

Law Program

In 2014, the Law Program's efforts were focused on four main topics: public confidence in justice, judicial reform, penitentiary reform and fundamental rights.

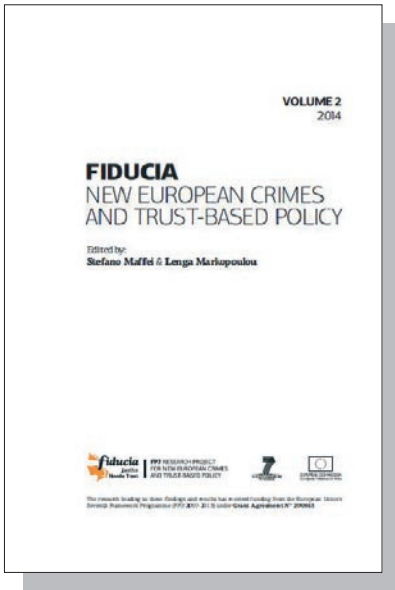
- **Public confidence in justice.** The Law Program continued its efforts in studying public confidence in justice in the context of new forms of criminality and particularly of cybercrime. The main findings of the research efforts are presented in two comprehensive comparative studies – on current domestic and supranational policies on cybercrime and on self-regulation and other non-legislative practices against cybercrime. A national survey on trust and attitudes to justice “abroad” as part of a joint effort of partners from 7 Member States was also conducted.
- **Judicial reform.** CSD experts contributed to optimizing the structure of the judiciary and to improving its work through developing an innovative method for using open public data for forward looking analysis of the socio-economic factors affecting the workload of the regional courts. The Law Program continued to provide expert assistance to the Ministry of Justice in updating the Strategy for the Continuation of the Reform of the Judiciary in the Context of the Full Membership in the European Union as well as for furthering the reform of the system of official registers.
- **Penitentiary reform.** Building upon previous efforts in the field, the Law Program published a comprehensive study on alternatives to imprisonment, compiled a handbook on the treatment of vulnerable groups of inmates and designed a state-of-the-art Prison Conditions Monitoring Index (PCMI).
- **Fundamental rights.** As a member of the FRANET network of the EU Fundamental Rights Agency the CSD collects data and information necessary for the agency's comparative studies. CSD also continued its work on protecting victims' rights through better access to legal aid and on facilitating the interaction between vulnerable groups and the state.

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 thirteen European universities and research institutes aimed at shedding light on a number of distinctively 'new European' criminal behaviours 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 con-

cept 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.



The research is focused on four new types of criminality: trafficking in human beings, trafficking in 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.

In 2014 volume 2 of the series *FIDUCIA: New European crimes and trust-based policy* was published, in which the chapter *D-9.1 Report and factsheets on prevalence of cybercrime and related enforcement activity* prepared by the CSD Law Program team is included.

Based on its own research and contributions by partners from other EU Member States CSD produced two subsequent comprehensive studies.

- The report *Current Domestic and Supranational Policy on Cybercrime* examines the cybercrime-related public policies. It is based on research covering two major areas: (a) initiatives and policy instruments of international actors such as the Organisation for Economic Cooperation and Development, the United Nations, the Council of Europe, the European Union and the Group of Eight Industrialised Countries, and (b) policies

“Most often countries collect data on the typical forms of cybercrime (i.e. crimes such as hacking, virus attacks, etc., that can be committed only by using a computer or other similar information technology). In terms of crimes that can be committed either with or without using such technology (e.g. fraud) separate figures are not available. This situation significantly hampers the assessment of the spread of cybercrime, since it remains unclear what share of crimes, otherwise recorded as conventional crimes, are actually committed in cyberspace.

A positive development in some countries is the publication (periodically or occasionally) of **special reports on cybercrime**. Such reports offer detailed statistics on cybercrime accompanied by analysis and recommendations.”

