

Law Program

The institutional and legal reform in the context of Bulgaria's accession to the European Union continued to be the major area of activities of the Law Program during 2004. The efforts involved drafting and supporting legislative changes, promoting judicial reform as well as developing and strengthening new mechanisms for monitoring the activities of public administration and protecting human rights.

2004 Highlights

- The Law Program continued to promote and support the introduction of local public mediators (ombudsmen) on municipal level. The process marked significant progress and by the end of 2004 a number of municipalities successfully introduced the new institution.
- Further efforts were dedicated to advocating for the election of the national ombudsman and for improvement of the legal framework of the institution, including its incorporation in the Constitution. Draft amendments to the Constitution, prepared by Law Program experts, were presented to the major stakeholders and were publicly discussed at a number of events.
- The Law Program continued to contribute to the legislative reform in Bulgaria by providing expert advice on drafting new legislation such as the Draft Law on Political Parties and the Draft Law on Forfeiture to the State of Assets Acquired through Criminal Activity.
- CSD published the book *Electronic Document and Electronic Signature. Legal Framework* including detailed commentary on the legal framework of e-documents and e-signatures in Bulgaria, prepared by Law Program experts. Further efforts focused on promoting the implementation of the e-signature legislation in the operations of the public administration and in the provision of public services.
- Law Program experts contributed to the drafting of the necessary legislative amendments for the introduction of electronic documents and electronic signatures in the judiciary. The package of draft laws has been approved by the government and presented to parliament.
- The Law Program facilitated the reform of company registration by contributing to the elaboration of a draft governmental strategy on the registration reform.

I. Institutional and Legislative Reform

1. Introducing Ombudsman Institution in Bulgaria

The efforts of the Law Program to facilitate the establishment of the ombudsman institution in Bulgaria continued in 2004 combining advocacy, awareness and training activities. Building on the established public-private partnership with municipal authorities and local NGOs the Law Program assisted the process of introducing local public mediators (ombudsmen) at a number of municipalities. As a result, by the end of 2004, seven public mediators have been elected and started their activities. Members of the Law Program team delivered lectures at seminars, workshops and public hearings throughout the country, explaining the role of the ombudsman combating maladministration and human rights violations. Further efforts were dedicated to encourage the establishment of the national ombudsman as well, although at the end of 2004 parliament had yet to elect the first Bulgarian parliamentary ombudsman.

Drafting Legislation

The shortcomings of the adopted legislation governing the establishment and operation of the parliamentary ombudsman and the local public mediators motivated the Law Program team to continue its efforts towards the creation of a modern legal framework of the ombudsman institution in Bulgaria.

- Law Program experts were actively involved in the *Coalition 2000* activities for drafting constitutional amendments by providing expert opinion and methodological assistance.
- Members of the Law Program team participated in the Task Force, hosted by the Local Government Initiative, which developed *Model Rules of Organization and Activities of the Local Public Mediators and Step-by-step Guidelines for Municipalities on How to Establish a Local Public Mediator*. The Model Rules and the Step-by-step Guidelines were widely distributed in the course of the CSD awareness activities and provided practical assistance to the municipal councils, willing to establish such an institution.

Raising Public Awareness

A series of awareness activities were organized aimed to popularize the advantages of the ombudsman and to convince the policy-makers' community in the necessity of establishing such institution.

- The **Training of Trainers Seminar on The Institution of Local Public Mediator in Bulgaria** that took place in Veliko Turnovo on April 23-25, 2004, brought together representatives of local NGOs and local government authorities. Law Program experts presented the legislative framework of the ombudsman institution in Bulgaria and the initiatives for introducing local public mediators, undertaken in some municipalities. The participants in the event expressed their concerns that the drawbacks of the legal framework could adversely influence the work of local ombudsmen. Representatives of local NGOs briefed the audience on the human rights protection initiatives undertaken on regional level in Varna, Gorna Oryahovitza, and Veliko Turnovo.
- The **Municipal Training Seminar on Human Rights Promotion and**



During the seminar in Veliko Turnovo (from left to right):
 Ms. Teodora Kaleynska, Chair of the Initiative for Sustainable Development Local
 Agenda 21 - Veliko Turnovo, Dr. Maria Yordanova, Director of CSD Law Program,
 and Ms. Dragomira Paunova, Project Assistant at CSD Law Program

Protection through the Institution of the Local Public Mediator, held in Haskovo on July 23, 2004, was aimed at popularizing the local ombudsman institution among the citizens, the local administration officials, and the NGOs from the region of Haskovo. The presentations delivered at the event focused on the legal framework of the ombudsman in Bulgaria and the experience accumulated so far with the establishment of such institutions on municipal level.

