

Law Program

In 2005 the Law Program focused its main efforts on two major areas: promoting constitutional and judicial reforms in Bulgaria in the context of the country's forthcoming accession to the European Union and strengthening the ombudsman type institutions as a human rights protection mechanism. In particular, the activities were aimed at encouraging the public and expert debate on the necessary reforms of the Bulgarian judiciary, further developing the reform of commercial registration in the country, assisting the practical establishment of the parliamentary ombudsman's office, supporting the introduction and operation of local ombudsmen and facilitating their mutual cooperation as well as their interaction with the national ombudsman.

2005 Highlights

- Contributing to the constitutional and judicial reform in Bulgaria continued to be a priority in CSD activities in 2005. The Law Program organized a number of events with international participation and issued a series of publications to discuss the main problems of the necessary reforms related to the judiciary in the context of Bulgaria's EU accession.
- The Law Program activities aimed at introducing of a modern electronic system of official registers continued in 2005 by active assistance in elaboration of the governmental Strategy for Establishing a Central Electronic Register of Legal Persons and an Electronic Registries Center of the Republic of Bulgaria and the Draft Law on Commercial Register. Both documents were presented at public events, organized by CSD.
- CSD experts continued their work for introducing the national ombudsman institution: after the election of the first Bulgarian ombudsman on April 13, 2005, they contributed to the practical establishment of the institution. Upon request by the ombudsman, they drafted the Rules on the Organization and Activities of the institution. After signing a Partnership Statement between CSD and the ombudsman, the Law Program experts also elaborated the technical project for the Electronic Register of Complaints and Signals at the national ombudsman.
- Law Program worked further on introducing local public mediators (ombudsmen) and establishing of cooperation between the national ombudsman and the local public mediators. In order to approach this goal, a series of events to summarize and exchange the experience gathered were organized.
- CSD continued to examine the opportunities for introducing specialized ombudsman institutions in Bulgaria, such as health services ombudsman, armed forces ombudsman, etc. Law Program experts made a thorough research of the foreign experience in establishing such institutions and its possible application in Bulgaria.

I. Constitutional and Judicial Reform

1. Constitutional Reform

The Law Program continued its drafting and advocacy efforts aimed at promoting constitutional reform in Bulgaria. The activities combined both public events and publications.

- Law Program experts elaborated a comprehensive analysis of the past and necessary future amendments to the Bulgarian Constitution and their relation to the country's accession to the EU. The analysis, developed within the framework of the Communication Strategy for the Preparation of Bulgaria for Membership in the EU, was published as **Bulgarian Constitutional Reform in the Context of Bulgaria's EU Accession (2003-2005)**. The report offers an overview of the constitutional reform in Bulgaria starting with the amendments and supplements to the Constitution of the Republic of Bulgaria in the period 2003 – 2005. It traces the socio-political factors, which have affected those changes, identifying external factors as the

most crucial among them. Bulgarian constitutional reform is also placed in the comparative context of the experience of other countries that joined the EU in 2004. The report contains several annexes offering additional information on some of the issues under consideration, such as: proposals on the continuation of the judicial reform, the procedure for the application of the European Arrest Warrant and the legal background of opening of the real estate (including land) market to the EU Member States.

- On March 29, 2005, the report **Bulgarian Constitutional Reform in the Context of Bulgaria's EU Accession (2003-2005)** was officially presented at a public discussion, organized by CSD. The participants shared the opinion that the amendments to the Constitution adopted so far represent an important step towards EU accession but in the same time should be considered as the beginning of a wider and more complex constitutional reform in the longer term.



Mr. Dimitar Pehlivanov, Ministry of Foreign Affairs (right) and the Program Director of CSD Mr. Boyko Todorov greet the participants in the discussion on constitutional reform

2. Reforming the Judiciary

Contributing to the implementation of judicial reform in compliance with the requirements formulated by the EU, especially as regards the re-organization of the investigation service and the improvement of the effectiveness and accountability of the prosecution, CSD undertook a series of activities to further streamline the debate and encourage the development and practical realization of concrete measures.

