

Law Program

The CSD Law Program in 2007 followed the traditional directions of its activities: fostering the legislative and judicial reform and strengthening the institutions providing for the prevention of and fight against crime and the promotion of good governance and human rights. The work in these areas was influenced by Bulgaria's post-membership situation and the new socio-political trends in the country and the region.

2007 Highlights

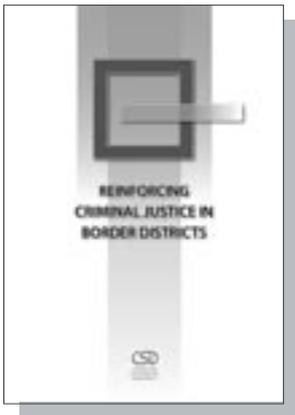
In the first year of Bulgaria's EU membership the CSD Law Program concentrated upon the newly arising aspects of several areas of activity, which it has already tackled in previous years, when Bulgaria was on its road to accession to the Union.

- In the field of **reinforcing and developing the criminal justice system**, the Program's efforts contributed to the combating, prevention and reduction of criminal activity. It continued focusing its efforts on reinforcing criminal justice and law enforcement in border districts, since Bulgaria has come to be responsible for several of the external borders of the EU and border crossing-related criminal offences and customs violations already represent a problem of EU security. The Program also started an assessment of the costs of crime repression, as well as provided technical assistance to the Bulgarian Criminal Asset Forfeiture Commission.
- In the area of **human rights**, 2007 saw the continued rise of the independent activity of the Bulgarian National Ombudsman and local public mediators as a vital instrument of good governance and human rights protection, whose introduction in Bulgaria is among the success stories of the Law Program and whose strengthening and interaction the Program continued supporting. CSD also operated for a second consecutive year as the Bulgarian National Focal Point (NFP) of the EU Fundamental Rights Agency, thus contributing to the prevention and counteraction of racism and xenophobia in key areas such as employment, housing, education, healthcare, legal issues and racist violence and crime.
- As part of its long-term commitment in the area of **commercial registration reform** the Law Program published a *Commentary of the Law on the Commercial Register* facilitating further the start of the new Central Electronic Commercial Register as a path for improving Bulgarian business environment. In order to assist the transition from a court to an administrative registration procedure, the Commentary is being disseminated among relevant state institutions, commercial entities and legal practitioners.

I. Criminal Justice Reform

Reinforcing Criminal Justice in Border Districts

The Law Program's initiative to help reinforce border security and criminal justice in the border districts stepped on the premise that, after Bulgaria's accession to the European Union, the country's frontiers with the Republic of Turkey, the Republic of Macedonia, the Republic of Serbia and the Black Sea became external borders of the EU. Hence, border crossing-related criminal offences and customs violations no longer represent a problem of Bulgarian national security alone: they have turned into a problem of EU security with the involvement of organized criminal groups and the breeding of genuine corruption threats to customs authorities, border policemen, investigative police officers and prosecutors and judges.



The work throughout the year comprised a training and exchange of experience component, the writing of a monitoring and needs assessment report *Reinforcing Criminal Justice in Border Districts*, its presentation to various audiences, and addressing the competent authorities and agencies with a comprehensive list of recommendations.

The training and exchange of experience component paralleled the preparation of the report and consisted of a series of events – a training seminar in January for Turkish magistrates, a focus group discussion in February with representatives of judicial and law enforcement bodies from the region on the border with the Republic of Macedonia, a roundtable in June featuring as a keynote speaker Mr. Ian Dawson, Prosecutor in the Crown Prosecution Service and Advisor of the Serious Organized Crime Agency, and two training workshops for representatives of the judicial and law enforcement bodies in Kyustendil and Burgas.

The **training seminar** gathered prosecutors from Edirne and Luleburgaz, as well as officials from the British Embassy in Turkey. The meeting was aimed to exchange information in connection with the preparation of the needs assessment and monitoring report on the state and the problems of detection and punishment of trans-border crimes, the training of the competent bodies, and the pilot application of recommendations in specific institutions from the border district. The necessity of a mechanism for enduring cooperation between the Bulgarian and Turkish institutions working in the area of administration of justice and law enforcement was emphasized and the specificities and differences between the Bulgarian and the Turkish judicial system were described. The Law Program experts' work on the preparation of the report for Bulgaria was dwelt upon, as well as the report's structure and the main phases in this process: engaging experts; collecting information about trans-border crimes from all institutions involved; analyzing the problems and proposing possibilities for their solution. The participants exchanged their views about the possibilities for more effective cooperation between Bulgarian and

Turkish institutions and the necessity of improving the legal framework in this direction. The Turkish representatives and members of the Law Program met with Mr. Kamen Mihov, Prosecutor in the Supreme Prosecution Office of Cassation and Head of International Legal Assistance Department. The conversations focused on the legal cooperation between Bulgaria and Turkey on cases of trans-border crimes with an accent on the existing difficulties and the unsolved problems.

