Maria Yordanova, Head of the CSD Law Program, Dr. Angel Kalaidzhiev, Associate Professor, Law School of Sofia University, Dr. Vessela Stancheva, Attorney at Law, Justice Borislav Belazelkov, Supreme Court of Cassation, Mr. Stephan Kyutchukov, Partner, *Djingov, Gouginski, Kyutchukov & Velichkov* law firm, Mr. Georgi Dimitrov, Partner, *O.R.A.C.* law firm, and Dr. Alexander Katzarski, Associate Professor, Law School of Sofia University. Several meetings of the Task Force were held and a preliminary draft of the Comments was prepared.

Parallel to the preparation of the Comments the CSD Law Program started working on the publication of a second revised edition of a book on the legal aspects of electronic commerce and the use of electronic signature whose the first edition had been published in April 2000. Comprehensive research on recent legislative developments in this field was carried out; several newly adopted foreign and international acts were collected and translated into Bulgarian.

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\* *By amendments to the Law on Telecommunications effective as of February 5, 2002 (SG N112/29.12.2001) the State Telecommunications Commission was replaced by Commission for Regulation of Communications.*

## 2. Introducing the Institution of the Ombudsman in Bulgaria

*Bulgaria is among the few European countries without an ombudsman institution so far. Existing mechanisms cannot always guarantee timely, efficient and easily accessible protection of individuals affected by the actions of the state. As a result, cases of maladministration, including abuse of power, corruption and violation of human rights, are widespread. That is why a new mechanism, parallel to the existing institutions, is necessary to complement their work in protecting human rights. In most European countries this task is performed by the ombudsman institution as an out-of-court mechanism complementary to the more expensive and cumbersome forms of protection (judicial, administrative and other).*

The launch of an Ombudsman-type institution in Bulgaria was put on the public agenda by the CSD Law Program in early 1998. The work started with research and analysis of the existing legal framework as well as the experience of such institutions in a number of established and new democracies; later, a Concept Paper was written on the subject and a Draft Law on the Ombudsman for Bulgaria was prepared.

In November 2000 the Draft Law on Ombudsman was presented by a group of members of the Parliament to the National Assembly in order to open a legislative procedure for its adoption. Another Draft on People's Defender was also submitted by another member of the Parliament. The National Assembly, however, could not adopt the Draft Law on the Ombudsman before the parliamentary elections in

June 2001. In the meantime, the Task Force of the CSD Law Program continued its work on the text and introduced further changes. The last version, entitled Draft Law on the Civic Defender and the Local Civic Mediators, was brought to the attention of the newly elected National Assembly in August 2001.

*As Chief Parliamentary Ombudsman of Sweden I have cooperated for some years with the Center for the Study of Democracy to promote its efforts to introduce the Ombudsman Institution in Bulgaria.*

Mr. Claes Eklund, Chief  
Parliamentary Ombudsman of  
Sweden

### *Recent Developments*

The submitted Draft Laws are now being discussed in the committees of the 39th National Assembly. In October and November 2001 the Parliamentary Committee on Human Rights and Religions and the Parliamentary Committee on Civil Society Issues organized discussions of the presented drafts - a number of representatives of the policy making community and other stakeholders participated in these discussions focusing on the necessity of an Ombudsman-type institution for Bulgaria. Experts of the CSD Law Program took an active part - they presented the accomplishments of the CSD in this field and shared their experience in the course of the work on the Draft Law. The CSD Law Program provided the Chair of the Parliament and respective Committees with the last version of the Draft Law on Civic Defender and Local Civic Mediators prepared by its Task Force.

### *Introducing Public Mediator for Sofia Municipality*

Parallel to the work on the Draft Law the CSD Law Program continued its efforts to introduce ombudsman-type mechanisms at the local level. In year 2001 the successful implementation of a number of projects launched within the framework of *Coalition 2000* led to the establishment of civic observers in several Bulgarian municipalities. The new chapter, concerning local civic mediators, was included to the Draft Law on the basis of their experience and accomplishments.

An important step in the process of introducing local ombudsman institutions was the launch of such an institution in Sofia. On May 23, 2001 the Sofia Municipal Council decided that a Public Mediator Institution be established for the Sofia Municipality; it also adopted the Rules on the Organization and Activities of the Sofia Municipality Public Mediator. Presentation of the local ombudsman institution and its role in the democratic society was organized in June by Sofia municipality and the CSD.



