

Law Program

In 2013, the Law Program's efforts were focused on four main topics: public confidence in justice, judicial reform, penitentiary reform and fundamental rights.

- **Public confidence in justice.** The Law Program, within the framework of the FIDUCIA initiative, continued its efforts in studying public confidence in justice in the context of new forms of criminality. CSD leads the efforts on cybercrime producing two comprehensive comparative studies – on the prevalence of cybercrime and related enforcement activity and on the conceptualization and classification of cybercrime.
- **Judicial reform.** The Law Program provided expert assistance to the Ministry of Justice in the development of key pieces of draft legislation such as the new Criminal Code and the legislative amendment package for introducing electronic tools in the administration of justice. CSD also contributed to furthering the reform of the system of official registers and assessing and updating the judicial reform strategy. Efforts were also made towards improving the capacity of the judiciary to handle complex cross-border cases of environmental crimes and maritime pollution.
- **Penitentiary reform.** Building upon previous efforts in the field, the Law Program started working on improving the social re-integration of offenders. The work is focused on identifying and promoting effective alternatives to imprisonment and good practices in the treatment of particularly vulnerable groups of inmates.
- **Fundamental rights.** In its broad spectrum work on fundamental rights the Law Program continued its monitoring of racism and xenophobia as part of the Rights, Equality and Diversity (RED) Network and its work on improving the protection of victims' rights through better access to legal aid.

I. Measuring public confidence in justice

Measuring public confidence in justice continued to be in the focus of the Law Program's activities. CSD is participating in the FIDUCIA initiative (www.fiduciaproject.eu): a joint effort of lawyers, psychologists, sociologists, statisticians, criminologists and policy analysts from nine European universities and research institutes aimed at shed-

ding light on a number of distinctively 'new European' criminal behaviors that have emerged in the last decade as a consequence of technology developments and the increased mobility of populations across Europe. Like its predecessor, the EURO-JUSTIS initiative, FIDUCIA is built around the concept that public trust in justice is critically important for social regulation, in that it leads to public acceptance of the legitimacy of institutions of justice, and

thus to compliance with the law and cooperation with legal authorities.

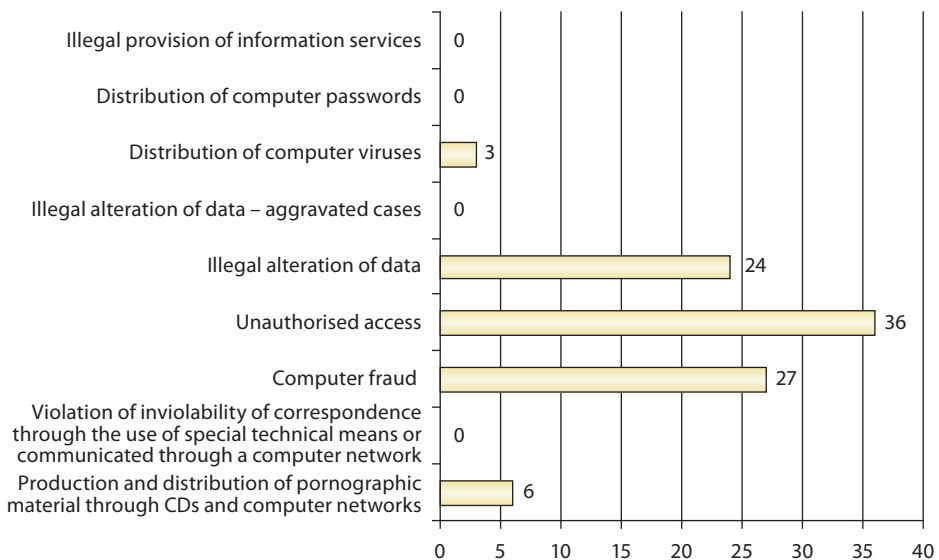
FIDUCIA is focused on four new types of criminality: trafficking of human beings, trafficking of goods, illegal migration and cybercrime. CSD is leading the work on cybercrime, which aims to examine the causal dynamics of that type of crime, assess 'best' and 'worst' policy responses across Europe and at EU level, identify 'trust based' alternatives that might prove more effective, and devise ways of implementing these approaches.