Source: FIDUCIA: New European Crimes and Trust-Based Policy, Volume 2, 2014, edited by Stefano Maffei & Lenga Markopolou, p. 134.

“Cybercrime has constantly been in the focus of EU instruments and initiatives over the past few decades. Parallel to the adoption of legal provisions covering a number of cybercrimes, development of a specific EU policy against cybercrime has long been recognised as a priority by the Member States and the Commission. Policy initiatives towards the development of a general policy on the fight against cybercrime have aimed at strengthening the fight against cybercrime at the national, European and international level. The first comprehensive policy document that the European Union has produced in this area, the *Cybersecurity Strategy of the European Union: An Open, Safe and Secure Cyberspace*, addresses all relevant actors: public authorities, the private sector and individual citizens. Drastically reducing cybercrime is one of the strategic priorities that should guide cybersecurity policy in the EU and internationally.”

Source: Current Domestic and Supranational Policies on Cybercrime.

at the national level. In addition to reviewing the state of the art in terms of existing domestic and supranational policies, the study examines the level of synergy between international, EU and national policies, and the possible short and mid-term trends in the development of common European policies in this area.

- The report *Self-Regulation and Non-Legislative Measures to Prevent and Counter Cybercrime at National and International Level* reviews the non-legislative initiatives and practices for preventing and countering cybercrime. It examines the international and national cooperation between business, government and civil soci-

ety to combat the inexorable growth in cybercrime. It has identified a number of best models and practices that could serve as a starting point for formulating future policies based on trust and soft/persuasive measures in contrast to the fear-based policies and coercive measures dominant so far.

The two reports were presented at the 14th Annual Conference of the European Society of Criminology (ESC), held on 10-13 September 2014 in Prague, the Czech Republic. In her presentation *Policies and non-legislative practices countering cybercrime at international, EU and national level*, the Law Program Director

“...the private actors dealing with ICT are contributing to cybersecurity and fight against cybercrime by a variety of voluntary initiatives and actions at international and national level. The implemented forms of self-regulation and co-regulation are necessary complements to centralised regulation of the cybercrime. These persuasive measures offer flexible approaches and in combinations with the traditional regulatory frameworks based on coercive measures can mitigate cyberthreats and vulnerabilities. They can balance the increasing over-regulation that can become an obstacle for the development of ICTs and their availability.”

Source: Self-Regulation and Non-Legislative Measures to Prevent and Counter Cybercrime at National and International Level.

Dr. Maria Yordanova presented the conclusions of the research on the EU and EU Member States' policy initiatives against cybercrime and the private sector's responses to cyberthreat. Special attention was paid on the need to expand the already established cooperations and partnerships at all levels both within the Union and within individual Member States (including successfully implemented self-regulations, co-regulations and other forms of PPPs and joint initiatives of businesses, non-profits and governments) as well as with all influential international structures.

A national survey on trust and attitudes to justice "abroad" as part of a joint effort of partners from 7 Member States (UK, Italy, Germany, Finland, Lithuania, Hungary, Bulgaria) was also conducted. The survey design included a separate set of questions on public attitudes towards and public awareness of cybercrime on the basis of which CSD will produce in the beginning of 2015 a comparative study on public attitudes to cybercrime.

II. Judicial reform

The reform of the judiciary continued to be a major component of CSD's activities. In 2014, the efforts were directed to supporting the design and implementation of the public policies for reforming the structure of the courts. In close cooperation with the Supreme Judicial Council (SJC) and the Ministry of Justice (MoJ), the CSD expert Todor Galev and the Law Program team have developed an innovative method for using open public data for forward looking analysis of the socio-economic factors affecting the workload of the regional courts. The main findings of the pilot analysis, methodology and some initial results were presented to the members of the SJC and administrative heads of a number of district and regional courts, representatives of the Ministry of Justice and civil society organisations involved in judicial reforms efforts. This is the first analysis in Bulgaria to identify potential socio-economic factors affecting the frequency and types of cases instituted by the Bulgarian courts. Until now, the



From left to right: Dr. Todor Galev, CSD Expert, Mr Kalin Kalpakchiev, Supreme Judicial Council Member and Mr Petko Petkov, Deputy Minister of Justice

“The developed model and pilot analysis which applies this model, identify factors of micro-level (settlement or municipality) that affect the instituted lawsuits and by which may be forecast the development of future scenarios can be foreseen.”