- In order to discuss in detail the role of the ombudsman institution as a mechanism for protecting the rights of specific groups of citizens the Law Program organized **two specialized Public Hearings**: one on **The Institution of Local Public Mediator, Local Administration and Disadvantaged People** (held in Veliko Turnovo on October 27, 2004) and the other on **Rights of Women and Mechanisms for their Protection** (held in Varna on November 12, 2004).

Educational and Training Activities

- Law Program experts in cooperation with university lecturers and academics developed the first **specialized university course on the ombudsman institution**. The ombudsman is still a novelty for Bulgaria's legal system and is therefore rarely included in the curricula of Bulgarian universities. However, thanks to the efforts of the Law Program, in 2004 the Law Faculty of Varna Free University became the first to include the course in its curriculum for the 2004-2005 academic year. The first course, entitled *The Ombudsman Institution – Legal Nature and Competencies in National, Comparative Law and European Context* started in the fall of 2004, enjoying considerable interest by the students.

The **educational radio show** *Mediation and the Rule of Law*, developed by the Law Program and broadcast on *Christo Botev* National Radio Program presen-

ted to a large audience the powers and the procedures of the ombudsman institution on both national and local levels. Politicians, acting and former local public mediators, representatives of NGOs and experts, participated in the program series.

Publications

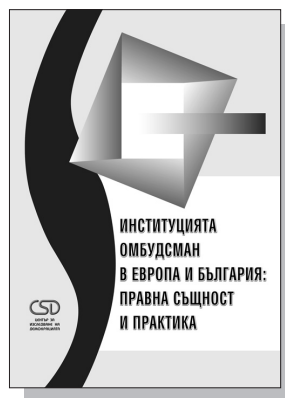
The Law Program expanded its series of publications on the ombudsman institution by issuing two more papers in 2004.

- The brochure *Local Public Mediators in Bulgaria* summarizes the accumulated experience and the best practices of the ombudsman type institutions on local level that have functioned as pilot projects during the 1998 – 2003 period. It also presents the first steps in the process of establishing such institutions after their legislative regulation in the fall of 2003.



- The educational manual *The Ombudsman Institution in Europe and Bulgaria: Legal Nature and Practice* is designed for specialized courses and programs in Bulgarian universities and high schools. It would be useful for students of law and political science, experts in public administration, human rights organizations, as well as for citizens to defend their rights

against omissions, illegal actions, or abuse of power on the part of the administration.



The Law Program continued to regularly publish articles in the *European Ombudsmen Newsletter* – a periodical issued by the Office of the European Ombudsman. The contributions provided in 2004 included:

- *Efforts Continue to Establish the Ombudsman Institution* (Issue No.2, April 2004);
- *The Emerging Ombudsman Institution in Bulgaria. Bulgarian Parliament Fails to Elect an Ombudsman* (Issue No.3, October 2004);
- *The Ombudsman Institution on the National and Local Levels – the Bulgarian Experience* (Issue No.3, October 2004);
- Summary of the brochure *Local Public Mediators in Bulgaria* (Issue No.3, October 2004).

To facilitate the election of the first Bulgarian parliamentary ombudsman and to foster dialogue between policy makers and the civil society in the process of nominating candidates the Law Program published and disseminated two policy briefs: *The Long Way of the Emerging Ombudsman Institution in Bulgaria* and *The Long Way of the Emerging Ombudsman Institution in Bulgaria: Six Months Later*. Both documents included analysis of the problems hampering the

election of the national ombudsman as well as recommendations for their overcoming.

“The successful election of a widely accepted personality highly depends on the active involvement of civil society and broad public consultations before the next nomination procedure is opened. This would not only increase the publicity and transparency of the entire procedure, but could also encourage political parties to reach an agreement so that the ombudsman could be elected with a higher majority. The broader support for the ombudsman would provide the institution with the necessary legitimacy and public confidence.”

