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Executive Summary

This report focuses on the development of a modern rule of law regime in the Republic of Bulgaria from the end of the Communist era in 1991 through the reform efforts of the current government at the beginning of 2003. The report charts the main features of Rule of Law development with respect to three major aspects: the establishment of a legislative framework; the development of a well organized, professional and independent judiciary, and the creation of transparent and accessible justice system for the citizens of Bulgaria. The report casts its net broadly in search of the major factors that have constrained or propelled positive development. The main emphasis of the report is on the impact of US foreign assistance programs on one or more of the three major dimensions of a rule of law regime. It also addresses the development of legal clinics in Bulgaria that have received USAID and other donor support.

The research for this report was conducted in January 2003. A four-person team made up of two Americans, one an evaluation expert with experience in rule of law assessments and the other a lawyer with expertise in judicial administration as well as experience in Macedonia with similar issues. Joining the team were two Bulgarian attorneys, both with extensive experience in Bulgaria and American legal systems. In addition to document review and open ended interviews with over 100 Bulgarian judges, lawyers, U.S. and Bulgarian government officials, officials from other donor agencies and interested NGO leaders and citizens, a written questionnaire was completed by an additional group of judges. The questionnaire focused on judges' assessment of the value of various training programs, as well as soliciting their opinions on a number of reform issues.

Important findings and conclusions from the report are:

- The legislative framework is substantially in place as a foundation for a modern rule of law regime, although much remains to be done to harmonize contradictions and to facilitate implementation of existing laws.
- Execution of Judgments remains a problem, but one where improvements have been made.
- The judiciary is relatively young and inexperienced, especially in the courts of first instance. Rapid turnover of judges increases the need for in service training.
- Various efforts at establishing a systematic judicial training system have converged with the creation of the Judicial Training Center, which will receive government budget support.
- Funding for the judiciary remains below EU standards for a transitional state. Judges identify this as the main constraint they face.
- The current Government (January 2003) has developed a comprehensive judicial reform strategy and plan of action and is taking steps to implement the reform program.
- The Bulgarian effort to join the European Union is the primary motivating force for the current Rule of Law reform effort.
- The Supreme Judicial Council, the highest level of governance for the independent judiciary, suffers from its unwieldy composition, lack of experience and skills for policy development and sound management oversight.
- The Bulgarian procuracy continues to resist reform efforts. Most foreign observers contend that the police and the prosecutors are either inept, corrupt or both in their handling of important criminal cases involving drugs, customs bribery, trafficking, and other aspects of the very substantial underground economy in Bulgaria.
- USAID programs supporting professional training and improved court and case load administration are well regarded by working level judges, but the impact of these relatively recent programs on the Rule of Law will not be known for several years.

I. INTRODUCTION

This assessment of the development of Rule of Law in Bulgaria is part of a series of studies commissioned by USAID's Europe and Eurasia Bureau. The overall purpose of the studies is to assess the impact of Rule of Law assistance on progress toward the establishment of a Rule of Law in selected countries that emerged from the collapse of the Soviet System beginning in 1989. By synthesizing the findings of the individual country studies in a final report, USAID hopes that the assessment will also provide guidance on how best to construct Rule of Law development programs in similar conditions.

The apparatus of the Rule of Law -- a judiciary, the prosecutors, and the civil and criminal codes -- was largely in place in these regimes. Indeed, except during periods of extreme ideological fervor, the application of rule of law was generally a humdrum, fairly stable affair. The courts without much ado settled petty theft, divorce, and disputes over what property was allowed. For most citizens, these kinds of issues were the primary interface with the "rule by law." However, if one became a dissident, confronted the state on issues of corruption, challenged the controls over media, the press, or sought to form any kind of association deemed by the state as a political alternative to the state and ruling party, the rule by law system followed the formalities but ensured that the interests of the state and party were protected. Rather than Rule of Law, these regimes promoted "rule by law" as the means for executing state control. In this system, the Procurator was the supreme agent of justice, the Magistrate was responsible for maintaining the formal proceedings, and the advocate, where allowed, sought to preserve the appearance of "legal defense" within the boundaries of the political reality of the time.

When the Soviet system collapsed, an entirely new array of human possibility for action, transaction, and initiative opened up to the governments and publics of the former Soviet states. Constitutions were written that, on paper at least, gave or restored to citizens both rights and obligations in the context of democratically derived government. Instead of the "unity of power in the party", powers of government were separated and balanced. Issues never considered under the old regime came to the fore. Property rights, human rights, minority rights, civil rights, media rights and rights to free expression, libel laws, commercial transaction issues, and a host of other human possibilities, not to speak of new forms of criminal behavior associated with financial, human, and other forms of exploitation, all created both conflicts in civil society and threats to the establishment of a democratic civil order. Few of the countries emerging from the old regime were prepared for the explosion of issues that had to be confronted.

The effort to cope with this explosion exposed the inadequacy of the old system's capacity to adjust, but new, more effective and relevant institutions have been slow to develop. Even where there was interest as well as technical assistance and financial support from the West, the challenge of creating a "true" Rule of Law in 10 plus years has remained a daunting one. Similar studies in this series in Armenia, the Central Asia, Ukraine, and Georgia, have concluded that the development of a Rule of Law, while formally progressing, has been slow to materialize, despite the importance of Rule of Law as a "lynch pin" of democratic and market economy development. A report written for one country could almost be repeated with variation in detail for another. Insufficient budget support for the judiciary, poor training, inefficient case management systems, limited enforcement of judgments, poor pay and status for judges, incompetent, overly powerful and politically influenced police and prosecutors, perceptions of rampant corruption, poor protection of basic rights of accused, the list goes on, whether one is writing about the Ukraine or Armenia.

There are bright spots in the picture. NGOs do heroic work representing marginal peoples or forcing environmental issues onto the courts. Reform judges fight for better working conditions, more enforcement of ethical standards, more budget support, greater efficiency and often make substantial headway in their own courts. Lawyers do organize and some do contribute to pro bono defense work and

otherwise attempt to promote the idea of a rule of law. Legislatures do pass an extraordinary number of new laws and amendments to old ones, each promoted as reform, some in fact designed to protect certain interests. Magistrates do attend training and study tour programs, become familiar with European and American law, sometimes attempt to organize in service training for other judges. In other words, there are reform assets and efforts emerging, becoming active, even making “enclave” like progress, more often than not with support from Western foreign assistance programs and their partners.

But still, the overall picture of slow development remains. Publics, surveyed by reputable polling organizations, remain deeply skeptical, courthouses remain dingy destinations for those unfortunate enough to get caught up in what most perceive as the slow, water torture of the much delayed judicial process. Judges become frustrated or cynical. Prosecutors learn to play by new rules, but do their best to preserve the old prerogatives. Governments and Parliaments write laws with considerable outside expertise from Europe and the US, but somehow in the bowels of the law making process, other interests prevail, and legal coherence and relevance suffers. Excellent laws are not followed by secondary legislation or procedural rules that facilitate implementation and execution of judgments.

Why is the progress so slow, so spotty? Why do budgets for the judiciary remain so low? Why does public respect and acceptance of the judiciary, never very high even in the most advanced democracies of Northern Europe, remain so abysmally low? Why is this creation or establishment of a Rule of Law so difficult?

The western experience with the development of a Rule of Law is marked by five major evolutionary dimensions. Each of these is an “idea” in the political culture and system, perhaps poorly articulated, but nevertheless deeply embedded. First is the idea of citizenship. This has within it the notion of rights, as well as obligations. Citizens are sovereign, who relinquish sovereignty in a variety of ways in order to gain the benefits of a civil order and a responsible and accountable government. This is a profound idea that has taken centuries to develop in the west. Second, the idea that government is accountable to citizens, who by exercising all necessary rights of citizenship, can and do hold the government accountable, and, from time to time, exercise the right to “throw the rascals out.” Third, that the right to information is a critical part of the democratic process. Without transparency and access to information, citizens cannot exercise judgment and political choice. Fourth, there must be a set of “rules”, developed from experience and with consent, that govern relationships between persons, which protect citizens from those who do not play by the legitimate rules, and govern relationships between the accountable state and the responsible citizen. Fifth, there is the idea of an institution of independence and wisdom, whose performance is marked by superior understanding of the “rules” and by total commitment to the notion of equal justice before the law. This institution is primarily the judiciary. All other instruments of the state, mainly the prosecutor and the police, must be subordinate to judiciary, which is assigned the primary role of preserving and upholding a “Rule of Law.”

Whatever the appearance of the formal apparatus of a “Rule of Law” in the former Soviet states, the “idea” of a Rule of Law as described in the previous paragraph has not yet become a part of the way of thinking.

We take this detour into political theory to make a point that has been made so often in these kinds of assessments. Rule of Law development takes time. This has become a mantra and has, therefore, lost the power of real meaning. The evolution of the Rule of Law in the west took many centuries, much backsliding, and a few rapid spurts of reform, followed by more backsliding. What could be more antithetical to the idea of a democratic “rule of law”, than the promulgations of the Nazi party on race in the 1930s? What could be more dramatic progress than the widespread acceptance of the Napoleonic reform embodied in the European “Civil Law”? The development of a Rule of Law may be one of the very last characteristics to emerge in societies that have had little experience of the kind known by the

West and that the path by which it appears may be quite different. The main point is not only that time will be needed, but that the Rule of Law solutions ultimately put in place by Bulgaria must reflect an internalized commitment of Bulgarians, elites and otherwise, that whatever emerges, it is theirs, it is fair, and it works. None of the previous should be interpreted as an argument for the West to have done nothing, or to abandon the effort. If anything, it is an argument for continued engagement.

The preeminent fact for Bulgaria today, and one which separates it from the Ukraine and others further east, is its desire to be part of Europe, and more important, its acceptance in 2000 by the EU onto the path of becoming a full member of the European Community. The power of this idea cannot be over estimated. If there is such a thing as a national consensus in Bulgaria, it is this commitment to become a part of Europe. How and at what cost to achieve this status defines much of the political debate today.

Among the many “chapters” which must be closed before the EU ultimately accepts Bulgaria into the fold is Chapter 24 of the European Union’s protocol for accession into the European Union, signed with the Bulgarian government. All chapters must be closed by the EU certifying that the laws and basic institutions of the applicant state are in harmony with those of the EU and its member states. Chapter 24 pertains to the Rule of Law, the Judiciary, Access to Justice, and protection for human rights as well as property. Efforts to close Chapter 24 are high on the government’s list of priorities.¹ Unlike all the other states visited in this series, what to do about the Rule of Law is a major public issue in Bulgaria today. The interest in Rule of Law among donors and local law related NGOs is also very high. USAID has a major commitment to judicial reform through support of the Magistrates Training Center, to better court administration and to enhanced professionalism and pro bono service from members of the Bar. The EU is poised to make a major investment of 11.1 million Euros for Information Technology modernization in the Courts. The World Bank has made rule of law reform part of the conditionality for its \$450 million Program Adjustment Loan, including increasing the amount of state budget allocated to the judiciary, adopting uniform standards of service for court administrative staff, improving the magistrate selection process, approving an anti-corruption plan among many others². One by-product of this high level of interest has been an enormous outpouring of assessments, reports, studies, planning documents and analyses of the state of the Bulgarian Rule of Law and the Judiciary. Although varying in detail, most come to similar conclusions... Bulgaria has made progress, but much remains to be done before Chapter 24 can be closed. Perhaps even more must be done before a Rule of Law is deeply embedded in the culture and institutions of Bulgarian life.

The study team benefited from this high level of interest and documentary output, much of which has been produced since 1998. The Bibliography to this report will provide the reader with a fairly comprehensive compendium of these studies, most of which have been used to inform the findings and conclusions expressed below. We are grateful to USAID, to other donor agencies and to many of our Bulgarian contacts for providing us with so many of these documents.

In preparing our own analysis, we have worked very hard not to repeat simply what others have already reported, although we do summarize what appear to be the main features of these reports. Instead, we have attempted to build on the findings of these documents with fresh data and analyses, confirming in some cases the general wisdom, but in others, raising serious questions about it.

¹USAID reports that Chapter 24 may have been closed by the EU in October 2003.

²USAID Memorandum to Assessment Team, November 11, 2003.

II. CONCEPTUAL APPROACH AND METHODOLOGY

This study follows the general conceptual approach and methodology set out by MSI in its original formulation of its proposal to USAID. The study is organized around three main themes or questions:

- The adequacy of the Legislative Framework
- The competency of the Judiciary to deliver justice
- The extent to which Access to Justice is provided³

For the Bulgaria study, the team was responsive to the USAID Mission's request that it pay special attention to court administration, magistrate training, and, to a lesser extent, the introduction of legal clinics in Bulgaria law schools. Each of these areas has been a focus point for USAID assistance in recent years. As with other studies in this series, the impact of rule of law work carried out as part of the Economic Growth Strategic Objective was not included in the assessment. The overall progress toward establishing a legislative framework is assessed, as it would be difficult to reach conclusions about the impact of Rule of Law development in Bulgaria without doing so. In the team's view, rapid and continual change in the legislative framework is a factor in shaping the function of judicial institutions and access to justice. The team attempted to be responsive to Mission needs, while at the same time addressing the issues in the original Europe and Eurasia Bureau Scope of Work. While USAID did provide financial resources to hire one additional Bulgarian researcher to assist the team, the time frame, three weeks in the field, remained the same as for other studies in this series. Inevitable choices had to be made about assessment emphases. The most attention was paid to court administration and training for justice sector personnel. Less time was allotted to NGO development/programs and other aspects.

The table below reviews USAID investments in ROL projects since 1992:

USAID Funding for Rule of Law Projects 1992-2002

Fiscal Year	ABA Grant (\$)	Judicial Reform (\$)	Total (\$)
1992	55,000		55,000
1993	85,000		85,000
1994	181,000		181,000
1995	389,000		389,000
1996	327,000		327,000
1997	462,000		462,000
1998			
1999	752,000	2,331,000	3,083,000
2000	929,000	2,139,000	3,068,000
2001	700,000	2,186,000	2,886,000
2002	120,000	3,806,000	3,926,000
Total	3,987,000	10,462,000	14,449,000

In examining the above numbers, it is worth noting that funding ranged from tiny to modest until 1999, when the budget increased seven-fold and new programs were initiated. This raises an important methodological concern: *it is still very early to be looking for impact and drawing lessons learned about the relative value of different kinds of investments or modalities.* Caveats are in order for those reading this report.

³ In many of the earlier studies, included in Access to Justice was an effort to assess the quality of legal education in the country.

The MSI study methodology relies on two perspectives. First, our respondents were asked in general terms to describe the major developments in Rule of Law over the last 10 years in Bulgaria. They were then asked to identify what they considered to be the main causal factors shaping this progress, or lack thereof. Following that, their attention was turned to the impact of foreign donor programs, especially foreign assistance. This approach, called the “pass back” approach was designed to elicit a more spontaneous assessment by the respondents than would have been the case if one followed the usual, “what did you think of the USAID funded XXXX project?” In many cases, respondents in the “pass back” discussions seldom mentioned foreign assistance unless asked, and even then, the responses tended to be of a general nature.

The second perspective was a more typical effort to assess the impact of foreign assistance programs, mainly those of USAID, by interviewing program Partners, reviewing their quarterly reports and interviewing participants in the programs. This “pass forward” approach, however, was not intended as a detailed program or project evaluation, but as part of a broader effort to elicit evidence as to what has worked, what has not, and why. In the Bulgarian study, a special effort was made to assess the impact of training programs for Bulgarian Magistrates; especially for those Magistrates operating in the USAID funded Model Court Program, developed under the East West Management Institute. For this purpose, a formal questionnaire was developed which was completed by 105 magistrates from 15 courts. The 15 courts were selected by the team as representative of both Model and Non-model courts, including first instance regional courts, district and appellate courts in small town as well as urban settings such as Sofia and Plovdiv. Since time was limited for purely random selection, the questionnaire was given to all available judges in each court visited. Of these the Bulgarian team members conducted personal interviews with about 70 percent of the total. These interviews focused on questionnaire completion, but more importantly each interview involved an open-ended discussion of Rule of Law development using the MSI guidance document. These interviews provided valuable information on what Bulgarian magistrates identified as the problems in developing a Rule of Law in Bulgaria.

Information from formal and informal interviews with magistrates, judicial leaders, NGO leaders, foreign donor representatives, members of the Bulgarian bar, as well as leading academics was reinforced by a serious effort to acquire quantitative data wherever possible. With great assistance from the USAID Rule of Law office, we are able to present data showing the level of priority given to the Bulgarian judiciary in the budget allocation process. In some cases, the team devised a “quick” Delphi technique to synthesize expert responses to such questions as “how adequate is the Legislative Framework.” For example, the experienced legal staff of ABA/CEELI prepared a very useful Legislative Status chart at the request of the team, which CEELI now plans to develop further. Although still in draft form, this chart brings together in one place the major legal building blocks of the Legislative Framework, rates the adequacy of each law, and also gives a rating as to whether the law is being implemented. This rating is reinforced by more informal data from Magistrates’ interviews and interviews with various legal pundits in the Bulgarian and foreign community in Sofia. In some cases, special studies done by European groups have proved very valuable. For example, the Helsinki Committees’ very recent studies of Access to Justice are critical to appreciating the difficulties Bulgaria has had in insuring that everyone accused of a crime receives competent legal defense. Finally it should be noted that the Ministry of Justice, the Supreme Judicial Council, and the individual court presidents, were very helpful in supplying us with substantial amounts of case management data over time and at all levels of the court system.

We are confident that the main findings about Rule of Law development for Bulgaria are reasonably sound. In some important ways, they challenge some of the conventional wisdom. We are somewhat less confident about findings with regard to the impact of USAID funded assistance, in part because of the admonition to emphasize areas of assistance other than commercial, in part because USAID assistance to

training and the court system is relatively recent, and in part because the team tried to be responsive to both Mission and the E&E agendas in the limited three week research period.⁴

III. THE LEGISLATIVE FRAMEWORK

Along with the other nations of Eastern Europe, the Balkans, the Trans-Caucasus, and the Central Asia Republics, Bulgaria emerged from collapse of the Soviet system in 1990 with a political, legal, and economic system in ruins. The Bulgarians had no more experience with the process of dismantlement and reconstruction than any of the other states. Bulgaria was not “liberated” through a movement like Solidarity in Poland. It had not experienced a Prague spring, or a heavy-handed Russian repression as in Hungary. Bulgarians had had friendly relations with the Russians, and thought of them historically as liberators and fellow Slavs, not oppressors. There was little visible “occupation” of Bulgaria, in part because the Bulgarian Communist Party had firm control, and in part because Bulgaria was not a front line state. Bulgaria also had a relatively benign experience with communism, which gave social mobility to many.

When the new era dawned, however, Bulgarians were quick to begin the necessary adjustments and lay the groundwork for a new type of political and economic system. The Constitution was passed in a special assembly in 1991. In that same year, a new Commerce Act was passed setting out both a general and specific legal framework for enterprise.

The initial legislative impulse in the first years was to amend laws passed during the Communist era, a practice that continues to a lesser degree today. A 1951 Law on State Taxes has been amended 15 times, the latest amendments passed in 2002. The Civil Procedure Code currently in place was passed in 1952, and amended 25 times. The Criminal Code was first passed in 1968 and then amended 28 times, and the Criminal Procedure Code, first passed in 1974, was amended 23 times through 2002. Other Communist era laws still in place, although heavily amended, include the law on Inheritance, 1949; the Administrative Violations and Penalties Law, 1969; the Administrative Procedure Code, 1979; the Family Code, 1985; and the Labor Code, 1986, among others of lesser import. Altogether, laws from the Communist era have had 192 distinct amendments passed since 1990. This plus the legislative output record set out in the following table demonstrates a very high level of legislative activity, especially following 1996.

⁴ A necessary condition for any study’s success is the participation of locally hired team members. This study was extremely fortunate in being able to secure the professional services of two Bulgarian attorneys, Tsvetanka Spassanova-Stoyanova and Ventsislav Tanev, who conducted all of the Magistrate interviews. Our interpreters, Reneta Barrett and Georgi Lekov were equally professional. Finally, our logistics and administrative assistant, Katya Dyankova, did a magnificent job of keeping us organized, on time and on track for the many tasks we had to accomplish in preparing for this report. We also want to thank the ABA/CEELI team for spending many hours with us, as did the equally cooperative East West Management Institute team. Finally, we extend our thanks to all the others, Europeans, Americans, and Bulgarians, who generously shared their thoughts, their hopes and their valuable time. Their names are listed in the Appendix to this report. The fieldwork for this study was done in January, and the draft report submitted to USAID in March 2003.

Legislative Output⁵ 1990 – 2002

Year	Number of New Laws Passed	Number of Subsequent Amendments to Laws passed in that Year	Significant Laws Passed
1990	4	4	Labor Disputes
1991	14	111	Local Self Gov: Ag Land Ownership: Commercial Law; <i>Constitutional Court</i> ; <i>Advocacy Law</i> ; <i>Political and Civil Rights of Repressed Persons</i>
1992	4	16	Restore Real Estate Expropriated; Mandatory Jurisdiction of International Court
1993	4	27	Settling Unattended Credits: Copyright
1994	4	31	<i>Judiciary Law</i> ; Excise Duties; Bankruptcy
1995	10	78	Defense; Concessions; Local Elections; Pharmaceuticals; Higher Education
1996	16	98	State Property; Municipal Property; State Takings; <i>Notary</i> ; Insurance Law; Stock Exchange and Mutual Funds; Purity of Air
1997	18	132	Bank Law; Bulgarian National Bank; Forest Lands Restoration; Corporate Income Tax; Labor Health and Safety; Personal Income Tax; Local Tax and Fees; Foreign Investments Code; <i>Supreme Administrative Court</i> ;
1998	25	114	Bank Deposit Guarantee; Value Added Tax; Health Insurance; Customs; Ag. Production; Radio and TV; Competition Protection
1999	38	108	Energy Sector; Consumer Protection; SMEs; Public Procurement; Public Offerings; Tax Procedure Code; Narcotic Substances
2000	24	27	<i>Access to Public Info</i> ; Real Estate Property; Public Information regarding High Ranking Persons; Professional Ethics Code; NGO Law; Protection of Children.
2001	13	13	Independent Audits; Establish Audit Agency;
2002	15	5	Bank Insolvency; Environmental Protection; Transactions with Compensatory Instruments; Tourism; Protection of Personal Info; Asylum for Refugees
Total	215 (764 plus 192 of Communist era laws = 956 distinct amendments.)		

As may be seen above, the pace of legislative activity increased dramatically beginning in 1996, and the focus of that activity shifted toward economic, social and political restructuring and reform. After 1997, it is clear that Bulgaria was engaged in harmonizing its laws with those of the EU, as well as reacting to pressures from the West to deal with corruption and criminal behavior.

The quality of legislative drafting, especially in the early years, may be deduced as being either flawed or not sufficiently thought through, given the extraordinary number of amendments that were passed, often in the same year as the base law's passage. Whether the somewhat lower level of legislation and amendments in the last two years reflects a more thoughtful process or simply insufficient passage of time to expose the weaknesses of legislation is too early to tell.

⁵ The full list of Legislative Acts since 1990 may be found in Annex 9. The table is a summary of that list intended to demonstrate the increasing pace of legislative activity as well as the increasing focus on structural reform especially in the economic and social area. Laws relevant to Judicial Reform are shown in Red Italic.

The parliament passed a deeply flawed Bankruptcy Act in 1994 ⁶, a third Commerce Act, Book III, in 1996, and in the same year a law governing Concessions. A Copyright Act was passed in 1993, and, for the legal system, a new Attorney's Act was approved in 1991. However, much of this output was either flawed or designed to protect state interests carried over from the previous Soviet era. In 1997, Bulgarians voted in a new party, the UDF, to form a reform government. This change marks the beginning of serious efforts to build a legislative framework appropriate to the future Bulgarians wanted to have.

Beginning in 1997, under the UDF government, the Parliament embarked on a series of economic reform legislative acts. This parliamentary energy has continued under the new government voted in 2001, the National Simeon II Movement government. The following is a representative list of major pieces of economic legislation passed from 1997 to the present:

- Foreign Investment Act 1997
- Consumers Protection and Trade Regulation Act 1999
- Public Procurement Act 1999
- Electronic Document and Electronic Signature Act 2001
- Banking Act 1997
- Bank Deposits Guarantee Act 1998
- Bank Bankruptcy Act 2002
- Public Offering of Securities Act 1999
- Mortgage Bonds Act 2000
- Competition Protection Act 1998
- Financial Supervision Commission Act 2003
- Civil Procedures Code 1952 with Major Amendments 1997, 1999, and 2002

With respect to civil society, legislation pertaining to non-profit organizations, political parties and rights to information came later, mostly in the year 2000, when 5 new laws were passed on these issues.

Unlike Commercial Law and Civil Law, the Penal law received only sporadic attention. The basic Criminal Code was established in 1968, and was not amended substantially until 2002. The Criminal Procedure Code, about which we will hear more, has been amended several times between 1999 and again in 2001. A new Criminal Procedure Code is now being drafted. Pressure to deal with international organized crime led to the passage of a law on Measures against Money-Laundering Act in 2001. There is pending legislation on Trafficking in Human

Prosecutor or Magistrate: Who Decides?

Art. 237 of the Criminal Procedure Code now provides that the Prosecutor's Ordinance for termination of a criminal procedure can be appealed before the court of first instance. Before that change the control over the Prosecutor's Ordinance was vested in the next higher-ranking Prosecutor. Bulgarian Magistrates say that this change transfers the responsibility for development of a criminal case to the Magistrate. This interferes with the Magistrate's role as the independent arbitrator in the court case. It should not be the judge's job to decide whether the charges are supported by enough evidence and hence should be brought to court. This is the Prosecutor's job. Now the Magistrate is forced to "form an opinion on the guilt of the defendant when deciding on termination of a criminal procedure. "This is contrary to the requirement for protection of the rights of the citizen" according to the Magistrate.

Bulgarian Magistrate Interview

⁶ For a more complete listing and assessment of the Legislative Framework by an experienced foreign organization, ABA/CEELI, see "ABA/CEELI DRAFT OF LEGISLATIVE STATUS IN BULGARIA", ABA/CEELI Office in Sofia, 29 January 2003, Annex 9. The authors are grateful to ABA/CEELI for preparing this chart on short notice, and recognize that it is a DRAFT subject to further revision and improvement.

