

Law Reform Program

The Law Reform and Comparative Law program was established in the early spring of 1991. It started out as a facilitator of the law reform process in Bulgaria and focused its efforts mainly on establishing and supporting the contacts between the Government and foreign assistance institutions. The initial focus of the Program was constitutional law reform. With the enactment of the new Constitution in the spring of 1991, the emphasis in the activities shifted towards commercial law reform. During the past four years the Program gradually developed into a legal reform agent with a considerable law drafting record. It now works on substantive legislative reform projects attracting its own expert resources.

1991–1995 PROGRAM HIGHLIGHTS:

- Organized two constitutional law seminars with the participation of foreign experts and members of the Grand National Assembly which facilitated the process of enactment of Bulgaria's new Constitution;
- Provided the government with expert comments on more than thirty draft laws in the following areas: copyrights, patents, commercial transactions, bankruptcy, privatization, commodity exchanges, trade, chambers of commerce, judicial structure, administrative justice, the bar, waste, protection of sea waters, criminal code, special investigative means, protection of information, etc.;
- Provided the government with five concept papers containing leading world and international concepts on drafting laws on money laundering, investment funds, foreign trade regulation, government procurement and securities regulation;
- Coordinated four policy oriented legal seminars/discussions involving government officials and representatives of the public, covering bankruptcy, copyrights, lawyers' code of ethics and accreditation of law schools;
- Organized a series of educational legal seminars on international sale of goods, franchising, joint ventures, alternative dispute resolution, commercial arbitration, purchase and sale of an on-going business, leasing, and copyrights and trademarks, GATT, ;
- Conducted two Training for Trainers workshops;
- Initiated and supported a successful effort to draft a new law on non-profit organizations for Bulgaria;
- Participated in the drafting of a Law on Registered Pledges, passed by Parliament in November 1996;
- Prepared six publications on topical legal issues including foreign investment law, in-kind contributions in commercial companies, privatization, government structure and operations.

The Program has in its record the Law on Registered Pledges, developed in cooperation with IRIS-Bulgaria, and passed by the National Assembly in November last year. The Draft Law on Non-Profit Organizations, which was also developed by the Program, has been approved and endorsed by the Government, and is awaiting consideration in Parliament. As a follow-up, the Program is presently working on the development of the tax legal framework for non-profit organizations and government procurement laws. Particular focus is also placed on issues of approximation of Bulgarian law to EU legislation.

I. Legislative Reform

1. Reforming the Legal Framework for NGOs in Bulgaria

A. Law on Non-Profit Organizations

For the past three years, CSD has been working on drafting a Law on Non-profit Organizations in Bulgaria. The Draft, developed with the expert resources of the Law Program and endorsed by the Ministry of Justice, is about to make its way into Parliament. Throughout the year, the Draft went through a series of discussions with NGOs and government officials. Such networking was an important vehicle for improving the draft law and ensuring its adequacy to the needs of the non-profit sector.

Among the government agencies dealing with NGOs, the Ministry of Finance is to play a key role in backing up the Draft on its way to becoming a Law. In view of this, in June CSD organized a workshop for **Discussing the Position of the Ministry of Finance on the Draft Law on Non-Profit Organizations**. As the Ministry of Finance will also be a key enforcement agency, the workshop provided a broad discussion basis where representatives of the Ministry

could meet other experts and share views on the Draft. The Ministry's position was presented by Mr. Istilian Simeonov, an expert in Corporate Taxation Department of the Ministry of Finance. In order to receive feedback on the Draft Law and to prepare the ground for proper future implementation of the law, CSD organized a number of training seminars.

Training Seminar on the Law on Non-Profit Organizations for NGO Managers, April 23

The seminar was part of a series of events organized by the CSD for the development of NGOs and their capacity to function and grow in a new environment. Participants were invited with the active participation of the Civil Society Foundation, the Union of Bulgarian Foundations and Associations and the Open Society Fund through its community network. The members of the drafting task force at the Ministry of Justice gave a short explanation on the Draft's final version as well as on some future implementation issues. The discussion focused on the impact of the present legal, political and social situation on the Draft and its future enforcement.