CSD Policy Brief No.3: The Long Way of the Emerging Ombudsman Institution in Bulgaria, May 2004

International Cooperation

The knowledge and experience of the Law Program team with the introduction of the ombudsman institution in Bulgaria allowed it to participate in various international events, including:

- **Visit to the Office of the Federal Ombudsmen of Belgium** and meeting with the two Federal Ombudsmen Mr. Pierre-Yves Monette and Dr. Herman Wuyts (Brussels, April 15, 2004). During the meeting the participants discussed the situation with the establishment of the ombudsman institution in Bulgaria and opportunities for further development of the established cooperation.
- **Training Workshop for Ombuds-person Institutions** (Tbilisi, Georgia, September 23-25, 2004). The workshop was organized by the European Centre for Minority Issues (ECMI) and hosted by the Office of the Public



At the office of the Parliamentary Commissioner for the Armed Forces of the German Bundestag (from left to right): Mr. Vladimir Yordanov, CSD Executive Director, Dr. Ognian Shentov, CSD Chairman, Dr. Willfried Penner, Parliamentary Commissioner for the Armed Forces, Dr. Maria Yordanova, Director of CSD Law Program, and Mr. Atanas Krastin, Deputy Head of Mission of the Bulgarian Embassy in Germany

Defender of Georgia. The event brought together representatives of the ombudsman institutions from Armenia, Azerbaijan and Georgia, academics, as well as international organizations and NGOs, such as the Organization for Security and Cooperation in Europe (OSCE), the United Nations, and the Helsinki Committee.

- **Visit to the Office of the Parliamentary Commissioner for the Armed Forces of the German Bundestag** (Berlin, September 28, 2004). During the visit CSD representatives met with the Parliamentary Commissioner for the Armed Forces of the German Bundestag Dr. Willfried Penner and senior officials from his office. They discussed the opportunities for establishing an ombudsman for the armed forces in Bulgaria. The meeting was part of the newly launched initiative of the Law Program for introducing specialized ombudsman institutions in Bulgaria, such as a health services ombudsman or an armed forces ombudsman.
- **Meeting with a delegation of the Petitions Committee of the German Bundestag** (Sofia, November 17-19, 2004). The discussion focused on the role of the Committee in protecting human rights and improving the work of government institutions as well as the importance of other similar mechanisms, such as the ombudsman institution.

2. Participating in the Public Debate on Constitutional Amendments

The Law Program actively participated in the public debate on the amendments to the Bulgarian Constitution necessary in view of the country's forthcoming accession to the European Union. Law Program experts started examining

the compliance of the Bulgarian Constitution with the EU membership requirements. The initiative was launched within the framework of the Communication Strategy for EU Accession of the Ministry of Foreign Affairs. The study includes also an overview of the constitutional reforms in Bulgaria in the period 2003-2004 and a summary of the constitutional changes undertaken in EU Member States, especially the newly acceded ones. The results of the study will be included in an analytical report, which will be officially presented before the signing of the Accession Treaty with Bulgaria in April 2005.

3. Improving the Legal Framework of Political Parties

The Law Program continued its efforts to promote the reform of political parties legislation. In 2004 members of the Law Program team have been involved in the work of the Parliamentary Committee on Civil Society Issues and provided comments and recommendations on the Draft Law on Political Parties, particularly on the draft provisions regarding the funding of political parties. Advocating for a speedier adoption of the draft, the Law Program prepared and disseminated a policy brief *The Outstanding Agenda for Political Party Reform in Bulgaria*, outlining the necessary steps to be undertaken for successfully reforming the system of political parties in Bulgaria.

"It is of crucial importance for the current National Assembly to keep the momentum and successfully complete the reform before the expiration of its mandate. Otherwise, if the Parliament fails to adopt the new law in time, the elections would be held according to the existing legislation. Thus the reforms

would be considerably postponed or even blocked if the next parliament does not show the necessary political will to develop them further.”

CSD Policy Brief No.4: The
Outstanding Agenda for
Political Party Reform in Bulgaria,
July 2004

4. Supporting the Introduction of Criminal Assets Forfeiture

The Draft Law on Forfeiture to the State of Assets Acquired through Criminal Activity, developed by the Ministry of Interior, was substantially improved thanks to the domestic and foreign expertise provided through the Law

Program. With the support of the Law Program, a series of public discussions on the draft law that contributed to better formulating the legal provisions, included:

- **Round table on Assets Seizure in Europe: Legislative and Operational Instrument to Counter Corruption and Organized Crime** (March 2, 2004), featuring presentations by Mr. Miguel Angel Alonso Rodriguez, Chief Inspector of the Judicial Police, National Police of Spain, Mr. Gerard Leguet, Divisional Commissioner, Director of International Actions, Economic and Financial Directorate, General Directorate of Judicial Police, and Mr. Felix McKenna, Chief Bureau Officer, Criminal Assets Bureau of Ireland;