Persons and ratification of the European Convention on Cyber crime.

The Attorney's act of 1991 and the Judicial Systems Act of 1994 constituted the two principal legislative framework laws for the judicial function. The 1994 act created the three-tier system of appeals, which has become an issue in current reform efforts. The Constitution's emphasis on separation of powers provisions more or less walled off the judiciary from both political pressure and from public scrutiny and political accountability. Several features of this protection are the subject of very intense debate today, including the inclusion of the Office of the Prosecutor and the Investigative Magistrates in the Judiciary, the provision of Immunity for all Magistrates (all Prosecutors are considered Magistrates), and the long term appointment of the Prosecutor General making that official relatively safe from being removed if a new government is elected. The most recent effort to reform the Judiciary was the current government's substantial amendments of 2002, two-third's of which were declared unconstitutional by the Constitutional Court, largely for giving too much authority to the executive branch, the Ministry of Justice, in contravention of the Constitution's emphasis on the separation of powers.

IV. ASSESSING THE LEGISLATIVE FRAMEWORK: FULL OR ADEQUATE

Foreign observers and foreign authored reports tend to concur that Bulgaria has made substantial progress in putting in place the Legislative Framework necessary for a Rule of Law.⁷ Most Bulgarian commentators agree that the Legislative Framework is substantially in place, but they are quick to point out that some of the crucial laws are seriously flawed, or are not working as intended, and that changes are necessary. For example, when asked to rank the top three priorities for judicial reform from a list of nine possible reforms in the Magistrate Questionnaire, Magistrates from all courts selected **Reform of the Legislative Framework** as their top priority, receiving more than double the votes than the next ranked priority, improving Magistrate salaries. The team's open-ended interviews indicated that Magistrates thought the situation might better be described as "**full**" rather than "adequate". One Magistrate at the District level in a medium size town described the situation as "Chaos." Many Magistrates could give specific and wide ranging examples, citing Tax Code, Labor Code, and Family Code as specific cases of poor and inconsistent legislation, the result of which often is to burden the court with very difficult to meet procedural requirements involving witnesses. When a government witness fails to appear in a hearing, the hearing gets rescheduled, something that happens all too frequently. A common theme in the Magistrates' lament is that there are real gaps between the substantive laws, for example the law on Obligations and Contracts, and the Procedural Codes that govern the work of the courts. These gaps and inconsistencies contribute to judicial delay⁸, but also tend to put the Magistrate in a compromising position, as was pointed out by one senior Magistrate.⁹ When asked to rate the adequacy of the legal framework, the ABA/CEELI Bulgarian team rated 8 out of 35 laws covering commercial, civil, penal, and public laws as requiring **major revision**.

A focus group of Prominent Bulgarian attorneys agreed that substantial revision was needed in the current body of Law, in criminal and civil procedure codes, and in the tax laws and regulation as well. A study

⁷ See for example, "Bulgaria Rule of Law Achievements" 2001 Final Report, MSI. "Bulgaria has established a fairly complete legislative framework that supports its democratic institutions and a free-market economy." Page 2.

⁸ The issue of judicial delay in Bulgaria is a controversial one. USAID and most other donors hold the view that a principal weakness in the Bulgarian judicial system is the very drawn out nature of the fact finding process, leading to lengthy delays in reaching closure and delivering verdicts. The team did see particular instances of this during the field research. On the other hand, the team also found considerable evidence from court statistics and interviews with judges that most cases are closed very quickly. This issue is discussed in greater detail beginning on page 30.

⁹ Nearly all magistrates interviewed are conscious of the public perception of the judiciary as a corrupt institution. In interviews, magistrates noted that they must sometimes choose between following the procedures very strictly, and reaching a quick judgment. As will be seen subsequently, there is considerable pressure on the courts to clear cases within a set timeframe.

Intellectual Property Rights in Bulgaria: Good Law – Poor Enforcement

Bulgarian intellectual property legislation has been significantly strengthened recently, and now includes modern patent and copyright laws and criminal penalties for copyright infringement. Bulgarian legislation in this area is considered to be among the most modern in Central and Eastern Europe, harmonized with European and International instruments. However, ...problems with implementation and enforcement of rights have not been fully resolved yet. As in other fields, a slow and ineffective judicial system, lack of sufficient jurisprudence on IPR disputes, inadequate reporting of cases, insufficient specialized training for law-enforcement officials are all part of the problems related to enforcement of IPR. As a result, infringement leads to huge losses in tax revenues and investments. Foreign companies hesitate to invest in countries where trademark counterfeiting and copying of goods is widespread.

**Memorandum on Intellectual Property Rights
ABA/CEELI Memorandum to USAID Sofia
July 26, 2002**

conducted for the UNDP on administrative law noted that substantial progress had been made, but that major revisions in tax laws were necessary to consolidate what is now divided between administrative and criminal law.¹⁰

Implementation of Legislative Framework

Problems of executing judicial judgments will be discussed in the next section. It is worth noting here that whether the current Bulgarian Legislative Framework is considered “full” or “adequate”, problems with implementation of the law loom large in the minds of Bulgarian attorneys. ABA/CEELI rated 41 major laws as to whether the implementation of each law was Good, Fair or Poor. Only 7 laws were rated poor, but of those 5 were in the commercial law area. Rated poor were such laws as the Banking Act, the sections of the Commerce Act regarding corporate governance, and the Foreign Investment Act. As mentioned above, almost everyone rates the tax codes as being poorly enforced, or difficult to enforce...or so confusing as to leave considerable leeway for executive branch discretion.

How does 2003 compare to 1989?

Asked this question in open-ended interviews, older magistrates expressed certain nostalgia for the old days, when life was simple, the law was clear and not very complicated, and judgments were carried out. Of course, they also recognize that social and commercial relationships are much more complex today. In responding to the same questions, younger judges (a substantial majority has less than ten years’ experience), tend to make reference to better human rights protection and to European Convention on Human Rights, to which Bulgaria has belonged since 1992.

Everyone in Bulgaria recognizes the need for change, and perhaps more than in other countries further east, the Bulgarian commitment to higher standards is palpable among the reform minded classes, especially in the framework of accession to the European Union. This commitment shines a bright light of expectation on the performance of the Bulgarian government, the judiciary and the business classes,

¹⁰ The need for substantial revision of the criminal procedure code is challenged by one expert team member whose view is that the deficiencies in the code are much exaggerated. There is little doubt that Bulgarian judges and criminal lawyers believe that substantial revision is necessary.

especially those operating in the vast “gray” economy. As with many other states in the region, much of what transpires is a product of personal arrangements with a “wink” to the formal rules and procedures of the legislative framework. In the light of the commitment to thorough reform, the persistence of “under the table” practices produces an almost fabled cynicism and perception of conspiratorial corruption that pervades conversations with Bulgarian legal experts, practicing attorneys and some academics.

Protection of Rights in the Current Legislative Framework

The issue of a defendant’s right to legal defense will be discussed in the section on Access to Justice. Suffice to say that most Magistrates believe that the protections for human rights in Bulgaria are adequate, but a few note that minorities, such as homosexuals and the mentally ill, lack adequate protection. When asked about gender equality, most said that “on paper” the protections for equal treatment are in place...the implication being that in reality, women still face discrimination at higher levels in government appointments, and are inadequately protected in domestic violence incidents. As for protection of property rights, all the respondents stated that the property rights protection is “full and relatively coherent.” There have been problems with the laws on “Restitution of Agricultural Lands” and a similar law on forests. The fact that Bulgaria has taken on these very tough issues is a mark in its favor from the point of view of foreign observers.

The Potempkin Effect: What is driving reforms in Bulgarian Legislative Framework?

In a word, the answer is “Europe.” The desire to close Chapter 24, by making the laws totally harmonized, is by far the most important factor motivating the rapid modernization and almost constant upgrading of the Legislative Framework. Foreign Assistance that contributes to this premier political objective is valued and indeed sought. ABA/CEELI claims that it has participated actively in 31 of the 45 major pieces of legislation passed by the Bulgarian parliament since 1991. The EU program also responds to requests for technical support, as do individual European states, most notably the Dutch, who have their own full time technical legal professional working with the government on legislative drafting.

Does this rush to modernize as driven by external forces and standards create a true Rule of Law, or does it lead to a kind of legal facadism, a “Potempkinization” of the Legislative Framework; all surface glitter, but not much behind it? The problem associated with poor implementation of law suggests that there is some merit in this rhetorical question. Many Bulgarian respondents, especially the more sophisticated Sofia based commercial attorneys and NGO leaders agreed, pointing out repeatedly that the objective is to get into Europe, and then hope that the rest of the system will catch up to the new ways of doing business. One very thoughtful Magistrate in a more distant medium sized city suggested that the drive to meet European standards might have caused the legislative framework to “...have surpassed the (current) level of social relations...an example: The Law on the Electronic Document and the Electronic Signature.”

On the other hand, there is also evidence that Bulgarians are fed up with incompetent and/or corrupt governments. They have little faith in the credibility or integrity of their judicial institutions, according to national surveys. They have used the election process to “throw the rascals out” twice, and may be prepared to do so again. Whether this dissatisfaction gets translated into persistent organized political action, a la the Progressive movement at the turn of the 20th century in America is a very big if. Perhaps the best that one can hope for is that as Bulgaria becomes a more integral part of Europe, as well as the

myriad international organizations it has signed on to,¹¹ the benefits of such integration will gradually influence the development of a Rule of Law culture at least equivalent to that of Italy or Greece.

There is no question that Bulgaria has made serious if not always adequate effort to develop a Legislative Framework that serves the needs of a democratic polity and a free market economy. Since 1997 especially, the pace of legislative output has been substantial, and the template of laws necessary for EU accession is largely in place, albeit not without serious problems. Some of these problems have been addressed above; more will be identified in the following sections on the Judiciary and Access to Justice.

Has USAID made a difference in helping to shape the Legislative Framework?

As noted above, the primary force shaping legislative development in civil, commercial and criminal law in recent years has been the interaction with expert teams from the European Union. USAID did not have a legislative strengthening program relevant to all three areas, choosing to concentrate its resources on the development of commercial law, principally through the work of ABA/CEELI, supplemented later by other programs. A detailed assessment of these programs is beyond the scope of this study. However, the wide-ranging influence and engagement of ABA/CEELI needs to be noted in this regard. ABA/CEELI has become something of an institution in Bulgaria, and a resource point for legislative drafters, academic reformers, progressive attorneys and magistrates, and occasionally USAID. CEELI is the longest running American backed effort to engage with the Rule of Law development process, although much of its program has been focused primarily on the development of commercial law. As noted above, CEELI has been a participant in helping shape a number of important pieces of commercial legislation, and is just now involved in the major revisions of the Bankruptcy Law.¹²

USAID has had other initiatives to develop the legislative framework in Bulgaria, again under the general strategic objective of promoting economic growth. Deloitte and Touche worked on the Bankruptcy and related laws, and offered some training to Magistrates in these areas. Currently, a project on corruption tackles this issue by working to improve government procurement laws, regulations and practices. By

¹¹ Bulgaria has adopted a variety of international conventions, such as the Convention on the Laundering, Search, Seizure and Confiscation of Proceeds from Crime, the OECD Convention on combating Bribery of Foreign Public Officials in International Business Transactions, the Council of Europe Criminal Law Convention on Corruption, and the Framework Convention for the Protection of National Minorities of the Council of Europe. In the world of Intellectual Property Protection, Bulgaria has committed itself to conventions and treaties most of the world has never heard of. It is a party to The Paris Convention for the Protection of Intellectual Property; the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcast Organizations; the Geneva Phonograms Conventions; the Madrid Agreement for the Repression of False or Deceptive Indications of source of Goods; the Madrid Agreement on International Classification and Registration of Trademarks; the Patent Cooperation Treaty; the Universal Copyright Convention; the Bern convention for the Protection of Literary and Artistic Works; the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration; the Budapest Treaty on the International Recognition of the Deposit of Micro organisms for the Purpose of Patent Protection; the Nairobi Treaty on the Protection of the Olympic Symbol; the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks; the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks; the Strasbourg Agreement Concerning the International Patent Classification and the Locarno Agreement Establishing an International Classification for Industrial Designs. And among the big economic trade organizations, Bulgaria is far ahead of the rest of the Balkan and Trans-Caucasus pack. It is a member of The World Trade Organization; the World Intellectual Property Organization; the European Patent Office; the Paris Union and the Bern Union. We have not touched on conventions regarding environment, air transportation, communications, and the rest of the web of international conventions and treaties that mark the obligations of most modern states in the West. (Lists compiled from several documents, including ABA/CEELI, MSI and others).

¹² ABA/CEELI's role in developing Rule of Law associations and training programs for judges and aspiring lawyers will be noted in subsequent sections of this report.

most accounts, these efforts have been well focused and have influenced the content of legislative output. But as we shall see, drafting a good law does not lead directly to the establishment of a Rule of Law regime.

Because most law making assistance was managed under USAID's economic growth program and the research team had neither the mandate nor the resources to examine that program, the team was unable to determine with any certainty whether laws drafted with USAID assistance were any more durable or workable than other laws. During the period from 1991 through 1996, legal drafting assistance was sought out and given, by ABA/CEELI, Deloitte and Touche, and by European nations, mostly on economic and commercial legislation, which was not an area of focus of the team.¹³ All such assistance had to pass through the filter of a legislature that was resistant to substantial reform, and which became increasingly under the influence of powerful economic/political interests engaged in underground economy. The financial and economic collapse of 1996 demonstrated the limits of such assistance with regard to the action behavior of the then Bulgarian government managers and economic brokers. Strict bankruptcy proceedings would have made quick liquidation of assets more difficult, and have exposed financial arrangements to scrutiny that were better left obscured. After 1996, when the reform governments took power initially, there was a burst of reform legislation, but some academic as well as practical business lawyers noted that hasty efforts to produce reform legislation led to poorly thought out laws; laws which proved to be inconsistent with other measures or which lacked secondary legislation necessary for implementation. The law-making pendulum seems to swing from resistance to haste. Finally, no foreign donor (with the possible exception of the EU with respect to harmonization of laws) has a sufficient level of power, authority, or political engagement to determine the final outcome of what has to be an internal political process. Bulgarians have learned from all kinds of western exposure about good law, but until very recently, few had the kind of in depth practical experience that a seasoned senior attorney, legislative staff person, or legal scholar in the west brings to the debate and process of law making. The outcomes of the legislative process will continue to be marked by substandard performance, according to one European embassy observer, whether by design, a result of inexperience, or the muddled outcome of a quasi democratic process is impossible for an outsider to tell.

Still the basic conclusion remains. The legislative framework for a modern state is substantially in place, and, a more or less democratic political process is becoming institutionalized, response to outside and internal pressure to pursue reform, and to correct the more egregious problems in the legislative framework. Where the Bulgarians lack in-depth experience in highly specialized areas of law, such as secured transactions, they have demonstrated a willingness to reach out, seek technical input and support, and move forward.

V. JUDICIAL REFORM

Introduction

This section focuses on formal legal sector institutions, the structure and operations of the courts, including the character and experience of those serving as judges and employees, the procedural codes and interpretive decisions that govern court operations, general trends in filings and appeals over the last ten years, and organization of the Bar. The following information will show that changes in this area have been manifold—for better and worse. It will also suggest that some of the problems are beyond the reach of foreign aid.

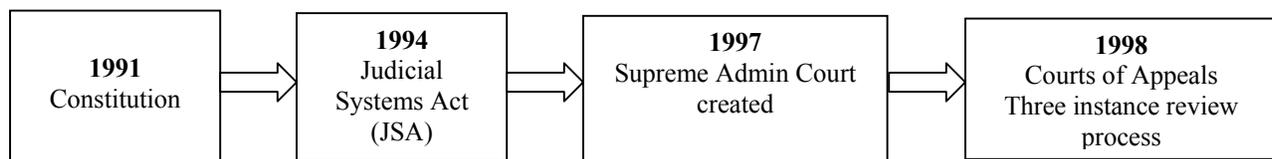
¹³ More recently USAID has begun to focus on judiciary, bar and procurement law.

For specific aspects of court administration, this report uses a 1992 ABA CEELI report as a baseline on which to gauge progress. It is clear, however, that court administration has only attracted significant local and foreign interest over the last 5 years, and that much of that interest has been in the form of assessments, evaluations and recommendations.

The Structure of the Courts in Bulgaria¹⁴

In 1991, Bulgaria adopted a new constitution, which recognized the judiciary as independent.¹⁵ The Judicial Systems Act (JSA), which governs the basic operations of the courts, was passed in 1994,¹⁶ establishing the framework for the principles set forth in the new constitution. The JSA established the Supreme Judicial Council (SJC), which is the policy making body for the judiciary.¹⁷ The SJC consists of 25 members: eleven are appointed by the National Assembly, eleven by the judiciary (five by the judges, three by the prosecutors and three by the investigators). The remaining three members are the presidents of the Supreme Court of Cassation and the Supreme Administrative Court, plus the Chief Prosecutor, who serve *ex officio*. The Minister of Justice chairs SJC meetings but does not have a vote. In 1998, Bulgaria instituted a three-tier court system for civil and criminal cases.¹⁸

Major Changes to Framework for Delivery of Justice in Bulgaria 1991-2003



This reform movement has continued with the draft amendments to the JSA that are currently pending with the Parliament after having been declared unconstitutional by the Constitutional Court for violating the constitutional guarantee of judicial independence by vesting too much responsibility for judicial operations in the Ministry of Justice. The basic structure of the third branch has been the subject of intense political fighting, and it is not clear at this time how, or if, this issue will be resolved. As recent articles attest, “Amid political and personal battles and court disputes, debate on changes to the constitution and to the judiciary is treading a difficult path. Right now, no-one knows where it leads.”¹⁹

Overview of the Courts in Bulgaria²⁰

The vast majority of original proceedings begin in the regional or district courts. The district courts also conduct appellate review of regional court decisions, and their decisions in original proceedings can be appealed to the courts of appeals. All appellate review is *de novo*, which means that new evidence or testimony can be required at the higher tribunal.²¹ The Supreme Court of Cassation hears appeals from the courts of appeals, as well as from the district courts, when they have reviewed regional court decisions. Its

¹⁴ There are a substantial number of reports describing this framework in greater detail. See, for example, MSI, *Judicial Strengthening in Bulgaria*, 1998; OSI, *Judicial Capacity in Bulgaria*, 2002.

¹⁵ *Constitution of the Republic of Bulgaria*, Art. 117.

¹⁶ *Judicial Systems Act (JSA)*, State Gazette No. 59/22.07.1994.

¹⁷ *JSA*, Art. 16-34.

¹⁸ *JSA*, Art. 39 *et seq.*

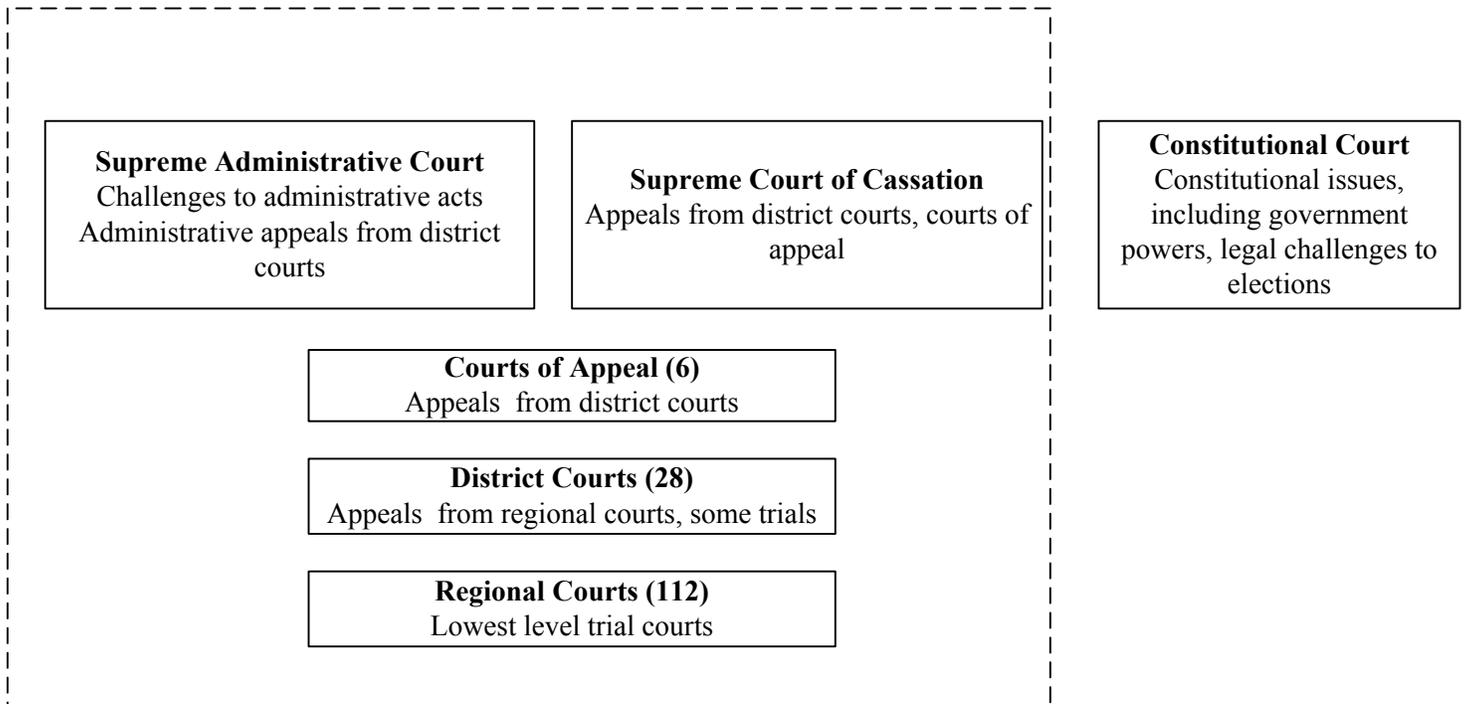
¹⁹ See Sofia Echo, *Budget Challenged in Court*, January 17-23, 2003; *Facing up to the Time of Trial*, January 24-30, 2003.

²⁰ The 5 military courts and 1 military court of appeals are not included in this diagram.

²¹ Civil Procedure Code, Art. 205; Criminal Procedure Code, Art. 314.

function is to examine legal issues only, and to render interpretative decisions on the enforcement of the law in cases of incorrect or conflicting judicial practice.²² Challenges to administrative decisions are made in the regional courts and may be appealed to the district courts. The Supreme Administrative Court (SAC), which was created in 1997,²³ hears appeals of administrative cases from the district courts and some laws provide for direct appeals to the SAC. The SCC and the SAC are considered equal in status. As noted in the organizational chart that follows, The Supreme Constitutional Court in Bulgaria is technically not part of the Judiciary.

Organization of the Bulgarian Judiciary

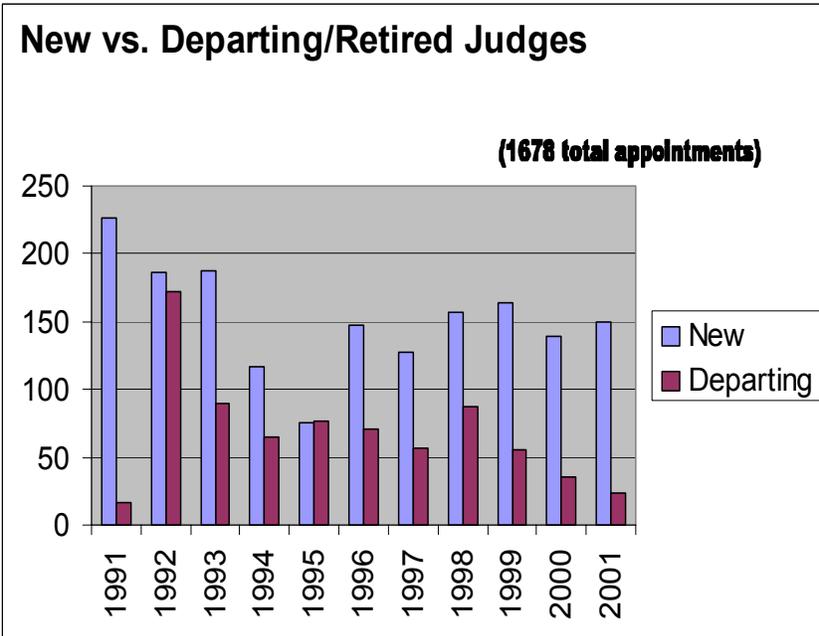


The Judges in Bulgaria

There are over 1,700 judges in Bulgaria. After 1989, when a large number of judges were fired or resigned, a number of new judges were appointed. This trend has continued, due to the creation of new courts, such as the courts of appeals in 1998; the departure of judges to private practice; and the design of the system, by which judges move up the ranks in the judiciary, beginning in the regional courts, moving on to the district courts, etc. In all, almost 1,700 judges have assumed new positions in the regional and district courts alone, a figure greater than the total number of judges in those courts.

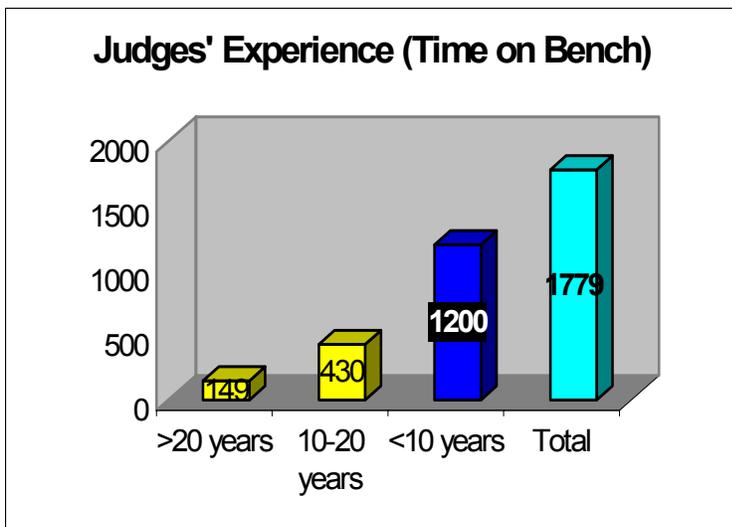
²² *JSA, Art. 84.*

²³ *JSA, Art. 91-100.*



From Data provided by the Bulgarian Ministry of Justice, January 2003

The volume of turnover in the judiciary represents a significant challenge from the standpoint of both training and administration. Moreover, the level of inexperience on the bench surely affects public perceptions of judicial competence and the attendant authorities of office. Less than one-third of sitting judges have ten or more years of experience



Improving Knowledge and Skills of the Judiciary

Every Rule of Law assessment report prepared since the first ABA/CEELI report in 1992 has recommended that Magistrates be trained, generally and specifically depending on the subject at hand. Such suggestions had particularly relevance given the youth/inexperience of the Bulgarian judiciary.

