

Law Program

In the year 2000, the main activities of the Law Program were focused on legislative and judicial reform, and institution building. The main achievements were the successful development of the Draft Law on Electronic Document and Electronic Signature and the Draft Law on the Ombudsman.

2000 Highlights

- As Secretariat to the *Judicial Reform Initiative* (www.csd.bg/jri/), the Law Program was instrumental in the further development and public endorsement of the *Program for Judicial Reform in Bulgaria* as a consensus document based on a set of political and legislative measures, assisting the legal and institutional infrastructure of the judiciary.
- The Draft Law on the Ombudsman was elaborated by an expert task force with the CSD Law Program and was introduced to the National Assembly by a group of MPs. A book on the main aspects of the institution titled *The Ombudsman Institution – Concept Paper and Draft Law for Bulgaria; Foreign Legislation* was published.
- Under the auspices of the Law Program, an expert group finalized the Draft Law on Electronic Document and Electronic Signature. The Draft was approved by the Council of Ministers and the procedure for its adoption by the National Assembly was started. A book on the main aspects of the law titled *Electronic Commerce and Electronic Signature: Legal Aspects* was published.
- Public hearings on new and amended legislation have already become a more accepted practice at the National Assembly as a result of the efforts of the Program within its project *Citizen Participation, Public Hearings and the Development of Improved Public Policy in Bulgaria*.
- The Program continued its efforts to assist the development of the non-profit sector by updating the distance-learning course on general and financial management of NGOs for the purposes of multi-media education and for introduction of the best European NGOs management practices.

I. Legislative Reform

1. Shaping the Regulatory Framework of E-Commerce

Electronic means of communications are a serious challenge for the security and protection of transactions and relations conducted electronically. The new technologies require a relevant legal basis both on national and international levels. The classical regulations are based on the requirement for a paper-based document and hand-written signatures and therefore do not guarantee for an e-commerce and electronic data interchange.

In early 2000, the Law Program set up an e-commerce task force including Dr. Vessela Stancheva, Attorney at Law; Dr. Maria Yordanova, Head of CSD Law Program; Dr. Angel Kalaidzhiev, Associate Professor at the Law Faculty of Sofia University, Justice Borislav Belazelkov, Supreme Court of Cassation; and Mr. Stephan Kyutchukov, Partner, Djingov, Gouginski, Kyutchukov & Velichkov. The group further extended the research on various legal aspects of electronic commerce and electronic signatures and finalized the concept paper and the Draft Law on Electronic Document and Electronic Signature. An Expert Advisory Board was also established consisting of representatives of the main stakeholders concerned - business associations, government regulatory bodies and ministries, legal and IT experts to ensure the quality of the legislative proposals. Members of the Board held regular meetings with the task force members discussing the legal regulation of electronic signatures in the EU and other countries as well as comments and suggestions made.

On September 28 the Council of Ministers approved the Draft Law on Electronic Document and Electronic Signature and submitted it to the National Assembly. The Draft reflects the most important opinions, suggestions and recommendations made by the experts and institutions concerned. On October 19 the Committee on Legal Issues and Anticorruption Legislation to the National Assembly made a decision to move the Draft for first reading in a plenary session.

Awareness Raising and Public Discussions on the Draft Law

Meetings, public discussions and consultations were held at different stages with Bulgarian and foreign experts. The most important ones included:

- A discussion at the Bulgarian National Bank on March 7. The presentation was made by the task force core drafters to the National Council on Payment Systems members and representatives from other agencies and institutions, such as the Central Depository, the Association of the Commercial Banks, the State Commission on Telecommunications, the Bulgarian National Securities Commission, the Bulgarian Telecommunication Company, etc. The participants outlined their views on the improvement of the legal regulation.
- A Policy Workshop was held at the Center for the Study of Democracy jointly with No 2 Diplomatic Club (an initiative of deputy chiefs of diplomatic missions in Sofia) on March 22, to introduce the Draft Law as well. The major points of the proposed legislation were emphasized, such as the mechanisms for generating an electronic signature and the

proposed institutional framework.

- A visit by Bulgarian experts and policy makers to the United Kingdom on the issues of e-commerce legislation was organized in March 2000. The UK has one of the most advanced experiences in this area within the EU member states. The visit was organized by the Law Program with the British Association for Central and Eastern Europe (BACEE), in co-operation with the British Embassy in Bulgaria. The Deputy Governor of the Bulgarian National Bank Mr. Martin Zaimov and the task force members took part in the event. Among some of the topics presented were perspective and vision of e-commerce in UK, issues of self-regulation; consumer confidence (Trust UK), e-government strategy, encryption and law enforcement issues. A comparative legal analysis has been outlined throughout the discussions on different provisions of the Bulgarian draft law and the UK Electronic Communication Bill 2000.
- The Draft Law was featured in the discussions at two major international events in Sofia:

The Southeast Europe E-Commerce Forum held in Sofia on July 2-3 and organized by the Applied Research and Communications Fund (ARC Fund). The Forum was attended by IT experts, civil servants, business and industry representatives from United States, the European Union member states and Bulgaria.