During the Assets Seizure Round Table (from left to right): Dr. Maria Yordanova, Director of CSD Law Program, Mr. Austin Gormley, Charge d'Affairs, Embassy of Ireland, Dr. Ognian Shentov, CSD Chairman, Mr. Felix McKenna, Chief Bureau Officer, Criminal Assets Bureau of Ireland, and Professor Georgi Petkanov, Minister of Interior

- **Public discussion on *Assets Forfeiture as a Mechanism for Combating Corruption and Organized Crime*** (June 3, 2004), featuring presentation by Mr. Heiner Boxleitner, Chief Criminal Commissioner of Bavaria;
- **Public discussion on *The British Policies and Approach to Assets Recovery*** (July 8, 2004), featuring presentations by the British experts Mr. John Tanner, Assistant Director, Performance and Policy, Assets Recovery Agency, and Mr. Stephen Goadby, Policy Advisor, Financial Crime Team, Home Office.

The discussions were aimed at both improving the quality of the draft law and increasing the transparency of the drafting process. They brought together policy makers, government officials, lawyers, experts, representatives of NGOs and the business community allowing them to benefit from the experience and best practices of other European countries. As a result of the discussions a number of proposals and recommendations for improving the draft law were formulated and presented to the drafting team.

5. Electronic Document and Electronic Signature

The Law Program continued to provide expertise in the process of developing the legal framework of electronic documents and electronic signatures in Bulgaria. Building on the experience accumulated in the course of drafting the Law on Electronic Document and Electronic Signature, in 2004 the Law Program contributed to the preparation of the draft legislation governing the use of electronic documents and electronic signatures within the judiciary. Representatives of the Law Program were included as members of the Expert Interagency Task Force set

up by the Council of Ministers. The Task Force elaborated a set of draft laws (including amendments to the Criminal Code, the Criminal Procedure Code, the Civil Procedure Code, the Tax Procedure Code, the Law on the Judiciary and the Law on the Electronic Document and Electronic Signature), which was subsequently approved by the government and submitted to the National Assembly.

“ ...The cooperation of the Ministry of Justice with the non-governmental sector is developing successfully also in the area of applying new technologies in the judiciary. Here we should mention the active contribution of the Center for the Study of Democracy in the development of the Law on Electronic Document and Electronic Signature and the draft laws on amending and supplementing of the Criminal Code, the Code of Criminal Procedure and the Code of Civil Procedure.”

Mr. Anton Stankov, Minister of Justice,
at the round table *Economic Growth and Higher Living Standards*, held by the World Bank and the Council of Ministers on June 17, 2004

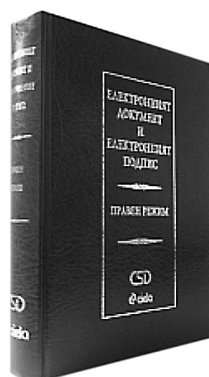
- In March 2004 CSD in cooperation with CIELA Publishing House published the book *Electronic Document and Electronic Signature. Legal Framework*. The edition is a result of the comprehensive research and analytical work carried out by the Law Program E-Signature Task Force in the period 2002-2003. It includes a detailed commentary on the Law on Electronic Document and Electronic Signature, an overview of the status and development of e-document and e-signature legislation in other countries and inter-

nationally as well as an overview of the major governmental and non-governmental initiatives in the area of information technologies undertaken in Bulgaria. The book contains also an analysis of the Bulgarian e-document and e-signature legislation in comparison with the EU law and a study on the legal regulation of computer crime under Bulgarian criminal law. The edition offers a set of annexes, including:

- a glossary of the most frequently used terms in the area of electronic signatures;
- standard documents for registration of certification service providers;
- a set of lists, prepared by the Communications Regulation Commission in accordance with the Law on Electronic Document and Electronic Signature and the ordinances on its implementation;
- the full text of the Law on Electronic Document and Electronic Signature and the ordinances on its implementation,
- the most important international instruments, European Union acts and foreign laws – translated to or summarized in Bulgarian,
- figures and schemes demonstrating the process of preparation and use of electronic documents and electronic signatures,
- the parties of the electronic communications and the relations between them,
- the mechanism for creation and use of qualified electronic signatures,

- the issuance of certificates for qualified electronic signatures.

In order to make the edition useful for foreign experts as well, an English-language summary of the process of developing the Bulgarian legal framework and its implementation and the full text of the Law on Electronic Document and Electronic Signature in English were also included.