The **focus group discussion in Kyustendil** became a valuable source of information about the state of cross-border criminality, the respective legislation and the existing problems in the region. Together with the focus group discussions in Haskovo and Burgas, held in 2006, and the statistical data collected from the competent judicial and law enforcement institu-

tions it served as a source of information for the development of the needs assessment and monitoring report.

At the **round table** in June, Mr. Ian Dawson made a presentation on the work of his office in England and Wales when countering trans-border criminality. He explained the structure of the law enforcement bodies in the UK and mentioned the problems of the international cooperation and the existing European mechanisms.

The round table brought together representatives of the judicial and law enforcement bodies involved in the detection, investigation and punishment of trans-border crimes, as well as officials from the Ministry of Justice and the National Institute of Justice. Other problems discussed further on were the significance of the close relationships between Bulgaria and its



*During the round table in June (from left to right):
Mr. Gareth Roberts, Second Secretary in the British Embassy in Sofia,
Maria Yordanova, Director of the CSD Law Program and
Mr. Ian Dawson, Prosecutor in the Crown Prosecution Service and Advisor
of the Serious Organized Crime Agency*

neighboring countries and the necessity of more investigating police officers and policemen in the Bulgarian border regions.

Among the main topics of the **training workshops** were the legal framework of the investigation and punishment of trans-border criminality, the analysis of the criminal justice and law enforcement in individual border districts, the international judicial cooperation in criminal matters and the recommendations to the respective institutions for improvement of the work on revealing, investigating and punishing the trans-border crimes. The peculiarities of the border areas were also debated, including the alarming statistics that the lack of clear statutory criteria for qualifying certain offences as crimes often results in opening administrative files for serious offences where the perpetrator should actually face criminal liability.

The Needs Assessment and Monitoring Report

The needs assessment and monitoring report *Reinforcing Criminal Justice in*

Border Districts aimed at exploring and visualizing the general problems and specificities inherent in the detection, investigation into and prosecution of cross-border crimes and displaying the existing views about the legislative, organizational and technical measures indispensable to improve law enforcement and criminal justice in the areas that straddle Bulgaria's borders with the Republic of Turkey, the Republic of Macedonia and the Black Sea. The report relied on various sources of information: studies of the relevant legislative texts, a series of focus group discussions, interviews with senior state officials, survey of statistical data, etc.

After being distributed first at the training seminars in Kyustendil and Burgas, on November 13, 2007, the report was officially presented at a high profile round table, attended by judicial and law-enforcement officials, representatives of other state institutions, lawyers and foreign diplomats. The importance of the border justice topic for the entire European Union was underlined, since border districts are increasingly becoming a target of international organized crime, which,



*During the presentation of the report (from left to right):
Mr. Rumen Nenkov, Deputy Chair of the Supreme Court of Cassation,
Ambassador Steve Williams, British Ambassador to the Republic of Bulgaria,
Dr. Ognian Shentov, Chairman of CSD, Mr. Rumen Petkov, Minister of Interior
and Mr. Konstantin Penchev, Chairman of the Supreme Administrative Court*

however, still does not face adequate counteraction on the part of the institutions.

During the round table the participants discussed the general problems and specificities inherent in the detection, investigation into, and prosecution of offences relating to cross-border crimes. The legislative, organizational and technical measures indispensable to improve law enforcement and criminal justice in the border areas were strongly emphasized upon and the ensuing interventions by key state officials gave a good start to the practical implementation of the recommendations by various state bodies and institutions.

International and Regional Cooperation on Border Security Issues

Globalization of security threats has given new incentives for consolidating regional and international cooperation for studying, preventing and countering border crime and terrorism. To contribute to the promotion of international cooperation members of the Law Program presented the results of the needs assessment and monitoring report at a number of **international events**.

- Dr. Maria Yordanova and Mr. Dimitar Markov from the Law Program took part in the *International Conference on Inter-Agency Cooperation to Tackle Cross Border Crime* (Istanbul, June 2007) and delivered a presentation on the findings of the needs assessment and monitoring report. The conference, organized by the British Embassy in Ankara, brought together senior representatives of Turkish institutions dealing with cross border crimes as well as speakers from the United Kingdom, Europol, Eurojust, etc.
- The results of the Law Program's efforts in the field of criminal justice

in border districts were presented at an international seminar in Ankara in August 2007. During the event, which was part of a capacity building project for the Turkish gendarmerie, Dr. Maria Yordanova and Mr. Dimitar Markov from the Law Program presented the major findings of the needs assessment and monitoring report and discussed some common border security problems for Bulgaria and Turkey.