A discussion of the final version of the Draft Law on Electronic Document and Electronic Signature was also part of the second Southeast European E-Commerce Conference held in Sofia in October 24 – 26 and organized by the Ministry of Economy.

- In order to facilitate the subsequent implementation of the draft law and to promote the knowledge at institutions concerned the Law Program published a book on the legal aspects of electronic commerce and electronic signature in April 2000.



Cover of Electronic Commerce and Electronic Signature: Legal Aspects

The book, published with the support of the Bulgarian National Bank, contains foreign and international acts related to e-commerce, including the legislation of the Czech Republic, Germany, the UK, the US (state of Utah), Spain and other countries, international law as well as the Bulgarian draft law. In the course of 2001, the Law Program will update the book in another edition including the relevant EU legislation.

Public-private Co-operation in Drafting the Legislation

The final version of the Draft Law on Electronic Document and Electronic Signature was elaborated together with representatives of the Ministry of Economy and with the participation of experts from the Bulgarian Industrial Association, the Bulgarian National Bank, and the Council of Ministers'

Directorate on European Integration and Relations with International Financial Institutions. The process of developing the draft and its successful introduction to the Parliament has clearly demonstrated the advantages of the public-private co-operation approach.

2. Introducing the Ombudsman Institution

The work on introducing the Ombudsman Institution to Bulgaria started in early 1998 with the analysis of a number of foreign legislative acts and continued in 1999 with the development of a Concept Paper and a Draft Law for Bulgaria. In 2000, the efforts of the CSD Law Program focused on further elaboration of the developed Draft Law on the Ombudsman as well as on the popularization of the necessity of establishing such institution in Bulgaria.

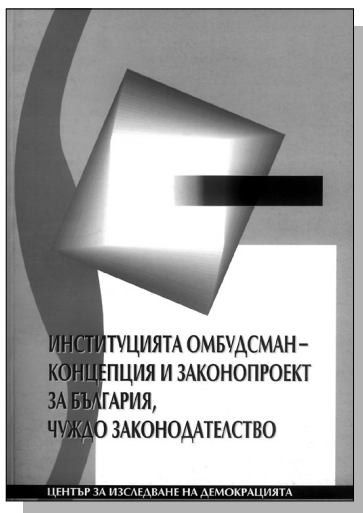
The year started with introducing substantial changes to the Draft Law. A separate chapter including provisions about local level Civic Mediators was added as a result of the successful implementation of *Coalition 2000's* initiative for establishment of local Ombudsman-type institutions. The inclusion of the new provisions made it necessary other texts of the Draft to be amended including its title, which was changed to Draft Law on the People's Defender and Civic Mediators. In the fall of 2000, the Draft Law was introduced to the Parliament by a group of MPs titled Draft Law on the Ombudsman. The opening of the legislative procedure resulted in further changes to the Draft. The name of the institution was changed into *Ombudsman (Public Mediator)* and the local institutions were renamed from Civic to Local Mediators. The scope of activities of the Ombudsman was further clarified.

The Draft Law elaboration and the

advocacy work of the Law Program could be summarized in the following milestones in the course of 2000:

- The partnership between CSD and the Parliamentary Centre of Canada on the establishment of the Ombudsman Institution in Bulgaria continued in 2000. In March 2000 Mr. Geoffrey Dubrow, Program Manager of the Parliamentary Centre of Canada, and Mr. Patrick Robardet, Legal Affairs and Research Director in the Office of the Public Protector in Quebec, visited Sofia. They were presented to the changes introduced in the Draft Law and made comments on them. In June, a delegation of Bulgarian politicians visited Canada on the invitation of the Parliamentary Centre of Canada and the Canadian International Development Agency (CIDA). The visit was aimed to study the Canadian experience in developing the Ombudsman Institution and other accountability mechanisms. Members of the delegation were Mr. Ivan Dimov, MP, Member of the Parliamentary Committee for Budget, Finance and Financial Control and the Parliamentary Committee on Legal Issues and Anticorruption Legislation; Mr. Yanaki Stoilov, MP, Deputy Chairman of the Parliamentary Committee on Legal Issues and Anticorruption Legislation; Mr. Kemal Eyup, MP, Member of the Parliamentary Committee on Foreign and Integration Policy; Mr. Valentin Georgiev, Secretary General of the National Assembly; and Mr. Dimitar Markov, Research Fellow at the CSD Law Program. The delegation had meetings with the Public Protector of Quebec Mr. Daniel Jacoby and the Ombudsman of Ontario Mr. Clare Lewis and participated in a Round Table on Federal Ombudsmen and Commissioners.