Training for Bulgarian Magistrates in the post-Communist period began with a variety of mostly ad hoc efforts by different donors as early as 1991, when ABA/CEELI began organizing seminars on the constitution. After CEELI was designated by USAID as the primary technical assistance provider for the development of commercial legislation, in addition to providing consultations and input to the commercial law drafting process, CEELI also organized training workshops and seminars for magistrates and other officials. CEELI's own mandate extended to more general efforts to establish some regular means of providing in service training to magistrates. Finding little interest in government at the time, CEELI worked with some progressive elements in the judiciary to establish a not for profit organization that, with technical and financial support, would provide some training. The Bulgarian Legal Initiative for Training and Development (PIOR) was established in 1994 and did provide some limited training. However, it did not succeed in capturing significant support, and while still functioning, has been basically superseded by a better-funded and organized effort, the Magistrates Training Center (MTC), which began operation in 1998. This Center was also a not for profit organization, with a Board comprised of the Bulgarian Judges Association (whose creation was in part assisted by ABA/CEELI), the Ministry of Justice and the Alliance for Legal Interaction, a Bulgarian NGO.

MTC was a 1998 initiative of the Bulgarian Judges Association, with CEELI supplying initial technical assistance and visits to the Latvian Judicial Training Center, the most successful of several CEELI efforts to establish judicial training institutes on a "private" basis (NGO) and to the famed French National Magistrates' School. MTC received significant financial support from USAID directly in the beginning, and later through the main USAID Rule of Law program being implemented by the East West Management Institute (EWMI).

MTC has developed a very comprehensive curriculum for training entry-level magistrates, now a mandatory requirement under recent Bulgarian law. The basic training for new magistrates involves three levels, with a five-day course at each level for a total of fifteen days for each docket. The courses are divided into two tracks, the civil and the criminal docket programs. It also offers special courses on specific legal issues, Prosecution of Software Piracy, Economic Crimes, and Judicial Ethics. MTC has collaborated with other organizations, including ABA/CEELI, PIOR, and European organizations. With the EU, for example, they have sponsored classes on European Legislation as it affects Bulgaria's need to harmonize Bulgarian law with the EU. A very positive feature of the MTC program has been the Training of Trainers program at both the basic and advanced level. As observed by the team, Bulgarian trainers now conduct all of the new magistrates training. In the specialized courses, foreign trainers/experts are used, such as the course on Economic Crimes: Banking, Tax and Financial Frauds in June and July 2000 and in the advanced Training of Trainers programs.

From the perspective of the impact of training on the way a system performs at the macro level, one of the important considerations is the extent to which the workforce in the system is stable, or experiences rapid turnover. As portrayed above, in the Bulgarian Courts, the turnover rate has been very high in the last ten years, especially among the Regional Courts, staffed for the most part by younger judges. As demonstrated previously, this creates a bi-modal age and experience profile that makes it difficult to develop a common training strategy. About one-third of the judges have considerable experience, whereas two thirds have less than ten years. The latter group is very unstable, with judges leaving the bench after 3 – 5 years. This exit rate obviously has an effect on training impact, as it makes little sense from a court system perspective to invest in training personnel who will soon leave. The government now requires mandatory training for all entry level judges, but also requires that they serve at least five years, or reimburse the government for training if they leave before five years is up.

Evaluation of the impact of training for individuals is also difficult. Most evaluations completed by trainees at the end of a course are almost uniformly positive if the course was at all well run and

reasonably on target. There is a “halo” effect that seems to occur with training.²⁴ Trainees have an opportunity for a break from their every day jobs. The training is usually held in a pleasant environment. Trainees enjoy the chance to party with old friends and make new ones. There is even opportunity for serious discussion and networking in one’s own profession. And often the substance and teaching is indeed interesting and first rate. End of course evaluations tend to reflect all these things, and hence rarely show much discrimination unless the presenter was really boring or poorly prepared.

Finding out what happened to the skills, knowledge, attitudes, and values that were being transmitted through the training experience once the trainee returns to the job is much more difficult. If a person returns to work and is unable to apply what was learned, or if the environment is not supportive of such application, the skills gained will quickly wither away. If training is targeted, relevant to the trainee’s job, and the work environment is supportive, it is more likely that the trainee will apply what was learned, and the training will have made a difference.

The USAID Bulgarian program has supported both high quality professional training through the MTC, supported technically by EWMI, and a more favorable work environment for some courts through the Model Pilot Court program, as described previously. Many more magistrates were also trained, but did not return to Model Pilot Courts. Therefore it seemed that a rough test could be made of the impact of training with a supportive environment in comparison to training alone, where trainees returned to a “normal” work place.

As part of a broader questionnaire, a maximum of 124 Magistrates were queried about their experience with training programs over the last ten years, or since 1991. The Respondents were about evenly divided between those returning to Model Courts, the hypothesized supportive environment, and those going back to their “normal” courts. Reflecting the predominance of female judges system wide, 82 or 71 percent of the sample were women Magistrates. The non-Model Court group had slightly fewer females than males.

The two groups differed with respect to age and level of experience however. Among Model Court respondents, 19 or 32% were under 35 years of age, while 46 or 80 % of the non-Model court Respondents were under 35. This young group was predominantly found in the Regional courts, where 75% of the non-Model court group was found, compared to the Model Court sample, where only 7 or 12% of the Respondents were in Regional courts, the balance being fairly evenly distributed between District and Appellate Courts.

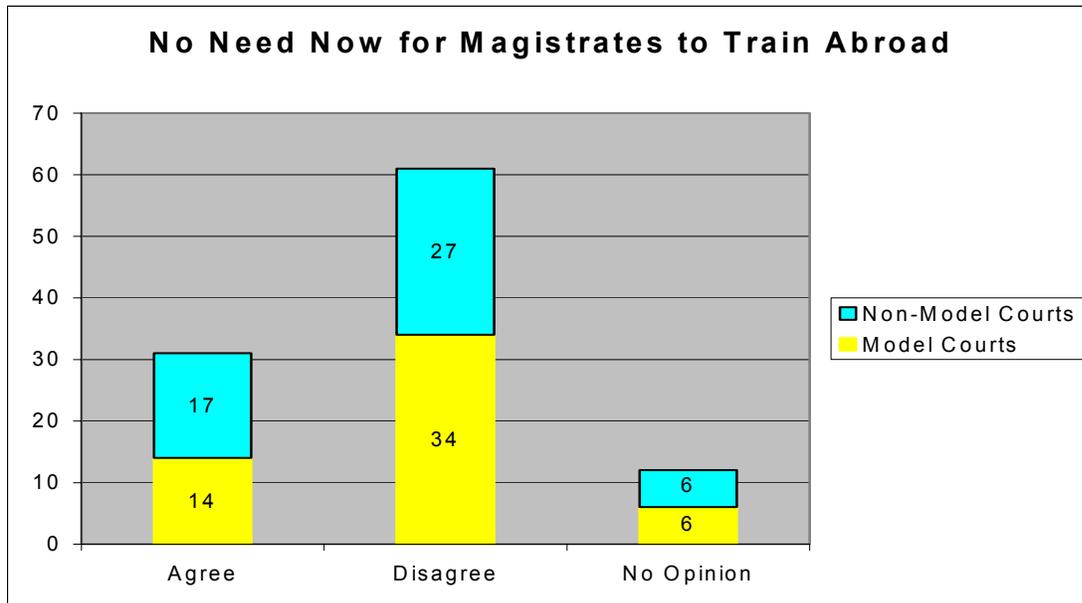
The sample does not represent the totality of the Bulgarian magistrates, most of who are young and serve in Regional courts. It does reflect the selection process of the Model Court Program, which has sought to work with more experienced Court Presidents found mostly at the District and Appellate levels of the system.²⁵ These judges also reflected greater specialization in law, with Respondents reporting

²⁴ This effect is well understood by EWMI, which plans to conduct its own impact evaluation as a follow-up to training programs. The assessment of training impact is very difficult. Respondents, as in this study, tend to report that training programs were useful and that they were able to apply skills, while finding it difficult to articulate exactly how the program was useful and what skills were applied in specific situations. This may be because what is learned, unless one is talking about how to work a computer, tends to merge into one’s general kit of knowledge, attitudes and skills after a very short time. The training may have had a useful effect and in general, moved the margin of competency up a few notches, but the respondent may still find it difficult to relate just how. The best test would be whether, all else being equal, the performance of the trainee had improved in some observable way before and after the training. That kind of test requires a more comprehensive design and longer term research management than USAID has felt able to support, given resource limitations.

²⁵ The intent of the survey design was to compare Model and Non-Model courts on training impact, not to generalize to the entire Bulgarian court system. Hence the over sampling of the Model Courts in this analysis.

specialization in Administrative, Commercial, and Family law, whereas Non-Model court judges were evenly divided between general civil and criminal law.

Turning to the Respondent’s answers to questions about training and training impact, it was somewhat surprising that only one Magistrate had had *long term* training abroad, in this case the Soviet Union. All other Magistrates had graduated with the standard Masters degree-equivalent from Bulgarian law schools. Of the total sample, 29% had entered the service after the requirement for mandatory entry-level training was established. Of the balance, 73% had also received some kind of training in the last 10 years. Only 22% had not received training, and most of these were more senior judges in District and Appellate courts.

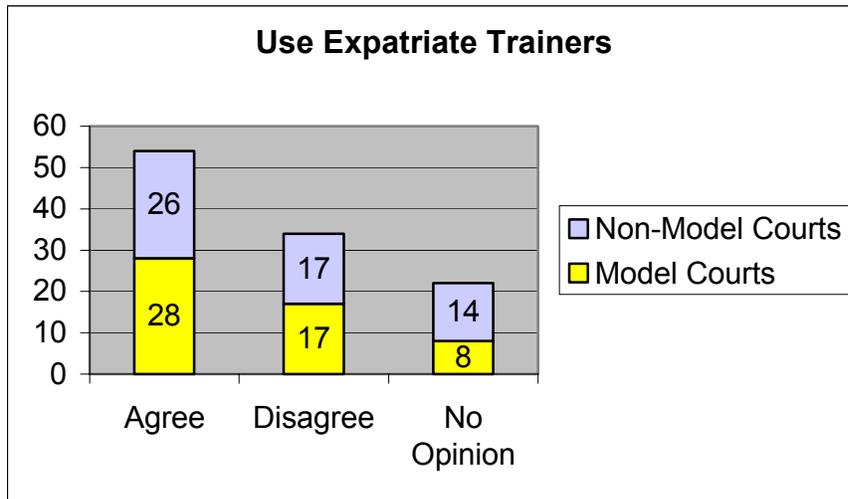


The Respondents were asked about what kind of training approach was most appropriate for training Bulgarian Magistrates. Five propositions were presented to which respondents were asked to agree, disagree, or state that they had no opinion. The first proposition was: There is not need for Magistrates to train abroad.

There is very little difference between the model and non-model respondents, with a combined majority of 61 or 58% believing that training abroad would be helpful to Bulgarian magistrates. Non-Model court magistrates are somewhat more interested in training abroad, but this may be a function of their younger age. With the advent of the EU accession, and the enormous amount of emphasis already being placed on harmonizing Bulgarian law with European law, Magistrates may have a case that direct exposure to European practices would be helpful to them in the future.

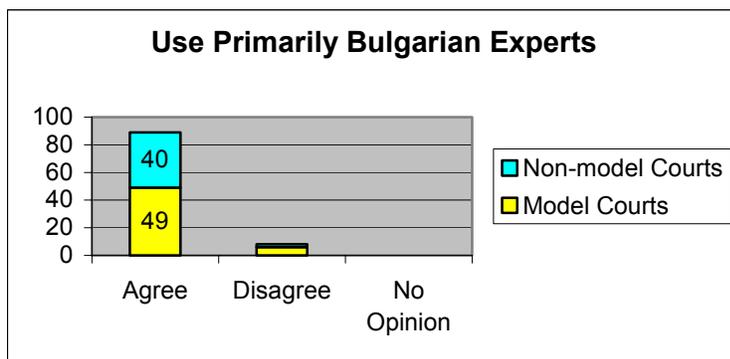
Responses to the questionnaire indicate that some magistrates had been exposed to training programs in Europe under various EU programs. Among the Model Court magistrates, there were 25 mentions of training experiences in Europe, mainly Netherlands or unspecified EU. The non-model court respondents reported only 12 such events, mainly in the Netherlands and Germany. These experiences in the main were rated as Highly Useful by respondents, especially respondents from Model Courts. Non-model court respondents tend to be more critical of courses offered by European states. The reason for this is not clear, and may be a function of an inappropriate match between the magistrates’ needs and what was being offered.

The second proposition was that training in Bulgaria using expatriate trainers was the best approach.



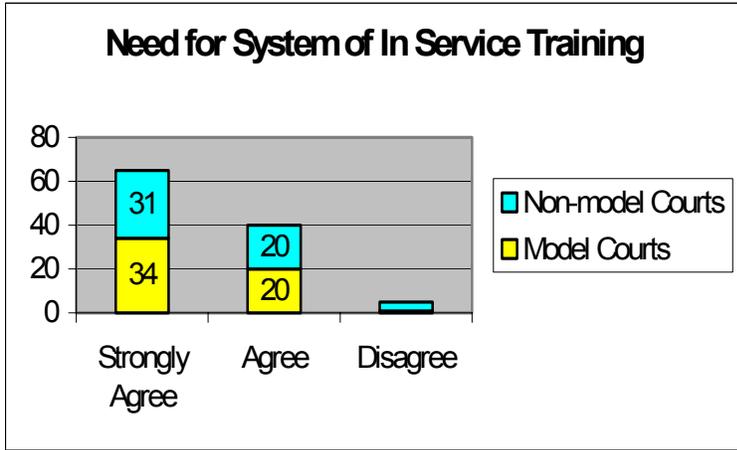
Here, 47 % agree, while only 30 % disagree, while a substantial number have no opinion. Not an overwhelming endorsement, but enough to encourage training programs to enlist some expatriate trainers. From the open-ended responses about expatriates, most would quite sensibly say it depends on the subject and the quality of the individual. Otherwise, for most subjects, they want to hear from more experienced Bulgarian jurists.

It is difficult to assess the value of the respondent’s positions regarding the role of expatriate trainers, as most of the respondent’s had very little exposure to them. Those trainees with exposure to expatriate trainers in the MTC program responded no differently than trainees without such exposure.

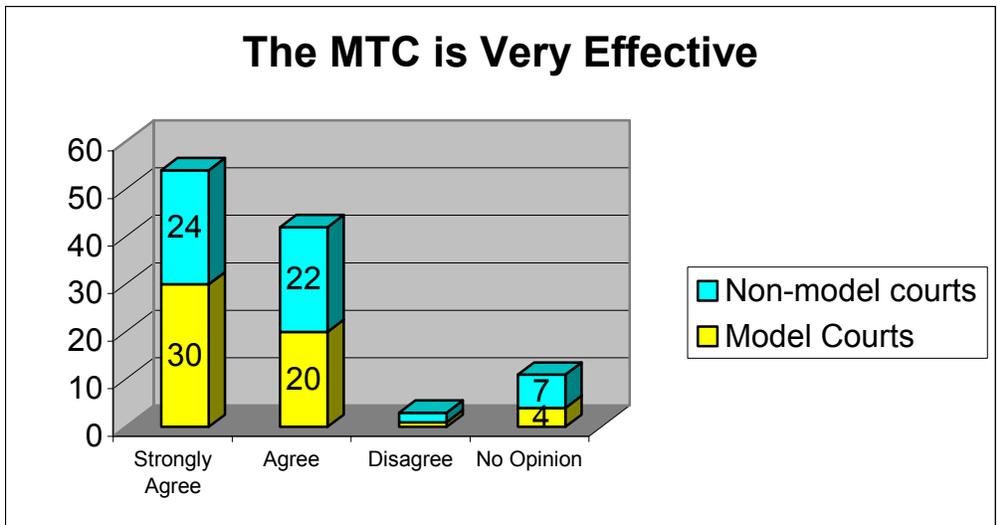


This general view was reinforced by the responses to the next proposition; training should be done primarily by Bulgarian experts. Although there were fewer responses, 91 % of those who did respond agreed with this proposition.

The next proposition was: There is a pressing need for a system of in service training for Bulgarian Magistrates. It is difficult to oppose training, but the vigor of the positive response was surprising. Here we asked Respondents to check whether they “strongly agreed”, “agreed” or “disagreed”. As may be seen, very few disagree, but 59% of the Magistrates Strongly Agree with the proposition.



The final proposition, following up from the previous question, assessed the respondent appraisal of the effectiveness of the Magistrate Training Center, supported by USAID and through the EWMI project. The responses to these propositions are reasonably consistent. Magistrates want systematic in service training, they value training experiences abroad, and they see a role for expatriate trainers under certain conditions



but believe that Bulgarians should do most of the training. On the performance of the Magistrates Training Center, they are very positive, with over 90% agreeing that the MTC has been very effective in providing training to Bulgarian Magistrates.

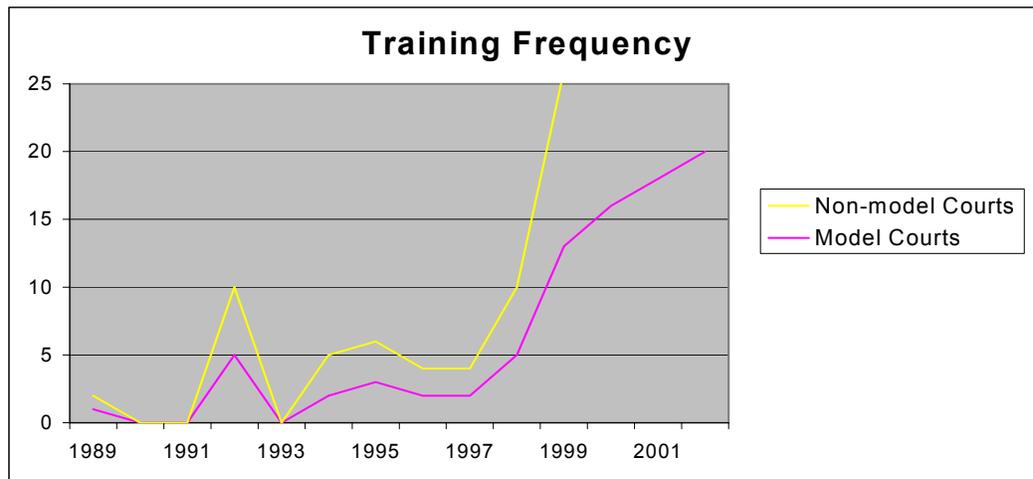
From the perspective of the Model Court versus Non-Model Court hypothesis set out above, there is almost no difference in the responses to these propositions between the two groups.

To assess the impact of the training respondents had received in the last ten years, we asked them first to recall the subject of the training, when it was given, and under what organization's sponsorship. Then for each course they mentioned, we asked the respondent to tell us whether the course was very useful, useful, somewhat useful, or of limited use. Then we asked them to say whether or not they were able to apply what they had learned in their work place as Magistrates. In coding the responses, we made a list of all courses mentioned, then recorded the answers to the utility and impact questions by each respondent

for each course taken. In this manner we hoped to be able to assess which courses had the most utility and were actually used by what percent of our sample. We coded responses for Model Courts separate from Non-Model Courts with a view toward testing the hypothesis that training plus a positive working environment made a difference in the utility and impact of the training.

The numbers reported below do not correspond necessarily to the array and frequency of training courses provided by different donors and organizations. These numbers reflect what respondents remember, but since the experience of training for this group was quite real, the magnitude and relevance of their training experience is relevant.

The first finding relates to the array and frequency of training by year since 1991, as remembered by Magistrates.



Among the older Model Court Magistrates, some training was available to them beginning in 1992, but for the most part, efforts to train Magistrates from 1991 to 1997 were spotty and not very systematic. Beginning in 1995, training began to pick up, with 1999 being the first year the MTC introduces a substantial schedule of courses. By 2000, mandatory training is taking effect, and number of training offerings for both Model and Non-Model courts increases substantially.

Specific training offerings are dominated in Magistrates minds by the MTC program, although Magistrates do recall other courses. The sponsors and courses mentioned are:

Distinct Courses Identified by Magistrates 1990 to 2002		
Sponsor	Model Courts	Non-model Courts
MTC	25	32
PIOR	6	1
MOJ	4	3
EU/PHARE	12	1
Dutch/PHARE	11	6
German	2	5
NGOs (OSI, etc.)	4	11
Other USAID	2	1
USAID Participant training	7	1

Bear in mind that the Non-Model Court respondents are younger, more of them came in to the Courts after training became mandatory, they have less experience, and, because they are younger, they are less exposed to offerings from EU or USAID participant training. With the exception of MTC training, these

younger Magistrates are not the targets of most donor sponsored training programs. More specialized offerings and training opportunities in Europe tend to be availed by more senior magistrates.

To examine utility and impact of training, we again rely on what respondents told us. This is at best a second or third best approach, but given the time and resources available, we hoped that it would yield useful data. Because of the dominance of the MTC in providing training, and because USAID is the primary consumer of this report, we present utility and impact ratings primarily for those programs clearly identified with USAID funded activities. For comparison purposes, we also include the ratings given to EU and Dutch training, since these were the second largest block of frequently mentioned courses by the Respondents.

Respondents by and large were reluctant to rate training programs as less than useful. They were somewhat more discriminating when asked whether they had actually applied what they had learned, but here too, ratings were mostly positive, as seen below.

Impact and Utility of Training (number in parenthesis indicates number of training events identified)										
Sponsor	Very Useful		Useful		Somewhat or lower		Applied		Not Applied	
	Model	Non-Model	Model	Non-Model	Model	Non-Model	Model	Non-Model	Model	Non-Model
MTC (25)	11 (39%)	95 (64%)	15 (53%)	46- (31%)	2 (7%)	7 (5%)	19 (63%)	105 (80%)	11 (37%)	25 (20%)
PIOR (CEELI) (6)	4	-	7	4	1	-	9	4	3	-
PHARE	10	-	2	3	1	-	7	3	4	-
Dutch	9	4	3	-	-	6	11	7	1	3
USAID PTO	9	3	-	-	-	-	9	3	-	-

Comparing the responses of Model versus Non-Model Court respondents with regard to the utility and impact (application) ratings given by respondents, it appears that Non Model Court respondents are more positive about the utility of the training received, and are more likely to say that they have applied such training, than are respondents from Model courts. Of Model Court Respondents, 39 % rate MTC courses as very useful, compared to 64 % of Non Model Court Respondents. Again, 80 % of Non-Model Court Respondents said they applied their training, compared to 63 % of Model Court Respondents. This is the opposite of what our hypothesis would predict. Why?

The reason is that our Non-Model court group is younger, their training of a more recent vintage, and the relationship between their course work, mainly their first systematic exposure to what it means to be a Magistrate, and their actual work experience is much more direct, even though these respondents may not work in the “improved” environment of the Model Court. Younger judges may also be more insecure, and more quickly ready to recognize the value of training, compared to older, more experienced Magistrates who will, inevitably, filter new training through the lens of their own experience. It may be also that the Model Courts are not as complete a transformation of the working environment as the causal viewer might expect. Model Court judges still have to deal with faulty procedural codes, pressure to move cases, limited number of hearing rooms, and the like.

Corruption

The general view of the Bulgarian judiciary is of an institution extensively riddled with corruption. This is the view of the Bulgarian public, Bulgarian commercial attorneys in Sofia, officials in many foreign Embassies including the United States, and is acknowledged by many Bulgarian Magistrates as the generally held view of these various publics. On the other hand, Bulgaria’s overall corruption level is

rated by Transparency International as comparable to that of Poland, and improving from its 1997 ranking of 96th place to 2002's ranking of 46. Similarly the ABA/CEELI Judicial Reform Index on this issue concludes that corruption in the judiciary has been exaggerated, and is not nearly as pervasive as general opinion seems to believe. There is however significant high stakes crime (e.g. trafficking in drugs and women, corruption on the commercial side) that goes unpursued or unpunished.

It is important to make distinctions when discussing corruption. Generalization to an entire class of persons is not helpful if one is also trying to provide technical assistance to those Magistrates who do seek to do a better job. Sitting judicial magistrates do not give very high priority to having written ethical codes, as most say that one is either ethical inside, or not, and written codes are not going to make much difference. What might make a difference would be the following:

- Reduce the number of opportunities for corruption that are a product of procedural complexity and extensive regulation.
- Improve the salary of sitting magistrates.
- Improve the overall status, professionalism and morale of the judiciary by investing more money in training, courtroom improvements, better management and IT systems.
- Put in place in the Bar and in the Judges Association a professional disciplinary system with powerful sanctions for ethical breaches.²⁶

Donor assistance to anti-corruption efforts is significant and operates at several levels. EU and World Bank support is conditional on the Bulgarian government doing more to control corruption. The US Ambassador has made public statements about corruption in Bulgaria, calling on the government to take more effective action. ABA/CEELI has persisted in developing codes of ethics for lawyers and judges, has developed programs to train officials in procurement law, and since 1997, has cooperated with the MOJ and Coalition 2000 to help shape the Judicial Reform strategy. In 1998, CEELI initiated a DOJ-CEELI program focused on criminal law reform, including training programs on public corruption for prosecutors. It may be argued also that USAID support for Public Interest NGOs advocating for greater transparency in the legislature and the courts, as well as many of its commercial law reforms related to banking and bankruptcy help to bring public pressure to bear and to reduce the opportunities for corruption.