Source: *Potential Socio-Economic Factors Affecting the Frequency and Types of Cases Instituted by the Bulgarian Courts.*

“To successfully complete the first stage of the Strategy 2005 it is still necessary to create a Central Electronic Register of Non-Profit Organisations, Central electronic register of entities of private law that are not created through registration, and a Central Electronic Registry of State Establishments.”

Source: *Updated Strategy for the Establishment of a Central Electronic Register of Legal Persons and an Electronic Registries Center of Republic of Bulgaria (draft).*

workload of the courts has been seen primarily in terms of data reporting by the judiciary itself and the statistics on the work of the law enforcement agencies (e.g. police statistics on recorded crimes). The expected final result of the CSD analysis is to support the ongoing reform of the structure of the judiciary and to enhance significantly its performance.

The Law Program experts continued to provide expert assistance to the Ministry of Justice in updating the *Strategy for the Continuation of the Reform of the Judiciary in the Context of the Full Membership in the European Union*, the final version of which was presented for public discussion by the Minister of Justice in October 2014.

CSD continued to advocate for an overall reform of the system of official registers in Bulgaria, in particular for the transfer of the register of non-profit legal entities from the district courts to the Registry Agency as well as for the adoption of the *Updated Strategy for the Establishment of a Central Electronic Register of Legal Persons and an Electronic Registries Center*

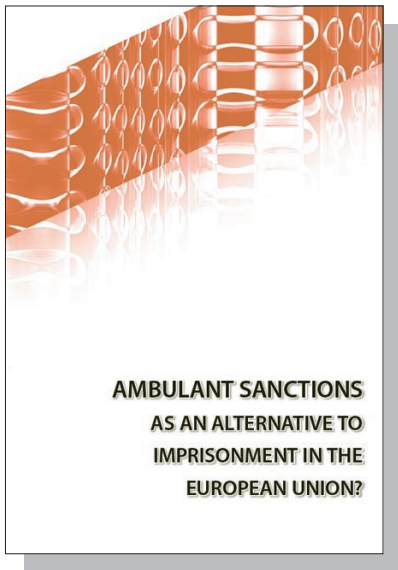
of Republic of Bulgaria, developed by CSD in 2012. The Strategy was further improved based on the feedback received from stakeholders and officially presented to the Ministry of Justice in January 2013 with a suggested system of legal and technical steps to be implemented.

In 2014, a newly formed working group with the Ministry of Justice was expected to elaborate legislative amendments enabling the electronic registration of non-profit legal entities. CSD was officially invited to participate in the working group and nominated as its representatives the Law Program Director Dr. Maria Yordanova and the Program’s Senior Analyst Mr. Dimitar Markov. However, no progress towards the establishment of a modern registration system in Bulgaria was made.

III. Penitentiary reform

The execution of criminal sanctions in Bulgaria reveals serious problems that have been neglected by the government for a long time. Particularly worrying is the situation in the prisons where prob-

lems 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. As indicated by international studies and reports, similar problems are also observed in lots of other countries across Europe.



Against this background, CSD launched an international initiative aimed at suggesting and promoting research-based solutions to the existing problems. The initiative combines the efforts of universities and research institutes from Bulgaria, Germany, Spain, Belgium and Lithuania, and is focused on the iden-

tification and promotion of effective alternatives to imprisonment, and of good practices for treating particularly vulnerable groups of inmates. The common efforts are also aimed at enhancing the civic monitoring of prisons by offering a set of indicators for assessing the conditions in prisons.