Encouraging a European Dialogue

As judicial reform has been one of the key aspects of Bulgaria's EU accession preparations, the Law Program has been facilitating the dialogue between Bulgarian and European partners in this area. On April 8-9, 2005, CSD held a highly representative international conference *Bulgarian Judiciary in the EU Accession Process: Reforming the Investigation and the Prosecution*. The event brought together representatives of the investigative bodies and prosecution offices from eight Southeast European countries,

Spain and the United States as well as representatives of a number of Bulgarian state institutions (the courts, the investigation, the Supreme Judicial Council, the National Assembly, the Ministry of Justice, the Ministry of Interior, the Constitutional Court, the Office of the President of the Republic), non-governmental organizations involved in judicial reform, international organizations, academia, experts, etc. The conference benefited from the participation of Director General of DG Justice, Freedom and Security Jonathan Faull who expressed his confidence that Bulgaria will manage to comply with the EU membership requirements on time and join the Union on January 1, 2007. Minister of Justice Anton Stankov and Deputy Minister of Justice Margarit Ganey presented the government's efforts in the area of judicial reform so far and the plans for future activities, stressing on the pro-active role of the Bulgarian civil society and in particular the Center for the Study of Democracy. The foreign participants made an overview of the organization of the prosecution office and the investigating authorities



During the discussions at the international conference on the reforms of the prosecution and the investigation



Director General of DG Justice, Freedom and Security Jonathan Faull (left) and Dr. Maria Yordanova, Director of CSD Law Program, during the opening of the international conference on the reforms of the prosecution and the investigation

in their countries, offering a variety of concepts that could be taken into account in the process of reforming the judiciary in Bulgaria. The set of proposals for reforming the judiciary developed by the Law Program experts were also disseminated among the participants.

Contributing to another major aspect of judicial reform in Bulgaria – the transparency and accountability to the public of the Bulgarian judiciary – on December 1, 2005, CSD jointly with the Embassy of Spain in Bulgaria organized a round table *Challenges to Transition: The Dialogue between Civil Society and the Judiciary*. Guest speaker at the event was Mr. Celso Rodríguez Padrón, General Secretary of the General Judicial Council of Spain. The event brought together members of parliament, senior representatives of the judiciary, ambassadors of EU Member States and other diplomats, representatives of non-governmental organizations and media.

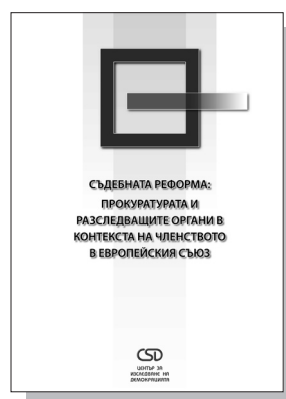
Publications

The essay collection **The Courts, Prosecution and Investigation in the EU Member States and Accession Countries** reviews the organization and principles of activity of the courts, the prosecution and the investigation in the EU Member States, including the new ones, and the accession countries. The edition was aimed at supporting the process of Bulgaria's EU accession and contributing to the strengthening of the judiciary, especially regarding the organization and place of the prosecution and investigation in compliance with the good practices, applied in the EU member states and the other accession countries. The book was officially presented at the international conference *Bulgarian Judiciary in the EU Accession Process: Reforming the Investigation and*

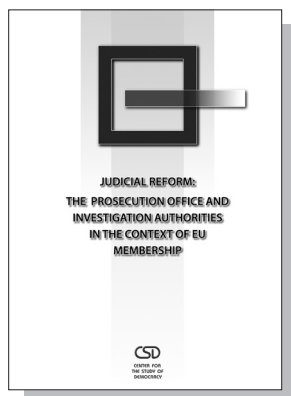
the Prosecution and was disseminated among all relevant stakeholders of judicial reform in the country.



The publication **Judicial Reform: The Prosecution Office and Investigation Authorities in the Context of EU Membership** offers a selection of articles, presenting the organization and the structure of the prosecution offices and the investigating authorities in the EU Member States and the candidate countries. Among the authors are representatives of the courts, the prosecution offices and the investigating bodies of Spain, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Hungary and the Czech Republic, the United States as well as judges, investigators, representatives of the legislature and the executive and non-governmental organizations



in Bulgaria. The aim of the book was to continue the broad public and expert debate on the different options to reform the judiciary in Bulgaria, following the successful models implemented in other countries.