Arguably these efforts are beginning to have effect, if one accepts the conclusion of the most recent Transparency International Ranking as discussed above. On the other hand, the perception of widespread corruption persists, and the frequently cited failure of the government to take action against the “commanding heights of organized crime” is testimony to the difficult task that remains.

Direct foreign assistance through projects such as the DPK program on government procurement are of recent origin. If we take the Transparency International Rating as a marker of progress, it may be argued that these programs, along with CEELI's long standing effort (but still not entirely successful; see later sections of this report) to get judicial and bar associations to take responsibility for maintaining ethical standards, are beginning to have some success. Coupled with the organized efforts of the Coalition 2000 group of NGOs, also supported through foreign assistance, it may be that the cumulative effort of these groups is creating a body of public opinion that will judge the political leadership in the next election on the basis of their performance with respect to installing an effective Rule of Law. Having said that, there is little evidence that one foreign assisted program or another has been the key causal factor in either

²⁶ USAID comments on an earlier version of this report state that USAID is addressing these issues, especially training. The Report has already stated that USAID supported training efforts through the MTC have been very well received by Magistrates. As the MTC matures, the hope is that it will expand its offerings to include training in very specialized areas of law confronted by more senior and higher-level judges. USAID Memorandum, November 3, 2003 and interviews with magistrates.

raising public attention or to reducing the degree of corruption in Bulgaria. For reasons well described by Robert Hislope in his analysis of corruption in neighboring Macedonia, which includes the drug and trafficking trade through Bulgaria and across Macedonia, it will take more than ethical codes and NGO pressure to counter the power and influence of those who profit from corrupt practices.²⁷

The Operations of the Judiciary

Much of the quantitative data on the functioning of the Bulgarian courts, especially with regard to caseload and case closure, comes from statistics compiled by the courts and aggregated at Ministry of Justice. USAID and other foreign donors tend to be highly skeptical of these data, pointing out that the prevailing view of various Bulgarian experts is, for example, that case filings are increasing and the length of time needed to close cases is expanding to the point that it takes 4 to 5 years to reach a verdict in most cases. The team has chosen to present the court's quantitative data that shows that caseload filings are not increasing dramatically, and the length of time to reach closure is becoming shorter. Both conclusions may be true; some cases may indeed become long, drawn out affairs, even while the great majority of "normal" cases are closed with dispatch. The team believes that the court statistics presented below should not be ignored, even if treated with some skepticism, as they do reflect general trends that need to be taken into account when developing rule of law programs. The alternative is to rely exclusively on self-interested opinions and anecdotal evidence. One obvious intervention that could be mounted by donors would be a concerted effort to improve the quality and relevance of statistical reporting.

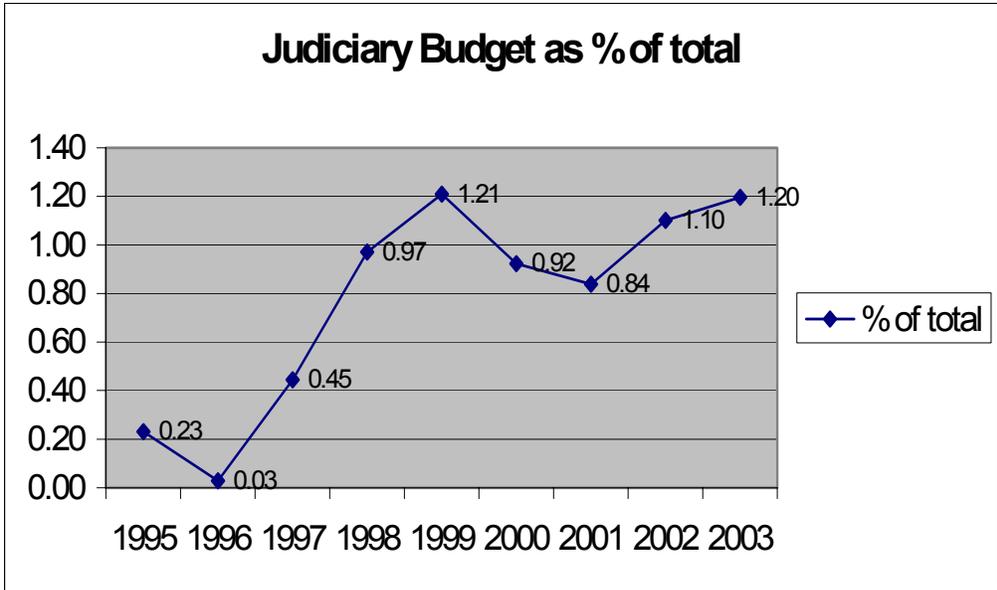
Although the JSA establishes the Supreme Judicial Council as the governing body for judicial independence and the Bulgarian Constitution requires that the judicial branch be independent and have an independent budget,²⁸ it is widely acknowledged that the SJC has neither the administrative capacity nor resources to fulfill this function, and that the finances allocated for the operations of the courts are insufficient.²⁹ Although the Bulgarian government has prepared a Strategy for Reform of the Bulgarian Judiciary,³⁰ significant increases in the judiciary's budget allocation will be needed to accomplish its objectives.

²⁷ Robert Hislope, **The Calm Before the Storm? The Influence of Cross-Border Networks, Corruption, and Contraband on Macedonian Stability and Regional Security**. Paper Prepared for Presentation at the 2001 Annual Meeting of the American Political Science Association.

²⁸ *JSA*, Art. 16-34; *Constitution of the Republic of Bulgaria*, Art. 117.

²⁹ See East West Management Institute, *Policy Analysis: A National Court Administration for Bulgaria*, July 2001 for a detailed assessment of the institutional and administrative needs of the SJC.

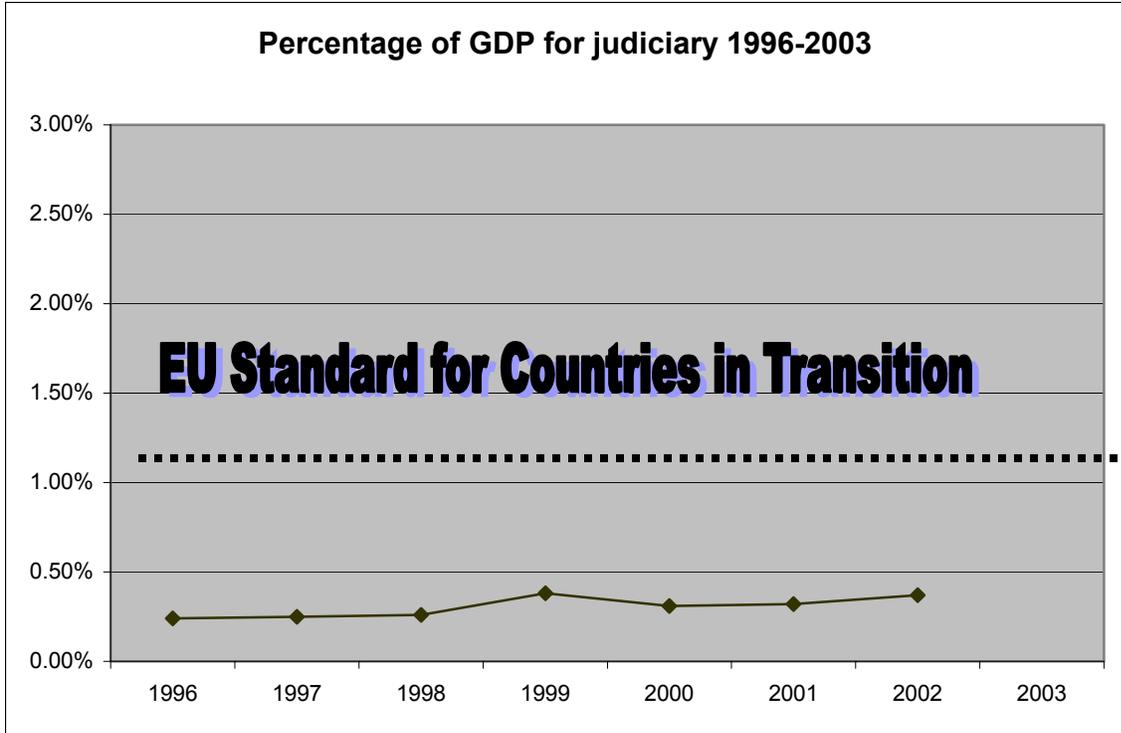
³⁰ Government of Bulgaria: *Strategy for Reform of the Bulgarian Judiciary*, Ministry of Justice, 2001.



The Bulgarian government's budget allocation to the Judiciary is demonstrated in the following tables. The first table demonstrates the changes in Judiciary budget as a percentage of the entire government budget from 1995 to the present.

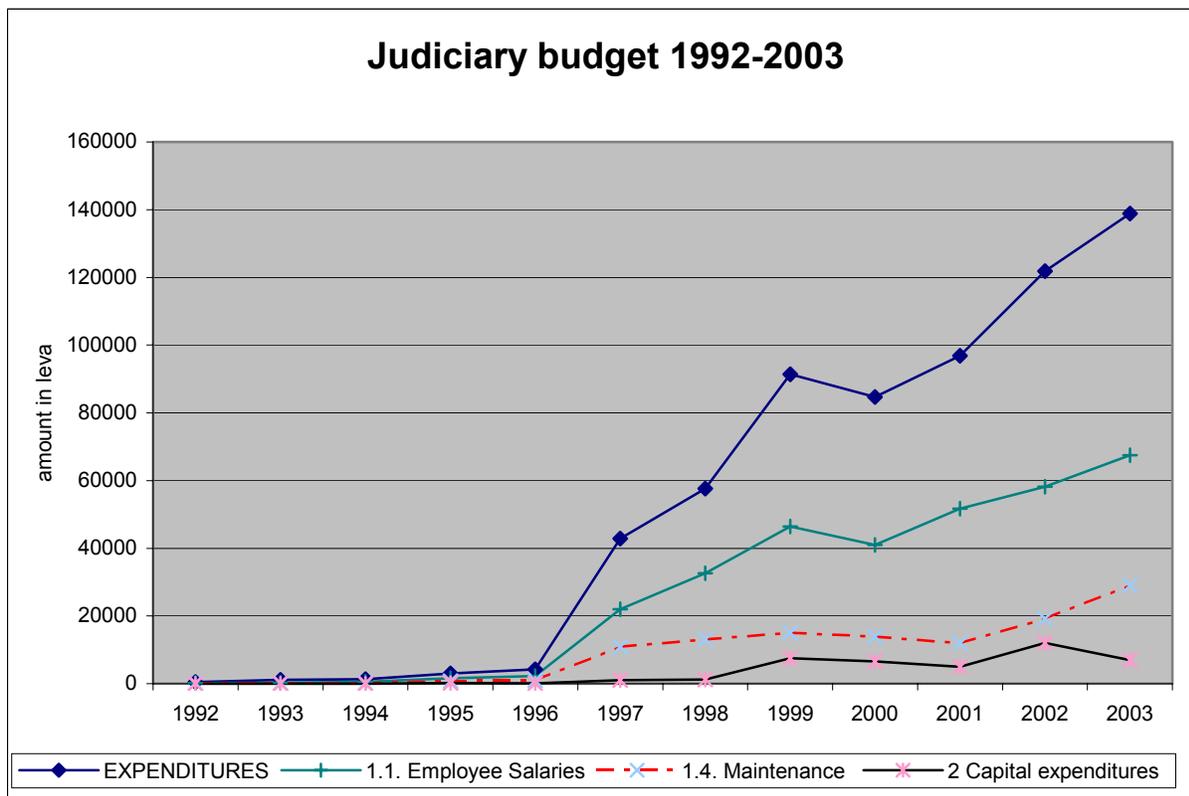
The absolute budget for the judiciary increased significantly from 1996 to 1999, and with some slippage, has remained near or above 1 % of the total budget since 1998. Much of this increase has gone to salary increases for judges and court personnel.

As a marker of the level of financial effort by the Bulgarian government to support the judiciary, the amount of judicial budget as a % of GDP is displayed in the next table. The Bulgarian economy has stabilized since 1996, and recent growth has been in the 4 to 5 % range. However, the amount received by the Supreme Judicial Council as a percent of GDP has remained almost flat, suggesting that the absolute increases in the budget are not reflective of a shift in government priorities. Also, as indicated in the next graph, the Bulgarian judicial budget is far below the level considered standard by the EU for transitional countries



What does the judiciary budget pay for?

The budget in absolute terms has increased substantially and steadily since 1996, a point at which the Bulgarian government was for practical purposes, nearly bankrupt. As may be seen from the third graph, most of the increase has been for salaries, while maintenance and capital expenditures have remained almost flat since 1996. This absence of budget for maintenance and supplies is reflected in the frequent remarks by magistrates about having to buy paper, computers, and other office supplies from their own funds, as well as in the generally sorry appearance of Bulgarian courtrooms. As will be seen below, the absence of adequate courtroom space is an important constraint to the efficiency of the judicial system. This rather bleak budgetary situation is relieved somewhat by the Government’s agreement to allow the courts to keep receipts from license fees, fines and other court charges as a means of defraying the cost of running the courts. In 2002, these revenues were BGN44.5 million, or approximately 27 % of total revenues available to the courts.



Implications of the budgetary process for Rule of Law

By Bulgarian law, the judiciary should have its own budget. The Supreme Judicial Council prepares a budget each year, but the executive branch routinely submits a budget to parliament that is about 30 % lower than that requested by the SJC. In 2003, the line item for the Supreme Court of Cassation was cut substantially, leading the SCC to bring legal action against the Government for failure to meet the constitutional requirement of separation of powers. On the other hand, many observers find fault with the SJC weak capacity to present a strong case for increased budget support. The EU noted in a 2001 report that “procedures for funding the management of the court...are complicated and untransparent” and called for more open and fact based process.

The implications of budgetary under-funding are serious for the Judicial Reform effort. The government’s strategy and the recent amendments to the Judicial Act would, if finally promulgated, have important budgetary consequences. For example, the establishment of a Judicial Training Institute, the requirement that all entry-level judges receive training, the commitment to introduce a modern information management technology, efforts to increase the number of courtrooms, all will cost substantial amounts of money.

Another major concern for the magistrates is salary. Wages for Bulgarian magistrates remain very low. Entry-level magistrates receive BGN 520 or roughly USD 280 per month. The basic salary for the head of the Supreme Court of Cassation is BGN 1549 or USD 860 per month. This does not compare well to the salary received by a member of the Romanian SCC, at USD2800. Low salaries contribute to low morale among magistrates. When asked to name the three top priorities for reform, salary increase was the number 2 choice for all judges. One President of a Regional Court said that salaries should be doubled.

Another, a young female magistrate, told the team that the reason there was such a gender imbalance among the magistrates, particularly at the lower levels, was salary. A young married woman with a law degree could supplement family income by becoming a magistrate, a job that also permitted her to keep regular hours. Most men similarly trained look for more remunerative employment in private law. Other respondents made an additional point: the reason so many people left the judiciary after 3-7 years was that they saw the job primarily as a training ground to establish their knowledge and networks in the legal profession, whereupon they could leave to pursue more lucrative careers.

Budgetary shortfalls and reliance on “fines and fees” to supplement the budget also mean that the courts are not managed according to uniform standards or prioritized needs. Some courts are well managed and do find revenues to buy computers, for instance, while others lag well behind.

Financial Management

The management and operations of each court are the responsibility of the court president, a person who is often unfamiliar with administrative or managerial principles and who receives no formal training for the position.³¹ He or she (approximately 70% of the judges are women³²) works with an administrative secretary to fulfill all of the court’s administrative functions.³³ More to the point is that there seems to be little in the way of overall financial management standards in the Bulgarian court system. The very limited staff capacity of the Supreme Judicial Council makes system management almost impossible. The formula of state budget for salaries along with local fines and fees for court expenses promotes a great deal of decentralized financial management, resulting in considerable unevenness in the availability of funds for each court. This inhibits capital expenditure financing greatly, as well as making it difficult to present an over all case to the government for judicial financial requirements.

General Trends in Case Filing³⁴

Court filings have been relatively steady over the last 8 years, with some intermittent spikes, reportedly caused by particular types of lawsuits, such as restitution of private property or labor cases, as well as by changes to the procedural codes. **The main problem posed by the current numbers, however, is the judicial workload, which, exacerbated by the guidelines set by the Ministry of Justice and the procedural codes on judicial efficiency,³⁵ puts a dangerous burden on the judges to act as quickly**

Court Statistics

Although all courts keep detailed statistics, which are regularly transmitted to the Ministry of Justice, the practices are widely varied and the numbers often primitively compiled. Although a number of conclusions in this report are based on the analysis of these figures, they should be treated with a certain degree of skepticism. Nevertheless, they offer an interesting counterweight to the hearsay that is often used to draw conclusions about court operations.

³¹ See Section D2, OSI, *Judicial Capacity in Bulgaria*, 2002.

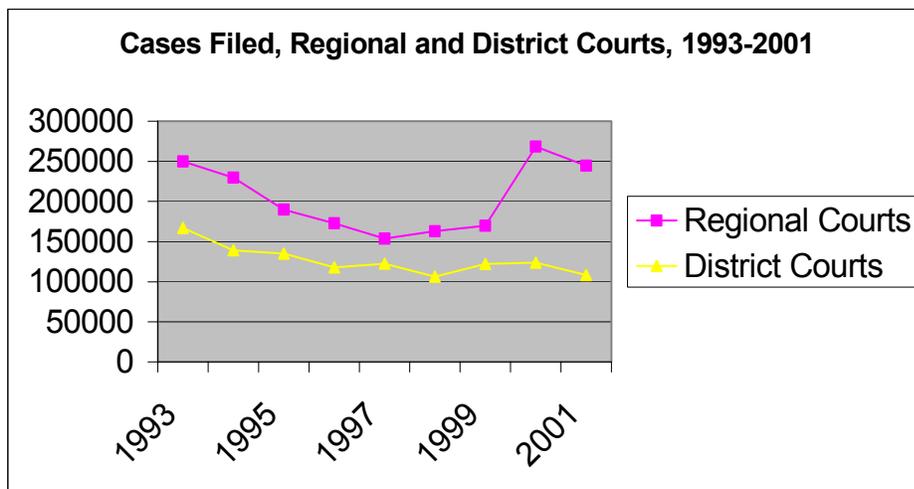
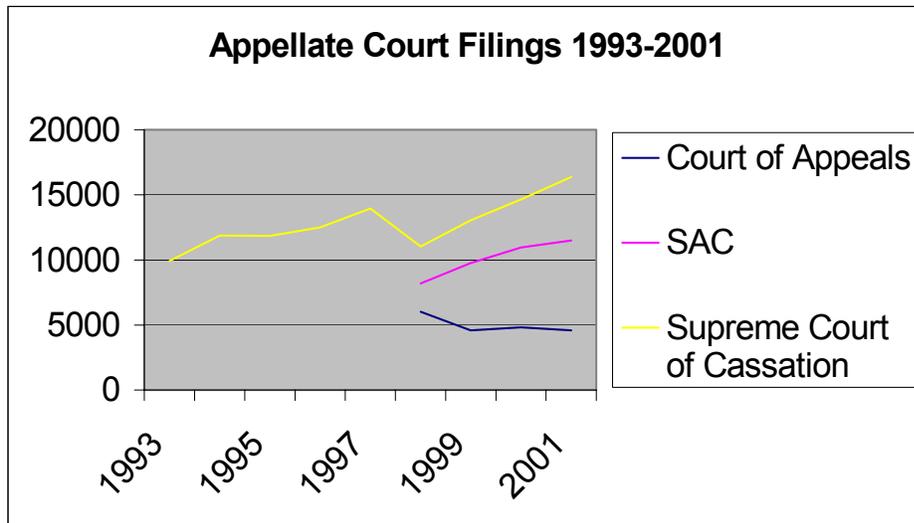
³² IDLI, *Assessment of the Training Needs of Bulgarian Judges*, 2000 (Data from questionnaire results).

³³ They are defined in *Regulation 28*, issued by the Ministry of Justice in 1995, a revised version of which is scheduled to be issued after the new Judicial Systems Act is passed.

³⁴ The Bulgaria Ministry of Justice, whose recordkeeping practices have been criticized by the World Bank as “not very reliable”, provided most of the statistics in this report. (See World Bank, *Legal and Judicial Reform Assessment*, March 1999, p.7. and Text box, inset.

³⁵ *Civil Procedure Code*, Art. 190; *Criminal Procedure Code*, Art. 306.

as possible. The monthly workload in 2001 was 35.25 new cases /judge in the regional courts; 16.26 in the district courts.³⁶ This problem is further compounded by the lack of sufficient hearing rooms, the generally poor facilities and the need for multiple hearings in almost all cases.



These statistics are interesting for a number of reasons. The most striking characteristics relate to what appear to be generally accepted truths in the Bulgarian system: that all cases are appealed and that the total number of filings is constantly increasing.³⁷ **The data suggest that total filings are relatively steady and that only a small percentage of cases are actually appealed.** The Ministry of Justice in its 2001 Annual report, which states that both the regional and district courts have been working effectively, confirms this information.³⁸ By comparison, for civil cases in the U.S., in the twelve-month period ending

³⁶ Ministry of Justice, 2001 Annual report (Doklad) p. 13,20. This figure is in addition to cases already pending. The Ministry has also expressed interest in developing a better methodology for assessing judicial workloads (*id.* pp. 25-26).

³⁷ See, for example CEELI, *Judicial reform Index* 2002 p.44 “caseloads have increased dramatically”; OSI, *Monitoring the EU Accession Process: Judicial Capacity* p. 73.

³⁸ Ministry of Justice, *Annual Report*, 2001 (p.5, 16).

March 31, 2001 there were 249,570 federal cases terminated in the district courts,³⁹ compared with a total of 35,941 appeals filed.⁴⁰ This makes for a ratio of civil cases terminated to appeals filed of 14% in the US, compared to 5% in the Bulgarian Courts of Appeals and 13% in the district courts. The corresponding figures for criminal cases in the US for 2001 were 10,260 criminal appeals⁴¹ against 58,790 terminations,⁴² a ratio of 17%, compared to 8% from the Bulgarian regional courts, 16% from the district courts.

Comparison of Lower Court Cases Appealed in the U.S. and Bulgaria, 2001					
Civil Cases			Criminal cases		
U.S.	Bulgaria		U.S.	Bulgaria	
	District	Court of Appeals		District	Court of Appeals
14%	13%	5%	17%	8%	16%

The only courts in which caseloads have been steadily increasing are the Supreme Administrative Court and, for the most part, civil cases in the Supreme Court of Cassation. The former, however, has also grown dramatically, from 10 judges in 1997 to 55 today.⁴³

Perhaps the most prominent characteristic of the information tracked by the MOJ is the number of cases resolved in less than three months, a standard that appears wildly optimistic, given the mean disposition time in U.S. federal courts of approximately 7 months for criminal and 9 months for civil cases.⁴⁴ This three-month benchmark appears to have been set arbitrarily by the Ministry of Justice as a measurement of court efficiency, but it is a figure of which court presidents are acutely aware.

Percentage of Cases Resolved in Less Than Three Months				
	Regional Courts		1st Instance District Courts	
	Civil Cases	Criminal Cases	Civil Cases	Criminal Cases
1993	65	64	91	86
1994	57	59	89	83
1995	54	53	88	79
1996	53	55	84	71
1997	53	51	83	75
1998	56	46	82	78
1999	59	58	81	75
2000	66	65	77	93
2001	60	62	74	90

The Legislative Framework for Judicial Operations

In addition to the discussions regarding the Judicial Systems Act and changes to the Constitution, there have been a number of changes to the Civil and Criminal Procedural Codes that have had an impact on

³⁹ US Courts, *Federal Judicial Caseload Statistics*, March 2001 (<http://www.uscourts.gov/caseload2001/tables/c00mar01.pdf>).

⁴⁰ *id.* (<http://www.uscourts.gov/caseload2001/tables/b07mar01.pdf>).

⁴¹ *id.* (<http://www.uscourts.gov/caseload2001/tables/b01mar01.pdf>).

⁴² *id.* (<http://www.uscourts.gov/caseload2001/tables/d00mar01.pdf>).

⁴³ Interview with Judge Svetla Petkova, Supreme Administrative Court, January 2003.

⁴⁴ <http://www.uscourts.gov/cgi-bin/cmsd2001.pl> The median time from filing to trial in civil cases in the federal courts is 22 months, compared with 30 months for tort cases in state courts in 1993. See NCSC, *Caseload Highlights* (http://www.ncsconline.org/D_Research/csp/Highlights/vol1no1.pdf).

court operations. Because the judiciary has little control over many of the basic rules of practice in the courts, it is beholden to attempts by the legislature to improve the efficiency of court practice. These rule changes can be modified or “explained” by interpretive decisions of the Supreme Court of Cassation, a process that can put the judiciary at odds with the legislature over relatively mundane aspects of court procedure. Although the changes have often attempted to deal with problems acknowledged by the courts and the donor community, they have frequently sought to improve court efficiency by legislative *fiat*.

Summary of Recent Procedural Changes Related to Court Administration

Procedural Change	Cite ⁴⁵
Judge should deliver decision at final hearing or, if cases are difficult, within one month.	Art. 190 CiPC (1997)
Must produce all evidence at initial hearing or pay 100 lv. to submit new material	Art. 110, CiPC (2002)
Determining dates for hearings after the initial hearing are the parties’ responsibility	Art. 41, CiPC (1997)
Court may revoke prosecutor’s decision to terminate a case and prosecutor may appeal the decision.	Art. 236, CrPC
Prosecution and defense may settle cases	Art 414F, CrPC
Plea bargaining allowed in criminal cases	Art. 414g, CrPC
Hearings may still be conducted if parties fail to appear (although non-appearance due to “sudden illness” is grounds for adjournment.	Art. 107, CiPC Art. 268, 269 CrPC
Courts can fine lawyers up to 100 lv. for delay	Art 71, CiPC (1997)
May summon parties by telephone or facsimile in urgent cases	Art. 41 CiPC (1997)

Although these changes have been enacted to reduce delays, it is not clear that the judges are using their new powers. Anecdotal evidence suggests that judges are hesitant to impose sanctions or to exclude evidence.⁴⁶

Court Administration

Court administration has been the focus of recent attention, due mainly to the proposed amendments of the JSA, which, among other, more politically volatile topics, create a “court administrator” position to assist in the operations of each court.⁴⁷ The topic has also received some outside interest as a result of a USAID-funded court administration and training project; a UNDP-sponsored proposal for the creation of regional administrative courts;⁴⁸ and an EU program for capital investment.⁴⁹ Except for the USAID project, the vast majority of work in this area has been in the form of assessments, evaluations or proposals for restructuring, which, by their nature, has little direct impact on the business of the courts.