- The book *Electronic Document and Electronic Signature. Legal Framework* was publicly presented at a **Round table discussion on Electronic Document and Electronic Signature: Instruments for Good Governance and Transparent Administration**, held by CSD on April 6, 2004. The event brought together representatives of the legislature, the executive and the judiciary, information technologies professionals, representatives of foreign and international organizations, the business community, journalists. The discussions focused on the opportunities to raise the efficiency and counter corruption in the work of the public administration and the provision of public services through the introduction and use of information technologies.



During the round table on electronic document and electronic signature (from left to right): Mr. Svetozar Tonev, Coordinator of the Interagency Task Force, Mr. Borislav Belazelkov, Justice, Supreme Court of Cassation, Dr. Maria Yordanova, Director of CSD Law Program, Mr. Anton Stankov, Minister of Justice, Dr. Ognian Shentov, CSD Chairman, Mr. Dimitar Kalchev, Minister of State Administration, and Prof. Dr. Jos Dumortier from the Interdisciplinary Center for Law and Information Technology at the Faculty of Law of the Katholieke Universiteit, Leuven, Belgium

II. Judicial Reform

1. Improving the Organizational Structure of the Judiciary

The Law Program continued to promote its concept for judicial reform, in particular as regards the improvement of the organizational structure of the judiciary. Following the submission in 2003 of the draft constitutional amendments, developed by Law Program experts, to the Ad-Hoc Parliamentary Committee on Amendments to the Constitution, the proposals were publicly presented and discussed at events, such as:

- Sixth Anti-Corruption Policy Forum (Sofia, February 17, 2004), organized by *Coalition 2000*;
- Round table on *Countering Corruption in Public Administration: The Spanish Experience* (Sofia, February 19, 2004), organized by CSD and *Coalition 2000*;
- International seminar on *The Impact of (Future) Accession to the European Union on the National Legal System* (Sofia, April 16-17, 2004),



*During the presentation of the Spanish experience in countering corruption (from left to right):
 Mr. Luis Salinas, Magistrate, Penal Court in the National Court of Justice,
 Mr. Daniel Campos, Prosecutor at the Special Public Prosecutor's Office Anti-drugs,
 National Court of Justice, Mr. Jose Antonio Choclan, Magistrate, General Judicial Council, and
 Mr. Javier Zaragoza, Deputy Prosecutor at the Special Prosecutor's Office Anti-drugs,
 National Court of Justice*

organized by the Center for the Study of Democracy jointly with the T.M.C. Asser Institute and the New Bulgarian University;

- Sixth Colloquium on Cross-Border Crime: *Crime and Economy and Crime Economy* (Berlin, September 2-4, 2004), organized by the Friedrich Ebert Foundation and the University of Tilburg;
- Civil Convent for Amendments to the Bulgarian Constitution (Sofia, October 13, 2004), organized by the Open Society Institute – Sofia.

2. Reforming the Registration System in Bulgaria

The initiative of the Law Program to promote and support the reform of the system of official registers in Bulgaria, launched in 2002, marked further progress in 2004. A second edition of the brochure *Opportunities for Establishment of Central Register of Legal Persons and Electronic Registries Center in Bulgaria* was published, including an updated version of the report of the Law Program Task Force on Registration Reform and an overview of the recent developments of the reform process.



Mr. Dimitar Markov, Project Coordinator at CSD's Law Program (left) and Dr. Maria Yordanova, Director of CSD Law Program, present the concept for reforming the registration system at the colloquium on Reforming the Judiciary and the Public Regulatory Mechanism for Funding in the Context of Transition, European Integration and Globalization

The proposal for reforming the registration system, developed by the Task Force on Registration Reform, was publicly presented and discussed at various events, among which were the **international seminar on Modernization of the Commercial Register in Bulgaria** (February 9, 2004) and the **colloquium on Reforming the Judiciary and the Public Regulatory Mechanism for Funding in the Context of Transition, European Integration and Globalization** (November 26-27, 2004).

Representatives of the Law Program Task Force on Registration Reform were invited by the Minister of Justice and took part in the work of the Working Expert Group for developing a *Strategy for Establishing a Central Electronic*

Register of Legal Persons and an Electronic Registries Center of the Republic of Bulgaria set up by Decision No. 332 of April 30, 2004, of the Council of Ministers.

The draft version of the strategy, prepared in the autumn of 2004, successfully passed the coordination procedure through all the ministries and was submitted for approval by the Council of Ministers. According to the strategy, the existing court registration procedures should be replaced with uniform and standardized administrative procedures. The provisions also mandate that the registers should be centralized and converted into electronic ones, and each entity would be assigned a unique ID number.