Transferring Experience Abroad

The experience accumulated by the Law Program in the area of judicial reform and anti-corruption allowed it to successfully transfer expertise to other countries. Law Program experts actively participated in the development of an anti-corruption pilot program to be delivered through the Global Development Learning Network to emerging democracies in Eastern Europe and Central Asia. In the fall of 2005 the program was delivered to representatives of public and private sector organizations and NGOs at the National Academy of Public Administration under the President of Ukraine, in Kiev, Ukraine and representatives from public and private sector and donor community in Bishkek, Kyrgyzstan. In the framework of the module entitled *Civic Initiatives for Judicial Reform and Countering Corruption* delivered on September 16, 2005, Dr. Maria Yordanova, Director of the Law Program, presented the introduction and development of a number of legislative initiatives and constitutional

amendments for countering internal corruption in the judiciary and listed some of the remaining challenges to judicial reform.

3. Commercial Registration Reform

In the first half of 2005 Law Program experts had been the key resource persons for the development of the government **Strategy for Establishing a Central Register of Legal Persons and an Electronic Registries Center of the Republic of Bulgaria**. The Strategy outlines one of the key reforms of the judiciary and of the business environment in Bulgaria by facilitating the registration of legal entities. Early on in the year, the Law Program was also active in raising the awareness of the public and of professional communities about the reform. As part of these efforts Law Program Director Dr. Maria Yordanova and Project Coordinator Mr. Dimitar Markov presented the reform progress so far at the Fourth National Conference on Law and IT, held on January 14, 2005.

Following the adoption of the Strategy on April 28, 2005, and to mark the successful completion of the initial stage of the reform CSD jointly with the Ministry of Justice and the Registry Agency held a special press conference on May 17, 2005. The Director of the Law Program Dr. Maria Yordanova, the then Minister of Justice Mr. Anton Stankov, and Mr. Svetlozar Tonev, then Executive Director of the Registry Agency, explained to the representatives of some of the most influential Bulgarian media the main principles of the adopted strategy and the activities to be carried out to implement its objectives.

Law Program experts were also invited as members of the government task force preparing the legal framework

for the implementation of the first stage of the registration reform. In the fall of 2005 the task force presented an initial version of the Draft Law on Commercial Register together with explanatory notes to the draft law and Draft Rules for Maintenance and Keeping of the Commercial Register. The package of documents was submitted by the Minister of Justice to the government for the obligatory coordination procedure preceding the submission of the draft to the parliament.

In order to ensure wide support for the draft law among all stakeholders of the reform CSD together with the USAID Commercial Law Reform Program and in cooperation with the Registry Agency at the Ministry of Justice organized a public discussion on the Draft Law on Commercial Register. The event was held on October 21, 2005, and brought together representatives of the legislature, the executive

and the judiciary, non-governmental organizations, business associations, international organizations, experts and media. Most of the participants expressed their support for the proposed reforms and made specific recommendations for improving the provisions of the draft law.

II. Establishing the Ombudsman Institution

1. Supporting the National Ombudsman

Thanks to the law drafting, advocacy and awareness raising efforts of CSD, Bulgaria has made considerable progress in the process of introducing ombudsman institutions throughout the country. Despite the big delay and the two unsuccessful elections in 2004, on April 13, 2005, the National Assembly elected the first Bulgarian national



During the discussion on the commercial register draft law (from left to right): Mr. Nikolay Yanev, Legal Advisor, USAID Commercial Law Reform Program, Mr. Chris Thompson, Chief of Party, USAID Commercial Law Reform Program, Mr. Michel Fritz, Mission Director, USAID, Mr. Svetlozar Tonev, Executive Director, Registry Agency, Dr. Ognian Shentov, Chairman CSD, Dr. Maria Yordanova, Director, CSD Law Program, Mr. Borislav Belazelkov, Justice, Supreme Court of Cassation, Mr. Georgi Sabev, Attorney-at-Law, Mr. Dimitar Markov, Project Coordinator, CSD Law Program

ombudsman. The election completed an important part of the process of introducing the ombudsman institution in the country. A civil society driven effort from the very beginning, the establishment of the ombudsman is a result of the effective public-private partnership between governmental institutions and non-governmental organizations, in particular the Center for the Study of Democracy.