Following the completion of the data collection stage, in 2014 the experts focused their efforts on analyzing the existing alternatives to imprisonment. The research, coordinated by the University of Applied Sciences and Arts in Dortmund (Germany), provided a theoretical framework of the concept of alternative to imprisonment and, based on this framework, reviewed the various types of alternatives applied in the participating countries. The results of the work were presented in a report entitled *Ambulant Sanctions as an Alternative to Imprisonment in the European Union*. The report covers several European countries, describing the existing alternatives to imprisonment and assessing their contribution to the re-socialisation of the offenders. The study also highlights some promising practices that could be transferred to other countries, particularly ones with increased involvement of civil society.

Vulnerable groups of inmates are another focus of the initiative. Inmates with special needs are often neglected by the prison administration due to lack

"While the consent of the affected individuals is inevitable, it has to be ensured that consent is not a mere expression of the urge or hope – oftentimes unjustified – to avoid a more intrusive sanction. As a first step to achieving that, procedural safeguards have to be created and the possibility of revocation needs to be abolished. Revocation adds imprisonment to the partially completed ambulant sanction which – in turn – leads to an even more intense sanctioning effect in the end."

Source: Ambulant Sanctions as an Alternative to Imprisonment in the European Union, CSD, 2014.

of financial resources and qualified personnel for the provision of specialised services. The expert team identified and focused its efforts on twelve vulnerable groups: prisoners with mental health care needs, prisoners with disabilities, representatives of ethnic and racial minorities, foreign nationals, lesbian, gay, bisexual and transgender (LGBT) prisoners, elderly prisoners, prisoners with serious and terminal illnesses, drug addicts, women, inmates with life sentences, prisoners at the risk of self-harm or suicide, and juveniles. Information was collected about the respective situation of vulnerability and the related special needs, the applicable legal provisions and the existing measures and practices addressing their vulnerability of each group. The collected information will be summarised into a handbook on vulnerable groups of inmates.

The work on monitoring the conditions in prisons also marked significant progress. Following several rounds of discussions and revisions, the expert team approved the set of indicators to be included in the Prison Conditions Monitoring Index (PCMI) and the methodology for their calculation. The PCMI is divided into five major components: living conditions, security and safety, employment, social work and free time, and healthcare. Under each of these components, as well as under the PCMI as a whole, each prison could mark a score within the range 0 (lowest) – 10 (highest).

In October 2014, CSD started the pilot implementation of the PCMI. The items included in the PCMI were translated into a questionnaire and sent to all prisons and reformatories. More than half of the penitentiary facilities responded to the questionnaire, which will allow CSD to feed the data into the PCMI and produce the first of its kind indicator-based report on the conditions in prison.

In the course of the work, the partners of the initiative met twice (in Barcelona, Spain, on 13-14 March 2014, and in Dortmund, Germany, on 28-29 August 2014) to discuss the findings and conclusions of the research, and to plan the upcoming activities. Among the research issues discussed during the meetings were: the definition of ‘vulnerable groups’, the criteria for assessing vulnerabilities and special needs, the indicators for assessing conditions in prisons and their applications, etc.

To improve the visibility of the initiative’s work and achievements a newsletter is regularly compiled and disseminated. In 2014, the first four issues of the newsletter were circulated, each providing brief information on recent and upcoming events, EU prison policies in the news and recommended reading.

CSD research on penitentiary reform also looked at the general prison population as a vulnerable group. It looked at the procedures inmates are involved in within the framework of its initiative on NGO-institutional collaboration in the protection of vulnerable communities.

IV. Fundamental rights

In line with its long-term research priority related to fundamental rights in a criminal justice context, the Center for the Study of Democracy in partnership with universities and NGOs from Poland, Italy and Latvia, continued working on improving the protection of victims’ rights through better access to legal aid. In 2014, the initiative focused on training practitioners and raising the awareness of various specialised audiences on the issue.

