

Law Program

2010 Highlights

In 2010, legal, institutional and judicial reforms in the country continued to be priority areas for the CSD Law Program. The activities focused on several major issues:

- Crime prevention and counteraction – penitentiary reform in Bulgaria within the context of the judicial reform;
- The rights of the crime victims in the EU Member States;
- Need for and opportunities of implementation of common European indicators of the public confidence in justice;
- Monitoring of racism and xenophobia and the policies and measures for their counteraction.

I. Indicators of public confidence in justice

In 2010, the CSD Law Program continued its work on the project *Indicators of Public Confidence In Justice: Tools for Policy Assessment (EURO-JUSTIS)*, officially launched in March 2008. The project is implemented through a partnership with universities and non-governmental organizations from Great Britain, Italy, France, Hungary, Lithuania and Finland. The aim of this project is to develop indicators, allowing comparative research of the public confidence in justice, which could be used in the preparation, implementation and evaluation of policies in the area of criminal justice.

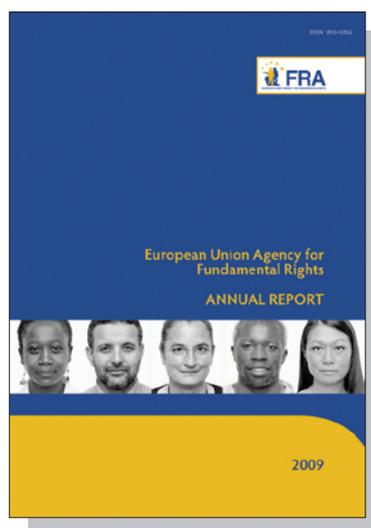
In 2010, the second round of the practical trial of the developed indicators, through the 'cognitive interview' method was carried out. Under the guidance of experts from the CSD's Law and Sociological Programs, 22 interviews were conduct-

ed. The results assisted to verify the reliability of untested by now indicators and to evaluate some specifics of their application in Bulgaria. After a comparative analysis of the data gathered through cognitive interviews in the countries participating in the project, an integral questionnaire for conducting surveys of the public confidence in the justice system was developed. In September the questionnaire was ultimately tested during the implementation of four pilot national surveys of the adult population in Bulgaria, Italy, Lithuania and France. From the main part of the indicators a module of questions was developed, which was approved to be included in the fifth phase of the European Social Survey (ESS), planned for the end of 2010. The integration of this module in the research methodology of the ESS provides the opportunity to gather comparative data about the public confidence in justice in 26 European countries and to develop national policies based on scientifically proven facts.

The Asylum-Seekers' Perspective: Access to Information and to Effective Remedies and Racist and Related Hate Crimes in Bulgaria. The study on the access to information and effective remedies for the asylum seekers was prepared on the basis of the results of focus group discussions with foreigners, applying for refugee status in Bulgaria. The research showed that the information given to asylum seekers is not complete and is often hard to understand because of the complex legal language. Due to that, asylum seekers often find information about the procedures from their compatriots, who have arrived earlier in Bulgaria. The access to remedies after a refugee status was refused was also found problematic. People whose applications have been rejected often do not understand where and in what term they can appeal against the decision; they encounter problems in finding lawyers; rarely have the possibility to actively participate in the court hearing where their complaint is being looked at. The main conclusions from the study were included in the FRA's reports about the access to information and the availability of remedies, officially presented at the Ministerial Conference on Asylum in Brussels on 13-14 September 2010 relating to asylum procedures in the EU Member States.

The study about racist or other hate crimes was prepared on the basis of the data collected from the relevant state authorities and non-governmental organizations working in this area. The main conclusion from this research is that hate crimes are increasing, but because of the serious difficulties to collect evidence, in most of the cases, they are investigated as conventional crimes rather than as offences motivated by racist or other hatred. For that reason, despite the frequent cases of violence, the official statistics do not report reflect the serious thread imposed by such

crime and the state does not undertake any specific measures of counteraction. The CSD has also prepared three more bulletins on the topic of racial discrimination, that include current information about newly released analyses and reports, changes in the legal framework and important events in the field of equal treatment and the counteraction to racism and xenophobia.