Based on its own research and contributions by leading European experts CSD produced two comprehensive studies.

- The report *Prevalence of Cybercrime and Related Enforcement Activity* examines

the available data on cybercrime at national and European level. The report offers a comprehensive analysis of the collection of official statistics (statistics collected by the police, the public prosecution and the courts) and, where available, of survey data. For each country the analysis covers the institutions and organizations collecting the data, the applied methodologies, the regularity of updating the data and the publicity and accessibility of the information. The factsheets annexed to the report offer a visual presentation of the collected data country by country. Based on the research results the report concludes that there is a serious gap in the collection of data on cybercrime and even if such data are actually collected they are not comparable due to differences in the methodologies.

Figure 1. Newly instituted pre-trial proceedings for computer crimes in Bulgaria by offence type (2011)



Source: Report on Prevalence of Cybercrime and Related Enforcement Activity.



Dr. Maria Yordanova, CSD Law Program Director, at her presentation “Cybercrime as New Emergency: Concept and Classifications”

- The report *Conceptualizing and Classifying Cybercrime* reviews the classifications of cybercrime used by national and international legal and policy documents. The report identifies as a serious problem the lack of commonly accepted definitions and classifications of cybercrime. The most widespread classifications divide cybercrimes into typical cybercrimes and traditional crimes committed through the use of information technologies. However, there is no common understanding about the scope of these categories while at the same time there are also other classifications based on different criteria.

The two reports were presented at the 13th Annual Conference of the European Society of Criminology (ESC), held on 5-7 September 2013 in Budapest, Hungary. In her presentation *Cybercrime As New Emergency: Concept and Classifications*, the Law Program Director Dr. Maria

Yordanova briefed the audience about the findings and conclusions of the research paying special attention on the need of comparable official statistics, commonly accepted definitions and corresponding classifications.

The Law Program team has been working on two more reports on cybercrime, both of which are going to be available in 2014. One of them examines the cybercrime-related public policies while the other reviews the non-legislative initiatives and practices for preventing and countering cybercrime.

II. Judicial reform

Still considered as one of Bulgaria's most serious problems, the reform of the judiciary continued to be a major component of CSD's activities. In 2013, the efforts of the Law Program were directed at evaluating the implementation of the government's judicial reform strategy and improving the capacity of the judiciary to face newly emerging challenges.

Three years after the government adopted the *Strategy for the Continuation of the Reform of the Judiciary in the Context of the Full Membership in the European Union* the Ministry of Justice invited the most influential non-governmental organizations to assess the implementation of the strategy so far and suggest revisions in view of a future update of this document. CSD was responsible for evaluating the measures related to e-justice and criminal policy. The analysis performed by the Law Program included an overall evaluation of the whole strategy, a measure-by-measure assessment of the strategy's sections on e-justice and criminal policy, proposals for re-formulating the measures that were not implemented and a set of recommendations for new measures to be included in the framework of a future update of the strategy.

CSD continued to provide expert assistance to the work of the Ministry of Justice in key areas of judicial reform such as e-justice and criminal law. In the area of e-justice, representatives of the Law Program continued their participation in the Ministry's working group preparing a legislative amendment package for introducing electronic tools in Bulgarian administration of justice. They presented draft e-justice supplements to the *Criminal Procedure Code*, aimed at introducing electronic notifications in criminal proceedings. The package, consisting of amendments to the *Law on the Judiciary* and the main procedural laws, was finalized in the beginning of 2013 and presented to the government. Due to the parliamentary elections in May 2013 the amendments are yet to be discussed in the Council of Ministers and the National Assembly.

In the area of criminal law reform, the Law Program's contribution was focused on the development of the new *Criminal Code*. Mr. Dimitar Markov, Senior Analyst at the CSD Law Program continued to participate in the regular meetings of the working group of the Ministry of Justice working on the draft. The group, set up in 2012, includes magistrates, government officials, academics and representatives of non-governmental organizations. The Law Program provided input on the sections on organized crime, cybercrime, human trafficking, hate crime and corruption.

