

Law Reform Program

In 1998, the Law Reform Program (LRP) focused on the expansion of legislative reform in Bulgaria, on the training of legal specialists, and on the education of NGO professionals. The main achievements of the LRP in 1998 were:

- Successful completion of a project aimed at designing and promoting a full set of modern principles and specific mechanisms for NGO taxation;
- Commencement of a distance learning project entitled “General and Financial Management of NGOs,” aimed at introducing best European NGO management practices;
- Commencement of the project “Citizen Participation, Public Hearings and the Development of Improved Public Policy in Bulgaria” aimed at promoting the dialogue between the public and private sector and contributing to the institutional reform;
- Implementation of a series of training and awareness-raising programs targeted at representatives of the judiciary, public administration, legal counsel, financial and accounting professionals, commercial companies and NGOs;
- Producing an extensive analysis of the third sector in Bulgaria focusing on two major topical areas: “Not-for-Profit Organizations in Bulgaria: Legal Aspects” and “Economic Analysis of the Activities of NGOs in Bulgaria”;
- Analysis and review of the European experience of the Ombudsman institution, focused on the Ombudsman’s role as a mechanism for administration and effective protection of human rights;
- Continued institution- and team-building: strengthening and deepening the integration and interaction within a diversified, highly qualified group of external legal, financial and accounting experts committed to implementing law reform projects;
- Successful completion of an assistance project with the Central Pledges Registry at the Ministry of Justice and Legal Eurointegration, which resulted in commencement of operations on a centralized, computerized, nationwide Secured Transactions Registry.

I. Legislative Reform

In 1998, LRP continued its efforts to facilitate the legislative reform in Bulgaria and the process of approximation of Bulgarian legislation to European Union law.

1. Reforming the Legal Framework for NGOs in Bulgaria

Background: a Continued Process of Leadership and Growth

In 1992 the LRP began a longterm project targeted at the creation of a modern and comprehensive legal framework for NGOs. A major landmark in this process was the creation of a modern Draft Law on Non-Profit Organizations. It was followed by the creation of the legislative motives supporting the expected enactment of the Draft Law. Alongside work on the legislative motives, the LRP created a body of commentaries explaining the philosophy and proper interpretation of the Draft Law’s provisions, thus, in a systematic, comprehensive and pragmatic manner, also presenting the results of the research efforts which accompanied the drafting process. Finally, the completion of the Draft Law was followed by a project for defining a modern set of taxation principles for NGOs.

Over the course of the six years preceding 1998, the LRP was able to attract, consoli-

date and develop a strong team of legal, tax and accounting experts who implemented the NGO law reform project. The team worked intensively with professionals from the judiciary, the tax administration, the Government, the bar and the NGO sector, with a view to identifying the concerns and purposes which would have to be met by the new NGO legal framework. In parallel, the team undertook an awareness raising and promotional effort, with a view to educating these target groups about the desirable modern principles which would have to be embodied in the future legal framework. In the course of the project effort, numerous publications, concept papers and other written materials were released. The LRP also carried out multiple public hearings and training seminars on topics related to modern NGO legislation.

The work of the LRP was carried out in close cooperation with, and with the support of, reputable international institutions, such as the International Center for Not-For-Profit Law (Washington, D.C.), the EU Phare Democracy Program, the Max-Planck Institute for Comparative and International Private Law (Hamburg), as well as other organizations active in the field of NGO law. That brought a strong international perspective to the LRP's efforts and contributed to importing the leading international experience in the newly developed legal framework, as well as to spreading internationally the results of the LRP team's work. The accomplishments of the LRP team received strong recognition internationally, with a number of East European, Middle East and African countries enacting NGO laws based on, or largely using, the concepts developed by the LRP.

A Policy Impact: Proposed Amendments to Tax Laws

In the course of 1998, teams of experts drew on the results of the research and analytic work done by the LRP in the field of NGO taxation. The modern tax principles formulated in the course of the LRP's

work were embodied in a number of proposed amendments to tax laws, with a view to causing a positive development in the taxation law framework for NGOs. The proposed amendments were reviewed in a session of the LRP's Expert Council and received various suggestions targeted at improving the language and concept of the proposals.

