

183-0220: Enhanced Rule of Law

Performance Goal: Bulgarians increasingly trust their judicial system and government.

Strategic & Special Objective Closeout Report: USAID/Bulgaria

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Strategic Objective Close-out Report

SO Name: Enhanced Rule of Law

SO Number: 2.2

Approval Date: 1998, revised 2003

Geographic Area: Bulgaria

Total Cost: \$41,111,000

USAID: \$41,111,000

Mission Funding \$41,111,000

Global Support

Total USAID Funding \$41,111,000

Principle Implementing Partners:

American Bar Association/Central Europe and Eurasia Law Initiative (ABA/CEELI)

Center for the Study of Democracy

DPK Consulting

East West Management Institute

International Development Law Institute

International Organization for Migration

Major Counterparts:

Bulgarian Courts at all levels

Commission for Protection of Competition

Ministries of Economy and Energy, Justice, Health, and Regional Development

National Assembly, in particular, the Legal Issues Committee

National Audit Office

National Institute of Justice

National and Local Anti-trafficking in Persons Commissions

Ombudsman Office

Public Procurement Agency

Supreme Cassation Prosecution

Supreme Judicial Council

Various NGOs working on ROL and Anti-corruption issues

Background

When this SO was launched, government corruption and deficiencies in the administration of justice represented the country's most outstanding democracy-related problems. This situation hampered economic development and investment; businesses had little confidence that contracts would be enforced. It also raised questions about Bulgaria's ability to meet international standards for the administration of justice and fighting corruption and its ability to promote a more stable economy that better partners with US interests. The Mission determined that the time was right to engage more actively with the Government of Bulgaria

(GOB) and significantly ramped up the technical assistance provided directly to the executive, legislative and judicial branches. Anti-corruption (AC) work with the executive and legislative branches focused on the critical areas of internal and external audit and public procurement.

The situation in judiciary was such that judges were unable to manage large caseloads and had difficulty with complex commercial and criminal law cases – especially cases where the legal issues involved new reform laws. Legal education was inadequate and overly theoretical. With few exceptions, the judiciary recruited judges immediately from law school who had no professional and little life experience. Courts had poorly-trained staff, administrative personnel and unreliable and inefficient case and docket management.

In addition to problems with the court system, significant problems existed with the private Bar. Addressing this issue represented an important component of USAID's judicial reform efforts. Any initiatives to reform the judicial system cannot be directed solely at magistrates and court staff; but must also include attorneys as they constitute a quintessential element of any effectively functioning judiciary. The conduct of attorneys intimately affects the judicial system's ability to provide fair, impartial and expedient justice. Moreover, no other donor worked with the Bar.

Due to the complexity of problems in this sector, USAID applied a systemic approach to ROL and AC issues. This approach called for judicial and Bar reform, anti-corruption and law enforcement (the latter implemented by the US Department of Justice (DOJ) and the US Department of the Treasury) to work together closely. The SO required extensive collaboration, coordination and information sharing among USAID, other USG agencies, USAID implementing partners, the donor community and counterparts to ensure success. The area for the greatest collaboration between the various USG organizations dealt with magistrate (judges, prosecutors and investigators) training. USAID was instrumental in assisting DOJ to work with the Bulgarian National Institute of Justice.

This very ambitious SO had numerous IRs and sub-IRs to carry-out in a relatively short time period. Nevertheless, all the IRs and sub-IRs needed implementing and USAID could not cherry pick the low hanging fruit; otherwise ROL and AC reform would become stuck. For instance, as long as the legislative framework remains incomplete and magistrates and attorneys lack experience, most improvements to court administration will have only limited, and largely superficial effect on the delivery of justice. But training magistrates, court staff and attorneys without an adequate legal framework and enabling environment in place, with a reform commitment and sufficient resources for realizing strategic objectives will not have much impact. Training must coincide with judicial structural reforms and requirements for new skills and higher standards. A strong link must exist between training and the demands of the work place. Trained magistrates and court staff cannot return to work in unreformed courts with poor administration and case management. Similarly, information technology applied to improve efficiency of case management in the courts will not bring about judicial reform without progress with human resources.