- In June 2000, Mr. Claes Eklundh, Chief Parliamentary Ombudsman of Sweden, visited Sofia on the invitation of CSD for a second time. During his stay he had a series of talks with representatives of the Council of Ministers, the President's administration, and the National Assembly on the establishment of Ombudsman Institution in Bulgaria and participated in a discussion on the Draft Law.
- The Law Program published a book titled *The Ombudsman Institution – Concept Paper and Draft Law for Bulgaria; Foreign Legislation*. The publication is aimed to inform the public about the nature and the significance of the institution and to facilitate the legislative procedure.



*The Cover of the publication *The Ombudsman Institution – Concept Paper and Draft Law for Bulgaria; Foreign Legislation**

The publication also offers a short overview of the development of the Ombudsman institution in various countries together with a comprehensive analysis on the Bulgarian constitutional and legal environment to be established in as well. The edition includes foreign

Ombudsman Acts, which served as a basis for drafting the Law for Bulgaria. They are both from countries with strong traditions in this area (Sweden, Canada and Spain) and from transition countries, in which the institution has been recently established (Poland, Hungary, Macedonia and Romania). Official Ombudsman related documents of the Council of Europe as well as the complete set of legislative acts on the European Ombudsman (Ombudsman of the European Union) are also included. The edition was distributed among legislators, politicians and civic organizations.

- On November 24, the CSD Law Program jointly with the Parliamentary Committee on Human Rights, Religions, Complaints and Petitions of the Citizens, American Bar Association – Central and East European Law Initiative and Union of Jurists in Bulgaria organized an International Conference Establishment of the Ombudsman Institution: Bulgarian Prospective. The Conference was held at the National Assembly on the occasion of the opening of the legislative procedure for the adoption of the Draft Law on the Ombudsman.

The conference was opened by the Chair of the Parliamentary Group of the Union of Democratic Forces Ms. Ekaterina Mihailova, and the Chairman of the Supreme Administrative Court Mr. Vladislav Slavov. The Ombudsman of Greece, Prof. Nikiforos Diamandouros, presented the Greek experience with the functioning of the Ombudsman Institution, which was established in Greece in 1998. He also made comprehensive comments and recommendations on the Bulgarian Draft Law on the Ombudsman. Ms. Hanne Juncker, Expert in the Directorate General of Human Rights to the Council of Europe, briefed the participants with the Ombudsman related activities carried out within the

Council of Europe. Bulgarian Draft Law on the Ombudsman was presented by the members of the task force to the Center for the Study of Democracy Dr. Maria Yordanova, Head of CSD Law Program, Justice Borislav Belazelkov, Supreme Court of Cassation and Dr. Silvy Chernev, Deputy Chair of the Court of Arbitration with the Bulgarian Chamber of Commerce and Industry. Ms. Anelia Toshkova, MP and member of the Parliamentary Committee on Human Rights, Religions, Complaints and Petitions of the Citizens explained the benefits of the Ombudsman Institution for the balanced relations between state and society. The Conference was closed by the Chair of the Parliamentary Committee on Human Rights, Religions, Complaints and Petitions of the Citizens Mr. Ivan Soungarski who appreciated the contribution of non-governmental organizations to the development of the Draft Law and expressed his hope for the

adoption of an effective and working law.

II. Judicial Reform

Judicial Reform Initiative (JRI) and Program for Judicial Reform

The *Judicial Reform Initiative* was launched in March 1999 as a joint initiative of leading Bulgarian non-governmental organizations: the Legal Interaction Alliance, the European Network of Women in Police – Bulgaria, the Chamber of Investigators in Bulgaria, the Legal Initiative for Training and Development (PIOR), the Association of Judges in Bulgaria, the Union of Jurists in Bulgaria, the Modern Criminal Justice Foundation, the Center for the Study of Democracy (acting also as Secretariat to the Initiative), as well as individual MPs, magistrates and public officials. The main objective of



From left to right: Prof. Nikiforos Diamandouros, Ombudsman of Greece; Deputy Minister of Justice Dimitar Tonchev; Dr. Maria Yordanova, CSD Law Program Head and Ms. Ekaterina Mihailova, MP, Chairperson of the Parliamentary Group of the Union of Democratic Forces

this initiative is to develop a detailed Program for Judicial Reform in Bulgaria (PJR), based on a broad consensus within the country.

The Program for Judicial Reform in Bulgaria in its separate sections addresses all the issues we consider significant for carrying out judicial reform.

