

Law Program

In 1999, the Law Program of CSD focused on promoting judicial reform in Bulgaria and on contributing to legislative reform. The achievements on these main priorities of the Law Program in 1999 could be summarized as follows:

- A Judicial Reform Initiative, aimed at developing a Program for Judicial Reform (PJR) in Bulgaria, started in 1999. CSD's Law Program became its Secretariat and driving force from the very beginning. The PJR is based on a set of political and legislative measures, assisting the legal and institutional infrastructure of the judiciary and providing assistance to its implementation.
- A Law on People's Defender was drafted by an expert task force set up by the Program. The draft law aims at encouraging democratic institutions, and setting effective procedures for administration and protection of human rights. A concept paper on the subject and the draft Law were broadly discussed with Bulgarian and foreign experts and politicians.
- A new subject field was added to the Program's agenda – electronic commerce. The Program researched the legal aspects of e-commerce and started drafting new legislation recognizing the legal validity of the electronic documents and signatures in order to provide for security and trust in open networks, to ensure that commerce is conducted electronically.
- A two-year project on "General and Financial Management of NGOs" aimed at introducing best European

NGOs management practices, was completed successfully.

- A series of pioneering public hearings with the National Assembly were organized by the Program in the framework of the project "Citizen Participation, Public Hearings and the Development of Improved Public Policy in Bulgaria". The project aimed at improving the legislative process and promoting the dialogue between the public and private sector.

Throughout the year the Program contributed to further development of cooperation between the non-governmental and governmental sectors. The Program team was able to strengthen interaction within a highly qualified group of non-resident experts and consultants committed to supporting the judicial and legislative reform process. Two research volumes– "E-commerce and Electronic Signature: Legal Aspects" and "The Ombudsman Institution: Concept Paper, Draft Law and Foreign Legislation", which started to develop in 1999 and will assist legislators, politicians and experts.

I. Judicial Reform

Judicial Reform Initiative: an example of practical assistance to reforms

The Judicial Reform Initiative for Bulgaria (JRI) was launched in February and officially announced in March 1999. It consolidated the efforts of leading not-for-profit organizations, representatives of government

*institutions and experts on the model of Coalition 2000, for developing a **Program for Judicial Reform in Bulgaria**. The initiating organizations of the JRI were the Association of Judges in Bulgaria, the Center for the Study of Democracy, the Chamber of Investigators in Bulgaria, the European Network of Women in Police – Bulgaria, the Legal Initiative for Training and Development (PIOR), the Legal Interaction Alliance, the Modern Criminal Justice Foundation, and Union of Bulgarian Jurists. Particular attention was paid to the involvement of representatives of the judiciary in the PJR development phase.*

The PJR drafting process

The major objective of this process was to draft a consensus document based on a set of political and legislative measures to assist the legal and institutional infrastructure of the judicial system and its long-term implementation. The process was designed also to achieve the following:

- Identify areas in which there is a need to improve procedural legislation and legislation applicable to the establishment of a modern court administration, as well as acceleration of legal proceedings.
- Initiate a broad public debate on the issues of judicial reform, its nature and objectives, and set out conditions for its greater openness and transparency.
- Set out the conditions under which the judiciary could better absorb assistance from the European Union, as well as from other international organizations and donors.

- Provide the policy and legislative framework for the introduction of internal control mechanisms to combat corruption and abuse of power.
- Work out a mechanism for enhancing the professional skills of those working in the court administration.

In a number of workshops, interactive discussions and open consultations, the stakeholders of the Judicial Reform Process unanimously identified the two main priorities of the judicial reform:

- *Improving the legal education and training of magistrates, and*
- *Streamlining court administration.*

In this respect, the structure of this program has evolved with due consideration of the priorities set for the development of the legal foundation of the reform process.