In February 2014, the Center sent a prosecutor and a legal aid practitioner to an international training in Poznan,



Participants in the training on the status of victims of crime in criminal proceedings and their access to legal aid, Sofia

Poland on standards in treating victims and trends in providing them with legal aid. As a follow-up, on 20 March 2014 the Center conducted a training on the status of victims of crime in criminal proceedings and their access to legal aid. Judges, prosecutors, attorneys and representatives of the Ministry of Justice participated and the experts, trained in Poznan, were able to serve as trainers for their peers, while the Law Program team ensured media coverage of the victims' topic.

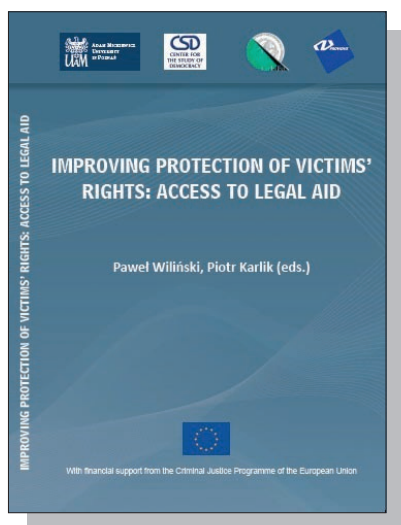
The Bulgarian country report on legal aid to victims, previously prepared by the Law Program team, was presented on 30 May 2014 during a session of the National Council for Assistance and Compensation to Victims of Crime, where various possible future efforts were also discussed. On 6 June 2014 the Law Program team held a roundtable on the adoption of long-term policies for improvement of the status of vic-

tims of crime, where magistrates, attorneys and representatives of civil society were invited. On 9 June 2014, Ms Miriana Ilcheva, Research Fellow at the Law Program, took part in an academic conference in Poznan, Poland on victims' access to legal aid. Together with a representative of the Ministry of Justice and a criminal attorney, she presented the system of legal aid in Bulgaria and the problems in obtaining state provided legal advice faces by victims of crime. In the accompanying meeting with the partners under the initiative, the Center presented its plans for follow-up of the activities to support the victims of crime in Bulgaria.

As part of the initiative's dissemination, four bulletins and two press articles were disseminated to relevant stakeholders. A CD containing an overview of all partner countries' legal aid systems and a brochure on how victims of crime can obtain legal aid in Bulgaria

were also distributed in electronic and hard copies to institutions and organisations, which in turn spread them among the groups they worked with.

A review of legal aid systems throughout partner countries and international standards in the area was published by Adam Mickiewicz University as scientific output of the initiative. The Law Program team contributed to the publication by editing the report, comparing domestic legal systems, and writing an article on the challenges to victims' protection in Bulgaria in view of harmonizing protection frameworks throughout the European Union.



In a related effort, Ms Miriana Ilcheva, Research Fellow at the CSD Law Program, participated in a working group with the Ministry of Justice to amend the *Law on Assistance and Compensation of Victims of Crime* in correspondence with the 2012 EU Directive on Rights of Victims. Ms Ilcheva advocated for the full and correct transposal of the Directive both in the law on victims and in the *Criminal Procedure Code* and presented to the members of the group the guidelines and stand-

ards for transposing EU legislation in the area.

In 2014, the Law Program, together with the Sociological Program of the Center, started implementing an initiative on enhancing the role of the civic sector as a guarantee for equal rights of vulnerable groups before the state. The start of the initiative was marked by a media release. A dedicated section of the CSD website was created, where all reports and analyses are uploaded.

A legal analysis was launched on the relations of institutions and NGOs in the protection of four vulnerable groups – asylum seekers, prisoners, victims of trafficking and victims of domestic violence. The document looked at several administrative and judicial procedures those communities usually participate in, the difficulties they encounter and the potential for assistance by civil society. Recommendations were given for facilitating the access of NGOs to law and policy making.