- Following the election, CSD's Law Program played important role in the practical setting up of the new institution. The CSD Ombudsman Task Force drafted the **Rules on the Organization and Activities of the Ombudsman**, which were adopted by the National Assembly on May 18, 2005, and came into force on June 3, 2005.
- In recognition of the yearlong work and the experience, accumulated by CSD in the process of establishing the ombudsman institution in Bulgaria, on August 5, 2005, a **Partnership Statement between the Ombudsman of the Republic**

of Bulgaria and the Center for the Study of Democracy was signed by the newly elected ombudsman and the Center. The statement is a response to the necessity of cooperation between the ombudsman and the civil society in order to promote the institution as an authoritative and effective mechanism for human rights protection and to contribute for further improvement of the work of the administration. The areas of the future cooperation between the ombudsman and CSD are outlined in the statement as well.

2. Efforts to Improve the Legal Framework

Following the election of the ombudsman, experts of the Law Program in cooperation with the ombudsman and his team developed draft amendments to the Law on the Ombudsman focused primarily on the introduction of opportunity for legal persons to approach the institution. The provision that only natural persons are allowed to file complaints to the ombudsman is among the most serious



The parliamentary ombudsman Mr. Ginyo Ganev and the CSD Chairman Dr. Ognian Shentov are signing the partnership statement

weaknesses of the existing law and was criticized by the Law Program experts on a number of occasions. Still, the amendments were not enacted.

The CSD Ombudsman Task Force continued its efforts to promote constitutional amendments aimed at incorporating provisions on the national and local ombudsmen in the Bulgarian Constitution. Law Program experts developed a set of draft constitutional amendments about the ombudsman institution and presented them to the major stakeholders, including the national ombudsman, who was supportive of some. Thanks to the advocacy and awareness activities of CSD by the end of 2005 the proposal for including the ombudsman in the Constitution gradually gained support from the major political parties represented in parliament and it is therefore expected the ombudsman institution to become part of the next package of constitutional amendments planned for the first half of 2006.

3. Supporting the Development of Local Public Mediators

The introduction of local public mediators progressed even faster than the establishment of the national ombudsman. Benefiting from the support of CSD, several municipalities opened a procedure for electing public mediators. By the end of 2005 eleven municipalities have already established such an institution (Kavarna, Banite, Shumen, Popovo, Oryahovo, Sofia, Lesichevo, Pazardzhik, etc.), while a number of others have already initiated the process (Plovdiv, Razgrad, Velingrad, Burgas, etc.).

- On February 18, 2005, a municipality training seminar *Human Rights Promotion and Protection through the Institution of the Local Public Mediator*

was held in the city of Pazardzhik. The event was organized jointly by CSD and the Regional Fund – IGA, Pazardzhik, with the support of *Coalition 2000*. The seminar acquainted the participants with the advantages of the local ombudsman institution by presenting its legal framework as well as the accumulated experience and the practical aspects of its activity. The event aimed to facilitate the forthcoming election of a local public mediator in the municipality.

- On April 26, 2005 a workshop *The Local Public Mediators in Bulgaria: the First Year* was organized jointly with the *Coalition 2000* to discuss various aspects of the activities of the local public mediators since the introduction of the institution in the beginning of 2004. The acting local public mediators from Kavarna, Shumen, Sofia and Botevgrad together with the first academic ombudsman in Bulgaria, appointed at the Sofia University, representatives of municipalities, where public mediators are elected or elections are forthcoming, NGOs and media representatives participated in the event. Special guests at the workshop were the newly elected national ombudsman Mr. Ginyo Ganev and his deputy Mr. Metin Kazak. Mr. Ganev emphasized on the necessity of cooperation and interaction between the national ombudsman and the local public mediators. According to him, as the legislation does not explicitly provide for such interaction, relevant provisions should be included in the Rules on the Organization and Activities of the Ombudsman. The local mediators presented their first annual reports and summarized the experience, accumulated during the first year of their work.