CSD continued to advocate for an overall reform of the system of official registers in Bulgaria and in particular for the transferring of the register of non-profit legal entities from the district courts to the Registry Agency. The *Updated Strategy for the Establishment of a Central Electronic Register of Legal Persons and an Electronic Registries Center of Republic of Bulgaria*, developed by CSD in 2012, was further improved based on the feed-

“According to the legislative agenda for the first half of 2013, approved by the Council of Ministers, the Ministry of Justice is expected to develop draft amendments to the Law on Non-Profit Legal Persons.

...

The suggested amendments will be subject to a public discussion with the relevant stakeholders, in the framework of which you could present your expert opinion.

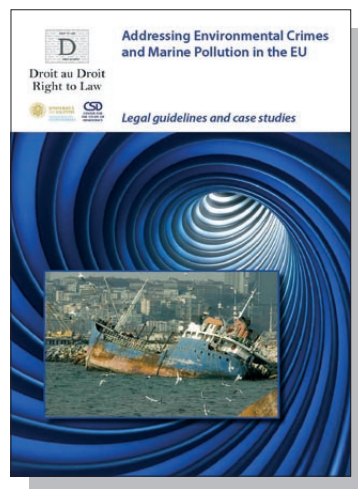
On behalf of the Ministry of Justice I would like to express my gratitude to the Center for the Study of Democracy for the effective cooperation on the issues of registration reform and the reform of the judiciary.

Source: Letter from Ms. Denitsa Valkova, Deputy Minister of Justice (December 2011 – May 2013), to the Center for the Study of Democracy.

back received from stakeholders during and after the public discussion held in October 2012. The revised version was officially presented to the Ministry of Justice in January 2013.

Further steps towards the establishment of a modern registration system in Bulgaria will be undertaken in 2014 when a newly formed working group with the Ministry of Justice is expected to elaborate legislative amendments enabling the electronic registration of non-profit legal entities. CSD representatives are the Law Program Director Dr. Maria Yordanova and the Program’s Senior Analyst Mr. Dimitar Markov.

CSD’s work in the area of judicial reform also includes training and capacity building activities. In 2013, the efforts were aimed at improving the capacity of the judiciary to handle cases of environmental crimes and maritime pollution. The complexity of these cases is due to the fact that environmental crimes often cause damages in more than one country and each of these countries may wish the case to be heard by its national judicial authorities. Following up on the series of training seminars for judges and prosecutors held in 2012,



the Law Program assisted the development of an online training course on environmental crimes and maritime pollution (<http://formazioneonline.unisalento.it/m/enrol/index.php?id=15>). The course, officially launched in May 2013, is designed for legal practitioners and includes a series of videotaped lectures and a collection of training materials. The Law Program was also responsible for the promotion of the online course in Bulgaria and for the dissemination of the handbook *Addressing Environmental Crimes and Marine Pollution in the EU*:

Legal Guidelines and Case Studies, which offers additional information on the topic, including an overview of the existing European and international instruments and rules related to environmental crimes and marine pollution.

III. Penitentiary reform

The execution of criminal sanctions in Bulgaria reveals serious problems that for a long time have been neglected by the government. Particularly worrying is the situation in the prisons where problems such as overcrowding, poor living conditions and lack of adequate social and medical services often lead to violation of prisoners' rights and prevent the effective social re-integration of offenders.

Based on its extensive expertise in the field of penitentiary system reform, in 2013 CSD launched a new initiative to-

gether with universities and research institutes from Germany, Spain, Belgium and Lithuania. The general objective of the initiative is to create better conditions for the re-socialization of offenders after their release from the prison. The work is focused on the identification and promotion of effective alternatives to imprisonment and of good practices of treating particularly vulnerable inmates such as foreigners, representatives of minorities, drug users, etc. In the long run, CSD and its partners will also work on developing a set of indicators for the assessment of the situation in prisons.