This SO took a comprehensive approach involving all parts of the judiciary, the bottom as well as the top, by working at the national and local level. This entailed advancing professionalism, good governance, efficiency and effectiveness in every corner of the judicial system. But core values such as transparency, accountability, integrity and customer service were equally essential and needed instilling.

Summary of overall impact at SO level and IR level

SO 2.2

This SO achieved its objectives and Bulgaria made sufficient progress in this sector to join NATO and the EU. Problems in the judiciary and corruption represented the primary obstacles to Bulgaria's joining these organizations. This said, much work remains in addressing ROL and AC problems. Increasingly, however, problems in this sector represent problems of political will and not so much development issues. Interesting to note that as EU accession came closer, the pace of judicial reform steadily picked-up. This is borne out by Bulgaria's *Nations in Transit* Judicial Framework and Independence rankings, see later section with performance indicators.

IR 2.2.1 A Strengthened Judicial System

Thirty-two model courts around the country implemented a court improvement plan (CIP) that made these courts more effective, transparent, independent and accountable. These courts scored significantly higher than non-model courts on independent, polling surveys of court users. At the national level, USAID strengthened the strategic and management capacity of the Supreme Judicial Council (SJC) to roll-out CIPs nationwide. The National Institute of Justice, a USAID legacy organization, emerged as the top magistrate training institute in Eastern Europe. JSI tracking statistics show that 509 training courses were delivered for 52,423 person days of training to magistrates and court staff. "Person days" affords a useful statistic to show both the length of a program and the number of participants, e.g. ten people attending a three day program constitute thirty person days of training.

IR 2.2.A Key Laws and Regulations Support Effective ROL

This was a cross-cutting IR where USAID tracked the progress on all legal reforms in this SO. USAID provided technical assistance to key counterparts to draft, advocate for and enact critical reform legislation and later promulgate implementing regulations. This included constitutional amendments pertaining to judicial accountability, the Judicial System Act, Civil Procedure Code, Attorneys Act, Mediation Act, Public Procurement Act and the Ombudsman Act.

IR 2.2.2 Reduced Corruption through Enhanced Transparency & Accountability

USAID strengthened the GOB's institutional capacity in public procurement and auditing, enhanced transparency and accountability and helped to promote the rule of law.

Summary of Activities Used to Achieve the SO and their Major Outputs

Judicial Development Project (JDP)

Implementer: East West Management Institute (EWMI)

The launch of the JDP in late 1999 represented a concerted effort by USAID to work in the ROL sector. While ROL had been a problem plagued sector since USAID's arrival in 1990 and USAID had provided limited ROL assistance, opportunities to seriously tackle this sector did not really open up until 1999. The JDP's initially worked on judicial legal and policy

reform and judges training. The National Judicial Strategy was prepared and a new Judicial System Act enacted.

USAID helped found an NGO, the Magistrates Training Center (MTC), which started out with three MTC staffers in an attic office space provided by the Ministry of Justice. In the last year of the JDP, this activity achieved significant success that ensured the sustainability of magistrate training. The MTC was transformed into a quasi-governmental body, the National Institute of Justice (NIJ), with over fifty staffers, thus ensuring GOB financial support for magistrate training. USAID JDP assistance provided for the renovation of a new building for the NIJ. And the one year training program for new magistrates was launched.

Progress was slow and a bit unfocused on court administration/case management front; but USAID/JDP did launch 22 model courts around the country and worked at the Appellate, District and Regional Court levels. Also, USAID/JDP worked closely with the Supreme Judicial Council's Information Technology (IT) Committee to develop a document based, electronic case management system (CMS).

Judicial Strengthening Initiative (JSI)

Implementer: East West Management Institute (EWMI)

The JSI built on the JDP's successes. EWMI implemented both activities. The JSI had three major tasks and each task had several sub-tasks. Task I focused on court administration/case management and JSI worked with 32 model courts around the country and the Supreme Judicial Council (SJC). The JSI developed the court improvement plan (CIP), which proved key and gave focus to the work with the model courts. A CIP has 26 factors for a model court to implement and addressed issues of: (1) judicial management; (2) court administration; (3) public access and outreach; (4) training and (5) information technologies. In addition to the electronic CMS, the IT work included installing verbatim recording equipment in 75 court rooms and introducing evidence carts. The CMS software was debugged and rolled out to additional courts. USAID had coordinated the CMS work with the EU with the understanding that the EU would build on the CMS system USAID and SJC developed. Unfortunately, this did not happen.