Awareness Raising: Publication of the Book "Non-Profit Organizations in Bulgaria: Legal Issues"

In 1998 the LRP experts produced written essays which were published in the book "Non-Profit Organizations in Bulgaria: Legal Issues." The book addresses two main types of issues: analysis of the current practice of Bulgarian courts on the legislation which has been in force since 1949, and a promotion of a set of modern principles which need to come to govern the legal framework of NGOs in Bulgaria.

The essay on the current court practice has been produced after intensive work targeted at collecting numerous unpublished decisions of the Bulgarian Supreme Court, as well as of two of the leading registration courts: the Sofia City Court and the Sofia District Court. The essay was also based on all published relevant decisions of the Supreme Court. The essay provides a critical analysis of the courts' interpretation of the existing legal framework. It reaches the conclusions that in a number of cases the Bulgarian courts have played a progressive role and have arrived at liberal interpretation of restrictive legal rules created during the era of communist rule. On the other hand, the essay identifies a number of cases where the courts have not been in a position to interpret the laws in the spirit of modern democratic times, which suggests that a change in the law is desirable. Apart from the conclusions intended to promote the idea for change in the current law, the essay provides NGOs and practicing lawyers with a valuable synopsis of the practical requirements which

would have to be met, in order for NGO activity to be carried out in a way compliant with the prevailing and authoritative interpretation of the laws provided by the courts.

The second essay is based on a systematic analysis of the new Constitution of Bulgaria and the Constitutional Court decisions rendered on the topics of “freedom of assembly” and non-profit organizations. The essay analyzes the fundamentals of the NGO legal framework, as defined and required by the new Constitution. It reaches the conclusion that the current laws governing NGOs diverge from the constitutional principles. The essay makes an attempt at defining explicitly those principles which should define the spirit and provisions of the future framework for NGOs.

Awareness Raising: a Public Discussion on Modern NGO Principles

During 1998, the LRP engaged in intensive activity for the dissemination of the results of its analytical and law-drafting work. The

final products of the drafting activity - the Draft Law on Non-Profit Organizations and the proposed amendments to tax laws - were broadly discussed with NGOs, politicians, law makers and representatives of the executive branch. Following the publication of the book “Non-Profit Organizations in Bulgaria: Legal Issues,” the LRP also organized a strong dissemination and discussion campaign, targeted at starting a public discussion on the issues raised in the book. During these discussions strong support for NGO law reform was initiated. The LRP also held a special forum at which the authors of the book engaged in a discussion with representatives of government institution and NGOs, regarding the need for NGO law reform.

Analyzing the Economy of the NGO Sector: Identifying Economic Factors for Change

Complementing its work on the framework for the operation of NGOs, the LRP has also been addressing the practical needs of NGOs at the microlevel, carrying out a



(from left to right) Mr. Stephan Kyutchukov, Coordinator of CSD' Law Program, Ms. Lydia Mileva, CSD Financial Manager and Judge Borislav Belazelkov, Sofia City Court

number of training seminars in the fields of management control, auditing, accounting and the financial and tax environment of non-profits. In preparing training activities the LRP also carried out analytical work. In 1998, it completed a successful project with "Ascana" Accounting Firm, which resulted in the production of a comprehensive analytical report entitled "Economic Analysis of NGO Activity in Bulgaria" covering a wide variety of relevant aspects.

The analysis of the joint team focused on the following major issues:

- status and trends of development of NGOs, with a view to identifying the need for legal change;
- statistical data and tax information;
- a poll study based on self-evaluation by NGOs which were included in the target group for the project.

2. Introducing the Ombudsman Institution in Bulgaria

Promoting the Ombudsman Concept: a European Dimension of the Protection of Human Rights

The establishment of effective institutions to guarantee the protection of human rights is one of the criteria for membership in the European Union formulated at the meeting of the European Council in Copenhagen in 1993. Meeting this criterion has been defined as one of the short-term priorities of the National Accession Strategy adopted by the Council of Ministers in March 1998. In view of this, CSD initiated research work, discussions and drafting of a concept paper dedicated to the prospective establishment of the Ombudsman institution in Bulgaria. The activities in this field have been coordinated by the LRP, in cooperation with the Information Centre on the Council of Europe, Sofia, and the CSD European Program. As part of the project activity, a working group of LRP experts (lawyers, experts on constitutional law and human rights judges) has been composed.