During the workshop on the first year of operation of local public mediators in Bulgaria

- On July 5-6, 2005, a municipality training seminar *Human Rights Promotion and Protection through the Institution of the Local Public Mediator* took place in the city of Veliko Turnovo. It brought together public mediators, municipal officials and representatives of NGOs working in the field of human rights protection. The event was organized jointly by CSD and the Initiative for Sustainable Development *Local Agenda 21*, Veliko Turnovo. The first steps of the institution of the local public mediator throughout the country and the main shortcomings of its legislative framework were presented and discussed at the seminar. The specialized ombudsman for disadvantaged people, operating in the municipality of Varna – still the only one in the country – explained the specific features in the work of such an institution. The establishment of a network of the local public mediators was also discussed.

4. Examining of the Possibilities of Introducing Specialized Ombudsmen Institutions

A next step in the process of introducing the ombudsman institution in Bulgaria is the promotion and establishment of specialized ombudsmen in different

areas of public life, e.g. health ombudsman, armed forces ombudsman, etc. The creation of such institutions would be easily recognized by the general public as useful mechanisms for curbing corruption and maladministration in the activities of the relevant authorities and would gather significant social support. Several activities in this respect were carried out in the year 2005.

To facilitate the exchange of experience with European partners, CSD facilitated the visit of the Parliamentary Commissioner for the Armed Forces of the German Bundestag Dr. Willfried Penner to Bulgaria (March 1-2, 2005). During his visit Dr. Penner met with Mr. Venko Aleksandrov, Chairperson of the Parliamentary Committee on Foreign Policy, Defense and Security, as well as with the Deputy Minister of Defense Ms. Sonya Yankoulova. Dr. Penner delivered two lectures before representatives of the General Staff of the Bulgarian Armed Forces, MPs, representatives of diplomatic missions, NGOs, etc. As a follow up members of the Law Program visited the office of the Parliamentary Commissioner in Berlin and met representatives of the team of the newly elected commissioner Mr. Reinhold Robbe.



The Parliamentary Commissioner for the Armed Forces of the German Bundestag Dr. Penner meets CSD representatives

In order to encourage domestic debate, CSD's Law Program hosted a public discussion on the two **Draft Laws on the Patients' Rights and Obligations**, submitted to the 40th National Assembly (October 11, 2005). The event brought together experts at the Parliamentary Human Rights and Religious Affairs Committee, representatives of the par-

liamentary ombudsman, the Ministry of Health, the National Social Security Institute, the Sofia Municipality Public Mediator, non-governmental organizations working in the area of public health and patients' rights and media. The draft laws provide for the creation of a health ombudsman as a mechanism for the protection of patients' rights.



Ms. Rada Kulekova, Dr. Maria Yordanova and Ms. Dragomira Paunova (left to right) during the discussion on the Draft Laws on the Patients' Rights and Obligations

5. Publications

In the year 2005 the Law Program expanded its series of publications on the ombudsman by adding a handbook on the ombudsman institution in Bulgaria and a number of articles in the *European Ombudsmen Newsletter*.

- The handbook **The Ombudsman Institution in Bulgaria** presents a summarized overview of the process of establishment and development of the ombudsman institution on national and local level in the country (1998-2005). It offers comments and analysis of the legal framework as well as comprehensive information on the election of the first Bulgarian ombudsman and the activities of the local public mediators before and after the legal regulation of their operation. The public attitudes towards the ombudsman institution are also presented. In addition, the book includes a set of annexes such as the full text of the Law on the Ombudsman and the Regulation on the Organization and the Activity of the Ombudsman, an excerpt from the Law on Local Self-Government and Local Administration, materials related to the operation of the local public mediators, etc.
- The Law Program continued its active cooperation with the **European Ombudsmen Newsletter** by publishing a number of articles devoted to the ombudsman institution in Bulgaria. The 2005 contribution included:
 - **Establishment of public mediators but still no national ombudsman** (Issue No 4, April 2005);
 - **Tools to promote the ombudsman institution** (Issue No 4, April 2005);
 - **Ginyo Ganev Elected First Bulgarian National Ombudsman** (Issue No 5, October 2005);
 - **Rules on the Organization and Activities of the Ombudsman** (Issue No 5, October 2005).

III. Electronic Commerce and Electronic Signature

The Law Program continued its activities related to the legal aspects of the introduction and use of the information technologies.