Task II entailed providing technical assistance, training and equipment for magistrate training and in particular, the Bulgarian National Institute of Justice (NIJ). Whereas the JDP focused on the initial magistrates training, the JSI focused on continuing magistrates training, training in the regions and training for prosecutors. The JSI also successfully worked to enhance the institutional capacity of the NIJ.

Task III addressed legal/policy reform, raising public awareness of judicial reform and its importance and included a ROL small grants program. The latter two areas were new and not part of the JDP.

Attorneys Professional Development Initiative (APDI)

Implementer: American Bar Association/Central Europe and Eurasian Law Initiative

APDI performed five tasks. The first, Bar development, sought to strengthen the professional development of attorneys by introducing and implementing new standards and procedures for

Bar admissions, strengthening discipline for unethical practices and requiring members to carry malpractice insurance. An essential step to ensure the basic competency level of new Bar candidates was taken when the Supreme Bar Council (SBC) organized bar exams; now administered twice a year. APDI worked with the SBC and twelve Model Local Bar Councils (MLBCs), to enhance the professionalism and integrity of their members, represent attorney interests, advocate for judicial reform, improve Bench-Bar relations and assist attorneys to become more effective litigators.

APDI worked with the SBC and MLBCs to institutionalize the Attorneys Training Center (ATC) and expand continuing legal education (CLE). The new Law on Bar, drafted and enacted with USAID/APDI assistance, now has a CLE requirement for attorneys. The SBC, MLBCs and in particular the ATC now collaborate to provide attorneys with relevant training in essential areas, such as the new Procedure Codes and professional ethics.

The third task entailed establishing five legal clinics at the Law Schools and teaching practical advocacy skills to law students. Interactive, practice-based teaching techniques were incorporated into the law schools' curricula through the legal clinics that included simulation classes and work with indigent clients (usually Roma). As of September 2006, approximately 400 law students had been trained and approximately 1,500 indigent clients assisted.

The alternative dispute resolution (ADR) task entailed technical assistance (TA) for drafting the Mediation Act with further implementation assistance that included professional training and introducing procedural standards for mediators, an Ethics Code, a registry for mediators, and introducing court-referred mediation programs in five cities through mediation centers. As of September 2006, mediation centers had conducted approximately 130 mediations.

Finally, APDI undertook the Judicial Reform Index (JRI) thrice and the Legal Profession Reform Index (LPRI) twice. These indexes measured Bench and Bar progress and provided direction for future reform initiatives. Additionally, the indexes provided a comparative index for Bench and Bar progress in Eastern Europe and Eurasia.

A Multi-agency Model of Cooperation for Combating Trafficking in Human Beings in Bulgaria

Implementer: International Organization for Migration (IOM)

This activity had two primary tasks: (1) build the capacity of Bulgaria's National and Local Anti-trafficking in Persons (TIP) Commissions and (2) a small grants program to indigenous organizations for community-based work addressing the root causes of trafficking in persons. The activity performed poorly for the first several years; primarily, owing to the GOB's failure to make the National Anti-TIP Commission operational. The key position of Secretary for the National Commission was vacant most of the time until 2007. Once the National Commission became operational USAID could not move forward in assisting the Local Commissions.

By the end of the activity in 2008 Bulgaria had a fully staffed National Commission in a renovated and fully equipped office. Local Commission now operate in four of the most vulnerable areas of the country. The National Commission developed the annual National Strategy for Combating Trafficking in Persons and launched several initiatives to reach out to

Bulgarian society. Most importantly, a functioning National Commission is now able to coordinate the work of the various Bulgarian agencies that work in this area.

Open Government Initiative (OGI)

Implementer: DPK Consulting

Prior to launching OGI in 2002, USAID anticorruption efforts primarily supported civil society. OGI represented an effort to work more directly with the GOB and increase its institutional capacities in internal and external audits and public procurement. OGI helped develop and pass legislation that complies with EU Directives and incorporates international best practices, including the Public Procurement Register (PPR), the Register on the Assets of High Ranking Politicians, and the Register on Political Parties. OGI produced numerous audit and procurement manuals that have greatly increased the government's capacity to provide accountable and transparent governance. Among the most important elements of the project's work on Public Procurement was the institutionalization of the public procurement units in the Bulgarian ministries. Also, OGI created and strengthened local professional associations, including the Institute of Internal Auditors in Bulgaria, the Board of Internal Auditors and government institutions, such as the Public Procurement Agency and the Center for the Protection of Competition (CPC).