Baseline Data and Change over Time

In 1992, ABA-CEELI presented an *Analysis of the Bulgarian Court System* to the then Minister of Justice Svetoslav Lutchnikov. The report contained a number of recommendations related to court administration, which are summarized in the table below. Although some progress has been made in many of these areas, it is clear that much remains to be done. In addition to the problems caused by the inadequacy of existing facilities, poor management techniques and procedural impediments have been

⁴⁵ CiPC (Civil Procedure Code); CrPC (Criminal Procedure Code).

⁴⁶ The application of these provisions should be substantiated by further research in order to accurately gauge their impact.

⁴⁷ Art 188q, *Proposed Amendments to the JSA*, 2002

⁴⁸ See Daniel Bilak and Denis Galligan, *Comprehensive Review of the System of Administrative Justice in Bulgaria*, 2003

⁴⁹ Interview with Milena Damianova, EU Delegation to the European Commission to Bulgaria, January 15, 2003. See also *Overview of PHARE Projects in the Field of Judiciary and Human Affairs*, 1999-2002, p.5

continuous constraints on improvements to court administration. The progress on each of these recommendations is discussed below.

Court Administration Recommendations From 1992 ABA/CEELI report

1. Creation of national rules of practice
2. Give judges contempt and sanction authority
3. Delegation of scheduling, case assignment and statistical reporting
4. Equalize workloads among lower court judges
5. Develop statistical profiles for court and judicial productivity
6. Modify the system for recording court proceedings
7. Create uniform case log or docketing system
8. Design and implement coded case cover sheets
9. Require uniform size for submissions
10. Improve public access to case files
11. Establish fee schedules for court services
12. Shift responsibilities for service of documents from court to advocates
13. Develop automated case management systems
14. Create IT development team in the Ministry of Justice
15. Select pilot courts for automation projects
16. Encourage development of automated legal research tools
17. Introduce generic office technology into the workplace

1. Created national rules of practice

While there are in effect, national rules of practice (the respective procedural codes, discussed *supra*), the judiciary would benefit tremendously from the ability to control the basic rules of practice in the courts. Many changes since 1991, such as the requirement that all evidence be submitted at the first hearing and the increased power of the judge to impose sanctions for delay, appear to have been enacted independently by the government with scant consideration of their potential impact or of their application to the movement of cases through the system. Although judges acknowledged their input into many of these efforts, the system would be well-served by allowing the judiciary to take responsibility for procedural codes, with changes subject to parliamentary approval. Judicial ownership of the rules of procedure might also help to address the problems with application, as well as conflicts with Supreme Court interpretive decisions discussed earlier.

Additionally, the basic structure of the procedure is a major impediment to efficiency. The process by which evidence and testimony are submitted at individual, intermittently scheduled hearings is a major obstacle to efficiency and is further compounded by the scarcity of hearing rooms. One of the most dynamic judges interviewed suggested that a process by which documents and expert opinions were exchanged by attorneys out of the court, followed by a single hearing in which all witness testimony was heard, would be a much more efficient model for resolving disputes. In light of the magnitude of the problems imposed by the current process of multiple, single-purpose hearings, it is not surprising that many of the procedural reforms approved to increase efficiency seem to have fallen short of their goals.

2. Gave Judges Contempt and Sanction Authority

Since 1997, Article 71 of the Civil Procedure Code, has allowed courts to impose fines for delay, although it is not clear at this point to what extent the sanctions are being imposed and whether they have altered the behavior of attorneys in any way. In one of the hearings attended, although the lawyer proposed the imposition of a fine when the opposing counsel did not appear, the judge did not comply.

Nevertheless, judges do now have the power to impose such fines and a number of hearings attended went forward, despite the failure of one of the attorneys to appear. Like the many other changes to the procedural codes, this seems to have been enacted with little outside help, and to have been motivated by a genuine desire for reform, most likely to advance the quest for EU accession.

3. Delegated scheduling, case assignment and statistical reporting

While statistical reporting does generally appear to be delegated to the administrative secretary in most cases, case assignment is the exclusive province of the court president, or, in some cases, the divisional chief. The Ministry of Justice has prepared Microsoft Excel templates for statistical reporting, and courts are incrementally moving away from the handwritten, unwieldy format that has been the norm. The decision to use these templates appears to be a factor of the availability of computer equipment and the motivation of the court president to use it for this purpose. Some, though not all of the USAID pilot courts visited were able to provide statistics in this format, and some non-pilot courts, which had acquired computer equipment from the Ministry of Justice or their own budgets, were also able to comply.

The president tries to assign cases according to the workload or known specialty of each judge. While this procedure has been criticized for lacking objectivity,⁵⁰ it does serve as a mechanism for addressing the realities of widely differing levels of competence and judicial workloads. Although the software developed by the EWMI project has a random case assignment function, it is not widely used, due to the desire of court presidents to balance workloads and to assign cases based on judicial specialties. Court presidents overwhelmingly supported this model as a means of combating judges' inexperience with particular types of cases.⁵¹

4. Equalized workloads among lower court judges

While court presidents do attempt to achieve workload balance by maintaining control over the scheduling process, there is no formal mechanism to track judicial workload. Additionally the encouragement by the Ministry of Justice that cases be resolved within three months and the requirement that decisions be issued within one month after the last hearing⁵² present tangible difficulties when a disproportionate number of complex or novel cases are assigned to one judge.

5. Developed statistical profiles for court and judicial productivity

Although the Ministry of Justice is keeping track of some court statistics, including the number of cases resolved within three months, they do not appear to monitor other productivity statistics, such as average time to disposition, time between hearings, etc. These statistics would serve to better depict the impediments to effective case processing, such as insufficient judges or hearing rooms, overlong time to decision or the number or infrequency of hearings.

Statistics provided to the Ministry of Justice are used in the compilations of annual reports, which assess court performance, both in terms of speed and quality. It is not clear, however, that much attention is paid to the findings, and the data is presented only in very general terms. The compilation and analysis of statistics appears to be a rote process, with little practical impact on policy decisions.

⁵⁰ CEELI, *Judicial Reform Index 2002*, p.31

⁵¹ The USAID Mission has informed the team that since the research for this Assessment was completed, EWMI has worked out a new relationship with the software developer and that an upgrade to the CMS has been completed. USAID Memorandum, November 03, 2003.

⁵² Art. 190 CiPC.

6. Modified the system for recording court proceedings

Many assessments of central and east European court proceedings mention the deafening racket and cursory summary produced by the production of court minutes during hearings or at the conclusion of proceedings on antiquated typewriters. Most of the courts visited, both pilot and non-pilot, had remedied this problem by replacing the typewriters with computers. While this is still not a *verbatim* record of the proceeding, it does represent a significant step forward in reforming court protocols. This improvement has been accomplished without foreign aid.

7. Created uniform case log or docketing system and 8. Designed and implement coded case cover sheets

Because of their relationship, these two items are treated together. The Bulgarian judiciary, as a direct result of the work of the USAID court administration project, has created a new filing system, highlighted by the use of red and green folders to differentiate between criminal and civil cases. While this should improve case folder tracking, the use of automated means to monitor file locations, as is currently in use at the Supreme Administrative Court, would further serve this purpose, and the availability of electronic information in some courts, both locally and via the Internet, allows for the recreation of large portions of the file, should it be misplaced or destroyed and lessens the need for attorneys to come to the court to view case material. Moreover, court staff did not generally like the new folders, calling them “difficult to handle” and criticizing the lack of suitable shelving to hold them. This problem has since been reported to the team as a production flaw, which has now been remedied by the Ministry of Justice, although no-one from the AID mission, the Ministry, the courts or the project mentioned this during the many interviews. Nevertheless, while the new format is indisputably better than the old process of stitching documents into the folder, it (along with other similar business process improvements) is unlikely to have much of an impact on efficiency due to the more than satisfactory staffing level of the courts. While better filing procedures might permit some incremental reduction in staff over time and resultant savings in the cost of court operations, this course of action does not seem to be on the table. Government jobs are very often a political issue in the region and improvements to operations through technology, while they may improve efficiency and customer service, are not likely to lead to budgetary savings.

9. Required uniform size for submissions

Although there are no current requirements for the uniform size of submissions, most of the documentation in a case is either issued by the court, or submitted as evidence, which, by its nature, can be restricted in size only in limited ways or excluded from the case file altogether. Nevertheless, courts do not issue notices in uniform format, employing a process that requires tractor-feed printers or small, pre-printed forms for their production and which ensures a variety of page sizes in the file.

10. Improved public access to case files

While some courts, such as the Plovdiv Appellate Court and the SAC have established Internet sites that provide access to varying aspects of the case file,⁵³ information is generally available only to the parties in the case and their attorneys. Although the country has recently passed a law on access to government

⁵³ See Table “Summary of Online Legal Resources in Bulgaria.” According to Judge Petkova, the SAC web site has had 60,000 hits since its inception in April 2002.

information, this law does not apply to “personal data,” by which court files are excluded.⁵⁴ In fact, the safeguard offered by court Internet sites, where the requesting party must know only either the case number or the party name is a decidedly weak guarantee of compliance with the current policy.

11. Established fee schedules for court services

Low filing fees were often mentioned as an inadequate deterrent to frivolous appeals. Although court revenues are returned to the judiciary as part of the budget, these numbers are small in comparison to actual expenditures. With regard to other services, many tasks have been assumed by Information Services, a private company (see 13, *infra*). Some courts, often in connection with the local bar associations, have installed photocopiers in the attorney rooms, which the attorneys can use to make copies of documents from their case files. Payment for these services is generally collected by the court employee who has the responsibility of overseeing operations in the attorney room. For those courts that provide electronic access to information via the Internet, no charges are currently imposed for these services, although payment for online legal resources is generally accepted in Bulgaria.⁵⁵

12. Shifted responsibilities for service of documents from court to advocates

Although courts have retained the responsibility for service of documents, changes to the way notices are prepared in some jurisdictions has improved the process marginally. In addition, the maintenance of court staff dedicated to doing the work of a mail carrier or private courier is a luxury, though surely not a wise economic choice for the judiciary.

More importantly, the change to Article 41 of the Civil Procedure Code, which makes determining future hearing dates the lawyers’ responsibilities has undoubtedly produced improvement in this area, although it is not clear at this time what effect it, as well as other procedural amendments, have had on attendance or efficiency.

13. Developed automated case management systems

Four separate automated case management systems (CMS) have been developed for use in the Bulgarian Judiciary, and all are currently in use. The level of automation in each court using one of the systems seems to depend principally on the level of commitment to technology displayed by the court president.

Supreme Administrative Court

The Supreme Administrative Court (SAC), operating under its own initiative, has developed a robust CMS that allows for all documents to be maintained and tracked electronically. The SAC also posts case information on its Internet site⁵⁶ and scans petitions received into TIFF⁵⁷ format. The SAC system appears complete and well integrated, although its users do not display the same enthusiasm and energy as some of the users in the pilot courts. It is projected that the greater enthusiasm in the pilot courts is due to the attention and training that administrative staff have received from USAID in conjunction with system deployment.

Supreme Court of Cassation

The Supreme Court of Cassation has been using a locally developed CMS since 1996, although it is much simpler and less advanced than the model currently being used in the SAC. This model is also being used

⁵⁴ Ministry of Justice, *Regulation 28* (1995) Art. 33.

⁵⁵ See page 39, *supra*.

⁵⁶ <http://www.sac.government.bg>.

⁵⁷ Tag Image File Format, a widely used format for storing image data.

in the Plovdiv and Sofia Courts of Appeals, both of which have received their hardware from USAID, and have chosen to employ the Supreme Court's system--rather than the product developed by EWMI--due to skepticism of the role of electronic documents in the courts, and of the willingness of judges and court staff to accept the changes featured in the more sophisticated system. Although the three courts are using the same system, the Plovdiv court has optimized the use of technology to a far greater extent by connecting the system to the Internet and developing a sophisticated web site to provide information to the public. This is the result of the court president's recognition of the importance of networking employees and providing them with Internet access, as well as the initiative shown by the local systems administrator.⁵⁸

Evaluation of case management operations in these three courts shows the importance of individual commitment and enthusiasm to the success of technology projects. Although all three courts are running the same, somewhat antiquated system, Plovdiv has used its own initiative to become competitive (in terms of the level of technological integration) with courts employing much more sophisticated software. This is testament to the proposition that the key to court efficiency is to collect the required data and to process it efficiently, and that the software and equipment employed for this task are only elements of the formula for success.

EWMI

The USAID project is run by East-West Management Institute (EWMI). Working closely with a number of judges and a local firm, EWMI engaged a private company to develop a CMS that allows all information except evidence to be maintained and shared electronically. The System is the most advanced of the four and has been adopted by the SJC as the national standard for Bulgaria⁵⁹, although many courts continue to run their own systems, and some of the USAID-pilot courts have adopted the more antiquated system used by the Supreme Court of Cassation.

The relationship with the software developer apparently finished with the creation of the software and system support is now being managed by three employees working out of EWMI's Sofia office. It is not clear how this support will be managed in the future or what the plans for software upgrades envision. Moreover, further deployment may strain the Sofia-based support team and local initiatives may make it difficult to maintain a national standard.

As with the Supreme Court software, the pilot courts have achieved varying degrees of success with the new CMS and other changes to operations, such as the improved professionalism of court staff and increased electronic data sharing among judges and court employees. Again, the court president and the administrative staff seem critical to the level of success, as employees and, to a more varied extent, judges are generally eager to embrace the changes. As described earlier, the enthusiasm of court employees seems attributable to the training, as well as the unprecedented level of outside interest in their work, which has been a function of system design and development.

Information Services

Finally, a handful of courts, including the Plovdiv, Sofia and Varna district courts have been running a CMS developed by a private company, Information Services (IS), which also maintains a website with information about cases, including hearings and summaries of decisions.⁶⁰ The availability of case

⁵⁸ Her husband is a programmer, who has done substantial work on the website, apparently for free, skewing the example somewhat.

⁵⁹ Supreme Judicial Council, Minutes #26, July 17, 2002.

⁶⁰ <http://www.is-bg.net>.

information via the Internet (as in Varna, Plovdiv and the SAC) also serves to reduce traffic at the clerk's office and the maintenance of information in electronic form (as in some of the pilot courts and the SAC) allows for more efficient production of notices, better file tracking and sharing of information within the court. It should be noted, however, that the team did not observe long lines at any of the intake offices visited, both pilot and non-pilot sites, so the extent to which clerks' offices can handle the current level of traffic is unclear.

IS has put employees and equipment in these courts and provides ongoing maintenance and support. The company makes money by providing Internet access to data and by charging for basic court services, such as certificates of doing business. A percentage of this revenue is then returned to the judiciary, where it can be used for the purchase of automation equipment.⁶¹ While the exact character of the business relationship between IS and the judiciary is somewhat shadowy, they seem eager and willing to build on the current model, through the enhancement of existing software or the development of relationships with more courts.

14. Create IT development team in the Ministry of Justice

The Ministry of Justice has put together a small team, with the aim of further developing the national automation strategy, and, particularly, with developing standards for and overseeing the integration of the various data management systems currently in use, or in development by all government bodies with law enforcement responsibilities, including the courts, the police, the prosecutors and the prisons. The goal of this committee seems to tie in to a EU project to provide capital investment for data integration activities. This project envisions a \$10+ million investment in equipment, assuming a suitable integration and implementation strategy is developed by 2005. While this would be a challenging timetable by itself, the committee does not appear to have sufficient staffing or expertise levels to fulfill this function.

15. Selected pilot courts for automation projects

The EWMI project, discussed at greater length in the "Role of Donor Assistance" section involved the selection of pilot courts for experiments in automation and related training. Eleven courts have been selected as pilot courts for the EWMI project and a third wave is set to be added in 2003.⁶² In addition, many courts have been self-selected as pilot courts, adapting existing automated systems or creating their own in the attempt to achieve better efficiency in case management. EWMI worked with judges and MOJ staff to write requirements for a new case management system and to select a system developer through a competitive bidding process. The resulting product has been adopted by the SJC as the standard for the judiciary in Bulgaria, although some courts, including a few of those selected as pilot sites, have chosen to use other software.

16. Encouraged development of automated legal research tools

The integration of technology into legal research in Bulgaria is widespread, achieved, to a large extent, by a combination of changing laws and market forces. In addition to the limited court information that is currently available on the Internet, the government has put a great deal of material on its web site and a number of commercial providers have developed automated legal research tools, many of which are currently supported by user fees. More information on this subject is available in the "Access to Justice" section.

⁶¹ The president of the company provided this information. It is not clear at this time whether this relationship is by law, contract or some other arrangement.

⁶² The current pilot sites are Sofia and Plovdiv Appellate Courts, Sofia, Blagoevgrad, Shumen, Smolyan and Gabrovo District Courts and Sofia, Blagoevgrad, Smolyan and Gabrovo Regional Courts.

17. Introduced generic office technology into the workplace

This has generally happened across the judiciary in Bulgaria, although, due to budgetary constraints, not yet to the extent that is needed in the courts. Most judges have computers in their offices for research and writing decisions, and those that do not are often using their own machines. Most courts are now creating hearing minutes in electronic form and a few are keeping statistics and producing notices using IT applications. Many of the courts also have permanent IT staff to support their use of technology. Although this process is slow moving, due to budgetary constraints, there has clearly been significant progress in this area over the last 10 years, largely as a result of local initiatives.

The Role of Donor Assistance in Improvements to Court Administration

Starting in around 1998, the donor community started to pay serious attention to court administration.⁶³ Four donor groups have showed an interest in the topic: The World Bank, UNDP, the EU and USAID.

As not much work had been done to this point, it is not surprising that many of the new recommendations echo the 1992 CEELI assessment. Perhaps the most detailed of these analyses is the July 2002 EWMI report,⁶⁴ which focuses on changes to the procedural codes needed to improve court efficiency, as well as the need to provide judges with research assistants to assist with their workload.

The result of these many assessments has thus far been minimal in terms of measurable improvements to court operations. In short, most of the progress has been the result of national or local initiatives, perhaps guided to some degree by the expert advice of donor organizations.⁶⁵ The notable exception to this assessment is the project funded by USAID. However, given the timing of this project, it is premature to derive final conclusions or lessons for other countries, and even the successes do not appear to translate into measurable results.

World Bank

The World Bank has not been directly involved in court administration projects, although it has recognized the need for improvements in court administration: a proposed loan to Bulgaria in 1999 was never issued and the possibility appears to have been shelved.⁶⁶

UNDP

The UNDP has funded research into the possible development of regional administrative courts. In addition to a general assessment of the needs for changes to administrative proceedings,⁶⁷ UNDP has formed a working group, consisting of judges, academics and agency representatives. The group, which

⁶³ See, for example, World bank, *Bulgaria: Legal and Judicial Reform—Judicial Assessment*, 1999; MSI, *Judicial Strengthening in Bulgaria*, 1998; Judicial Reform Initiative, *Program for Judicial reform in Bulgaria*, 2000; OSI, *Monitoring the EU Accession Process: Judicial Capacity*, 2002.

⁶⁴ EWMI, *Analysis of Case Delays in the Bulgarian Judiciary*, July 2002. Although this report contains a thorough analysis of the procedural impediments to efficiency, a more in depth study of actual cases would have been very useful in determining the extent to which these impediments actually figure in the day-to-day operation of the courts. Without data, this report, like so many others, contains only conjecture, and its accuracy is easily questioned.

⁶⁵ Although technical assistance of this kind was not mentioned by any of the subjects interviewed, it is surmised that the identification of needs had to have played some role in the adoption of these projects.

⁶⁶ As noted at the beginning of this report, the World Bank has made judicial reform a condition for extending Bank loans to Bulgaria.

⁶⁷ Daniel Bilak and Denis Galligan, *Comprehensive Review of the System of Administrative Justice in Bulgaria*, 2003.

presented its findings in January 2003, advocates the creation of a new administrative procedure code along with regional administrative courts, which would reduce the caseloads of both the district and Supreme Administrative courts. It is not clear, at this time, what would happen to the administrative departments of the district courts or how such an initiative would be funded. Moreover, the need for a significant number of new facilities and judges would painfully stretch an already under-funded and inexperienced judiciary.

European Union

A 1998 assessment of the judiciary states that

The absolute top priority has been harmonization of Bulgarian legislation with the European Union. Bulgaria wants its rightful place in Europe so badly that almost anything connected with the EU Accession process is given priority. Seventeen hundred laws are being reviewed for compatibility with European principles. As an indication of the importance attached to this task the MOJ was renamed the Ministry of Justice and European Legal Integration.⁶⁸

The decision at the recent Prague summit, which set a proposed date for Bulgaria's entry into the EU of 2007, and the presence of the EU flag in the office of almost every top official interviewed, suggest that the adoption of European standards is still a top priority today. Moreover, the Bulgarians are well aware of the need to close the chapter on Justice and Home Affairs and of the 10 million Euros available for automation and training in the judiciary once a strategy for an integrated system of data sharing among law enforcement bodies is achieved.⁶⁹ This requirement of a strategy has been the major driver behind the Ministry of Justice's recently completed *Strategy for the Reform of the Bulgarian Judiciary*, a high-level planning document that sets out a number of current problems, including:

- Co-ordination between the SJC and the Ministry of Justice
- Computerization
- Preparation and management of the budget of the judiciary
- Facilities Improvement

This document is unequivocal in stating that the main goal in the area of judicial reform is to develop European Standards in justice "contributing to the preparation of the Republic of Bulgaria for European Union (EU) accession."⁷⁰

USAID

EWMI has embarked on a project at pilot sites to totally reform all aspects of court administration, including automation, staff training, customer service and business processes. Although it is too early to judge the overall success of this undertaking, and the legislative framework makes measurable improvements elusive, some of the pilot courts are dramatically changed; others appear little different. The EWMI project has been far and away the most hands-on project in the area of court administration. EWMI staff have worked closely with judges and court employees to both develop a working case management system and to train people on how to use it and on how to work together. It is not clear why they chose to embark on a very different system to the other in use. The system offers more bells and whistles but at least one informant questioned whether such ornaments brought much value added. Moreover, hearsay evidence suggests that the design team consisted largely of technology enthusiasts,

⁶⁸ MSI, *Judicial Strengthening in Bulgaria*, 1998, p.1.

⁶⁹ Interview with Milena Damianova, EU Delegation to the European Commission to Bulgaria, January 15, 2003.

⁷⁰ Ministry of Justice, *Strategy for Automating the Bulgarian Judiciary*, 2002, p.2.

who perhaps did not give enough attention to the practical impact of their decisions. While most (but not all⁷¹) of the district and regional pilot courts appear to be using the EWMI software, the level of use has varied. The appellate courts as noted earlier do not use this software. The data thus far suggest that the impact of the software has been minimal.⁷² While the SJC has declared the EWMI software product the national standard, it has no means of ensuring that courts use it.

Certain motivated presidents in the pilot courts have used the equipment and training to improve customer service and to instill an apparent sense of professionalism in the employees of the clerk’s office. The funding of not only hardware, but also office equipment such as shelving for new files and improved office space for clerk’s office staff have also contributed to a better and more accommodating working environment for employees and the public.



EWMI Pilot Sites		
Appellate Courts	District Courts	Regional Courts
Sofia Plovdiv	Blagoevgrad Gabrovo Shumen Smolyan Sofia	Sofia Blagoevgrad Smolyan Gabrovo

An association of court employees was founded in 2000 as a result of local initiatives. The association has grown from 600 dues-paying members at founding to 1,700 today (out of approximately 3,000 total employees). Although it did not help in their creation, EWMI has involved the association with the

⁷¹ It took significant time to persuade the president of Smolyan District Court that the system would work. Other pilot court presidents not introducing the system may fear that it is too sophisticated. Since it is still relatively early in implementation, it may be too soon to expect all pilot courts to be using it and doing so effectively.

⁷² This is consistent with electronic filing projects in the federal courts, which, though well received by judges and lawyers, have not yet produced improvements to efficiency.

working group on the amendments to the Judicial Systems Act—work that resulted in the draft law’s creation of a specialized “court administrator” position. Court employees have also benefited from EWMI training courses and would like to see this work continue. The association has worked with EWMI on the creation of an employee manual and its members display a heightened degree of professionalism, as exemplified by their wearing of name badges in various offices around the country.

Although it is a somewhat flawed indicator of court efficiency, the data collected by the Ministry of Justice on cases resolved in less than three months might be able to provide some indication of whether the pilot courts are operating more efficiently. The Smolyan *regional* court, for example, which is one of the most advanced pilot courts, is resolving fewer cases in less than 3 months than the national average as does the non-pilot regional court of Asenovgrad. The regional court in Dupnica, also a non-pilot site, performs far better than the national average for regional courts. No pattern is evident. Over the past 10 years, the percentage of civil cases resolved in less than 3 months in the regional courts has dropped significantly, even though the number of filings has been relatively steady.

Data for 2002 from the *district* courts suggest that the efficiency of the pilot and non-pilot courts with regard to **civil** cases is remarkably similar. Even when the data from Sofia, which is currently hampered by a major renovation project, are excluded, there is only a small difference in processing times between pilot and non-pilot sites.

1st Instance Civil Cases Closed in <3 Months, Pilot District Courts, 2002

Court	Closed within 3 months (%)
Blagoevgrad	74.29
Gabrovo	80.1
Sofia	63.98
Smolyan	86.38
Shumen	78.71
Total Pilot Courts	76.69
Total Non-Pilot Courts	75.59
Pilot Courts (w/o Sofia)	79.87

Similarly, the data from **criminal** district court cases in 2002 do not clearly conclude that the pilot courts are outperforming the non-pilot courts. As displayed in the chart below, the range of the percent of cases closed within three months is quite large and void of pattern. Again, eliminating the struggling Sofia courts from the analysis demonstrates only a small gain of 4%.