Analyzing the European Experience: Research and Analysis of the Ombudsman Institution in the European Countries

The work started with a review and comparison of the experience of the European countries in the field of Ombudsman. The purpose of this approach is to help formulate the respective conclusions, recommendations and views for the creation, status and role of a similar institution in Bulgaria. The LRP experts produced a comparative study on the Ombudsman institution in Scandinavian and other west European countries, as well as in such Central and East European countries and former Soviet Republics where the Ombudsman institution has been established and is functioning. The study also reviewed the international (European) dimension of the Ombudsman institution, and namely the link between the national Ombudsman and the European institutions, the cooperation among the Ombudsman institutions of all member states, and the status and role of the European Ombudsman. It contains a large bibliography and will assist legislators, politicians and expert teams in their efforts to establish an Ombudsman institution in Bulgaria.

Causing a Practical Impact: Drafting the Concept Paper "Possibilities for the Creation of the Ombudsman Institution in the Republic of Bulgaria"

The concept paper summarized and analyzed the European and other foreign experience with the Ombudsman institution and other similar institutions. It also outlined the fundamental principles and provisions of a possible future legal framework for such an institution in Bulgaria, with a view to current needs, public attitudes, and political and constitutional realities.

The proposed concept has the following features:

- The establishment of one national Ombudsman with general competencies

(such as to review petitions from private persons, to make proposals and recommendations to public authorities, to request information), combining the characteristics of the classical Scandinavian Ombudsman model with some of the new features of its modern versions existing in the European countries, and with some adjustments according to conditions in Bulgaria;

- The establishment of the institution on the basis of a special statute (instead of by way of amending the Constitution) and possible further incorporation in the Constitution;
- The establishment of the Ombudsman institution as a new type of a guarantee for the rights and freedoms of the private persons, adding to the traditional mechanisms for protection, such as the classical parliamentary mechanisms, the constitutional justice, the judicial and administrative control, the media and non-governmental organizations;
- The establishment of the Ombudsman institution designed for monitoring the

work of the public authorities and any other exercise of public activity;

- The establishment of the Ombudsman institution as an individual elected directly by the Parliament and reporting to the Parliament, disposing of autonomy, independence and immunity;
- The establishment of the Ombudsman institution acting with a high level of publicity and transparency of its activities and the results thereof.

The concept paper regarding the possibilities for the creation of the Ombudsman institution in Bulgaria is aimed at encouraging a broader and more comprehensive discussion, which will ultimately result in finding the most effective and appropriate solution for the specific Bulgarian conditions.

A Public Outreach: Discussions, Workshops, Presentations and Publications

The first version of the concept paper was discussed during a workshop, organized



CSD Ombudsman draft law task force (from left to right): Judge Borislav Belazelkov, Rositsa Elazar, Supreme Court Justice Kina Tchoutourkova, Dr. Maria Yordanova, Law Program Coordinator, Ralitsa Dimitrova, Konstantin Tanev, Siloy Tchernev, Attorney.

by the Information Centre on the Council of Europe in May 1998. Representatives of the Ombudsman offices in Denmark and Hungary made presentations of the work of their institutions. The workshop was attended by a large audience of lawyers, Members of Parliament, experts from the Ministry of Justice and Legal Eurointegration, experts from the Ministry of Foreign Affairs, and representatives of national and international NGOs. The discussants made a number of useful recommendations for the process of drafting a concept paper which benefited the subsequent work of the CSD expert team.

The first version of the concept paper was also presented at the National Conference on Human Rights held on June 1 - 2, 1998, organized by the United Nations in cooperation with the Human Rights Committee of the National Assembly, the Information Centre on the Council of Europe, Sofia and the Friedrich Ebert Foundation. The output of the conference was a collection of papers, "Human rights in Bulgaria 1998 -

All human rights for all," which included the CSD concept paper on establishing an Ombudsman in Bulgaria.

The CSD activities targeted at the creation of the Ombudsman institution were presented at an international seminar, "Mediation and the Rule of Law," organized by the Legal Directorate of the Francophone Agency in cooperation with the Ministry of Justice and the Ministry of Foreign Affairs and hosted by the Center for the Study of Democracy at the end of September. The seminar was attended by representatives of Belgium, Bulgaria, Burkina Faso, Canada (Quebec), France, Moldova, and Romania.