Mr. Vladislav Slavov

Chairman of the Union of Jurists
in Bulgaria
Chairman of the Supreme
Administrative Court

The PJR has been developed by eminent Bulgarian lawyers and benefits from the combined efforts of government representatives, representatives of influential NGOs, and individual experts to ensure further successful development of judicial reform

in Bulgaria. The final version of the Program developed and discussed during 1999 was accomplished in the first half of 2000. A Policy Forum to endorse the PJR was held on May 18. More than a 100 representatives of public and private institutions, international organizations, judiciary, academicians and media attended the Forum. The Program for Judicial Reform was presented and publicly endorsed at the Forum, which reflected the consensus reached among the principal institutions and stakeholders. The PJR was published both in English and Bulgarian and distributed among all institutions and persons concerned.

The Program is mainly related to the development of the legislative framework, and efforts will continue in the course of 2001. In September 2000, a task force with the Ministry of Justice preparing a draft law amending the Law on the Judiciary started work. Representatives of the executive, legislative



From left to right: Judge Kapka Kostova, Chair of the Association of Judges, CSD Law Program Head Dr. Maria Yordanova and Mr. Dimitar Abadzhiiev, MP, Deputy Chair of the Council on European Affairs at the National Assembly

and the judiciary, as well as NGOs including the CSD were involved in its activity. The major part of the priorities of the further judicial reform, as identified in the PJR, were included in the Ministry of Justice's Concept Paper on the amendments needed to the basic for the Judiciary and for the continuing judicial reform Law (the Law on the Judiciary).

Our efforts to draft a new act focused the directions, proposed by the European Commission to reform the Judiciary, by the Program for Judicial Reform in Bulgaria, prepared by the JRI and CSD and the proposals of the Supreme Judicial Council.

Dimitar Tonchev, Deputy Minister of Justice, in his opening speech at the public hearing on the draft law on the Amendments to the Law on the Judiciary on November 17



Deputy Minister of Justice Dimitar Tonchev at the public hearing on November 17

Some of the priority areas proposed as amendments include:

- A more accurate selection of the candidates and introducing contests as a major principle when appointing magistrates (especially on their first appointment).
- Improving the efficiency of the regulatory framework of the one-year internship of the court candidates.
- Regulation and specification of the status of court administration.
- Setting up with the Ministry of Justice a specialized unit (Court Police) to provide security and assistance to the different judicial system bodies.
- Specifying obligations for the various units of the Judiciary to accurately maintain court statistics and Uniform Information System to combat criminality.
- Improving mechanisms and procedures to ascertain/find out cases where disciplinary violations have been made and to institute disciplinary liability of all magistrates.
- Assessment of the possibility to establish specialized prisons.

The Draft Law was publicly discussed at a hearing organized by the Center for the Study of Democracy, ABA/CEELI, the Union of Jurists in Bulgaria and the Ministry of Justice on November 17, attended by more than a 100 representatives of all judiciary branches.

III. Contributing to Enhanced NGO Capacity Other Initiatives

Since 1992, the Center for the Study of Democracy has been working for the promotion of a better legal environment for Bulgarian civic organizations. The Not-for-Profit Organizations Draft Law and a package of proposals to amend the tax legislation regarding not-for-profit organisations were elaborated during this period. In 2000, the Law Program continued to be active in the public campaign for the adoption of a modern NGO legislation. Three draft laws on the status of not-for-profit organizations were officially moved to the National Assembly in 2000. One of them was based on the draft elaborated by a task force with the Center for the Study of Democracy. In October, the Parliament adopted the Not-for-profit Legal Entities Law replacing the respective part of the old Persons and Family Law (enacted in 1949). The main achievement in the new law is the division of NGOs in two categories: *public-benefit and mutual-benefit organizations (PBO and MBO)*. This division is a basis for future introduction of tax benefits for PBOs by amendments to the tax legislation. CSD experts

participated in the task force (with the Resource Center for the Not-for-profit Organizations) for changing the tax regime of the not-for-profit entities. The package prepared by CSD contributed to the work of this task force. The elaborated proposals were aimed at encouraging the development of the social economy sector and to structure the basis of its sustainable development.

In 2000, the Law Program continued its work on providing practically oriented programs for the NGOs community. As a result of the project "General and Financial Management of Not-for-profit Organizations", carried out in cooperation with the Hellenic Management Association (Athens), the Sofia University Regional Distance Education Study Centre, and the Skopje University Law Faculty, a distance learning course on NGOs management is now part of the curriculum of the Faculty of Business Administration at Sofia University. The work for furthering the achievements of this project continued with exploring the possibilities for adjustment of the study materials for multi-media education.