Program for Judicial Reform

Stage one: Building the JRI infrastructure

A Steering Committee for managing and coordinating the activities of the Initiative, formed by representatives of the JRI initiating organizations and other major stakeholders, legislative, executive and judiciary, NGOs and lawyers was set up. Task forces were also convened in the main areas of reform - Civil Law (incl. Commercial Law) and Procedure, Penal Law and Procedure, Administrative Law and Procedure, Court Administration, Education and Training of Magistrates, Opening of the Judiciary to Society. For the purpose of providing an ongoing support to the Steering Committee, the CSD Law Program acted as JRI Secretariat. The Secretariat provided the day-to-day operational management and assistance, logistical support to the

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highlighted by Ms. Ekaterina Mihailova, Deputy Chair of the Parliament's Anti-Corruption Committee. The discussion focused on training of magistrates, enhancing the efficiency of the court administration, and improving of the legal framework of reform. Mr. Claes Eklundh, Chief Parliamentary Ombudsman of Sweden was a special guest at the Policy Workshop. Mr. Eklundh presented the role of the Ombudsman in controlling public administration and in protecting civil rights and freedoms, and focused on its potential to exercise out-of-court control in the new democracies.

The draft PJR was then published in 1000 copies and distributed to professional associations, state institutions, the media, experts with the aim of soliciting their opinion and specific proposals for amendments. Copies were also sent to the representatives of foreign agencies and international organizations in Bulgaria.

A web page of the Judicial Reform Initiative (www.csd.bg/jri) was developed by the LP which also includes links to information about the Initiative's founding organizations.

Stage four: *Towards a final version of the PJR*

Two reform priorities emerged as a result of the discussions: training of magistrates and court administration reform. The text of the PJR was accordingly revised, in particular with the assistance of World Bank experts, which set the Initiative on the road of preparing its first Policy Forum. JRI started preparation for the Forum at which the Program for Judicial Reform in Bulgaria will be presented for endorsement. The Forum is scheduled for the first half of 2000. Following its endorsement, the PJR will be widely distributed as a basis

for future concrete steps along its action lines.

International support and contacts

- The Delegation of the European Commission in Bulgaria was instrumental in launching the Judicial Reform Initiative. It provided support for a number of its activities and advice on the PJR drafting.
- A number of international institutions expressed their support to the Initiative: the International Development Law Institute (IDLI), Rome; the World Bank; court experts and magistrates from the Asser Instituut in the Netherlands; the Spanish Institution of People's Defender; the Chief Parliamentary Ombudsman of Sweden; the American Bar Association (ABA/CEELI), the British Association for Central and Eastern Europe (BACEE), among others.

II. Legislative Reform

The CSD Law Program has long been successfully involved in drafting key pieces of legislation (NGOs draft Law, Registered Pledges Act, draft Law on People's Defender, etc.). In 1999 the efforts of the Law Program focused on improving the quality of the legislative process and legislation in general, and on developing some draft laws in particular.

1. Improving the Quality of New Legislation

In 1999 the CSD Law Program continued its work on the project *"Citizen Participation, Public Hearings and Development of Improved Public Policy in*

Bulgaria” launched at the end of 1998 in order to improve the quality of legislation and to make the legislative process more transparent through the incorporation of public hearings as a component of the legislative process.

The model hearings and series of seminars on topical issues of the legislative agenda were organized jointly with the National Assembly, the judiciary and government agencies. The participants - key legislators and legislative staff, academics and representatives of Bulgarian NGOs - discussed proposed changes to the legislation and were acquainted with the democratic mechanisms in the modern legislative process.

- An introductory seminar in January outlined public hearings as a parliamentary practice and the importance of various practices implemented in the advanced democracies. British parliamentary experience in involving NGOs and citizens in the legislative process was presented by Mr. Robert Dunn, former Member of the House of Commons and former Minister of Education of UK. He stressed the openness of the legislative committees to the public, the consultations with different social groups prior to submitting a new draft bill and regulated lobbying that limits corruption opportunities.

Mr. Enrico Munos, Senator in the Senate of the Spanish Parliament, presented the information phase in the legislative process for assessing public attitudes while preparing new legislation or amendments, existing in Spain. He pointed out the opportunity for public legislative initiative set forth in a special law, and on the established special institution - Public Defender - that provides for a link between citizens and administration. Government officials, representatives of the judiciary, of NGOs, Bulgarian

and foreign experts attended the seminar.