Training Workshop on the Law on Non-Profit Organizations for Judges, April 28

The courts will be a crucial component of the future implementation of the NGO law as the life of every NGO starts and ends in a court procedure. The workshop was attended by judges from all instance courts, including all the Registry Departments of the 29 District Courts in Bulgaria, and three Supreme Court justices dealing with registration appeals. Sofia City Court Judge Borislav Belazelkov, Mr. Stephan Kyutchukov and other members of the drafting task force participated as panelists and

resource persons providing background on the motives of the law. The result of the workshop was a better understanding by the participating judges of the principles of the proposed legislation which is a key component for its most effective enforcement in the future.

In order to further facilitate the proper implementation of the Law on Non-Profit Organizations when enacted, in October CSD initiated a process of **Drafting a Commentary to the Future Law**. An expert commentary made it possible for the creators of the Law to express in "layman's" terms the fundamental concepts and legal techniques embodied in it. The comments include case examples of the existing court practice and a comparison between the newly introduced and the repealed legal frameworks. The commentary will be particularly useful for both practicing lawyers and NGO activists.

B. Reforming the Tax Environment for NGOs in Bulgaria

Alongside the effort for facilitating the enactment of the Draft for a Law on NGOs, in 1996 CSD launched a follow-up project, supported by the European Union Phare Democracy Program, aimed at reforming the relevant collateral legislation. While the Law on NGOs will provide the core of the framework by rules on the creation, status, organization and functioning of NGOs, the collateral legislation will complete and make operational the required legal framework. It is by virtue of this legislation that certain tax breaks and other incentives for NGOs and charitable giving will be established in Bulgaria.

The current tax environment is not favorable for the functioning of NGOs. Tax laws do not provide for a harmonized treatment of natural and judicial persons subject to *Income or Corporate Taxation*, as regards incentives for their donations to NGOs. There are no

relieves for NGOs with respect to customs and excise duties, with a few exceptions provided for certain organizations.

The Task Force

The CSD task force, which includes also managers of leading Bulgarian NGOs, representatives of academia, auditing companies, courts, and private practitioners with expertise in the field of taxation, are developing recommendations for specific amendments to the existing tax laws. The proposals elaborated by the task force were coordinated with experts from the Ministry of Justice, Ministry of Finance and other relevant institutions.

The task force meetings were preceded by extensive collection of information on NGO taxation and tax treatment of donations to NGOs, particularly in the US and West European countries. Some relevant extracts of materials on this topic were translated into Bulgarian in order to be accessible to a larger audience in Bulgaria.

Public Outreach

Discussions with the Relevant Government Agencies on Income Tax and Local Taxes

At a meeting with representatives of the Ministry of Finance in October, the drafting task force presented the idea of introducing equal tax treatment of charitable giving by employees, on the one hand, and freelancers and sole proprietors, on the other. The Ministry officials introduced the participants to the relevant ideas under the Draft Law on Income Tax being elaborated by the Ministry. The discussion was of substantial importance for clarifying the positions of both representatives of the non-profit sector in Bulgaria and government representatives in the sensitive area of taxation.

Conference with Representatives of Bulgarian Non-Profit Organizations Regarding Proposed Amendments to the Law on Income Tax and Law on Local Taxes, November 18

Following the discussion with government representatives, the proposed amendments were discussed at a workshop held at CSD with the participation of over thirty representatives of Bulgarian NGOs, and legal experts in the field of NGO law. The discussion provided valuable input to the drafting process as it allowed the task force members direct contact with future beneficiaries and outside expertise.

Proposed Amendments at the First Stage of the Project:

- *Law on Corporate Tax.* The working group focused on the development of amendments to the existing corporate tax law with a view to creating incentives for corporate charitable giving to NGOs.
- *Law on Value Added Tax; Custom and Excise Duties.* The activities of NGOs usually depend on support and donations from abroad which include literature, educational and medical equipment and the like. Goods received as donations from abroad are subject to value added taxation and customs duties. In view of this, the task force started drafting legislative amendments providing for relief in the fields essential for NGOs.
- *Law on Income Tax and Law on Local Taxes and Fees Concerning Charitable Donations.* The proposed amendments are aimed at making tax relieves for charitable giving. The suggested mechanism represents both a means of limiting tax relieves only to cases of evident benefit to society, and a means of introducing reliable control devices.