In the annual report about racism and xenophobia in Bulgaria, the CSD experts made a review and evaluation of the measures for counteraction to racist and ethnic discrimination in the country within the traditional spheres of legislation, racist crime, healthcare, education, employment, housing and minorities' participation in public life. The information from the report will be used by the FRA for the preparation of its annual human rights report in the EU.

IV. Judicial Reform

1. Prison reform

Some of the main problems in the field of criminal justice in Bulgaria are linked

to the poor prison conditions. With the intention to contribute to the continuation of the reforms in the system of execution of the penalties, the CSD started working on a study on the conditions in prisons, which should depict the key problems and suggest proposals for their overcoming. The research is a follow up to the Law Program's work on analysis and evaluation of the costs for crime repression – an initiative accomplished by the CSD together with nine academic and non-governmental organizations from Italy, Spain, Portugal, Germany, Latvia, Cyprus, Hungary and Turkey.

In the course of the research, up-to-date statistical data was collected reflecting the conditions in prisons (number of prisoners, prison capacity, prison budgets and so on) and a comprehensive analysis of the new legislation on the execution of penalties was produced. Special attention was paid to the problem of the state's penal policy concerning offenders who use or are addicted to drugs. The results from the study will be summarized in a report, which will be published in 2011.

2. Improving the efficiency of the judiciary through the introduction of information technologies

The CSD experts have repeatedly recommended the introduction and use of information technologies as a tool for increasing the transparency and accountability in the work of the judiciary. With the intention to promote the wider use of these technologies in the courts, the CSD started researching the possibilities for the introduction of good practices in this field, which have been successfully applied in other countries. The research is part of an international initiative to encourage the exchange of good practices between

European states in the area of introducing the new technologies in the judiciary. The initiative is a joint effort of CSD, Adam Mickiewicz University (Poznan, Poland), Droit au Droit Association (Brussels, Belgium), and European Public Law Organizations (an international inter-governmental organization based in Athens, Greece).

The initiative was officially launched on 3 December 2010, with the holding of the first steering committee meeting attended by experts from the participating organizations. The first phase of the work is now ongoing and it includes gathering and summarizing of existing good practices, implemented by the leading states in this field, like Great Britain and Spain, as well as evaluation of the needs and the potential impact of the introduction of such practices in Bulgaria.

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In 2010, the National Assembly elected a new parliamentary ombudsman, the second since the establishment of this institution in 2005. As part of CSD's initiative to establish and strengthen the ombudsman institution on national and local level, launched in 1998, experts from the Law Program presented to the newly elected ombudsman the work of the organization in the field of human rights and the possibilities for further cooperation.

CSD continued to develop its cooperation with the European Ombudsman. Experts from the Law Program attended the official presentation of the European Ombudsman's annual report for 2009 before the Petitions Committee of the European Parliament and met with officials from the institution's Brussels office. The meeting focused on topics such as the role of the civil society organizations for promoting the work

of ombudsman type institutions and the possibilities for holding joint events with the participation of representatives of the European ombudsman, the Bulgarian ombudsman and the CSD.

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In 2010, CSD's Law Program continued to closely work in cooperation with a number of national, foreign and international institutions and organizations.

On 22 and 23 February the Law Program hosted the third meeting of an advisory group focused on the problems of the democratization and judiciary in Asia and Europe. The event was organized by the 'Asia-Europe' Foundation in partnership with the 'Hanns Seidel' Foundation, Indonesia. The advisory group consists of representatives of the respective international and regional organizations, non-governmental organizations and academics in the field of democratization and justice. The meeting resulted in the establishment of partnership for future cooperation in the area of developing and consolidating democratic institutions, security and stability in Asia and Europe.