- A discussion on introducing the ombudsman institution to Bulgaria, organized jointly with *Coalition 2000*, took place at CSD on April 20. Special guests were Mr. Antonio Rovira, First Deputy to the People’s Defender of Spain and Mr. Pasquale Ferraro, Deputy Director of the International Development Law Institute in Rome. The work of experts in determining the powers and the functions of the ombudsman institution in Bulgaria was presented. Mr. Rovira outlined the functions of the People’s Defender in Spain and underlined that in order to function successfully the institution of the Ombudsman should be guaranteed political and financial independence. The participants emphasized on the need for a further and more detailed study of Spanish and other countries’ successful legislative decisions and practices in the field of human and citizens’ rights.
- Draft amendments to the *Commercial Code* were discussed at a public hearing co-organized with the Ministry of Justice in May. Representatives of the executive and the judiciary, as well as notaries, lawyers, journalists, university professors and distinguished commercial law experts attended the discussion. The main ideas of the proposed amendments were presented by Ms. Maria Serkedjieva, Deputy Minister of Justice. The discussion focused on the harmonization of Bulgarian legislation with EU Law as well as on the practical needs of Bulgarian companies and on the requirements for improving publicity and transparency in their activity that will guarantee third parties’ interest. Dr. Christa Jessel-Holst of the Max-Planck Institut for Comparative and International Law in Germany and

Dr. Hans-Joachim Vollrath, manager of the Local Notary Chamber of Bavaria took part in the seminar.

- The draft of a new *Family Code* was the topic of a public hearing organized jointly with the Ministry of Justice in June. Ms. Zlatka Rouseva, Deputy Minister of Justice, presented a general overview of the draft. Experts who had worked on the draft presented in detail the key issues – new patrimonial relations between the spouses (proposed regulation of separate property and property based on ante-nuptial contracts), child adoption and child protection. MPs, academics, judges, lawyers, family law experts, representatives of NGOs took part in the discussion. Two Spanish experts shared their opinion and experience - Dr. Francisco Welmo, Law professor at the University of Valladolid, and Dr. Maria Tereza Crespo, Professor of psychology at the same University - underlined the necessity to establish the institution of an intermediary for settling the relations between the spouses and discussed the psychological aspects of divorce and separation of spouses.
- A public hearing on “*The People’s Defender of Civil Rights and Freedoms and the Creation of Efficient Local and Central Government Administration*” was held in Pleven in October. Participants included MPs, representatives of local administration and non-governmental organizations, and lawyers. Dr. Silvy Chernev, expert with the CSD task force on the People’s Defender (Ombudsman) draft law, presented the draft. The discussion emphasized on the creation of new means for protection of civil rights and freedoms, and specifically the Ombudsman institution as a local intermediary between the citizens and the municipal administration. Mr. Naiden Zelenogorski, MP, stressed the need of establishing



Mr. Antonio Rovira, First Deputy of the People’s Defender in Spain (second from the right) speaking at the public hearing in the National Assembly.

a People's Defender institution at the local level, and particularly in the municipality of Pleven as it could shorten the distance between public administration and citizens.

- A public hearing at the National Assembly was organized by the CSD and Parliamentary Committee on Human Rights, Religion and Citizens' Claims and Petitions. The draft Law on the People's Defender in Bulgaria was discussed and evaluated positively. Recommendations and remarks were made by the participants – members of Parliament and its Committees on Legal Issues and Legislation against Corruption, Human Rights, Religion and Citizens' Complains and Petitions, and Public Health, Youth, and Sport. The foreign guests – Mr. Rovira, First Deputy of the People's Defender in Spain and Canadian experts Mr. Robardet, Mr. Boyer and Mr. Dubrow - shared opinions based on their experience in establishing the Ombudsman institution. The members of the task force drafting the law explained some of the legislative proposals.
- In May, CSD's Law Program organized a visit for Bulgarian MPs and experts to Spain within the public hearings project. This visit reinforced the results of the first project visit November 1998. The program of the visit allowed a small group of MPs (Ms. Ekaterina Michailova and Mr. Dimitar Abadzhiev), and law experts to meet with EU politicians and legislative staff, and to get acquainted with various possibilities of citizen participation in the legislative process. The visit included meetings with MPs at the Senate of the General Cortes, meetings at the office of the People's Defender, Mr. Alvarez de Miranda, and his First Deputy Mr. Rovira, as well as a meeting at the