C. Research and Technological Development

The Ministry of Education, Science and Technology, the TEKLA private Consortium and CSD elaborated an analysis of the existing legal framework on scientific and technological research and drafted a concept paper on the need and directions of its development. The partners launched the elaboration of a draft law on research and technological development aimed at developing the country's scientific potential and promoting the economic reform in general.

2. Approximation of Bulgarian Law to European Legislation

In 1996, CSD continued its effort to facilitate the process of approximation of Bulgarian law to European Union legislation as well as to European conventions and international agreements. The approximation aspect has been a key consideration in all activities of CSD aimed at reforming Bulgarian law.

SME Legislation

During the drafting of a *Policy Recommendation Paper on Small and Medium Enterprise Sector in Bulgaria* (described in more detail below), CSD's Law Program analyzed the legislative recommendations in the paper against the background of the Europe Agreement and the relevant EU legislation.

The policy recommendation paper paid special attention to the existing EU legislation on SMEs, such as the First Directive of March 9, 1968 regarding public availability of commercial registry information and Recommendation of April 3, 1996 concerning definition of SMEs.

European Social Charter

In conjunction with the Information and Documentation Centre on the Council

of Europe-Sofia, the Law Program translated the European Social Charter into Bulgarian. A task force was set up to prepare an analysis of the compatibility of Bulgarian legislation with the Charter. An expert was appointed to write a paper on the degree of compatibility which could provide the basis for future decision on the signing of the European Social Charter by Bulgaria. The revised Bulgarian version of the European Social Charter was formally approved by the Ministry of Foreign Affairs.

3. Commercial Law

Law on Registered Pledges

In 1996, the CSD/IRIS-Bulgaria Project task force finalized its work on the Draft Law on Registered Pledges. The

Draft was passed into Law by Parliament in November, which exemplified the significant pro-legislative impact of the informal sector in democratic societies.

The team of experts finalized its one-year effort which involved dynamic interaction with experts of the World Bank, the International Monetary Fund and the European Bank for Reconstruction and Development. The opinion of academic experts from Germany, the United States, Poland and Hungary was used as well. The team of experts worked closely with the Bulgarian Ministry of Justice, the Council of Ministers and the National Assembly Committees thus ensuring government support for the project. In 1997, the necessary supporting legislation will be developed jointly with the Ministry of Justice to



The task force group which drafted the Law on Registered Pledges: (from left to right) Mr. Silvy Tchernev, Attorney-at-law, Mr. Borislav Belazelkov, Judge at Sofia City Court, Ms. Maria Yordanova, Senior Legal Advisor at United Bulgarian Bank, Dr. Angel Kalajdjiev, Associate Professor at Sofia University School of Law, Ms. Jerry Coletti, IRIS-Bulgaria Director and Mr. Stephan Kyutchukov, Coordinator of the CSD Law Reform Program.

enable the Central Registry for Pledges, envisaged by the law.

With the passage of the Law on Registered Pledges, Bulgaria became the third European country, together with Norway and Hungary, where a modern non-possessory pledge system with a central pledges registry is being implemented.

II. Public Outreach Activities

The use of a public outreach mechanism is of particular importance for achieving the desired impact of the overall legal reform efforts of the Program. In this way, it solicits the support of the target communities and receives valuable feedback for its priorities.

Roundtable Discussion of the Legal Issues Affecting Small and Medium Size Businesses in Bulgaria, February 12

The purpose of the meeting was to bring together representatives of the Bulgarian business community to discuss the legal impediments to doing business in Bulgaria and to define areas for legal reform. The discussion was attended by representatives of the Bulgarian Energy Efficiency Foundation, Union of Private Economic Enterprises, Bulgarian Chamber of Commerce and Industry, National Association of Real Estate Brokers, Bulgarian Industrial Association, EU Phare and the US Department of Treasury. The topics discussed included finance and tax, creditors' rights, social security, pensions and other benefits. The participants shared thoughts and ideas on ways of coping with the above issues, including drafting new legislation, amending existing laws, improving the implementation process.