On 14 May 2010, the CSD jointly with Ms. Maria Nedelcheva, Member of the European Parliament, Group of the European People's Party, and with the support of the Balkan Trust for Democracy, organized a seminar on *Conflict of Interests, Good Governance and Management of the Local Authority – Civil Society Relationship*. The objective of the seminar was to facilitate the sharing of experience related to the conflict of interest legislation and its application to the public-private partnership between municipalities and NGOs. In order to focus the discussion on practical issues faced by local authorities, the seminar took place in the European Information Centre in the town Hadzhidimovo. The

event brought together about 30 participants from the region, including municipal councilors, representatives of NGOs working with the municipalities, and journalists from the local media. Among the local authorities represented at the seminar were the municipalities of Gotse Delchev, Razlog, Blagoevgrad and Hadzhidimovo. Members of the Municipal Councils of Bansko and Sofia also took part in the discussions. The CSD Law Program was represented by its director Ms. Maria Yordanova, who presented the legal framework related to conflict of interests and the problems in its implementation, and the senior analyst Mr. Dimitar Markov, who pointed out the need to improve the definitions of the terms "related persons" and "conflict of interests".



On 13 October, upon invitation by the Macedonian Centre for International Cooperation (MCIC), Ms. Maria Yordanova took part in the official presentation of the CSD's ninth corruption assessment report, entitled *Crime without Punishment: Countering Corruption and Organized Crime in Bulgaria*, translated and published by MCIC. The participants of the event included the President of State Commission for Prevention of Corruption in Macedonia Ilmi Selami, the Executive Director of the Association of the Units of Local Self-Government Dusica Perisic, the Head of the Sector



The presentation of the report "Crime without Punishment" in Macedonia on 13 October 2010. From left: Ms. Dusica Perisic, Association of the units of Local Self-Governance, Ms. Maria Yordanova, CSD Law Program Director, Mr. Saso Klekovski, MCIC First Executive Director, Mr. Ilmi Selami, State Commission for Prevention of Corruption, Ms. Snezana Mojsova, Ministry of Justice

for International Legal Cooperation of the Ministry of Justice Snezana Mojsova, the MCIC First Executive Director Saso Klekovski. The event, as well as CSD's report, was broadly reflected by the leading Macedonian media.

Following up on the established relations between MCIC and CSD, the two organizations signed an agreement for cooperation, under which a study visit of a Macedonian delegation to Bulgaria was organized. The visit was aimed to acquaint the Macedonian participants with the anti-corruption mechanisms, the Bulgarian experience and the future challenges. The Macedonian delegation included MPs and representatives of the judiciary, the executive, the self-government and the civil society. During the visit, organized jointly by CSD and MCIC, the delegation had meetings with representatives of the national institutions working in the field of countering crime and corruption and with the team of experts from CSD, who presented the corruption monitor-

ing system developed by the CSD and Vitosha Research, the main components of the anti-corruption infrastructure in Bulgaria, the links between corruption and the organized crime and the CSD's experience with anticorruption initiatives and cooperation with state institutions. The delegation also attended a regular session of the Anti-Corruption, Conflict of Interests and Parliamentary Ethics Committee and had a meeting with its members.

Within the framework of the established partnership between the CSD and other non-governmental organizations working in the field of justice, representatives of the Law Program took part in a number of public events (conferences, round tables and seminars), dedicated to different problems of judicial reform. The CSD joined the group of the non-governmental organizations, which in November signed an open letter addressed to the President of the Republic of Bulgaria, the President of the National Assembly, members of



The meeting of the Macedonian delegation with representatives of the Center for the Study of Democracy, 26 November 2010

the Supreme Judicial Council and the management of the national media, regarding the procedure for the election of a new Chairman of the Supreme Administrative Court. The letter emphasized that the public confidence in the judiciary can be developed and strengthened only if every decision made by its governing body is rational, motivated, publicly accessible and in compliance with the word as well as the spirit of the law.