Center for Political and Constitutional Studies.

As a result of the project, public hearings have been accepted by the key stakeholders as a regular parliamentary practice and a useful method for promotion of new ideas and democratic practices in legislation.

2. E-commerce and Digital Signature: Shaping the Regulatory Framework

"One of the basic goals for transition to Information Society is the creation of a legal and regulatory framework for the provision of services, for living and working in the new information environment, harmonized with that of the European Union".

Strategy for Information Society
Development in the Republic of
Bulgaria
Council of Ministers, October 1999

The Law Program's work on e-commerce and digital signature started with orientation meetings and consultations in early 1999 with representatives of the main stakeholders interested in the legal regulation of the subject – business associations, government regulatory bodies and ministries. In parallel, the Law Program researched the most important international instruments already adopted or in a process of preparation, which envisage the use of alternatives to paper-based methods of communications. The study also reviewed the international and European acts and proposals, as well as materials on foreign legal regulations - USA, EC countries and Latin America Acts, draft acts and investigations.

A Task Force for the preparation of the draft law and an Expert Council including representatives from the stakehold-

ers, legal and IT experts were formed. Following the initial expert effort, the preparatory work and first draft of a law on electronic commerce and digital signature were presented at a workshop at CSD in September by the drafters. The logic and proper interpretation of the draft law provisions were presented in a comprehensive and pragmatic manner. Expert Council members, representatives of the USAID – Washington, as well as legal and IT experts took part in the discussion. The participants made a number of useful suggestions and recommendations related to the process of drafting, the presented materials, and the general framework of digital signature and e-commerce which benefited the subsequent work of the CSD expert team. All agreed that future work should be aimed at coordinating the efforts of the institutions and experts involved.

A seminar on the issues of electronic commerce and digital signature was held in Velingrad in November. Participants - members of the Expert Council and of the Task Force, and IT specialists – discussed the two draft laws on e-commerce and on digital signature. The prevalent opinion in the discussions was to combine both drafts in one. The team decided to develop the texts further and combine it in a single draft Law on Electronic Document and Digital Signature.

Article 3

(1) Electronic document is an electronic statement, recorded on magnetic, optical or other carrier that allows its reproduction.

(2) The written form of the document is considered observed provided that an electronic document has been produced.

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Article 15

(1) The digital signature is a transformed electronic statement included, added or logically related to the original electronic statement.

(2) The digital signature has the effect of a legally valid signature.

Draft Law on the Electronic Document and Digital Signature

The Law Program started developing a publication on “E-commerce and Digital Signature: Legal Aspects” which includes the concept paper and the draft law for Bulgaria, as well as international documents and foreign laws translated in Bulgarian.

3. Introducing the Ombudsman Institution

Drafting the Law on the People’s Defender in Bulgaria

In early 1998, the Law Program of CSD began exploring the possibility of introducing an Ombudsman-type institution at a national level to act as a complementary mechanism for monitoring and control over the public administration and an out-of-court means of respecting and restoring the rights of citizens violated by the state. The establishment in Bulgaria of such an institution restricting corruption and the abuse of power also became one of the key priorities of *Coalition 2000*. Within the framework of *Coalition 2000*, an expert group of the CSD Law Program continued its research and analysis of the existing legal framework and the functioning of this institution in a number of established and new democracies. The laws on the Ombudsman institution of Austria, Denmark, Macedonia, Lithuania, Poland, Hungary, Spain, the United Kingdom, Romania, Sweden, Argentina and Costa Rica were translated in

Bulgarian. A concept paper developed on the basis of this analysis, however, takes into account the existing needs and public attitudes, and political, legal and constitutional realities in Bulgaria. It formulated a set of recommendations for the future introduction of the Ombudsman, its status and role in the country's political and legal system, and outlines the basic elements of its future legal regulation. In April 1999, the Law Program experts completed the first draft law on the People's Defender.