*From left to right: Ambassador Jose Angel Lopez-Jorin, Embassy Spain, Mr. Stefan Sofianski, Mayor of Sofia and Mr. Winfried Schlote, Deputy Head of Misson, German Embassy at the presentation.*

Until the adoption of the relevant legislation the Sofia Public Mediator office will operate on an experimental basis. Elections for a mediator will be held by the Sofia Municipal Council every two years; incumbency in office will be limited up to two consecutive mandates. The Public Mediator has the authority to carry out investigation, mediation between the parties involved, bringing abuse of office to the attention of the local authorities and making public statements. The Public Mediator will report to the Mayor of Sofia and to the Sofia Municipal Council; he/she will be held accountable to them for violations of the law he/she committed.

### **3. International Events**

On September 12–16, 2001 an international seminar „Ombudsmanship: Prospects and Challenges for the Twenty First Century“ was held in Nicosia to celebrate the tenth anniversary of the Office of the Commissioner for Administration (Ombudsman) of Cyprus. CSD was represented at this event by the Head of the Law Program Dr. Maria Yordanova and the Executive Secretary of *Coalition 2000* Ms. Valeria Bouhlarska. A discussion of



*Participants in the international seminar „Ombudsmanship: Prospects and Challenges for the Twenty First Century“*

such issues as recent developments, current trends and future challenges for the Ombudsman as well as its role in the XXI century took place.

The seminar focused on a number of specific problems faced by the institution of the Ombudsman in different countries. The major topics included:

- Ombudsmanship: Prospects and Challenges in the XXI Century;
- The Effectiveness of the Ombudsman in the Oversight of Administrative Conduct of Public Bodies;
- Democracy, Accountability and the Office of the Ombudsman;
- Moving from Adversarial to Non-adversarial Approaches: A Contemporary Approach in Ombudsmanship;
- The Proactive, Preventive and Educational Role of the Ombudsman;
- The Role of the Ombudsman in Balancing the Exercise of Authority by the Governmental and Government Accountability.

A number of distinguished speakers addressed the seminar, including Mr. Jacob Soederman of the European Ombudsman; Ms. Eliana Nicolaou, Commissioner for Administration of Cyprus; the UK Parliamentary Commissioner for Administration Mr. Michael Buckley, Mr. Pierre-Yves Monette, Federal Ombudsman of Belgium; Dr. Peter Kostelka, Member of the Austrian Ombudsman Board; Finland's Parliamentary Ombudsman Mr. Lauri Lehtimaja, Ms. Kerstin Andre, Parliamentary Ombudsman of Sweden, Prof. Oleg Mironov, Commissioner of



*Professor Nikiforos Diamandouros, National Ombudsman of Greece and Dr. Maria Yordanova, Head of the Law Program at the seminar*

Human Rights in the Russian Federation, the Greek Ombudsman Prof. Nikiforos Diamandouros; Ms. Nana Devdariani, Public Defender of Georgia, etc. The participants encouraged the efforts of the CSD for introduction of the institution of the Ombudsman in Bulgaria noting its importance for the consolidation of civil society and expressed their willingness to further cooperate in the future.

*For some years now in my academic capacity, I have collaborated with the Center for the Study of Democracy to promote the initiatives and activities related to democratization in Bulgaria. More recently in my capacity of National Ombudsman of Greece I have been in even closer cooperation with CSD in the process of introducing the Ombudsman institution in the Bulgarian civic environment.*

Professor Nikiforos  
Diamandouros, National  
Ombudsman Of Greece

## II. Judicial Reform Initiative

The *Judicial Reform Initiative* (JRI) was launched in March 1999 by CSD as a joint initiative of eight leading Bulgarian non-governmental organizations and representatives of the Legislature, the Executive and the Judiciary. Within its framework a Program for Judicial Reform was drafted on the basis of joined efforts of influential NGOs, policy makers and experts in this field.