The activities performed in 2013 included mainly the collection of data on the prison systems of the participating countries. This is the preparatory stage of the work and the results of the research will serve as the basis for the next stages. The data collection and analysis were conducted according to a methodology developed by the Lithuanian Law



From left to right: Mr. Alejandro Forero, Researcher, Observatory of the Penal System and Human Rights (OPSHR), Dr. Maria Yordanova, CSD Law Program Director and Mr. Dimitar Markov, Senior Analyst at CSD Law Program

Institute in cooperation with the other partners. The results were summarized in five country background papers (one for each country). Each country background paper offers an overview of the national legal and institutional framework of the prison system accompanied by statistical data on the number and profile of the prison population.

The partners held two progress meetings (in Brussels, Belgium, on 19 January 2013, and in Vilnius, Lithuania, on 7-8 August 2013) to discuss the findings and conclusions of the research and plan the upcoming activities. The research issues discussed during the meetings included the definition of 're-socialization', the criteria for assessing concrete measures as 'good practices', the availability and reliability of statistical data, etc. During the meeting in Vilnius the participants also visited the local prison to obtain direct impressions of the material conditions and the treatment of inmates.

Based on the collected information about the criminal prosecution of drug-related crime and the treatment of drug users in the prison, the Law Program Senior Analyst Mr. Dimitar Markov co-authored the country report on Bulgaria for the collection *Drug Policy and Drug Legislation in South East Europe*, published by the Greek association Diogenis.

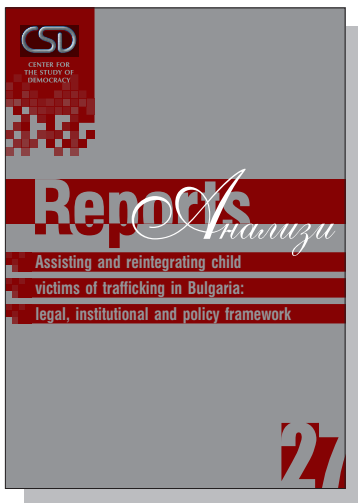
IV. Fundamental rights

In the line of its long-term research priority, related to fundamental rights in a criminal justice context, in February 2013 CSD in partnership with universities and NGOs from Poland, Italy and Latvia, started working on improving the protection of victims' rights through better access to legal aid. The initiative aims at shedding light on the legislative and practical aspects of providing legal aid to victims, as well as training practitioners and raising the awareness of



The partners in the initiative to improve the protection of victims' rights during their first meeting in Poznan, Poland

various specialized audiences on the issue. The Law Program team was tasked with preparing a research paper presenting the current legal framework and best practices of selected Member States, the EU and the International Criminal Court in the area of legal aid to victims. The paper elaborated on victims' right to information about their procedural status, the conditions for awarding state funded legal aid and the institutional structures, providing it. The paper was widely disseminated and published on the initiative's website (<http://victim-rights.eu/>).



The study on the legal and institutional framework for assisting and reintegrating child victims of trafficking in Bulgaria, published by the Law Program in 2012, was presented at a policy workshop *Support and Reintegration of Children Victims of Trafficking: Improving Policy and Practice in Bulgaria* held in Sofia on 20 March 2013. The study includes an overview of the relevant laws and regulations and an analysis of the compliance of Bulgaria's protection framework with the findings and recommendations in the report on Bulgaria by the Group of Experts on Action against Trafficking in Human Beings GRETA.

Another aspect of victims' rights, researched by the Law Program in 2013, was the use and effect of protection orders. Ms. Miriana Ilcheva, Research Fellow at the CSD Law Program, wrote an analytical report on the protection order legislation in Bulgaria. The report includes information on protection orders against domestic violence, warning protocols under the *Law on the Ministry of Interior*, restraining orders under the *Criminal Procedure Code* and interim measures under the *Civil Procedure Code*. The research was done in the framework of the POEMS initiative (Protection Orders in the European Member States), which aims at giving an accurate, in-depth, and up to date overview on what legal protection measures are currently in force in the EU Member States and developing a comparative and analytical perspective on the current state of protection order legislation.