1st Instance Criminal Cases Closed in <3 Months, Pilot District Courts, 2002

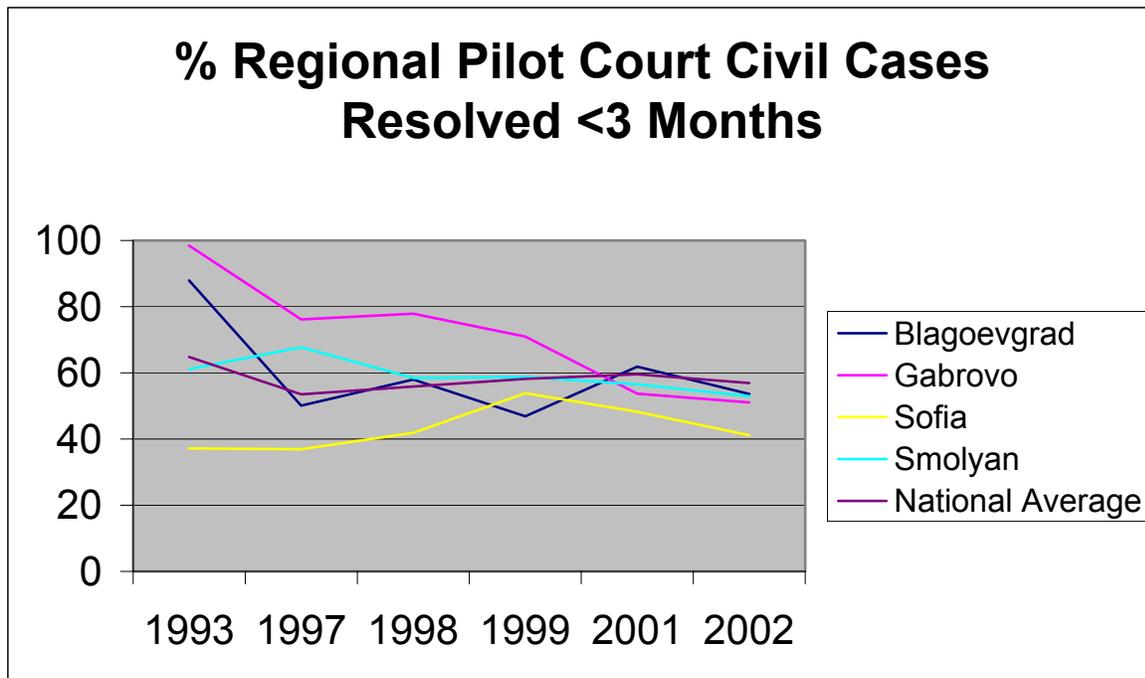
Court	Closed within 3 months (%)
Blagoevgrad	57.14
Gabrovo	45.45
Smolyan	85.71
Shumen	22.22
National Average	47.68
Pilot Courts (w/o Sofia)	52.63

The tables below, which track performance over time in the pilot regional and district courts, show the difficulty of drawing clear conclusions. Readers should focus on progress since 1999 in particular. For civil cases, two pilot regional courts show declining performance since 1999, one shows a sharp improvement and then a decline, and one shows a decline and then a small improvement. All four pilots are performing slightly below the national average (pilot and non-pilot courts). For criminal cases, three regional pilot courts show declines in efficiency and one shows sharp improvement. Two courts are

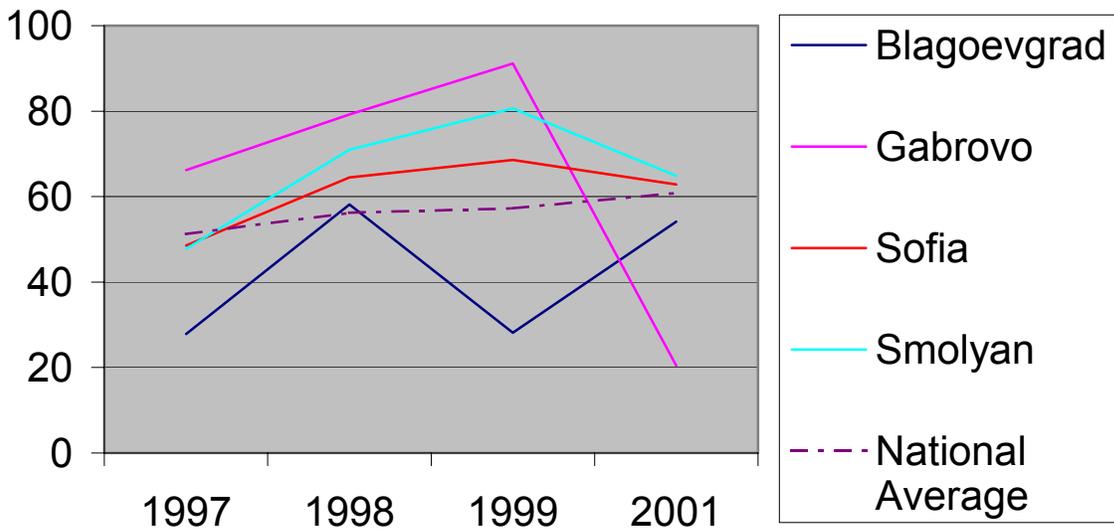
performing slightly above the national average now and two below; one of them is performing astonishingly poorly. In both criminal and civil cases, the steady improver is Blagoevgrad, which may have a very energetic court president. The worst performer is Gabrovo in both criminal and civil cases.

For pilot district courts in civil cases, two show declines in performance, one shows improvement, and one shows improvement and then a drop off in efficiency, though with still a substantial gain in percent of cases processed within three months. All are performing better than the national average, which is declining. With respect to criminal cases, two improved and then declined, one improved and then leveled off, one declined and then began to improve but was left only scarcely better off in terms of efficiency than it was in 1998. Two district pilot courts were performing in 2002 below where they were in 1998, one is only slightly more efficient and another is substantially more efficient. Two courts were performing below the national average and two were above the average.

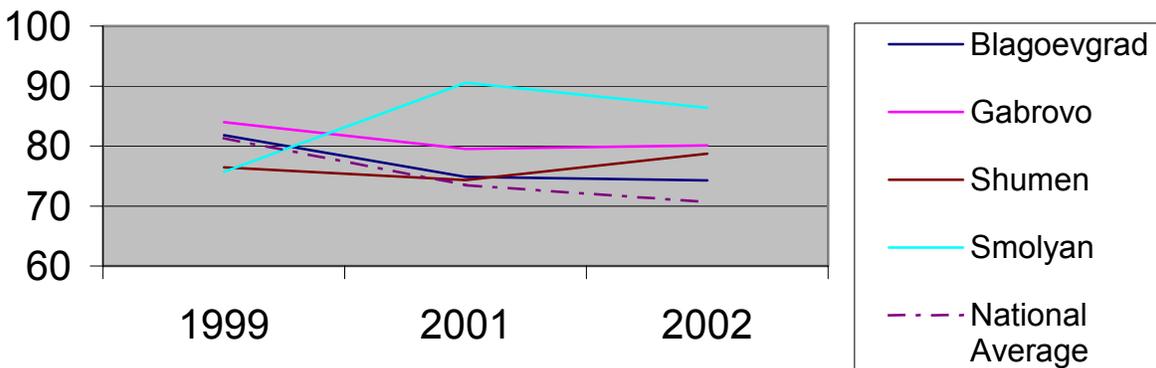
That the data is confusing should not be surprising, given the recent implementation of new systems; the varying degrees to which the pilot courts have embraced the project; the importance of the character of the court president; the uncertainties in the organization of the judiciary; the many recent changes to the procedural laws; the inexperience of the judiciary and the recentness of the deployment of the new system. Another few years of data may clarify the extent to which performance changes in pilot and non-pilot courts, due to the implementation of new systems. It would not be a surprise to find out that the implementation of complex new systems slowed efficiency for a time. This has been the lesson from court management improvement projects in the United States.

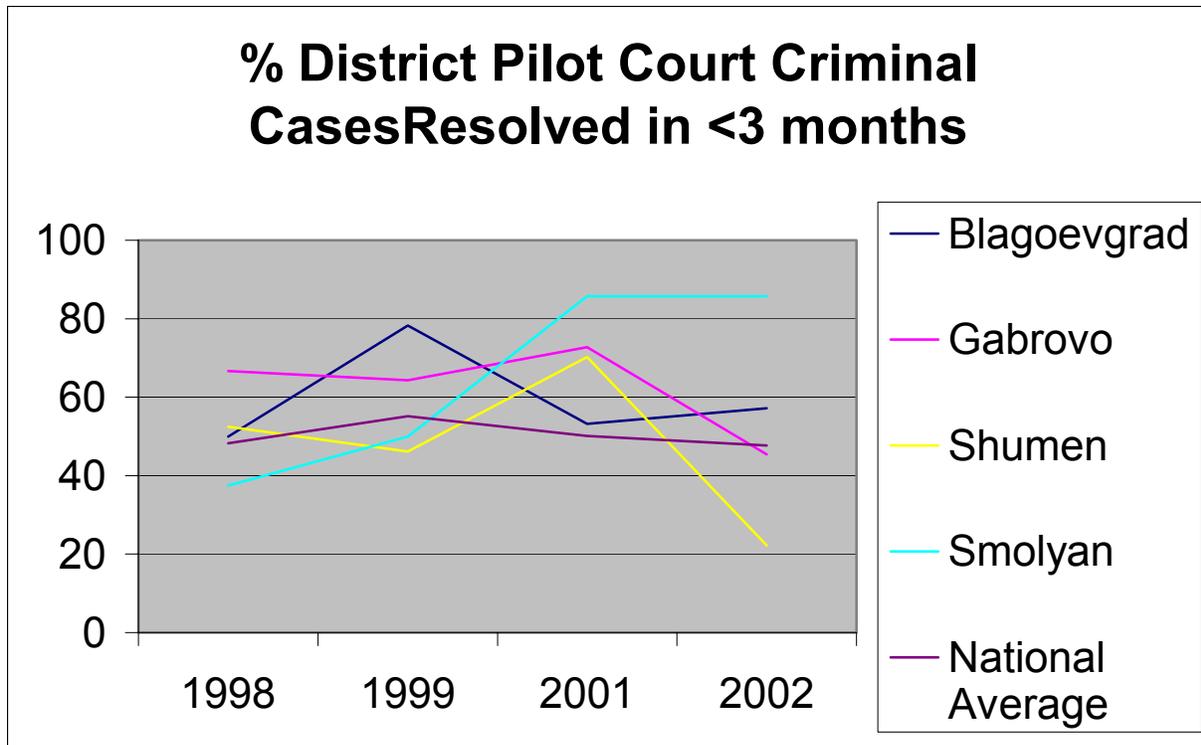


% Regional Pilot Court Criminal cases Resolved in <3 Months



% District Pilot Court Civil Cases Resolved in <3 months





Future Needs

Based largely on the advice of foreign donors, the Government of Bulgaria has identified a number of future goals for the improvement of judicial administration.⁷³ The main goal is:

- To develop European standards in justice by determining the political and legislative priorities in the reform of the judiciary, thus contributing to the preparation of the Republic of Bulgaria for European Union (EU) accession.

More specific sub-goals are identified as

- Strengthening of the Law Enforcement Capacity
- Strengthening of the Professional Qualifications of the Judiciary
- Introduction of Information Technologies in the work of the Judiciary
- Improving Administrative Operations
- Strengthening the Supreme Judicial Council
- Strengthening the coordination between the SJC and the MOJ
- Transformation of the Magistrates Training Center in a Public Institution.
- Improvement of the Court Enforcement System in order to ensure an effective and prompt protection of the rights of citizens and legal persons.
- Improvement of Recordation Offices
- Introduction of Alternative Settlement of disputes
- Improving the Judiciary Budget preparation and submission process

⁷³ Ministry of Justice, *Strategy for Reform of the Bulgarian Judiciary*, 2002.

- Addressing additional legislative amendments as necessary.

As has been demonstrated by the findings of this report, this long and complex agenda requires consistent action on a number of fronts. We have found that good progress is being made in several areas, especially the training objectives, improvement of administrative operations, and the introduction of information technologies. Of the many remaining objectives, we find that greater attention must be given to court enforcement of decisions, to strengthening the SJC, and to the Judiciary budget process. For these issues to be addressed, the relationship and coordination issues between the MOJ and the SJC need to be resolved.

The Judges Association

The Bulgarian Judges Association (BJA) was founded about six years ago, and is a founding member of the Magistrates Training Center. Its main objective is to maintain and improve judicial qualifications, and the association will soon have an office and secretary in Sofia's main court building, funded by a grant from ABA-CEELI.⁷⁴ The BJA has problems with plans for funding, as well as in increasing membership, and does not seem to have a clear idea of its mission. Although its statement on the amendments to the Judicial Systems Act were acknowledged by the Constitutional Court as helpful, the BJA does not appear as active or engaged as similar associations in other countries.

Reforming the Bar

One function of Bar associations is to provide in service training to members of the Bar, in the US on a mandatory basis, and to assist in providing general education on law and legal rights to the citizenry. The Bulgarian bar councils at the regional level as well as the Supreme Bar Council is under obligation to enhance the attorneys' professional qualifications. While most attorneys recognize the need for continuing legal education, the bar councils do not possess or have not been aggressive in mobilizing the resources necessary to pay faculty and develop in service education. There have been sporadic efforts to develop training programs, especially for younger lawyers, but no systematic approach has materialized.

US assistance to the Bulgarian Bar Association has been provided by ABA/CEELI, which has been working with the Bar since 1991. Among the variety of institutional strengthening efforts, CEELI has worked with the Bar to prepare a professional code of ethics, conduct service training, and publish directories, newsletters, and an "almanac" of contact information for attorneys as well as other information relevant to the profession. More recently, CEELI has turned its attention to assisting more specific groups, perhaps with more of an inclination to be supportive of needed institutional reforms. CEELI has established an informal working group of prominent reform oriented lawyers, and is working with an informal group of "young lawyers". Positive structural change in the Bar has been slow to emerge, CEELI's best efforts notwithstanding. The President of the Bulgarian Bar is optimistic that draft legislation increasing the powers of the Bar association to set and enforce standards will be passed. CEELI has worked closely with the Bar leadership on the draft law, and it may be that a more energized and professionally significant association will emerge.

Many attorneys who belong to the Bar do not feel it provides much in the way of private benefits to them, nor has it become a recognized voice for the public interest in developing the Rule of Law. As one foreign observer lamented, there is no "voice" for reform in this area. The Supreme Bar Council is required by the Attorneys Act (Art. 90. item 9) to: "...present opinions to draft legislative acts and shall make proposals

⁷⁴ Although ABA CEELI provided this information, the judge interviewed, although not involved with the administration of the Judges Association, made no mention of any foreign aid, despite repeated questioning on the subject.

for future legislative changes”. However, unless asked, the SBC has been largely passive on issues of Judicial Reform, Corruption and other issues being discussed in the media and in political circles.

Conclusions

The following table reflects the level of progress made to date in these areas, as well as the internal or external factors that have contributed to this development.

Recommendation	Progress 1993-2000	Motivating Factors	Comments
Strengthening professional qualifications	Substantial	Magistrates Training Center (USAID)	All new judges receive basic training, but still relatively young and inexperienced
Introduction of information technology	Substantial	EWMI (USAID) Local initiatives	Automation slowly becoming integrated into the workplace
Better customer service	Limited	EWMI (USAID)	Success in pilot courts that are well managed and embrace the concept
Improvement of court executions	Limited	Local initiatives	Some increased power for bailiffs, discussion of assigning executions to private entities.
Code of conduct for administrative staff	Substantial	EWMI (USAID) Local Initiative	Created and used in some pilot courts.
Training of administrative staff	Limited	EWMI (USAID)	Success in pilot courts that are well managed and embrace the concept of customer service. Some pilot court presidents have worked with admin staff to improve customer service.
Strengthening the capacity of the SJC	Negligible	EWMI (USAID) EU	Under discussion. Hindered by political in-fighting and relationship with prosecutors
Strengthening coordination between the SJC and the Ministry of Justice	Negligible	EWMI (USAID) EU	SJC has no institutional capacity
Alternative dispute resolution	Negligible	ABA-CEELI (USAID)	Some attempt at introducing mediation, largely unsuccessful ⁷⁵
Increased budget	Negligible		Currently under debate in the parliament and the constitutional court
Amendment of material and procedural laws	Substantial	Local initiatives	Significant changes to procedural codes
Creation of specialized administrative and commercial courts	Limited	UNDP	Embraced by the government and the judiciary but source of funding unclear.
Bar Reform	Negligible	ABA-CEELI	SBC has been inactive on judicial reform issues, provides little in the way of in service training to lawyers and has made little progress in terms of increasing standards as yet.

⁷⁵ The team did not focus significant attention on ADR. It is a low priority for the judiciary and senior magistrates do not believe that dockets would be much reduced through the introduction of ADR. There was a sense that an ADR system would add more work because it would require judicial involvement and supervision.

The Ministry of Justice recognizes the IS and EWMI software as the two main competitors for dominance in the judiciary, even though the SJC has designated the latter as the standard for the judiciary. This is presumably due to the somewhat primitive nature of the Supreme Court of Cassation software and the limited expandability of the SAC system, which was designed exclusively for administrative cases. While not nearly as robust as the EWMI product, any of these systems appear generally sufficient for case management purposes. The key issue is the selection of one alternative, which, in order to secure EU money (discussed, *supra.*) must work in concert with the systems used in other law enforcement bodies, such as the prisons, the prosecutors, etc. Uniting these disparate and sometimes contentious groups will be difficult, requiring commitment and support at the highest level of government. At this time, based on admittedly limited observations, it is not clear that the required level of commitment from the top exists, or that anyone in the judiciary grasps the magnitude of such an undertaking.

In the more pedestrian aspects of court administration, improved facilities and training for court employees can go a long way toward making the courts more hospitable to the delivery of justice. It should be emphasized, however, that things like name badges, employee manuals and better shelving, while they all contribute to improved court operations, are not likely to improve court efficiency in measurable ways, and that attempts to measure the quality of “justice delivered” by reducing the time to disposition harbors its own dangers.

While improvements to the process are sorely needed and occurring incrementally, if sporadically, the quality of court operations can and should be judged primarily by the quality of justice delivered, a standard which rests squarely and equally on the shoulders of the judges and the legislature. If the judges are not able or motivated to understand and interpret the law and to manage their courts actively and effectively, court administration projects are doomed to fail.

VI. ACCESS TO JUSTICE

Concepts and Issues

The Access to Justice concept is made up of several parts. The thread that ties these parts together is not always obvious, but the connections will be made. Access to Justice is understood here as the following:

- The extent to which persons accused of crime have adequate legal defense at all major points of the investigation and trial process.
- To what extent the citizenry at large have relatively easy access to information about criminal and civil proceedings.
- The extent to which the legal profession takes seriously its responsibility to provide a public service in advancing the rule of law
- The extent to which legal education is developing attorneys with the experience and public service orientation toward pro bono service to the poor.

Another dimension of “Access” has been used by analysts to get at an important part of the Rule of Law equation, the extent to which citizens believe in the integrity and legitimacy of the legal regime and judicial system. The “social factors” according to one important study, includes trust in the system, belief in its accessibility, the extent to which the main players receive respect by citizens, and other sociological and cultural factors that may affect acceptance of “the Rule of Law.”⁷⁶ Without gainsaying its importance, this report will not address this second, sociological dimension, largely because opinion data is difficult to assess in a comparative perspective, and because the interpretation of these issues requires a degree of expertise and time not available to the team.

⁷⁶ See Bulgarian Helsinki Committee Report: “Access to Justice Country Report”, 2001, page 1 and *passim*.

The various instruments by which any society seeks to provide “access to justice” to citizens include:

- Means by which those who cannot pay are provided with legal defense.
- Professional associations that, among other things, take upon themselves a fiduciary responsibility for the public’s interest in Rule of Law, including ethical behavior and provision of pro bono services to the indigent.
- A legislative framework that guarantees rights to defense and to the information necessary to conduct a defense.
- A set of public interest NGOs who take upon themselves as their purpose the advancement of citizens (human) rights before the law, and related issues pertaining to the use of law as a means for advancing a/the public interest.

Timely and competent counsel is a key element of “access” for the citizenry. The competency part of this formula depends in large measure on the quality of legal education the society imparts to the members of the legal profession. The instruments for achieving and sustaining quality are largely two: a relevant and well-taught legal course of studies in the Universities, and a process of continuing legal education for members of the profession. This study will not attempt to assess the quality and relevance of legal education in general. It will assess the attempt by USAID partners ABA/CEELI to introduce clinical legal practice into the university based legal education curriculum.

No country has been able to fashion an “access to justice” system which scores high and equally on each of these standards. Some do better than others. In this section of our assessment we examine developments in Bulgaria with respect to this broad issue.

Right to Counsel

The essential protections for human rights and right to counsel are found in Bulgaria’s constitution and in the law. Defense is mandatory in Bulgaria if three conditions are met:

- Defendant cannot afford to hire a lawyer
- Defendant wishes to have one, and
- The interests of justice so require.⁷⁷

The number of attorneys in Bulgaria alone would be more than enough to provide pro bono services to those who cannot afford to pay for counsel. Similar to other emergent states, Bulgaria has witnessed a remarkable increase in the number of law schools (from 1 in 1990 to 11 in 2002) and in the number of lawyers from 3300 in 1992 to 12,000 in 2003.⁷⁸

However, recent assessments and discussions with NGO leaders and some attorneys generally state that in practice, there are serious problems in Bulgaria with respect to rights to counsel. A 2001 report prepared by MSI states “The inaccessibility of affordable and knowledgeable counsel remains a problem in Bulgaria.”⁷⁹

More detailed analyses were conducted by two Bulgarian NGOs, the Bulgarian Helsinki Committee and the Public Interest Law Initiative. Survey research on 1357 case files in 109 of the First Instance (Regional) Courts in Bulgaria “revealed that in 23.6% of the cases defense counsel was absent during the

⁷⁷ Article 70, para 7, Code of Criminal Procedure, Amendment of 1999.

⁷⁸ Supreme Bar Council: data supplied in response to team request. Not all attorneys belong to a bar association.

⁷⁹ MSI, Final Report. ROL August 2001, Section C. [Access to Justice](#) (no page numbers)

interrogation of the accused. In 97.9 % of the cases, defense counsel was absent during searches and seizures.” Moreover, in 15.2% of the cases, defense counsel was absent when the “file was closed and served on the accused.”⁸⁰ Other surveys demonstrate that court appointed counsel is rarely effective in providing adequate defense. Peer review of cases handled by court appointed defense counsel indicated that appeals and remedies available to the client were not applied for in from 14 to 18 % of the cases examined. A client evaluation conducted by the Helsinki Committee on the question of the weakness of defense counsel found the following:

- Lack of sufficient interest in the case (22 %)
- Inadequate performance (20%)
- Insufficient contact with the defendant (16%)
- Collaboration with the investigative authorities (12 %).

The notion of equal justice under the law suggests that no person should be denied right to counsel because of any social, religious or racial/ethnic factor. In Bulgaria, only 6.8 % of those accused of crimes are women. On ethnicity, the data indicate that Roma are both accused and convicted at a rate “much higher than their share of the population...”⁸¹ Another characteristic of those convicted of criminal acts is lack of education; 70 % of those convicted and detained had a primary education or lower.

Causal Factors Limiting Right to Counsel

There are a number of constraints that inhibit the implementation of Bulgaria’s commitment to the provision of legal counsel to defendants. First among these is insufficiency of funds. Legal Aid budgets are part of the overall court budget managed by each court. Courts are faced with conflicting priorities for their limited funds, and paying for legal aid may not be as high as paying for the heating bill for the courtrooms. Personal interviews with Magistrates confirmed that in some recent years, the courts simply did not have the money to pay for court appointed legal defense. A second factor cited by the Helsinki reports and by Interviewees are the relatively “low fees” awarded to attorneys in legal aid cases, as well as delays in payments to the attorneys who provide such services. However, some Magistrates said that fee schedules varied from court to court, and anecdotal evidence was given of attorneys joining bar associations in nearby municipalities with more attractive fee schedules in order to receive work. A third factor that contributes to inconsistent legal defense for indigent defendants is the sliced salami like nature of the hearing process, sometimes extended over several years. A defendant may go through several court appointed attorneys over the course of an extended hearing process.⁸²

⁸⁰ Kanev, Krassimir and Mitrev, Georgi, “Access to Justice Country Report: Bulgaria”, from Project on Promoting Access to Justice in Central and Eastern Europe, Helsinki Committee, November 2002. Also Terzieva, Vessela, Notes from the Helsinki Report, page 1. The Krassimir – Mitrev report is the most in depth and well-substantiated document on this issue available to the team. According to one Bulgarian NGO observer, however, the report relies on recall reports by convicted felons to a considerable extent, and may exaggerate the problem...although this respondent did agree with the basic conclusion.

⁸¹ Helsinki Report, p 14.

⁸² In its comment on an earlier draft of this report, USAID Bulgaria suggests that the report’s reference to procedural delays in this section contradicts the analysis presented in previous sections raising questions about whether these delays are as significant a problem as the USAID Mission and other donors believe. The Team’s position is that court statistics as well as interviews with magistrates raise serious doubt about the centrality of the delay issue, in comparison to court performance in other countries. As pointed out in the report, comparison with US court performance as an international standard would suggest that Bulgarian courts are performing rather well. Again, the main point for this Assessment’s readers is that this constraint, or any other constraint relevant to improving rule of law needs to be verified by more research, especially if major program investments are to be contemplated. It is too easy to simply disregard court statistics while at the same time relying on “the general wisdom” as supported by various anecdotes and horror stories. USAID Memorandum, November 03, 2003.