The main points of the CSD concept paper on establishing the institution of the Ombudsman in Bulgaria were included as recommendations under the section on monitoring and controlling institutions in the Coalition 2000 document, "Clean Future - Anti-Corruption Action Plan for



Mr. Daniel Jacoby (left), Ombudsman (Mediateur) of Quebec, Canada shared his experience at the international seminar "Mediation and the Rule of Law" organized by the Francophone Agency and hosted by CSD.

Bulgaria," with the full text of the paper added as an appendix.

3. Improving the Quality of New Legislation and Public Policy in Bulgaria

A New Effort at Improving the Work of Democratic Institutions

In October 1998, the LRP launched a project entitled "Citizen Participation, Public Hearings and Development of Improved Public Policy in Bulgaria." The purpose of the project is to develop a model of public hearings, in order to improve the quality of legislation and to make the legislative process more transparent and participatory, through the incorporation of public hearings as a normal component of the legislative process.

Supported by the EU Phare Democracy Program, the project is implemented in cooperation with the Santander Group - a network of 43 of the best known and most prestigious universities in Europe. Bulgarian NGOs, universities, key legislators and legislative staff will also take an active role in the project. Through the Santander Group Secretariat, based at the University of Murcia in Spain, the project benefits from the expertise and contacts of the Department of Politics and the Graduate Programme in Public Administration at the University of Exeter, the Department of Political Science (especially, the Working Group for Local and Regional Policy) at the Justus-Liebig-University, Giessen, and the many other leading schools of public administration, centers for public policy and faculties of law.

The objectives of the project will be pursued by conducting a series of public hearings. The model hearings will be held by CSD and the Santander Group with the participation of other Bulgarian NGOs, universities, and key legislators and legislative staff.

The first orientation session of the project included a visit by a Bulgarian delegation

including the Chair of the Human Rights Parliamentary Committee, the Secretary General of the National Assembly and other senior parliament staff together with representatives of major NGOs to the parliaments of Belgium and the Netherlands, as well as the European Parliament. The Bulgarian delegation met with their counterparts to exchange experience on the mechanisms for promoting citizen participation in the legislative process.

4. A Continued Effort in Modernizing Commercial Law

Providing Continued Assistance to Institutions: Work with the Central Pledges Registry (CPR) to Install and Put into Operation a Computerized Registry System

After an intense effort during 1997, when LRP experts played a key role in drafting the Regulation on the Structure and the Activity of the CPR, the LRP experts continued their close cooperation with the CPR throughout 1998. LRP experts participated in numerous discussions with CPR management and staff on issues arising in the course of implementing the Registered Pledges Act. LRP experts provided ongoing assistance to the CPR in resolving practical problems in instances of complicated and unusual cases of secured transactions registrations.

The past year was also marked by a strong transition effort on the part of the CPR. While it had to start its operations in 1997 with a paper-based registry system, the major task for the CPR was to close 1998 with an operating computer-based registry system. LRP experts liaised between the administrators of the CPR and the development team of software experts, with a view to ensuring that the full scope of registration activities envisaged by the Registered Pledges Act would be adequately reflected in the computer-based registry system. As a result of the joint effort, the CPR was able to commence the process of up-loading its backlog of paper-

based files onto the new computerized registry system. Expectations are that, as of the beginning of 1999, the CPR will start entering new files on the computer platform only. Thus, the first computerized, centralized and public registry in the history of Bulgaria will start normal operation.

Improving the Law on Registered Pledges: Monitoring and Work in the Ministry of Justice and Legal Eurointegration Drafting Team

Almost two years after it came into effect, the Registered Pledges Act had revealed a number of technical flaws which were inhibiting economic agents' use of the modern secured transactions concepts it introduced. The LRP team of experts worked closely with the CPR on identifying omissions and problems with the Registered Pledges Act which would have to be corrected with a first round of revisions. LRP experts also liaised with commercial banks and other financing parties in identifying how the Law might be improved. This effort enabled the CPR to identify a comprehensive list of proposed revisions which, if carried out, would result in the Registered Pledges Act meeting to a high degree the expectations related to its implementation.

LRP experts were made part of a drafting committee constituted by the Ministry of Justice and Legal Eurointegration, with a view to creating a draft law, to implement the necessary revisions to the Law on Registered Pledges. The drafting team included representatives of the CPR, the Council of Ministers, the Bulgarian National Bank, the Association of Commercial Banks and the LRP. The team had a series of working meetings which resulted in the production in mid-December of an amending draft law with the legislative motives necessary for its enactment. The draft law has been introduced into Parliament, with a view to being enacted in the first quarter of 1999.