CSD continued to participate in the Rights, Equality and Diversity (RED) Network, an independent research network composed of 17 research institutes and civil society organizations in EU Member States. The RED Network developed and launched the RED Portal with its two components RED Atlas of Racism and Discrimination (a set of indicators providing a profound view of the racism, discrimination, integration and diversity policies, cases, statistics, etc. in the EU) and an Early-Warning System (map-based and providing straight forward information to experts and other users). The Law Program was responsible for monitoring the situation in Bulgaria and inputting relevant data into the early warning system and the atlas since 2011. In 2013, the portal was fed with the latest developments in the policy measures, major incidents and latest reports. At the regular meeting of the RED Network in Athens, Greece, on



29 January 2013, CSD was represented by Ms. Maria Doichinova, Program Assistant at the Law Program. The network members discussed the perspectives before the initiative, including the European Parliament's interest in granting its patronage to the Early Warning System.

The Law Program also conducted research in the area of religious rights. Based on its results Dr. Maria Yordanova delivered a presentation on the legal guarantees and deficits of religious rights in modern Bulgaria at the workshop on law and religion held in Rome on 21 June 2013. The workshop was organized by the Department of Law of the University of Rome Tor Vergata and the Institute for the Study of Regionalism, Federalism and Self-Government of the National Research Council within the framework of the tenth international symposium of university professors 'Culture before God, challenges, research, perspectives from the Mediterranean to the world'.

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The Law Program continued to contribute to CSD's work in the area of anti-corruption. The Law Program experts drafted the sections on legislative reform, constitutional justice and criminal law of the CSD Policy Brief No. 43 Corruption and Anti-Corruption in Bulgaria 2012 – 2013, published in November 2013 and presented at a press conference on 29 November 2013. Ms. Miriana Ilcheva, Research Fellow at the Law Program, continued working on the legal aspects of the Overall Analytical Report and the periodic updates within the framework of the Local Research Correspondents on Corruption (LRCC) Network.

The Law Program Director Dr. Maria Yordanova delivered a presentation on the effective public-private partnerships and monitoring mechanisms for countering corruption in Bulgaria at the conference *Anti-Bribery and Corruption: Bulgaria on the Global Stage*, held in Sofia on 21 May 2013 and co-organized by the



Dr. Maria Yordanova, CSD Law Program Director, during the conference "Anti-Bribery and Corruption: Bulgaria on the Global Stage"

British Bulgarian Chamber of Commerce, Dentons Europe, KPMG Bulgaria and Penkov, Markov & Partners.

The Law Program continued to serve as national correspondent for Bulgaria of the fifth edition of the *European Sourcebook of Crime and Criminal Justice Statistics*. The European Sourcebook is an instrument for collecting official statistics and data from sociological surveys carried out in the area of crime and criminal justice. In 2013 the Law Program collected the necessary official statistics and survey data filled the collected information in the online country survey.

The role of the civil society for enhancing democracy and the rule of law was

also among CSD's areas of research of in 2013. The Law Program contributed to the development of a study on the civil society and non-governmental organizations in Bulgaria. Some of the findings of the study were presented at the seminar *Protests in Bulgaria and on the Balkans in 2013: The State of Democratic Institutions*, hosted by CSD on 22 November 2013. In her presentation at the seminar Ms. Maria Doichinova, Program Assistant at the Law Program, talked about the pro-active role of the civil society in the context of the series of protests taking place in the country during the last two years.

Through the Law Program CSD is participating in an international initiative studying the challenges before

the protection of critical underground infrastructure. The initiative, called Upsidedown Protect brings together public authorities and research institutes from nine EU Member States in an effort to examine the access to information about the critical underground infrastructure and assess the risks of the

potential use of such information for terrorist activities.

Upon invitation of the Constitutional Court of the Republic of Bulgaria the Law Program provided expert opinion on two of the most important constitutional cases of 2013.