- In December 2007 members of the Law Program took part in an international workshop on *Strengthening the cooperation in the fight against terrorism: legislation, institutions and proposals*. The event, held in New York, was organized by the Center for International Human Rights at John Jay College of Criminal Justice in close collaboration with the Greek Center for Security Studies (KE.ME.A.) and the Institute for Central-Eastern Europe and the Balkans of the University of Bologna as part of the Policing Across Borders project. Mr. Dimitar Markov reviewed the legal framework of illegal border crossing and smuggling of persons stressing on the necessity of effective border control for preventing and countering possible terrorism acts. Dr. Maria Yordanova talked about the international legal cooperation and the legal assistance against cross border crimes and terrorism emphasizing the importance of regional legal instruments and cooperation.

II. Enhancing Good Governance and Human Rights Protection

In 2007 the Law Program continued working on the promotion and development of the ombudsman institution on national and local level and studying the similar and specific mechanisms for good governance and human rights protection.

Keeping track of the existing specialized ombudsman institutions in other countries as an important source of experience for the newly established Bulgarian ombudsmen a **working meeting with the Prisons and Probation Ombudsman for England and Wales Mr. Stephen Shaw** was organized in June 2007.

Mr. Shaw presented the work of his office, led by the belief that the prison institution could actually have a real instructive effect if applied properly, as well as some best practices, the ways prisoners' complaints (around 4500 per year) are dealt with and the Office's close work with the British Refugee Council. It was outlined that, when it comes to prisons, the English system includes three independent monitoring bodies with substantial formal power - the Independent Inspectorate, the Prisons and Probation Ombudsman and the Independent Monitoring Boards, whose members can perform checks at any time in any prison in the country. The Prisons and Probation Ombudsman is the newest institution, established in 1994

and vested with increasing powers: in 2001 probation was added in the scope of the Ombudsman; in 2004 the institution started investigating every death in prisons and in 2006 the Ombudsman started to work very closely with the immigration detention centers. As a result of the work of the Ombudsman, the situation in all prisons has changed towards the better, especially regarding their health care system - upon initiative of the Ombudsman the National Health Service is now in charge of the health care services in the English prisons. Mr. Shaw was also informed in detail about the Bulgarian ombudsman institution.

Fostering the interaction between the national Ombudsman and the local public mediators the Law Program held **three national meetings of local public mediators**, organized in April, May and July 2007 in the towns of, respectively, Veliko Tarnovo, Nova Zagora and Sofia. The meetings were devoted to the improvement of the cooperation of the local public mediators and the national



During the meeting with the Prisons and Probation Ombudsman for England and Wales

Ombudsman and the development of measures for recognition of their role for a better and more transparent government and protection of the civil rights. The relevant legal framework and the specific problems of local public mediators were also discussed. The National Association of the Local Public Mediators contributed actively to the organization of the events. They were attended by local public mediators from throughout the country, members of the Bulgarian Ombudsman's administrative staff, municipal officials, and representatives of the National Association of Municipalities in the Republic of Bulgaria.

Among the topics discussed were the necessity of good governance and good administration and the role of the institution as a method for civil control over the administration and the imperious legal framework changes for the better functioning of the office, as well as the necessity of the guarantees for the local mediators' independence, including the introduction of the so-called delegated budgets, by which the

mediators will be able to make their own arrangements. Better mechanisms, including legislative amendments in the Law on the Ombudsman, were also said to be needed for interaction, mutual assistance and exchange of information between the national Ombudsman and the local public mediators as a very substantial factor in the transfer of powers and resources, as well as more active participation in the development of rules and regulations within the municipal councils. The full support of the national Ombudsman was declared to the work of the local public mediators - a big part of the citizens' complaints, sent to the Ombudsman of the Republic of Bulgaria, referred to the scope of powers of the local mediators, which even more necessitated a better interaction mechanism to be elaborated.