Implementer: Center for the Study of Democracy

The civil society component of the OGI program ran for three years, and had several tasks implemented by Center for the Study of Democracy (CSD). CSD supported a diverse range of activities, among the most important of which were preparation of an annual Corruption Assessment Report based on the Corruption Monitoring System CSD developed and support for establishing and building the capacity of the National and Local Ombudsmen. CSD assisted the GOB to draft its National Anti-corruption Strategy and later assisted the GOB in preparing the National Strategy for Good Governance, Prevention and Counteraction of Corruption. In addition, CSD's work included capacity building for civil investigations and journalists; access to public information; capacity building for government counterparts through training courses; and a small grants program.

Implementer: International Development Law Institute (IDLI)

When USAID provided its first significant funding for CSD in 1998, the issue of improving government transparency and integrity and fighting corruption was a very sensitive issue. Consequently, USAID channeled funds for this effort through the International Development Law Organization (IDLO), formerly the International Development Law Institute (IDLI), in order to create some distance between USAID and CSD and to give it a more international appearance. Granting funds through IDLO was also necessary because USAID did not have an existing mechanism to make a grant directly to CSD and it also allowed IDLO to strengthen CSD's financial system.

Prospects for Long-term Sustainability of Impact and Principal threats to Sustainability

The judiciary by its very nature is the most conservative branch of government; thus, change comes slowly. Moreover, the Mission recognized when preparing its Graduation Strategy that given the plethora of problems with the Bulgarian judiciary and corruption, these areas

would still have a ways to go after the Mission closed. While the Mission probably set its objectives too high for this sector, given the time constraints with most of the activities ending in 2007, USAID needed to shoot high. ROL was the Mission's top priority and received significant funding. Putting such substantial resources in this sector made sense. Had USAID not done so, it would not have made sense to pursue ROL activities. Moreover, at this point, while institutional capacity in the justice sector remains a problem, the bigger issue is one of political will.

The prospects for the sustainability of the reforms pioneered in the model courts appears good. But, unless the reforms are replicated in other courts the prospects for long-term, far-reaching impact are poor. When JSI closed in September 2007, the prospects for the sustainability and replication of the court improvement plan (CIP), the mechanism for implementing the model court program, looked fairly good. The Supreme Judicial Council (SJC) had: strongly endorsed the CIP, worked with JSI to develop a next generation CIP and established a Department of Court Administration within the SJC. However, with the enactment of a new Judicial System Act in the fall of 2007, the mandate of the SJC members expired early. The new SJC, while not repudiating the CIP mechanism has not embraced it. Moreover, partly owing to SJC staff reductions, it eliminated the Department of Court Administration. More progress would likely have been made if the CIP mechanism had been developed earlier in USAID's judicial reform work.

To address the problem of replicating the Model courts, USAID signed a small purchase order with the Program for the Development of the Judicial System (PDJS) to provide some short-term TA and training to the new SJC. While PDJS has been very diligent, the SJC is proving very slow to embrace and implement. If USAID investments are to prove sustainable, PDJS will need to receive additional funding to help build SJC capacity. PDJS really has unique experience and expertise.

The World Bank designed a very innovative and comprehensive judicial reform program, called *Bulgaria: Resourcing the Judiciary for Performance and Accountability*, which could build on USAID judicial reform accomplishments (USAID staff worked with the Bank team on the project's design). The GOB, however, no longer appears interested in a Bank loan and even if the proposed project was dramatically scaled back and became a grant the GOB, the Ministry of Justice (MOJ) may still not be interested.

The National Institute of Justice (NIJ) has excellent prospects for long-term programmatic and financial sustainability of impact. The NIJ is now the best magistrate training center in Eastern Europe and a strong USG counterpart.