Another factor contributing to the problem rests with the defendants' side of the equation. It is necessary in Bulgarian law to request legal assistance from the court. As already seen, defendants are substantially poorly educated, frequently minorities, and often young, indicating that they are probably unaware of their rights. Vessela Terzieva, of the Public Interest Law Initiative, in her summary of the Helsinki report, states boldly:

The lack of awareness of the possibilities of receiving legal aid from the bar associations is probably the primary reason that this procedure is so underused. The courts are not obliged to advise the parties of the availability of legal aid provided through the bar association and little information is available to the general public.

Professional Associations Role in Access to Justice

The Bulgarian Bar

The Bulgarian Law on Advocacy, art. 5.35, para. 1, states that “attorneys provide pro bono legal services to a) people who do not have the necessary funds, and b) to those entitled to support money/alimony”. Under Article 134 of the Constitution of 1991, the Bulgarian Bar is an independent self-governing body with a public responsibility to “... assist citizens and legal persons in the defense of their rights and legitimate interests”. There are 28 regional bar associations whose regions correspond to the District Court regions. The Supreme Bar Council is the national governing body, which includes a general assembly, a control council and a disciplinary court. Those who graduate with law degrees may become members of the Bar without any additional examinations. Being a member obliges the attorney to comply with Regulation N.2 of the Supreme Bar Council pertaining to “Rule for the Standards of Attorneys’ Practice and Professional Responsibility” of 1993. Sanctions for violations include fines (symbolic), deprivation of right to be an elected member of the various governing bodies, deprivation of the right to practice as an attorney from one to up to three years, and deprivation of the right to practice forever. Sanctions are rarely imposed for breaches of ethics. “The greatest number of disciplinary cases is for non-payment of membership dues”. There has been no case of disbarment for breach of ethics or for failure to serve client interests whether court appointed or otherwise.

With respect to provision of “for fee” court appointed services or of “pro bono” services, attorneys are obligated by law to provide services under court appointments, but many decline for reasons outlined in the previous section. For pro bono service, there is no way to “prove” that a person is in fact indigent, so attorneys simply opt out on a technicality from providing these services, nor does there seem to be much of a media incentive for attorneys to provide pro bono service.

Access to justice includes citizens having access to technical information relevant to their case, or to more general principles of law. Not surprisingly, the bar associations also have not developed any electronic means for more general dissemination of technical or more general information about law and legal developments, whether to its members or to the general public. The bar associations, including the Supreme Bar Council, do not have websites. A professional journal is published on a monthly basis, and the Supreme Bar Council does offer a law library and, since 2001, one computer for legal research.

The Role of NGOs in promoting Access to Justice

As already noted, the Bulgarian NGO community, supported especially by the EU, The Open Society Foundation (OSF) and USAID, has taken the leadership role in analyzing access to justice issues, including defendant rights to legal counsel and access to information. Among the most prominent national level NGOs active in Judicial Reform are:

- Center for the Study of Democracy
- Law and Internet Foundation
- Access to Information Program
- Institute for Regional and International Studies
- Bulgarian Center for Non-Profit Law
- Bulgarian Helsinki Committee
- Bulgarian Legal Initiative for Training and Development
- Parliamentary Center for European Law
- Open Society Foundation
- ProMedia

Each of these organizations contributes to Rule of Law through a variety of means, including training, research, advocacy, coalition building, and information dissemination. For example, the Law and Internet Foundation are concerned with freedom of information as a policy issue, as well as maintaining a widely used web site, LEX.BG. The Center for the Study of Democracy took the lead in forming a coalition pushing for Judicial Reform, as well as conducting substantial research measuring the level of corruption in Bulgaria and in the region. This coalition, supported by USAID and other donors, played an important role in assisting the Bulgarian government to develop a Judicial Reform Strategy and Action Plan. ProMedia conducts training for journalists in how to report on legal developments, in addition to other efforts to increase the professional skills and status of media in Bulgaria. It has formed a Bulgarian Media Coalition of 13 NGOs and Industry Associations to promote positive media legislation.

Many of these organizations have become quite sophisticated in their ability to conduct well-researched advocacy campaigns. Their program managers are frequently attorneys, backed up by strong social science and public information skills. In many ways, these organizations are more committed and effective in their capacity to promote public education and advocacy for reform than their counterparts in the Bar and the other judicial associations. This capacity building success is largely due to the level of intelligence and commitment the leadership has brought to the task, as well as the significant level of training and financial support provided by the donor community. This support has attracted and retained strong, well-educated leaders who can stand up in skill and knowledge with the best of the private sector attorneys and elected Members of Parliament.

In some cases, Bulgarian NGOs have also taken the lead in providing direct support to people in need of legal counsel, although not primarily in providing court defense services. The USAID supported DemNet program, for example, provided grant support to an organization in eastern Bulgaria that assisted people with legal advice relevant to their clients right to various subsidies, housing, services for elderly and disabled and the like.

More directly relevant to the issue is the Open Society Foundation's upcoming project to establish a Legal Defense Office on an experimental basis in Veliko Tarnovo. This office will have salaried attorneys whose job it will be to provide defense and counsel for indigent persons. Although the Bar, according to our Respondent, resisted this initiative in the beginning it has now agreed to support the effort.

Foreign assistance to the Bulgarian Public Interest NGO community has been critical to its development. Each of the organizations listed above has leadership in place that has participated in a variety of training programs, workshops and other experiences in Europe and frequently in the United States. They have received program support for their individual efforts, as well as encouragement and support for advocacy coalition building in support of anti-corruption and judicial reform.

VII. CLINICAL LEGAL EDUCATION

As is the case with most countries in the former Soviet Union, after that system collapsed, the interest of young people and academic administrators coincided in a desire to expand as rapidly as possible the number and array of institutions offering approved education toward a degree in Law. In Bulgaria, where Sofia National University Law School had reigned supreme, by the mid-1990s there were 11 law schools. The number of students increased from a few thousand to over 11,000, and school administrators quickly learned that teaching law was a cash cow that could not be ignored in times of shrinking state support for more traditional programs. By 1998, the expectation of most foreign observers was that this rapid increase in the production of lawyers would come up against the law of supply and demand, and the number of schools and graduates would substantially shrink. To date, there is not much evidence that this prediction can be supported. There are still 11 law schools and, in spite of complaints that there are too many unqualified lawyers in Bulgaria, the number of students has shrunk only a bit. So what is happening?

What seems to be the case is that many young Bulgarians, as with many young Americans, no longer see the profession and practice of law as their objective. Rather, the law degree is a status symbol that can be converted into other forms of employment and economic success. Increasingly, Bulgarian law graduates do not find a future in law. They go on to other professions in the private and public sectors. But many do try to practice law, and most observers agree that the competition for jobs is fierce, so much so that any effort to regulate this competition by the Bar association through examinations, licenses, ethical standards and sanction, is resisted.

It was not a major focus of the team to examine the changes in Bulgarian legal education that had occurred since 1990. The team did learn from younger Bulgarian magistrates that the curriculum of studies had changed, and did reflect “modern times”, including newer concepts of commercial law, changes in the state perspective on criminal law, and the like. However, they also agreed that the schools still emphasized memorization, legal theory, and “knowing the law”, with very little effort to give students any practical experience in what meant to be a lawyer, or a judge.

The team polled magistrates to find out their views on legal education. Using a weighted ranking scoring process, it was found that sitting magistrates ranked reform of legal education as the sixth reform priority out of nine potential reform areas, but substantially ahead of other priorities such as procuracy reform, judicial ethics and a better system of legal defense for indigent persons. Magistrates were also asked whether in their opinion, today’s law graduates were better prepared than 10 years ago? Of the 91 magistrates with an opinion, 47% said current graduates were less well prepared than before, 38% thought about the same, and 13% thought current graduates were better prepared. From the magistrates’ perspective, there was little optimism that the Bulgarian law schools were today producing more prepared members of the legal profession.

The introduction of Legal Clinics into the educational experience of young Bulgarian law students has been primarily the result of the efforts of USAID supported ABA/CEELI programs and the work of the Open Societies Foundation. Although not the major part of their focus in Bulgaria, CEELI’s more general program strategy during the 1990s was to attempt to introduce the law faculties in transitional countries to the concept of applied legal education through the clinical model. The basic outlines of the model are well known. Senior law students are given the opportunity to “practice” law under close faculty supervision through a clinic environment, usually serving poor or marginalized groups in the population who would otherwise not be able to avail themselves of legal counsel. Law students do interviews, prepare case materials, provide some counseling, if not consul, and under close scrutiny, assist in provision of legal services while gaining an invaluable practical experience.

The first clinic was established at the Technical University at Rousse in 1999, in northeastern Bulgaria on the Danube River. Largely the passion of one law professor, the legal clinic there was set up to provide law students with the opportunity to acquire practical skills first, and second, to provide the community with a source of pro bono legal advice. The clinic specializes in family law, with, according to the director, the majority of the cases involving divorce. Although provided with office space by the university, as well as being recognized as a credit earning option for senior students, the university does not provide direct financial support for the clinic. Recently, the clinic did manage to develop a contractual relationship with the city government to provide legal services in certain areas.

The local bar association has resisted the development of pro bono services through university run clinics as a threat to their members income earning potential. Recently agreement has been reached between the university, the Bar and the procuracy as to the value of the clinical program.

Other clinics have been opened with support from the Open Society Foundation at Sofia University and at Plovdiv, along lines similar to those of the Rousse program. These programs are very popular with students, but as reported by the Dean of Sofia Law School, there are not enough human and physical infrastructures to train all the students who want to participate. According to the Dean, “there is no funding to do this work from the regular budget”. At Plovdiv, the program has expanded to include 11 clinics, including attorney defense in criminal cases, administrative law, labor law, refugees, NGOs, public legal education, legal writing in criminal cases, etc. As with the others, each clinic is headed by a professor and a practicing lawyer, who supervise 8-10 students over a two-semester period. This includes 15 academic hours, 15 hours of computer training, and 30 hours in clinical situations. The admission to the program is very competitive as the program in Plovdiv, as elsewhere, is very popular among students.

At this point it is difficult to ascertain any wide spread systemic impact of the introduction of legal clinics, either through adopted changes in the basic curriculum, or in the provision of pro-bono services to needy clients. The clinics that do exist are well regarded, even by very senior and respected faculty such as the Dean of Sofia Law School. Magistrates generally agree that practical legal education is a necessary component of a good legal education. Schools that have adopted legal clinics have recognized the academic merit and in some cases, provided in kind support, but for reasons that may have to do with finances, conservatism, and the persistence of more pressing reform priorities in the Rule of Law sector, the systematic institutionalization of legal clinical education has yet to take root. This may be an example of the limits of an otherwise good and relatively low cost foreign assistance program pursued by CEELI and by the Open Society Foundation. Unless there is a broader level of pressure and commitment to the comprehensive reform of the legal education establishment, it is unlikely that smaller projects will tip the scales in favor of that reform. On the other hand, when such a comprehensive program for educational reform is put in place, it is highly possible that the positive experience with law clinics will result in them being part of the reform solution.

Unfortunately, time may be running out. In Plovdiv, as with Sofia, the post donor assistance future of the clinical program is in doubt. “When the foreign aid finishes” according to our Plovdiv informant, “the program will have to close”. In Rousse, the more limited program would probably continue as long as there is a high level of personal commitment from the faculty and from at least one local attorney who volunteers her time to supervise.

Results of Assistance (by Sector)

LEGISLATIVE FRAMEWORK

The Legislative Framework is substantially complete. As might be expected, basic laws that were passed in the early transition period require substantial revision, a process which will continue to go forward as

Bulgaria becomes more integrated into the European and global economy. However, implementation rules, procedures, and the political culture of a modern democratic polity and market economy lag behind the formal legislative framework. Most foreign observers, Bulgarian magistrates, and attorneys agree that there are serious problems in executing judgments and implementing the law. These problems are deeply embedded in complex and confusing procedural codes, poorly integrated public law, and inadequate case preparation by investigation services.

Legislative processes have become increasingly open to a variety of influences, and there is a substantial effort to increase the accessibility of interested citizens to information about the legislative process. The quality of legislative output appears to have improved, but a proper system for insuring a high level of technical legal competence in legislative drafting is lacking, according to foreign and domestic observers.

Although slow to materialize, the Bulgarian commitment to bringing the legal system into harmony with the EU, as well as with WTO, NATO and other international arrangements to which Bulgaria aspires, has been a powerful factor in shaping and accelerating the development of the legislative framework.

USAID assistance through ABA/CEELI and other programs to Bulgarian development of a legislative framework was concentrated primarily in commercial law development. This assistance has been effective in shaping Bulgarian thinking about commercial law during the 1991-6 period. Whether this assistance was critical is hard to tell given the resource and topical limitations of this study. All else being equal, the impact of technical assistance in legislative drafting is directly related to the government's recognition of the need for a new law, the desire to emulate principles from other legal systems, and the extent to which the proposed legislation has a negative impact on the political and economic interests of important elites. Because of US economic dominance in the global economy of the 1990s, it is not surprising that Bulgarians would look to the US for concepts and practices that could fit into its civil law system. It is equally apparent that Bulgarians look to EU assistance in legislative drafting to complete the process of legal harmonization required by the Accession process.

JUDICIAL REFORM

The Supreme Judicial Council is lacking the infrastructure, support and expertise necessary for the management of the judiciary. This will slow the pace of reform.

Financing: Government budgetary support for the Judiciary has increased significantly since 1997 in absolute terms, but relative to the size of the economy or the expansion of the national budget generally, the level of financial support lags well behind the European standard. There is no "independent" judicial budgetary process that is based in an objective assessment of actual needs and projected future capital and system maintenance requirements. Reform legislation for the judiciary imposes new budgetary requirements that are not well reflected in future budgetary planning for the Judiciary. There appears to be only a very rudimentary system in place for financial management by the Supreme Judicial Council and the various courts.

Skill Building for Judges: Bulgarian magistrates have been generally exposed to a variety of training programs, although until the advent of the Magistrates Training Center in 1999, much of this was ad hoc in nature. Magistrates are eager for more and more systematic training, ranking the need for in-service training as 5th on their list of priorities, after Court Administration reform. Magistrates and most foreign observers rate the MTC very highly. The relevance and effectiveness of training is actually rated higher by Magistrates in non-Model courts, in part because they are younger and with less experience, who found the MTC training received to be immediately relevant. USAID support for the MTC was critical to its timely establishment and early success, both through direct financial support and through subsequent

technical assistance through the EWMI project. The tandem character of Bulgarian commitment and USAID's timely willingness to provide the finances is an unusual example of effective partnership.

Court Administration: There has been limited improvement to court administration, due mainly to changes in procedural rules and the incremental incorporation of technology into the workplace. However, it is "early days" as yet. Donor assistance is of recent vintage and may in time produce a positive long-term impact. However, as long as the legislative framework continues to be revised, and judges are young and inexperienced, most improvements to court administration will have only a limited, and largely superficial, effect on the delivery of justice.

Improvements in court statistics and reporting have been incremental, but much remains to be done, particularly in using the data for staffing and budgetary allocations. The proposed creation of the "court administrator" position may help to improve court management, but only if the incumbent duties are clearly defined and competent personnel are identified to fill the positions.

The USAID supported Model Pilot Court program is highly regarded by Bulgarian legal professionals, especially magistrates and court presidents. The emphasis on effective and customer friendly service provision is a positive change, as is the recognition of the contribution of court support personnel. This program is showing results in the pilot courts, and is having some spread effect through the formation of the Clerks Association. The model pilot courts have had significantly divergent degrees of success in reforming court administration practices. This seems to depend principally on infrastructure and the willingness of the court president to accept change. This also may be because the model court approach is not a complete overhaul but deals only with certain pieces of the problem.

The UNDP-sponsored proposal for reform of administrative cases ignores the current infrastructure for these matters and could undermine judicial reform by creating yet another discrete judicial body for review, with all the attendant financial and personnel demands that accompany the creation of a new court.

Bar Reform: New legislation has been drafted to upgrade professional and ethical standards for members of the legal profession. ABA CEELI assistance has played a role in this. To date, the disciplinary proceedings of the Bar have been trivial in content and impact. The Bar is still perceived by attorneys as a licensing agency rather than a strong advocate for Rule of Law reforms or as an effective professional association providing important benefits to its members.

Other: USAID commitment to having a long term US rule of law institution in place, ABA/CEELI, has created a network of relationships with the legal profession, law schools and magistrates, that has proven to be a valuable technical and legitimizing resource for those Bulgarians who sought to introduce innovation in training or in the role of professional associations.

ACCESS TO JUSTICE

As with the Legislative Framework, the formal guarantees for legal counsel and access to information regardless of economic and/or social status are in place in the Bulgarian Constitution and in various procedural codes. However, an effective system for actual provision of legal counsel and defense is lacking. Budgetary constraints and poor enforcement of ethical and legal responsibilities creates a slack environment for provision of legal services.

The Bar is formally obligated to provide public service and legal counsel to those in need of representation, but it has generally been unable to meet this obligation. New legislation has been drafted to strengthen the role of the Bar in providing legal services.

Improvements have been made in providing access to trial information to parties to a case, and the general level of information in specific cases has improved.

The broader role of public interest NGOs in promoting Rule of Law, access to information, professional competence among journalists, and the provision of non-judicial legal counsel has been very important, and perhaps critical with respect to focusing both informed public and elite attention on issues of Rule of Law Reform. USAID and other donors, especially OSF, have invested heavily in the development of Civil Society, and for Rule of Law purposes, a subset of public interest NGOs with an interest in ROL issues such as rights to counsel and human rights more generally, issues of transparency, and greater participation by citizen groups in law making process. After the leadership shift of 1997 and again in 2001, these groups were well positioned to exercise influence in the shaping of legislation, such as the NGO law, in securing greater transparency through information technology, and by campaigning against corruption. The impressive thing about the Bulgarian NGOs is their generally high level of knowledge, technical competence, and ability to do the research and analysis necessary for effective advocacy and public education.

Although not based on extensive research, there is some evidence to indicate that other social service NGOs have also contributed to ROL development by providing legal consultative services to poor and marginalized segments of the population seeking various services from government agencies.

Legal Education

The rapid expansion of legal education in post communist Bulgaria arguably has had an effect on the absolute quality of persons serving in the legal profession, while at the same time producing an oversupply of attorneys in the current market.

Efforts to introduce clinical legal education as an integral part of the state supported university curriculum have not been successful, the popularity and micro-success of specific legal clinics in Rousse, Plovdiv and Sofia notwithstanding. These clinics do help to promote a sense of pro bono service for the limited number of students who are able to participate, but this remains the exception rather than the rule.

VIII. LESSONS LEARNED FOR THE DONOR COMMUNITY

In addition to an assessment of the outcomes and impact of legal reform programs, the scope of work for this assessment instructed the MSI Assessment Team to examine a number of assistance management issues, including:

- Assistance sequencing,
- Assistance modality effectiveness,
- Assistance targeting, and the

E&E/DG Assistance Sequencing Questions Raised in the Assessment SOW

- Was the rule law assistance provided appropriate in terms of the needs of the sector and the prevailing conditions in the sector at the time it was provided?
- Would it have been more effective to have first provided another type of rule of law assistance than what was provided?
- Were certain types of assistance more or less effective because they preceded or followed other types of assistance?
- Were there synergies between different types of rule of law assistance that made those types of assistance more/less effective when provided together?
- How was the sequencing of assistance interventions affected, if at all, by any changes in conditions in the host country? Were appropriate adjustments to assistance interventions made to reflect or respond to these changed conditions? What factors affected the ability of rule of law programs to adjust to changed circumstances?
- What does experience in the countries studied tell us, if anything, about the sequencing and effectiveness of assistance focused on the governmental versus non-governmental sectors?

- Assistance coordination

This section of MSI's report addresses findings and issues in each of these areas.

A. Assistance Sequencing

The absence of a USAID Rule of Law Strategic Objective from 1990 to 1997 is, in retrospect, a fortuitous choice. Premature efforts to achieve substantial reform without political commitment might have led to wasted resources. The level of engagement appeared appropriate given the constraints and the possibilities for impact. USAID did not have a strategy per se but had a flexible series of interventions, some of which were major such as CEELI's work in commercial law between 1991 and 1996. Once it became obvious that the new UDF government was interested in moving on reform in 1997, USAID put a strategic objective into place and organized resources behind it. USAID responded to changes in the political environment and a heightened level of government commitment to change, and in so doing, helped to reinforce and maintain that momentum.

Not having a "strategic objective:" should not be an excuse for not having a Rule of Law strategy, however delayed the program consequences might be. In other words, early on in the assistance program, USAID should have developed a strategy for all of the elements of the democratic transition process, even if a conclusion of that strategy is to delay direct program assistance until conditions change. If ROL is as critical a feature of market economic(s) and democratic development as USAID and democratic theorists posit, then any overall development strategy must clearly address the issue, if no reason than to justify inaction because of unfavorable circumstances.

The early focus by USAID on commercial law made sense, as even the conservative socialist regime saw the necessity of remodeling the old socialist commercial legal structure.

It was possibly fortuitous that CEELI and other donors invested early on in the creation and strengthening of Public Interest NGOs with an interest in law and public policy change. These NGOs became more important as the reform governments took hold in the late 1990s, becoming sources of pressure as well as providers of technical assistance and information to government and to the citizens. In the Bulgarian case, a limited number of well-organized NGOs with an interest in Rule of Law issues came together to form a coalition for reform that helped shaped the Government's own ROL Strategy and Action Plan. Even when early "results" are not obvious, the long-term investment in these organizations is well worth doing, and may be the only thing that makes sense during a "stuck state" period.

When compared to ABA investments in trying to persuade the Bar or Judges to be advocates for reform, the return to date has been greater from NGO investments. This is not the place to go in to the entire CSO literature, but the limited evidence we could gather, not only from the NGOs, but from government and other donors, was that the Coalition 2000 did have an impact, did receive a lot of media attention, and did influence the development of the Governments Strategy and Action Plan. The four or five Public Interest NGOs that were involved were very professional, competent in their understanding of the issues, and reasonably well organized. They were not largely the product of USAID or CEELI efforts...in fact, in retrospect, it MAY BE that CEELI's efforts to quickly reform the Bar and Judges was unrealistic. It has proven very difficult to transform former state licensing institutions such as the Supreme Bar into independent service and advocacy organizations. In the short run, at least, more success has been gained by developing new Public Interest NGOs.

B. Assistance Modality Effectiveness

1. Technical Assistance

Short-term technical assistance was used during the early stages of legislative/ rule of law development. Until 1997 the political environment in Bulgaria was hostile toward long-term development assistance.

The two main rule of law TA providers in Bulgaria have been the ABA CEELI and EWMI. EWMI relatively recent assistance effort has been discussed at length above.

CEELI has been in place from 1991/2. Their primary task has been to provide technical assistance for development of commercial legislation, but they have also pursued development of the Judges Association and an independent Bar, and have worked with both to write ethical standards, develop in service training, and improve overall professionalism. The ABA has also housed the CEELI/Department of Justice training programs for Prosecutors, now focused increasingly on corruption issues. CEELI has also pursued clinical legal education. In addition, they have, from time to time, served as a kind of critical legal "think tank" for Bulgaria rule of law development, providing analyses and commentary on ROL.

CEELI's long term presence as something beyond a regular project implementer has important advantages for longer term US interests, if not necessarily and obviously for shorter term USAID interests. It has developed a knowledge base and relationships that can be of use. The availability of an assistance provider that has a long term commitment to providing more or less on demand consultative advice to Bulgarian professionals carries some weight with host country people whose view of many vendors is one of suspicion and resentment.

With respect to the other activities, CEELI's long term relationship with the Judges and the Bar reinforce the notion that even long term technical assistance is not enough by itself to transform organizations from being state recognized licensing organizations to independent service and advocacy organizations. The leaders of the Bar and the Judges associations "know" what it means and what needs to be done, largely as a result of this relationship and the more general exposure that has come to Bulgaria through contact with Europe and the modern western world, but "knowing" does not lead directly to "doing." Perhaps one deficiency in this kind of technical assistance is that too much emphasis is placed on the normative side, "what you should be doing", and not enough assistance given on the tactical side, "lets work out a political strategy for getting from where we are to where we (you) want to be." This is a failing of much technical assistance...found for example in many "legislative drafting" exercises, where the output is well crafted legislation, which may or may not get passed, or implemented.

With CEELI's other programs, the effort to start a judges training program using a "reform group" of judges was a noble one, but it did not receive USAID support, and in the long run, may have underestimated the political realities; that is, any sustainable and recognized judicial training institute has to be part of the state apparatus. That being said, it is also true that the JTI that did emerge is much more independent than would have been the case if one had started on up, say, in 1996...and the experience

E&E/DG Assistance Modality Effectiveness Questions in the Assessment SOW

- What types of rule of law assistance have been the most effective in achieving results?
- Has this been true throughout the region or has it been largely country-specific? Which have been the least effective? Has this been the pattern in the region (or at least in the countries studied) or has it been country specific?
- What factors have made certain types of rule of law assistance more/less effective in achieving results? Are these factors common from one country to another or have they been largely country-specific?
- Within the basic types of assistance provided, have certain modalities of assistance been more effective than others in achieving results? e.g., when assistance has been provided in the form of training, has a certain type of training (i.e., long-term vs. short-term, overseas vs. local, group vs. individual; institutionalized vs. ad hoc training; use of judges vs. law faculty trainers; etc.) been more/less effective in changing attitudes or serving as a catalyst for change within the legal system? Is this true throughout the region (or in the countries studied)?

with CEELI's effort did prove useful when the JTI program finally jelled with USAID financial support, and technical assistance from EWMI.

Efforts in clinical legal education did result in a minor movement with the establishment of one clinic. CEELI reports it has worked with Open Society and others to establish 4 more clinics, but as the assessment team pointed out, whether the clinics will survive is an open question. If there were a strategy in place to reform legal education, including how it might be financed, then the experience with clinics could pay a greater return.

2. Training

Training for court staff, especially in those cases where the court president is committed to the project has been successful in improving the environment for doing business at the court. Improved equipment and supplies have played a critical role in this improvement. **However, training impact is a function of the direct relevance of the training received to the immediate tasks of the trainee.** There is little difference between Model and Non-Model court magistrates in measures of utility or application of skills learned in MTC training. Most of the general training is geared toward how to be a magistrate – this is highly relevant to the younger and new entry judges who make up two-thirds of all magistrates. The more specialized training focuses on new or rapidly changing elements of the law, of direct relevance to any of the more senior or specialized magistrates. Whether a magistrate is working in a model or non-model court does not make much difference to these subjects; the training can still be applied.