As regards the work of the local public mediators, some of the difficulties they face were mentioned such as the lack of a preliminarily provided budget, of premises and appropriate work conditions, the need to be formally appointed



During the national meeting of local public mediators in Sofia

by the local mayor, which puts them in a vulnerable position, etc. For some local public mediators there is a prohibition for membership in NGOs, which prevents their acceptance in the National Association of Local Public Mediators and makes it necessary for the municipal councils in these municipalities to vote a special decision to allow such membership. The need for amending the legal framework was expressed to give the opportunity to the public mediators to make suggestions during the sessions of the municipal councils. Positive experiences and stories of unsolved problems were shared, together with a proposal to develop a platform allowing the local public mediators to exchange experience. The possible ways of cooperation were presented between the ombudsmen institutions on both national and local level and the civil society, since many civil organizations in Bulgaria have a significant potential in different areas, which, along with the accessibility of these organizations for the citizens, could be of a great use to the local public mediators, not only in their work on specific cases but also for raising public awareness of their operation.

The idea of the national Ombudsman was discussed to establish regional offices throughout the country and the necessity of legislative regulation of the local mediators' relationships with the national Ombudsman, including the possibility of forwarding complaints between the national and the municipal institutions. Proposals were made for the introduction of an obligation for every municipal council to elect a public mediator.

The participants in the national meetings debated on the Draft Law on Local Self-Government, proposed by the National Association of Municipalities in the Republic of Bulgaria, as well as on

a wide range of necessary changes, consolidating the independence of the local mediators, their election, statute and activity and their role of guarantees for better administrative services and observance of the civil rights. The idea of elaborating unified regulations, governing their status and activities, was referred to as well. Some other issues were also discussed, such as the standardization of the terms of office, the local ombudsmen's legal status, the possibilities for the public mediators to participate in the municipal councils' sessions, the proposals for introducing delegated budgets and for changing the majority for the election of a public mediator from 2/3 to 1/2.

III. Commercial Registration Reform

In 2007, the *Commentary of the Law on the Commercial Register* was written by renowned experts of the Law Program – lawyers, working in the fields of commercial and civil law. It preceded the much awaited entry into force of the Law on the Commercial Register scheduled for January 2008, which would start the long deferred, but much needed reform in the system of commercial registration. Following up on its experience with the legislative regulation of the Central Pledges Register and the electronic document and electronic signature the Law Program drafted a concept for the development of an Electronic Registries Center and took part in the development of the Law on the Commercial Register. The Commentary aims at supporting the reform and facilitating the use and provision of register services.

The book was officially presented by its authors in December 2007. The event was attended by the Deputy Minister of Justice Ms. Ana Karaivanova, officials from the Registry Agency, many law-

yers and journalists. The participants expressed their hope that there would be no more postponements of the entry into force of the law. Deputy Minister Karaivanova presented the work of the Ministry of Justice on the pilot application of the law and added that reforms do not begin nor end with the drafting of the law, but need adequate facilities and good implementers. In her opinion, the electronic register would largely contribute to the unification of practices in commercial registration and, despite the fact that there were still a lot of vacancies in the Registry Agency, the electronic commercial register should be able to start without further delay.

On the part of the authors, it was noted that, although there was certain experience gathered in the work of other electronic registers, the volume of work



of the commercial register would be much bigger – around 2000 registrations a day for the whole country. An example of a successful electronic register was given, apart from the Central Pledges Register – the register of law firms, which functioned electronically



*During the presentation of the Commentary (from left to right):
Mr. Borislav Belazelkov, Supreme Court of Cassation Judge, Dr. Maria Yordanova,
Director of the CSD Law Program, Ms. Ana Karaivanova, Deputy Minister of Justice
and Mr. George Dimitrov, attorney-at-law*

and saved a lot of time and paper. The great importance of the electronic commercial register for the economic environment in the country was emphasized, as well as the hope that it would guarantee transparency and efficiency and give opportunities to Bulgarians to improve their economic situation.

IV. Preventing and Reducing Crime

Assessing the costs of crime repression

In May 2007 in partnership with nine academic institutions and non-governmental organizations from Italy, Spain, Portugal, Germany, Latvia, Cyprus, Hungary and Turkey, the Law Program started working on **assessing the costs of crime repression**. The main goal of the initiative is, based on an assessment of direct and indirect costs of penal policies, to develop measures for improving the efficiency of crime

repression and new conceptual tools and effective strategies for prevention and reduction of criminality, including terrorism and drug-related crimes. The initiative also intends to allow an evaluation of crime costs with special concern for costs associated to recidivism and to the functioning of penal and penitentiary systems, aiming at reducing it.

Members of the Law Program took part in the kick off meeting of the initiative (Florence, May 2007) and the first of a series of workshops (Barcelona, November 2007). For the workshop in Barcelona the Law Program prepared two presentations *Penitentiary System in Bulgaria and Drug-Related Crime and Drug Use in Prisons*.