Technical Discussion on the Legal and Business Planning Issues Involving the Taxation of Insolvent Businesses, April 23

Tax experts from the private sector, representatives of leading auditing compa-

nies, and representatives of the World Bank, ABA/CEELI and CSD discussed net operating losses, as well as how they are treated in Western systems and under Bulgarian Law. The discussion also focused on how a debt-equity conversion or the issuance of new equity affects net operating losses in reorganization cases.

Roundtable Discussion Workshop on the Bulgarian Central Depository for Securities, September 15

The purpose of the roundtable workshop was to bring together the persons responsible for the establishment and operation of the Depository with representatives of the banks and financial brokers who may become participants in and users of the Depository. Participants in the discussion included representatives of the Ministry of Finance, the Bulgarian National Bank, the Center for Mass Privatization, the Securities and Exchange Commission, the Central Depository AD and the Bulgarian Stock Exchange. Also participating were leading professionals from the US Securities and Exchange Commission and the National Securities Clearing Corporation.

Technical Discussion on the Use of Expert Testimony in Copyright Piracy Prosecutions, June 8

The discussion involved judges from the Supreme Court and the Sofia City Court, representatives of the private sector and representatives of NGOs dealing with protection of intellectual property rights in audio-video products. The participants discussed the legal provisions on expert assistance and the use of expert testimony in copyright piracy prosecutions. Relevant case-law was discussed.

Vesti Newsletter

In late 1996, the Law Program published the fourth issue of its *Vesti*



Dr. Michael Havercamp, Associate Professor at the College of Human and Community Sciences, University of Nevada trained Bulgarian NGO representatives on Organizational Visioning, Action Planning and Effective Teamwork.

newsletter presenting the activities of the Program. The main topic of the issue was the Program's effort of reforming the tax environment for NGOs, including expert analyses, interviews with task force members and presentation of public events. The newsletter was distributed among judicial NGOs, the Bar Association and the courts.

III. Training

In 1996, the Law Program continued its efforts at providing expert training to a number of target audiences, including NGOs, private and government lawyers, business associations, etc.

Legal Training Workshops on Bulgaria's Bankruptcy Laws, February 19-20, and 22-23

The workshops were co-organized by the Bulgarian Trustees Association (BTA), Bulgarian Bar Association (BBA), ABA/CEELI and CSD. These workshops were focused on how to conduct liquidation and reorganization cases under Bulgarian bankruptcy law. The workshops used hypothetical case studies of insolvent companies to illustrate the issues and steps necessary to commence, administer and close a bankruptcy case. Participants studied the differences between liquidation and reorganization cases, and the duties and responsibilities of bankruptcy trustees and judges, respectively. Instructors to the workshops were distinguished US

bankruptcy experts. The workshops were attended by private lawyers, government legal advisors and officials, banking executives and their legal advisors, judges and business people.

Seminar on Advocacy and Governmental Relations, February 9

This seminar was organized by ABA/CEELI, the Association of Democratic Trade Unions and CSD. It was focused on the specific skills and techniques needed by various associations and organizations to effectively advocate for issues that concern their members. The topics covered included preparation of a legislation action plan, building a grassroots organization, running a grassroots advocacy campaign and publicizing association's activities. Private lawyers, government legal advisors, policy makers, non-governmental and trade association officials attended this workshop.

Training Workshop on Organizational Visioning, Action Planning and Effective Teamwork, October 20

The roundtable was attended by representatives of NGOs and was monitored

by Dr. Michael Havercamp, State Leadership Specialist and Associate Professor at the College of Human and Community Sciences, University of Nevada. The discussion was focused on negotiation techniques. The participants discussed issues like creating "win-win" strategies, conflicts resolutions, effective teamwork, action planning and the like.

VI. Publications

Issues in Bulgarian Law Series, Issue No. 6, April 1996: A Comparative Analysis of Bulgarian And USA Bankruptcy Laws by Sandra Mitchell, Esq., ABA/CEELI Liaison

This paper represents a comparison and overview from a Western perspective of US and Bulgarian bankruptcy laws. It covers the commencement of proceedings, procedure after petition is filed, property of the estate issues, debtor and creditors' claims, liquidation and reorganization. This paper was prepared after request of CSD, with a view to providing a starting point for a Westerner's understanding of Bulgarian bankruptcy law.