The groups' sociological and demographical profile was outlined in another publication. The analysis used data by various governmental and non-governmental sources and emphasised how burdensome it is to obtain comparable statistics from institutions and protection NGOs in order to make a well informed effort to assist those groups.

Lastly, a directory was prepared of all state bodies and non-governmental organisations, involved in the protection of and assistance to the selected vulnerable groups, using parameters such as contact information, relevant legal provisions for their protection and the main initiatives in each area. The initiative continues by analyzing relevant best practices from all over Europe in terms of their sustainability and transferability into the Bulgarian context.

All research outputs are consulted with relevant stakeholders to ensure the full and correct representation of the legal and practical framework of working with vulnerable groups. They will be actively involved in the initiative's future efforts on drafting a concept for more prominent participation of NGOs in the process of assisting vulnerable groups.

In October 2014, the EU Fundamental Rights Agency (FRA) designated CSD as the Bulgarian member of the Agency's multidisciplinary research network FRANET (<http://fra.europa.eu/en/research/franet>). As a FRANET member CSD provides, upon request, relevant data to FRA on fundamental rights issues to facilitate the Agency's comparative analyses. The tasks performed in 2014 included data collection for the upcoming FRA annual report and participation in the FRANET meeting held in Vienna, Austria, on 31 October 2014. The data collection covered a broad range of topics such as equality and non-discrimination, racism, xenophobia and related intolerance, Roma integration, asylum, borders, migration and integration, information society and data protection, rights of the child, access to justice, rights of crime victims, etc.

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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 section on judiciary and anti-corruption and the subsections on anti-corruption legislation and institutions in Bulgaria of the 2014 Corruption Assessment Report;
- assisted the preparation of the *Macedonian Corruption Assessment Report* (MCAR), part of the Macedonian Anti-corruption Program of USAID

Macedonia by providing consultations to the local experts and participating as lecturers in the joint trainings and seminars in Macedonia;

- provided the 42th National Assembly with an expert opinion on the planned amendments to the legislation on conflict of interests.

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 represented CSD in the work of the first meeting in 2014 of the National Coordination Mechanism on human rights, established in December 2013 by the Council of Ministers and chaired by the Minister of Foreign Affairs.

In 2014, the fifth edition of the European Sourcebook of Crime and Criminal Justice Statistics was published. It is an instrument for collecting official statistics and data from sociological surveys in the area of crime and criminal justice, of which the Law Program served as national correspondent for Bulgaria. The program experts collected the necessary official statistics and survey data, and filled the collected information in the online country survey.

In April 2014, Ms Miriana Ilcheva, Research Fellow at the Law Program, attended a seminar organised by the Academy of European Law in Trier devoted to access to justice for crime victims in the EU. The seminar presented an opportunity for exchanging experience on the transposal of the 2012 EU Directive on Rights of Victims.

Through its Law Program CSD continued its participation in the Upsidedown

Protect initiative – a joint effort of research institutes from nine EU Member States to examine the access to information about the critical underground infrastructure, and to assess the risks of the potential use of such information for terrorist activities. CSD took part in the development of the Bulgarian country report on the availability of and access to spatial data on water supply networks, participated in an exchange of experience workshop held in Stockholm, Sweden, on 12-13 June 2014 and selected the Bulgarian participants in the concluding conference held in Milan, Italy, on 28 November 2014. Being also responsible for the evaluation of the initiative, CSD experts drafted a series of evaluation reports, each combining a detailed assessment and

corresponding recommendations for improvement.

CSD continued to actively participate in the Informal Drug Policy Dialogue in Southeastern Europe – an international network of experts working in the field of preventing and reducing illegal drug use. In 2014, the network held two meetings in Athens: one to discuss the new psychoactive substances and cannabis policies (23-25 January) and another to debate on the shift of focus in interventions from repression towards a human rights and public health approach (10-11 October). Mr. Dimitar Markov, Senior Analyst at the CSD Law Program, took part in both meetings presenting the recent policy and legislative developments in Bulgaria.