It would be very useful for every state, pretending to be a democratic and constitutional one, to create an ombudsman institution. The mission of this institution is to guarantee the rule of law and the individuals' rights and freedoms.

Claes Eklundh
Chief Parliamentary Ombudsman
of Sweden, Sofia, July 1, 1999

It is clear that the contributions of an ombudsman to the development of a democratic society is manifold. In a nutshell, he does so by promoting accountability, transparency, respect for the rule of law, objectivity and impartiality in decision making, quality of service delivery, and democratic values in public administration.

Dr. Patrick Robardet
Director of Legal Affairs and Research,
Office of the Public Protector
(Ombudsman), Quebec, Canada
(Comments on the Bulgarian Draft Law,
November 1999, Sofia)

Awareness Raising: Public discussions of the draft Law Meetings, public discussions and consultations were held at different stages of this process with Bulgarian and foreign experts, politicians, citizens, representatives of NGOs and the parliamentary Committee on Human Rights. The more important ones included:



Claes Eklundh, Chief Parliamentary Ombudsman of Sweden.

- Meetings with Ambassador Michael Sahlin, leader of a Swedish government delegation, which visited Bulgaria in January.
- Visit to Sofia in July by Mr. Claes Eklundh, Chief Parliamentary Ombudsman of Sweden, and meetings with the Vice-President of the Republic of Bulgaria Mr. Todor Kavaldzhiev, with the Chair of the National Assembly, Mr. Yordan Sokolov and with the Chair of the Supreme Administrative Court Mr. Vladislav Slavov.
- Discussions with Spanish parliamentarians and the People's Defender of Spain, Mr. Alvarez de Miranda, during a visit by Bulgarian MPs and experts to Spain in May.
- Visits by the First Deputy of the People's Defender of Spain, Mr. Antonio Rovira (in April and November), and by Canadian experts to Sofia in November, and meetings with the Vice-President of the Republic of Bulgaria Mr. Todor Kavaldjiev, with the Chair of the National Assembly Mr. Yordan Sokolov and with the Chair of the Supreme Administrative Court Mr. Vladislav Slavov.

In addition, a series of meetings, seminars and discussions on the draft law were organized within the framework of the public hearings project implemented jointly by CSD and the Santander Group of European universities.

The Concept Paper and the Draft Law were published in 500 copies, and were distributed among a wide range of experts, governmental institutions and non-governmental organizations with a request for their opinion and recommendations. The publication provoked

further discussions about the possibilities and the procedure for introducing the People's Defender institution in Bulgaria.

The idea of establishing the People's Defender in Bulgaria is now supported by the Vice President of the Republic, by the Chair of the National Assembly, members of Parliament, representatives of the judiciary and the executive, the local authorities, and human rights NGOs.

III. Education

Since 1992, the Law Program has become well-known for its legal training programs on legal reform and NGO management, accounting, financial control and auditing. The Program identified the need for alternative forms of education providing a method different from the classic university models. The tradition of providing practically oriented programs continued in 1998 with the implementation of a project on "General and Financial Management of Not-for-profit Organizations" in cooperation with the Hellenic Management Association (Athens), the Sofia University Regional Distance Education Study Center, and the Skopje University Law Faculty.

In 1999 the project was successfully completed and the technique of distance learning was piloted at the Sofia University Faculty of Business Administration. The pilot course was targeted at professionals of civic organizations, postgraduate students in business administration, state officials, and the general public.

The course quality and structure were praised by the Sunderland University (UK) experts appointed after a tender among organizations specialized in evaluation of DL education courses and