II. Education

Entering the Field of Education: Design and Implementation of a Distance Learning Project

CSD, and the LRP in particular, have a long track record as providers of highquality training programs for experts in various fields. The LRP has become well-known for its continuing legal education programs on topics such as joint ventures, franchising, sale of an on-going business, arbitration and ADR, and leasing. Still, the LRP identified the need for alternative forms of education, which would provide a method different from the classic university models. Thus, the LRP made its first appearance as an agent in the field of education, in the form of developing and implementing for the first time in Bulgaria the pioneering concept of "distance learning."

The LRP Distance Learning Project is entitled "General and Financial Management of Not-for-profit Organizations." It is being implemented in cooperation with the Hellenic Management Association (Athens); Regional Distance Education Study Center, Sofia University and the Law Faculty, Skopje University (Skopje). The Project is targeted at producing the first systematic training course in NGO management in Bulgaria. The Project is financed by the Phare Program, through the European Training Foundation.

Distance Learning: Introducing New Education Techniques and Technologies

The distance educational method is new for the Bulgarian educational system. Distance education leads to a proactive structure of the learning process. The method chosen comprises mainly the individual work of the students participating. The teaching materials are made to follow the requirements of this kind of education. Besides the students' individual work, weekend meetings are provided for discussion of the topics of the

course curriculum and assessment of the students' work.

The course that will result from the project will be delivered through print materials and an electronic version of the exercises and the self-evaluation materials related to the course.

The Distance Learning Project envisages the development of an educational course designed for last-year students already holding a Bachelor's Degree in another field, or for practitioners working in civic organizations. It represents a Master's Program for Business Administration with a concentration in Not-for-Profit Organizations. The concept and educational tools designed during the Distance Learning Project will be provided to the distance education centers in Central and Eastern Europe. Thus, the product of the LRP effort will have an international enabling effect on the NGO sector.

Distance Learning: Reaching the Benchmarks

The LRP experts have already created the Instructional Design Model. The model provides for three teaching modules related to not-for-profit organizations' regulation and activity: Legal Aspects; General Management; and Financial Management and Control.

The team drafting the course materials includes university professors and specialists in the fields of law, general and financial management, accounting, and auditing.

III. Training

Training: a Continued Tradition

The LRP continued in 1998 the tradition of providing short and practically oriented training programs. There were two main lines in the 1998 training program. The first line focused on developing the train-

ing skills of potential trainers in the implementation phase of the General and Financial Management of Not-for-profit Organizations educational project. Thus, the LRP made a link between the conceptual and practical components of a comprehensive educational project. The second line continued the tradition of training NGO practitioners in the fields of accounting and auditing.

The 1998 Training Seminars

The LRP's efforts in the field of training focused on the following topics during 1998:

- Training of Trainers Seminar for Course Developers. The seminar was attended by the authors of the course materials and future trainers participating in the Distance Learning Project, and was held in two sessions – in May and June 1998. The instructors at the seminar covered the following topics: "Distance Education — the European Standards and the Bulgarian Environment" and "Distance Education — Principles, Objectives, Methods and Techniques." The seminar ended with a discussion on the draft for the Instructional Design Model;
- Training of Trainers Seminar for Course Developers: a Follow-up Seminar in Athens. The seminar was hosted by the Hellenic Management Association in the beginning of September 1998 and was attended by five representatives of LRP's Distance Learning project partners. Representatives of the Hellenic Management Association demonstrated distance education tools elaborated by the latter, designed to work on the basis of multimedia equipment. The participants discussed the overall structure and design of the course materials for the General and Financial Management of Not-for-profit Organizations course. Special focus was given to the students' evaluation and the need for interactive communication.

A training seminar on "Accounting and Audit of NGOs" was held on November 30, 1998, jointly by the LRP, the Open Society Foundation and the International Development Law Institute (IDLI), Rome. The main instructor was Mr. Pascuale Ferraro, Deputy Director at

IDLI. The seminar was attended by 30 practicing accountants and auditors active in the field of NGOs. The topics for discussion included forthcoming changes in tax laws, internal and external financial control, and financial management of NGOs.