In 2001 the Law Program continued to serve as the JRI Secretariat in the implementation of the Program for Judicial Reform:

- In the beginning of year 2001 the efforts of the Law Program focused on increasing the transparency in the initiated legislative procedure for amending the Criminal Procedure Code and the Law on the Judiciary. The Law Program collected expert statements on the proposed amendments by prominent Bulgarian and foreign legal experts and submitted them to the policy makers in charge. CSD published these statements on its web site, thus providing unlimited public access.
- With the assistance of prominent Bulgarian legal experts within the framework of JRI the Law Program started working on a Concept Paper on reforming the court registration system in Bulgaria and introducing an out-of-court central electronic registry for NGOs as a first step in creating a Central Electronic Registry of Persons and Property.
- The web pages of the JRI and its founding organizations were updated on a regular basis to provide comprehensive information on the process of judicial reform as well as on the activities of these organizations.
- As a part of the criminal law reform the Law Program started exploring the needs and opportunities for

instituting a modern legal framework in the field of computer and cyber crimes.

Taking into consideration the experience accumulated in the process of implementation the CSD Law Program already started working on updating the Program.

### III. Contributing to Enhanced NGOs Capacity

Setting up an appropriate regulatory framework for the non-governmental sector has permanently been a key issue for the CSD Law Program. That is why for the last ten years it has focused on drafting new legislation on the legal status and taxation of NGOs. After the adoption of the Law on Not-for-Profit Legal Persons, effective since January 1, 2001, its efforts targeted further improvement of the legal environment for NGO action. This Law introduced serious regulatory changes, although it does not provide an adequate distinction between the public or mutual benefit not-for-profit organizations or the public perception of their effectiveness. In order to further elaborate and improve the regulatory framework a Task Force of the CSD Law



*Law Program Staff (from left to right): Dr. Maria Yordanova, Head, Mr. Dimitar Markov, Project Coordinator, Ms. Rossitsa Elazar, Program Manager, Mr. Konstantin Tanev, Fellow.*

Program drafted a proposal for amending the Law in the following aspects:

- setting up a body on special reassures responsible for the registration of public benefit organizations on the basis of clear legal criteria;
- guaranteeing transparent activities of the public benefit organizations and reducing the opportunities for abuse with public funds on the basis of reasonable responsibilities for the NGOs and control over their activities;
- the body on special reassures should be responsible for the control over the not-for-profit activities of the organizations registered by it while the National Audit Office should exercise control over their business activities;
- preventing the possibility that legal persons with not-for-profit status, registered before January 1, 2001, claim to be mutual benefit organizations if they were donated property by the State, the municipalities or from other public funds, or their activities have been supported by voluntary acts or work of private persons, except for their founders and members;
- transferring of the registry for not-for-profit legal persons from the courts to the Ministry of Justice.

In 2001 the Law Program continued to pay special attention to the long-term educational program for civic organization managers which is implemented in co-operation with the School of Economics and Business Administration at Sofia University within the framework of a specialized Master Program. A course, based on the Open and Distance Learning Program – General and Financial Management of Public and Private Not-for-Profit Legal Entities, was developed by a consortium

coordinated by CSD in partnership with the Greek Management Association, and the Universities of Sofia (School of Economics and Business Administration) and Skopje (School of Law). This activity is in line with the CSD's long-term pro-active policy to support the professional development of human resources in the public and private sector, thus creating a better environment for the work of civic organizations. In year 2001 CSD experts took part as instructors in the course modules on legal issues and general and financial management; about 20 students attended the class.

#### **IV. Other Activities**

On March 7th, 2001 the Law Program organized a discussion on the Court Administration Reform in Bulgaria. This discussion was launched by the new President of the N2 Diplomatic Club Mr. Winfried Schlote, Deputy Head of Mission of the Embassy of Germany. Guest lecturers, such as Mr. Vladislav Slavov, Chair of the Supreme Administrative Court and of the Union of Jurists in Bulgaria, and Ms. Kapka Kostova, Chair of Sofia Regional Court and of Association of Judges in Bulgaria, made presentations on the ongoing reform of court administration in Bulgaria. Mr. Slavov briefed the participants on the activities of the Supreme Administrative Court and the work on reforming its administration while Ms. Kostova spoke on the projects targeting improved court administration performance in which the Association of Judges in Bulgaria was involved. The discussion focused on issues of judicial control over the administration, proposed changes in criminal procedures and opportunities for training judges and other judicial officials.