Strengthening crime repression institutions

Throughout 2007 the Law Program continued its efforts to assist the fur-



During the asset forfeiture round table in Sofia (from left to right): Mr. Nikolai Lachkov, Inspector in the Sofia Territorial Directorate of the Bulgarian Criminal Asset Forfeiture Commission, Prof. Stoyan Kushlev, Chair of the Commission and Mr. John O'Mahoney, Chief Officer of the Irish Criminal Assets Bureau

ther development of **criminal asset forfeiture** in Bulgaria by contributing to the institutional strengthening of the Bulgarian Criminal Asset Forfeiture Commission and ensuring opportunities for exchange of experience with countries, where asset forfeiture has had a long history.

In November 2007 the Law Program jointly with the Embassy of Ireland in Sofia organized a round table discussion on *Criminal Assets Recovery: Irish and Bulgarian Experience*. The operation of the Irish Criminal Assets Bureau (CAB) was presented by Chief Bureau Officer John O'Mahoney, who spoke to an audience of diplomats, prosecutors, customs officials, representatives of the National Institute of Justice and the Bulgarian Criminal Asset Forfeiture Commission and many journalists.

The history of criminal asset recovery in Ireland was recalled, starting with the murders of Detective Garda Gerry McCabe and journalist Veronica Guerin in 1996, which served as a catalyst and forced the Irish government to undertake measures about organized crime, bringing together police, financial authorities and social welfare services to go after criminals' financial assets. The Irish CAB, created thereafter, was entrusted with identifying, freezing and seizing of criminal assets, combining the efforts of police forces, revenue officials and social welfare services to investigate the money trail of organized crime, to make applications, freeze assets and after 7 years of receivership bring them back to the state budget under a civil standard of proof and needing no criminal conviction on the part of the court. The efforts of the Bureau have resulted in over 120 million Euro of seized proceeds of crime, 2 million Euro of welfare savings and 150 million Euro of taxes collected. Prof. Stoyan Kushlev, Chair of the Bulgarian Criminal Asset

Forfeiture Commission, reminded that the Bulgarian Law on Criminal Asset Forfeiture used the Irish example, but at the same time turned out to be weaker in certain aspects, including the inability to seize unlawfully received social welfare, the need for a criminal conviction in order to start assets recovery proceedings and the slow, three-instance court proceedings. Still, despite its weaker legal framework, the Bulgarian Commission has still achieved significant practical results in terms of injunctions and proceedings opened.

On December 5, 2007, in Washington DC, the Center for the Study of Democracy and the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) of the US Department of Justice organized a round table discussion on *Asset Forfeiture in Bulgaria: Policies and First Results*. In his opening remarks OPDAT Director Carl Alexandre outlined the importance of asset forfeiture for effectively countering organized crime. Stressing on the need of enhanced international cooperation Mr. Alexandre confirmed the readiness of OPDAT to provide assistance for further strengthening the Bulgarian Asset Forfeiture Commission, which, according to him, has already achieved significant results despite being set up only two years ago. Prof. Kushlev mentioned some the shortcomings of the asset forfeiture legislation that impede the effective operation of the Commission and shared his views on some legislative amendments that might improve the Commission's activities. Mr. Dimitar Markov, Project Coordinator at the CSD Law Program, briefed the participants on the role of the civil society in the process of introducing asset forfeiture in Bulgaria. He presented the series of activities organized by CSD during the drafting of the asset forfeiture legislation and outlined the way civil

society may further cooperate with the Asset Forfeiture Commission, e.g. in raising public awareness, organization of trainings, monitoring, etc. The event was hoped to streamline the cooperation between the Bulgarian Asset Forfeiture Commission and its US counterparts to more effectively counter international organized crime.

V. Monitoring of Racism and Xenophobia

In 2007 CSD operated for the second consecutive year the Bulgarian National Focal Point (NFP) of the EU Fundamental Rights Agency (the successor since March 2007 of the European Monitoring Centre on Racism and Xenophobia). The NFP is part of the European Racism and Xenophobia Information Network (RAXEN), coordinated by the Fundamental Rights Agency (FRA) and comprised of NFPs in each of

the EU Member States. Operating the Bulgarian NFP the Center through its Law Program was responsible for collecting official and unofficial data on racism and xenophobia in the country in areas such as employment, housing, education, healthcare, legal issues and racist violence and crime. The information was submitted to the FRA by CSD in the form of a national data collection report and a series of regular bulletins. The national data collection report assessed the situation with racism and xenophobia in Bulgaria and the measures for their prevention and counteraction. A large part of the information collected was included in the FRA's Annual Report on the problems of racism and xenophobia in the Union. The series of bulletins included current information on racism and xenophobia such as important legal developments, incidents of discrimination, research and studies, public events, etc.