- Representatives of the Law Program, who in previous years had been involved in the drafting of the e-document and e-signature legislation, provided expert assistance to the process of development of a **Draft Law on Electronic Commerce**. The draft was prepared by a joint working group consisting of representatives of state institutions and non-governmental organizations and was publicly presented on March 28, 2005, at a workshop hosted by the Minister of State Administration. Representatives of the Law Program took part in the discussion and as a follow-up elaborated a set of proposals and recommendations for improving the initial version of the draft, which were sent to the drafting group.



- Law Program experts took part in the work of the task force coordinated by the Applied Research and Communications Fund (ARC Fund), which developed and disseminated a set of recommendations for harmonizing the Bulgarian anti-spam legislation with the European legal framework and the best practices implemented in other countries.

IV. International Cooperation and Activities

- A significant prerequisite for the results achieved by the Law Program in the process of introducing the ombudsman institution in Bulgaria is the active cooperation with foreign ombudsmen and representatives of their offices. Parallel to the regular exchange of information with ombudsmen from other European countries, CSD initiated a series of exchange visits to ombudsman institutions in Europe. Meetings with representatives of the Greek ombudsman in May, of the People's Defender of Catalonia and of the European Ombudsman in Strasbourg in July created opportunities for joint projects and sharing of experience with both CSD and the Bulgarian national and local ombudsman institutions. The discussions with the European Ombudsman officials focused the importance of the support of the European Parliament and the European Commission as well as the adequate financing within the framework of the European Parliament's budget. Among the other topics discussed during the meeting were the problems with the establishment of the ombudsman institution in Bulgaria, the possible interaction between the Bulgarian Ombudsman and the European Ombudsman and the opportunities for Bulgarian citizens and legal persons to address the European Ombudsman after Bulgaria's EU accession.
- Representatives of the Law Program continued to participate in international events and forums sharing the knowledge and experience accumulated in the field of constitutional and judicial reform in Bulgaria as well.
 - On June 7-8, 2005, an international conference *Reinforcement of Judicial System and Struggle against Corruption: a Starting Point for Social Dialogue and Workers' Rights* took place in Matera, Italy. The conference was organized within the framework of a PHARE project, implemented by the Institute for Cooperation and Development at the Common Labor Confederation of Italy. Participants from Bulgaria, Romania, Hungary and Italy, including representatives of trade unions, NGOs, enterprisers and employers' organizations and academics took part in the event. The presented national reports focused on topics such as: current trends in corruption practices, the state of the judiciary in the respective countries, anti-corruption legislation, corruption cases research and successful anti-corruption activities, the role of the multinational companies and strategies for counteracting corruption and strengthening the judiciary. The national report for Bulgaria was presented by Dr. Maria Yordanova, Director of the Law Program. In conclusion of the conference the participants discussed and endorsed a Declaration for cooperation in the fields of judicial reform, curbing corruption and organized crime.
 - Mr. Dimitar Markov, Project Coordinator of the Law Program took part

-
- in the Regional Crime Prevention Forum for NGOs from Central and Eastern Europe. The event, held in Vienna on October 27-28, 2005, was organized jointly by the Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations (CONGO) and the United Nations Office on Drugs and Crime (UNODC). The forum focused on the role of NGOs in the prevention of human trafficking, urban crime, and corruption.
- On November 10-11, 2005, the Director of the Law Program Dr. Maria Yordanova participated in the annual international conference *Bulgaria and Its Neighbors in a New Europe*. The event was held in Vienna and was organized by the Bulgarian Research Institute in Austria – Friends of Wittgenstein House Association and the Austrian Institute on Eastern and Southeastern Europe. Dr. Yordanova delivered a presentation on corruption and organized crime in their national and regional characteristics and the activities of CSD in these fields.
 - Dr. Maria Yordanova, Director of the Law Program, delivered a presentation on the role of the civil society in preventing and countering corruption in Bulgaria: the example of CSD and *Coalition 2000* at the international conference *Corruption as an Obstacle to Development: Policies, Tools and Strategies to Fight It*. The conference was held in Rome on November 22, 2005, and was organized by the International Development Law Organization in collaboration with Transparency International – Italy.