With the objective to expand CSD's cooperation with the EU institutions and with influential foreign non-governmental organizations, in May the senior analyst of the Law Program Mr. Dimitar Markov was on a two-week visit in Brussels. During the visit, organized with the support of Friedrich Ebert Foundation, Mr. Markov present-

ed CSD's work at a number of meetings with representatives of the European Commission (DG Justice, Freedom and Security; DG Regional Policy; DG Enlargement; DG Employment, Social Affairs and Equal Opportunities; and the General Secretariat), the European Parliament, the European Ombudsman and others. During the meeting with the experts, working on the Cooperation and Verification Mechanism (the mechanism, through which the European Commission follows the progress of Bulgaria in the field of fight against organized crime and corruption) the discussions focused on the latest events in the country and their significance for the regular report of the Commission.

In June, the policy brief *The Cooperation and Verification Mechanism Three Years Later: What Has Been Done and What Is*

Yet to Come was published. The analysis looks at the introduction and the results from the Cooperation and Verification Mechanism in Bulgaria, the necessity of its application, the way in which it functions and the possible consequences for Bulgaria depending on the country's progress. Based on the situation in Bulgaria the policy brief made a forecast about the conclusions and recommendation of the then upcoming regular report on Bulgaria.

In June, the Law Program's senior analyst Mr. Dimitar Markov, held a lecture on *The State of judiciary and the internal order before the report on Bulgaria's progress in front of the European Commission* at the fifth edition of the 'Future Leaders' discussion forum – an initiative of Friedrich Ebert Foundation providing a forum for young political activists and



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The Cooperation and Verification Mechanism Three Years Later: What Has Been Done and What Is Yet to Come

Dimitar Markov

What is the Cooperation and Verification Mechanism?

On 1 January 2007 Bulgaria became a member of the European Union. However, according to the European Commission, the country's judicial system and law enforcement bodies still lacked the necessary capacity to implement and apply the measures adopted to establish the internal market and the area of freedom, security and justice. The remaining issues warranted the establishment of a mechanism for cooperation and verification of the progress of Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime.

The cooperation and verification mechanism (CVME) was officially introduced by a Commission Decision of 12 December 2006. Under the CVME, six benchmarks were introduced for Bulgaria and the Bulgarian government agreed to report on a regular basis in addressing them. The first report was submitted on 31 March 2007.

On a regular basis the Commission conducts an assessment of the progress made by Bulgaria in addressing the benchmarks. The findings and conclusions of the assessment are summarised in annual progress reports. The reports are published in the summer of each year and contain a detailed evaluation of progress and concrete recommendations for further reforms. Each winter the Commission publishes an interim report, providing a technical update on significant developments that have occurred in the last six months. The interim reports do not contain an assessment of progress achieved, i.e. the progress reports remain the main point of reference for the assessment of progress.

Why was the Cooperation and Verification Mechanism necessary?

According to the Commission Decision of 12 December 2006 the main reason for introducing the CVME was the insufficient progress made by Bulgaria during the pre-accession preparations. At the time of accession the country made certain commitments to continue to implement the necessary reforms and tackle the "remaining issues" in the accountability and efficiency of the judicial system and the law enforcement bodies. However, the EU no longer had at its disposal the pre-accession monitoring instruments or a new type of tool approach necessary to track progress and exert pressure on the national government, when needed.

To respond to this need the European Commission, using as a legal basis the Act of Accession, which empowers the Commission to take appropriate measures in case of imminent risk that Bulgaria would cause a breach in the functioning of the internal market by a failure to implement the commitments it has undertaken (Article 37), introduced the CVME – a combination of a set of benchmarks and an obligation of the country to report on a regular basis on the progress in addressing them.

Thus, for the first time in the history of the European Union newly accession Member States were made subject to post-accession monitoring.

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Publication: Dimitar Markov, 07/03/2010, 10:37 AM, 10/03/2010

public servants to debate on current problems of the political and social life in the country.