The prospects for future mediation are generally poor. This said, the Plovdiv Mediation Center, will likely survive since it has diversified its activities and does not limit itself to just mediation. The prospects for the mediation organizations that other USAID implementing partners, i.e. the Commercial Law Reform Project and Partners Bulgaria Foundation, supported are not as promising. The likely reason being, that the APDI implementing partner, ABA/CEELI, had worked in Bulgaria longer than the other implementing partners and had had a longer time to build the capacity of its counterpart organization.

The legal clinics, which appeared the most vulnerable of any of the USAID ROL initiatives, are managing to hang in there – barely. This is because of legislation that USAID and APDI vigorously advocated that finally passed towards the end of the APDI. The legislation

permits practical skills training to be part of a university curriculum. This enabled law schools to make student participation in a legal clinic part of the curriculum and thus eligible for funding.

The Bulgarian Institute for Legal Initiatives (BILI) is well positioned to continue working on the next generation of legal reform initiatives – where APDI left off. BILI received a \$72,000 grant from the Bulgaria Fund to work on legal education reform and is vigorously exploring funding options to continue working with the legal clinics.

There is a significant caveat to the OGI achievements. OGI provided tools to the government in fighting corruption: training, capacity building, and the means of conducting business transparently. What cannot be supplied is the political will to use these tools effectively and consistently. Despite major improvements in the government's ability to conduct internal audits and public procurement in a transparent manner, major gaps still exist. The National Audit Office can only report; many of its negative findings appear languish without further action. Public Procurement remains an area of particular on-going concern with indications that ministries continue to structure procurement actions so as to avoid competition requirements, or directly violate the regulations.

Significant progress has been made in the last two years in combating human trafficking. But, this is mainly due to pressure from the donor community. While there is some increased interest in this problem by Bulgarian decision-makers, this remains donor driven and will likely remain so for the next several years.

Lessons Learned

To a large extent the demand for judicial reform was driven by external actors, i.e. the European Union (EU), owing to Bulgaria's desire to join the EU. Bulgaria moved relatively quickly to pass EU-compliant legislation, but given the haste, these laws were often poorly drafted. When providing assistance for legal/policy reform, USAID found that using European – rather than US models, proved more effective.

In the area of court administration/case management, USAID made significant progress with its model court program working in the regions. The methodology developed for the model courts, constitutes a best practice that USAID activities in other countries could consider. The work with the Supreme Judicial Council (SJC) at the national level was not as successful. Nevertheless, without the experience from the model courts demonstrating the benefits of court administration/case management reform initiatives which USAID could point to, we would not have made the progress we did make with the SJC. Moreover, working in the regions complemented other USAID regional activities and is an area where USAID enjoys a comparative advantage over other donors. The main lesson learned is the importance of working on judicial reform at the local level and to focus solely at the national level could lead to a great deal wheel spinning.

IT support and development of the CMS afforded an important incentive in helping USAID get a foot in the door with the courts to implement often painful reforms. Regardless of what CMS software is ultimately used, USAID's assistance enabled the courts to become familiar with working with IT. Nevertheless, support for CMS must be carefully considered for future USAID judicial reform projects in the E&E region. The IT sector is fairly well developed in

this area of the world and can be very aggressive promoting its product. The EU’s failure to follow through on our understanding that it would build on the USAID/SJC CMS proved a major setback.

While EU donor coordination on IT issues was generally abysmal, the coordination on magistrate training was exemplary. Engaging with an EU PHARE bilateral implementing partner usually proved fruitful.

Overall judicial reform was hampered by the lack of prosecutorial reform. Reform of the courts and increasing the capacity of judges and court staff alone is insufficient. This said, work with the prosecutors prior to the appointment of a new reform-oriented Prosecutor General in February 2006 was not feasible. USAID worked with the US Department of Justice (DOJ) to obtain performance funds for work with the prosecutors after USAID closes.

USAID’s first major anti-corruption activity, OGI, was a multi-faceted activity that took a systemic approach to fighting corruption. Given the multi-faceted nature of corruption, fighting corruption on many fronts is essential. But, it proved beyond the program’s manageable interest to work in such diverse areas. Once the civil society component managed by CSD was split off from OGI and made a stand alone activity, both the government and civil society components performed better.

SO Performance Indicators

Nations in Transit: Judicial Framework and Independence Ranking							
1999	2001	2002	2003	2004	2005	2006	2007
3.50	3.50	3.50	3.50	3.25	3.25	3.00	2.75

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