There is no single approach to training, whether overseas, short or long term, or done by foreigners or by local experts that should prevail. In early stages of transition, broad exposure to more progressive systems abroad is extremely useful, but the transition to domestic training on a systematic basis should move forward as soon as politically feasible.

Expatriate trainers will continue to play a limited role, but the bulk of the training responsibility must be with Bulgarian experts, but experts trained in how to train, not simply lecture.

Training without a broader context of reform commitment, a clear strategy, and sufficient resources for realizing strategic objectives will not have much impact. “When in doubt, train”, is too often the mantra of donor programs. There is little evidence to support an ad hoc approach to training, except perhaps in the very early stages of the transition period. Training becomes important when it coincides with structural reforms that create new challenges and new requirements for skills and higher standards. The link between training and the demands of the work place are underestimated.

3. Equipment

The provision of equipment has largely focused on developing information technology to improve courtroom

E&E/DG Assistance Targeting Issues in the Assessment SOW

- At the time it was provided, did ROL assistance provided address the principal constraints to legal system development? If not, why not? Was targeting adjusted over time?
- Was assistance targeted appropriately in terms of type of assistance provided, parties assisted, and duration of assistance?
- Would assistance have been more effective or had greater results if certain areas of assistance/assistance recipients had been targeted that were not? E.g., should more attention have been focused on the governmental vs. non-governmental sector assistance; greater investments in institutional capacity building versus law drafting; to enforcement issues; long-term vs. short-term training; public defender/legal aid programs; defense counsel training; ADR; programs directed at changing the underlying legal culture; or programs designed to build government consensus on/capacity for broad legal system reform?
- To what extent did assistance recognize, target or deal with any gender issues arising in the administration of law? Were there gender issues that were not addressed by assistance programs that should have been? If so, why not? Was assistance more or less effective in achieving results because gender concerns were or were not factored into rule of law assistance programs?

administration. The largest contribution, complimented by USAID funded office equipment, in terms of investment and implementation has been the EWMI. Although the levels of implementation have varied across regions, acceptance and understanding of the system has grown in recent years. The primary obstacle to successful implementation across Bulgarian regions remains the hesitancy within individual courts to install innovative techniques of management. Whether greater pre-implementation training and discussion of the EWMI with local officials would have improved the programs adoption is unknown but it seems further attitudinal changes will be needed for before Bulgaria can adopt the CMS developed by EWMI as a truly national system. The software provided through the project is very sophisticated and the issue of support for courts using it after the expiry of the project has not been resolved.

C. Assistance Targeting

ABA-CEELI developed codes of ethics for lawyers and judges, has developed programs to train officials in procurement law, and since 1997, has cooperated with the MOJ and Coalition 2000 to help shape Judicial Reform Strategy.

In 1998, CEELI began to focus on criminal law reform in response to growing U.S. and other donor concern over allegations of wide spread corruption and abuse of power. CEELI/DOJ programs now target the prosecutor’s office for training and reform efforts.

Political support for reform is critical if the reform process is to seriously address practices that may favor current vested interests. USAID’s focus on developing Public Interest NGOs with competence and authority on issues of legal reform may have brought public pressure to bear for reform.

Targeting corrupt practices through the preparation of professional code of ethics and development of NGO pressures is useful but limited in impact. Removing the incentives for corrupt practices including low salaries, low sense of professional self-esteem, and high opportunities for rent seeking through excessive regulation may have far greater impact on reducing corruption.

Targeting courts capacity to hear cases is important as case loads grow and create difficulties in the system. However, changing the ethics code at the MOJ level is not the means to use.

<p>E&E/DG Assistance Coordination Issues in the Assessment SOW</p> <ul style="list-style-type: none"> ▪ Have rule of law assistance interventions been adequately coordinated with similar activities of other assistance providers (international organizations, NGOs, other bilateral donors)? ▪ What external or internal (conditions within the host country) factors affected (positively or negatively) the ability of the various assistance providers to effectively coordinate rule of law assistance activities? E.g., to what extent did the presence or absence of a host country strategy for legal system reform affect the ability of donors to provide effective assistance? ▪ To what extent have ROL programs funded by other providers positively or adversely affected the results and effectiveness of USAID-funded rule of law programs?
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Procedural changes must be done by the judges (i.e. the implementers) with sufficient consideration for the impacts on the pursuit of justice in the courts.

Targeting toward court administration issues and the introduction of info techs has worked well but further targeting of resources must be done to support the enforcement of decisions, strengthen the SJC and the judiciary budget process.

ABA/CEELI has worked with the Bulgarian Bar Association for a variety of institutional strengthening issues... this is good for sustainability of reforms and reform minded attitudes. The development of an autonomous, strong and organized Bar is essential for a recognized “voice” to emerge.

D. Assistance Coordination

Convergence and cooperation among donors

With the collapse of the communist regime and the quick adoption of a new democratic constitution by Bulgaria in 1991, donor assistance strategies toward the development of rule of law focused initially on providing technical assistance for the drafting of economic and commercial laws that had to be in place if the transition to a market economy was to proceed. Both the European Union and USAID provided technical assistance for legislative drafting through 1996, with relatively less emphasis on broader rule of law development objectives.

After the financial crash and resultant runaway inflation of 1996, a new reform oriented government was elected. At about this time, USAID, EU/PHARE, the World Bank, and the Open Societies Foundation turned attention to other issues affecting the emergence of Rule of Law in Bulgaria. Human Rights issues, media, right to counsel, access to justice generally became part of the overall set of problems donors would address. USAID prepared its first Rule of Law strategic objective in 1997, and was instrumental in forming the coalition behind the establishment of the Magistrates Training Center in 1999. USAID partners, ABA/CEELI and EWMI became active in helping the current government prepare its Judicial Reform Strategy and implementation plan. USAID, along with OSF supported NGO efforts to analyze, educate and advocate for measures to combat rampant corruption in Bulgaria. By 1999, donor attention turned toward the general issue of judicial modernization, with emphasis on information technology and better case management, in part linked to the higher level objective of reducing the amount of time needed to process cases and bring them to closure. While this effort continues, attention is now turning toward implementation of laws and execution of court judgments.

Coinciding and perhaps causing this increased attention to ROL development has been the European Union accession process that Bulgaria has entered into, with all of its attendant standards, guidelines, and harmonization requirements. The government's ROL reform strategy is a direct outgrowth of this process, as is the passage of a number of laws bringing Bulgaria into alignment with the EU.

Because each donor strategy is driven in part by mandates from donor headquarters, donors are almost never able to develop patterns of cooperation that would lead to a single coherent strategy with each of the donors programs contributing to a well defined "whole." Still, there is evidence that USAID partners do maintain good contact with other donor programs, and in some cases, program cooperation does emerge. For example, the ABA/CEELI effort to introduce clinical education was followed on with a larger grant program run by Open Society. The USAID backed MTC has cooperated with EU to introduce training for magistrates on aspects of European Law in selected training programs.

The Utility of a Comprehensive Strategy

Foreign assistance to Rule of Law development as an overarching objective was slow to materialize, and has been dominated by a rather diffuse set of specific training and technical assistance activities focused on a broad menu of perceived constraints. While many of these activities are intrinsically worthwhile, together they do not make for a strategic approach. With hindsight, it appears that the USAID strategy was too narrowly focused on a piecemeal program involving economic law drafting, judicial training and reforming court administration and case management.

With the development of the Judicial Reform strategy and plan of 2000 and 2001, a more comprehensive strategy has been put into place. USAID did not develop a Rule of Law Strategic Objective until late in the transition period, once it appeared that the political will to commit to reform was beginning to emerge among ruling elites. The evidence suggests that EU Accession (the carrot) and the collapsing economy

(the stick) with a shift in power to democratic reformers was key to creating that political will, rather than USAID or other donor assistance. However, USAID assistance to reform elements among commercial lawyers, the bar, public interest NGOs, the judiciary, and some of the more outspoken law faculty was useful in shaping the thinking of these elements and expanding their own ideas and references. This fed into the reform process even if it remains difficult to demonstrate that it was critical to it.

USAID, the EU and Bulgarian public interest NGOs (some of them USAID supported) did have an impact on the government's excellent Judicial Reform Strategy of 2001. However, the government has had difficulty in sorting out the necessary structural changes that must occur before the more technical and administrative reforms can truly take effect. By January 2003, the government was embroiled in a political and constitutional conflict over control of the Judiciary, control of the Office of the Prosecutor, and control over the budgetary process for both. As presently structured, the Supreme Judicial Council cannot administer a modern judicial system as envisioned in the current USAID project. The issue of accountability of the Prosecutor and the Judiciary is very much unresolved. The role of the Ministry of Justice is not clearly defined. The capacity of the entire structure to develop a realistic financial investment and maintenance plan necessary for court rehabilitation and modernization has not been thought through. To the team's way of thinking, these structural and budgetary issues should have received at least equal attention to the focus on judicial training, court administration and case management. A comprehensive strategy would have identified these constraints and focused at least some effort in helping to resolve them.

If there had been better use of existing information by government and donors in the 1997-2000 period, a more comprehensive approach to reform might have emerged. Neither the donors nor the government have been able to frame the problem of Rule of Law development broadly enough to drive a comprehensive strategy. Focusing on specific problems such as Information Technology, Case Management, or Basic Training is not wrong, but together is not sufficient to achieve the major goal. Reliance on seemingly well informed opinion, to the effect that judges' were overburdened, rather than hard data led to an emphasis on case management systems that now look like a mistaken priority, or at least not sufficient when taken on their own. Greater attention to issues surrounding legal system corruption might have been merited.

Conclusion

The Bulgarian experience in developing a Rule of Law regime is not dissimilar from the experience of Ukraine, Georgia and other transitional states assessed in this research program. The overall template of legal requirements for a functioning democracy and market economy are well known and understood today by Bulgarians, donors and other foreign actors. The constraints to realizing these requirements are also familiar. Bulgaria has a gray economy, it has significant corruption, and it has important weaknesses in its rule of law regime.

What may be learned from the perspective of donor assistance, especially USAID?

- Having a political will to succeed with reform is critical, but not sufficient. In Bulgaria, the crisis of 1996-1997 produced a new momentum for reform, followed by the successful entry on to the European Union Accession path. Political will has to be translated into a plan for action. A government must also be able to develop a results oriented strategy that is sufficiently comprehensive to address the major constraints to reform, as well as to attract needed donor assistance. The Bulgarian government, with USAID and other donor support has done this. Implementation of the strategy is proving difficult, however.

- The USAID training strategy of developing Bulgarian trainers and building core competency courses in commercial, civil and criminal law has had an important impact on judicial self-confidence and the attainment of expertise. MTC Training for Magistrates has been timely and relevant, especially when the training is closely aligned with the immediate challenges facing the trainees. Magistrates still see value in some overseas training, and in well-integrated training by expatriate trainers. For the main, however, training by Bulgarian trainers with good legal experience, has proved to be the most effective and well-regarded approach, as followed by EWMI in its training support strategy.
- The creation of Judicial Training Centers in transitional countries has been difficult, notwithstanding the value to individual magistrates and attorneys who have received training. Many of these promoted by ABA/CEELI were the initiative of reform minded judges and/or attorneys who formed NGOs as the nucleus of a JTC type establishment. With a few exceptions, these efforts did not become institutionalized until government stepped into the funding and certification breach. Nevertheless, as seen in the Bulgarian case, these early efforts did provide valuable experience in what needed to be done, and laid the groundwork for later establishment of a modern approach to judicial training.
- Establishing a center for legal intelligence, policy research, and international networking is a highly useful part of a reform strategy. To some extent, ABA/CEELI was able to play a broader role than its primary mission in commercial law, by establishing relationships with the Bulgarian Bar, with Law Schools through the clinic program, and with the Judiciary through training and association development efforts. CEELI's early effort to diagnose and recommended needed judicial reforms, as well as its more recent report on the status of Rule of Law in Bulgaria have proven to be very useful documents.
- There are no "silver bullets" which will bring about "Rule of Law". ROL is a process that is constantly evolving as other, more powerful forces in the polity, economy and culture change through several generations of experience. USAID, faced with limited resources and, in Bulgaria, a time schedule for withdrawal, may be tempted to identify one or the other weaknesses as the "key" to reform. This is seldom the case. Information technology applied to improving efficiency of case management in the courts will not bring about a rule of law. Getting the government to prosecute a few high visibility corruption or narcotics running cases will not do so either.
- If there is political will, and a commitment to making reforms happen, then donors can help governments to understand that creating a rule of law requires a more comprehensive approach to the problem. Certain core values need to be advanced in every corner of the system...transparency, accountability, and integrity is essential. But so are professionalism, good corporate governance, efficiency and effectiveness in the functioning of the police, the prosecutors and the courts. To realize these values will take significant investments of state resources: budget, salary support, better facilities, and incentives for high quality performance. Government has to expect more, and be prepared to support the changes necessary to achieve the Rule of Law objectives all agree are required. Donors can assist by avoiding ad hoc efforts, lack of coordination, or the search for the "silver bullet".

Two things make the Bulgarian experience different. First, it has become a functioning democracy. Three rather different governments have gained power through elections without major allegations of fraud or suppression of the political rights associated with the democratic process. Second, Bulgaria has been invited to join the European Union and NATO, assuming it can meet the requirements of institutional, policy and legal reforms necessary for such status. This commitment has prompted the current government's formulation of a Rule of Law reform strategy, as well as serious efforts to pass legislation, create higher performance standards, and develop a more effective judicial system. Serious problems remain as we have noted in this report, but the main observation is that Bulgaria has taken up the issue of Rule of Law development as a major public issue. The contest of wills and institutional interests over this

issue are being fought out in public view, and with considerable public comment and input. It is quite possible that by the end of 2003, additional important reforms will have been put into place, including a much stronger Bar, a more accountable and transparent Office of the Prosecutor, and a better trained and more efficient judiciary.

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168 Hours Weekly “An American Report Wigs the Prosecutor’s Office” by Maya Yankova, November 15, 2002

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Information Service Plc. - presentation

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www.ewmi.org - East-West Management Institute

www.csd.bg - Centre for the Study of Democracy

www.apelsad-pd.bg - Official Site of the Court of Appeal in Plovdiv

www.usembassy.bg - Official Site of the American Embassy in Bulgaria

www.novinite.com - Daily Online Newspaper

www.mediapool.bg - Information and News Portal

Law portals:

www.lex.bg

www.apis.bg

www.ciela.net

www.digesta.com

www.norma.bg

Annex 2

MSI Scope of Work (SOW)

1.1 BACKGROUND

In early 2000, the Office of Democracy and Governance of the Bureau for Europe and Eurasia (E&E/DG) began a process aimed at developing a strategic framework to guide democracy and governance programming in the region for the coming decade. Over the course of the last year, this process has included a review of experiences gained and lessons learned from nearly ten years of democracy sector programming in the region. Various discussion papers have been prepared and fourteen discussion sessions have been held examining key issues in each of the major areas of democracy programming.

This strategy development process has included an examination of the effectiveness of assistance provided for the purpose of strengthening the rule of law (ROL) in countries in the region. In preparing for this review, it quickly became apparent that little in-depth evaluation work had actually been done of ROL activities in the region since the inception of ROL programming, either by USAID or other assistance providers. In fact, at the time, only one formal evaluation specifically focused on ROL programming had been conducted by USAID, a 1999 evaluation done of ABA/CEELI programs in the region. Despite the substantial amount of USAID ROL programming in the region over the last 7-8 years, little hard information has been systematically gathered regarding the effectiveness of ROL programming in actually producing changes in legal systems in E&E countries; nor on the relative effectiveness of different types of ROL assistance in strengthening law and legal institutions in countries in the region.

In March 2000, E&E/DG and the Office of Program Coordination and Strategy of the Europe and Eurasia Bureau (E&E/PCS) agreed that it would be desirable to carry out an in-depth ROL program assessment in the region. This evaluation was to focus on several countries and ROL program types in order to better validate findings and conclusions and to facilitate what were thought to be useful comparisons from one country to another.

Unfortunately, available funding and contracting limitations at the time did not permit the implementation of a multi-country assessment. Instead, a decision was made to conduct an assessment in one country as a pilot effort, with the anticipation that further assessments would be done as more funding became available. Armenia was chosen for the pilot assessment, which was carried out in March and April 2000 by a two-person contractor team, which spent ten working days in country. The lessons learned in carrying out that assessment (regarding approach and methodology) have been incorporated into this statement of work (SOW).

Consequently, the work proposed in this SOW represents a continuation, refinement and expansion of the evaluation work already initiated. The knowledge gained as part of the previous assessment work should, as much as possible, be integrated into the analytical work done as part of this assessment and factored into cross-country comparison process.

1.2 TITLE

E&E Regional Rule of Law Assessment Program

1.3 OBJECTIVE

The objective of this assessment is to determine the effectiveness of ROL assistance in promoting reform in the law and legal institutions in selected countries in the E&E region over the past ten years; to identify the various factors and conditions which have enhanced or limited the effectiveness of ROL assistance in those countries; and to determine the relative effectiveness of various types of ROL assistance provided in the region in strengthening law and legal institutions.

The findings and conclusions generated as the result of this assessment are intended to assist rule of law strategists and mission DG officers to formulate more effective rule of law strategies, both regionally and on a country-specific basis, based on experienced gained and lessons learned from past programming in the region. The principal aim of the assessment is to determine what has worked and what has not worked and why, and whether certain means of delivering assistance have been more effective than others in achieving change in participants and institutions in the legal system.

The assessment is also intended to serve as a tool to assist ROL activity designers to:

- Decide what their best investments are likely to be when putting new ROL projects together;
- Make appropriate adjustments in ongoing programming as required; and
- Better evaluate whether proposals put forward for ROL programming (whether from internal or external sources) are likely to produce results and what level of results can be expected.

The information gathered should also assist Bureau planners in better understanding and demonstrating the results of programming in this key area.

Another important objective of the assessment is to assist the missions participating in the assessment to get another perspective on the effectiveness of their ROL programming, past and present, and to systematically gather for them important information about developments in the legal sector that they might not otherwise be able to obtain.

1.4 STATEMENT OF WORK

I. Work to Be Performed:

A. **General.** During the period indicated in Section IV, the Contractor will perform, as requested, assessments of rule of law activities which have been undertaken in up to three (3) countries in the Eastern Europe and Eurasia region and will prepare and provide written and oral reports to USAID (as specified in Section V) on the results of those assessments. These assessments will include a review of all rule of law activities conducted by USAID in the selected countries since the inception of USAID ROL assistance in each country and, to the maximum extent practicable, an assessment of the effectiveness of ROL activities financed by other assistance donors, both public and private, during the same time period in each country.

Assessment work will be carried out when the USAID field missions are available to work with the Contractor's assessment team. This task order covers evaluation methodology development, regional analysis and synthesis work, and country assessments in up to three countries. Additional country assessments may be undertaken when additional funding becomes available.

As part of this assessment process, the Contractor will develop, along with USAID, a specific and common methodology to be used in carrying out the assessment in each country and for cross-comparison purposes. This methodology will be consistent with the methodology guidance provided in section III.D, and must be approved by USAID prior to the start of country assessment work under the task order. The methodology will be designed in such a way as to ensure that, as much as possible, activities in each country are assessed in the same way and that the same types and quality of results data are collected for each rule of law activity assessed. The methodology must also be constructed in such a way as to facilitate country cross-comparisons of assessment results at the end of the individual country assessment process.

The assessment will include analytical work both in the U.S. and in selected countries in the E&E region.

B. Specific Work Tasks.

1. Development of Common Assessment Methodology (CAM). Within two weeks of USAID's request to do a country assessment(s), the Contractor will provide to USAID (E&E/DG and E&E/PCS) for approval a proposed assessment methodology which will be used to conduct the requested assessment(s). This methodology will include the methods, techniques and indicators that the Contractor proposes to use to measure the impact and effectiveness of each type of rule of law assistance modality (see Annex A), and will describe the types of data that will be gathered and analyzed. The methodology will be designed to gather data which will provide a reasonably accurate and representative picture of the impact of the various types of assistance that have been provided and which can be analytically defended. Consideration should also be given to the availability of data throughout the region and the level of effort and cost involved in collecting that data or generating new data. Alternative methods of feasible data collection and the level of effort and the cost associated with each should be presented. The techniques used and information gathered should also be such as to provide a basis for answering the questions set forth in Annex B.

Within two weeks of receipt of the proposed CAM, USAID will provide the Contractor with its comments on it. It is anticipated that the Contractor and USAID will meet shortly thereafter to discuss these comments. Within a week after this meeting, the Contractor will present a final version of the CAM to USAID for approval.

2. Country Assessments. The Contractor will carry out the work on each country assessment in three phases:

a. Preparation Phase. During this phase, which will start with receipt of the request for the assessment, the Contractor will:

1) Identify and review all available documentation describing ROL assistance activities carried out in the selected country (countries), including, but not limited to, a review of mission R4s, contracts and grants under which assistance has been provided, interim and final contract and grant reports, internal or external evaluations and/or assessments, and documentation describing ROL assistance provided by other assistance donors during the period assessed.

A substantial amount of material about ROL programs in the Europe/Eurasia region has already been assembled by E&E/DG/ROL and will be made available to the Contractor for review. This documentation is not necessarily complete, however, and it is the responsibility of the Contractor to seek out and acquire any other documentation necessary to properly identify and assess ROL activities in each country. The Contractor will also arrange to get background briefings from AID/W officials in E&E/DG/ROL and elsewhere having knowledge of ROL activities in the countries selected for assessment.

2) Country Assessment Plan (CAP). Within three weeks of receipt of the request to do the assessment, the Contractor will prepare and submit to USAID a draft plan for conducting the assessment in each country included in the request. This plan will include a proposed schedule for all field work to be conducted, proposed dates for submission of draft and final reports, and a proposed methodology for doing assessment work in each country, consistent with the common methodology agreed to between USAID and the Contractor. The proposed CAP will include a description of what specific ROL activities the Contractor proposes to assess and how the Contractor proposes to evaluate the impact of each of these (e.g., by interviews, review of statistical data, or survey work, etc.). The CAP will also indicate any areas of programming that the Contractor believes do not merit impact assessment because of low levels of assistance, impracticality due to cost or other considerations, or other reasons. The CAP will be provided by USAID to the USAID mission in the selected country for review and comment. After USAID has had the opportunity to review the draft plan, the Contractor will meet with USAID to review and agree on a final plan prior to the start of fieldwork.

b. Field Work Phase. Following USAID approval of the final CAP, the Contractor will proceed to carry out its field visit in the selected country (countries).

Upon arrival in-country, the Contractor will contact USAID Mission personnel responsible for ROL programming, discuss with them the Contractor's proposed plan for assessing ROL activities, and obtain the Mission's input regarding persons to contact, availability of information, and the Mission's views on the impact/effectiveness of ROL programming from the Mission's perspective. While the Mission may provide recommendations on individuals to contact and may be willing, in some cases, to assist in making appointments for the team, the assessment team will have primary responsibility for scheduling any necessary interviews or appointments and should not expect to receive significant logistical support from the participating missions.

Upon completion of assessment work in each country and prior to departure, the Contractor will provide an oral debriefing for Mission staff on the Contractor's findings for that country. Mission comments on the findings will be included in the Contractor's draft and final written reports.

Upon request, the Contractor will provide interim reports to E&E/PCS and E&E/DG/ROL on the progress of the assessment.

c. Reporting Stage. Within two weeks of completion of each field visit, the Contractor will provide a draft final report to E&E/PCS and E&E/DG/ROL on the results of the country assessment. Approximately a week thereafter, the assessment team will meet with and orally debrief AID/Washington staff on the findings and recommendations of the assessment.

In addition to the findings on the effectiveness of ROL assistance, debriefings will include a discussion of the methodology used, problems encountered, and recommendations on how to undertake future assessments of this kind. Based on comments received both in this meeting and in writing, the Contractor will complete the final country assessment report and submit it to USAID no later than two weeks following the debriefing.

3. Regional Comparative/Lessons Learned Analysis (CLLA). Within thirty days after the date of completion of the field work on the final country assessment under the task order, the Contractor will complete and submit to USAID a draft report presenting its comparative analysis of the impact of rule of law programming in the various countries in the region and its conclusions regarding lessons learned from programs conducted to-date.

The objective of this task is to determine if common problems have been experienced within the region in achieving impact from rule of law programming, why that has been the case, and whether techniques have been developed to successfully deal with those problems which might be used in other country programs. The analysis should also identify where, from a regional perspective, there has been success in achieving results, whether some types of programming have been more successful than others, the reasons for that, and what the implications of that are for future programming in the region. The analysis should be broken down by types of assistance (training, law drafting advice, equipment support) and by different modalities of assistance within types (such as long vs. short-term training; in-country vs. overseas training, etc.), to the extent that sufficient experience exists to make meaningful comparisons. The analysis will also include a consideration of the results of the rule of law assessment report on Armenia published in May 2000.

The Contractor should also discuss differences, if any, in experiences and lessons learned in Eastern Europe as opposed to Eurasia. The E&E/DG Office has also identified separate political regime typologies in the region as an analytical tool for determining what types of assistance interventions are likely to be more or less successful in particular countries. The Contractor should review rule of law impacts, experience, and lessons learned using these topologies to determine if there is any correlation between regime type and success or failure in rule of law programming, in general or with respect to specific types of rule of law assistance. The Contractor's analysis and conclusions with regard to this will be included in the CLLA.

Within two weeks of USAID receipt of the draft CLLA, the Contractor and USAID will meet to discuss the draft. Within a week after this meeting, USAID will provide the Contractor with written comments on the draft. Two weeks after receiving USAID's written comments, the Contractor will submit a revised final report to USAID. Copies of the final country assessment reports done by the Contractor under the task order will be included as annexes to the final CLLA.

C. Team Composition

The work effort described above includes work to be performed both in the U.S. (common methodology development and comparative analysis/lessons learned) as well as in the field (country impact assessments).

Overall Team Management (Key Personnel). The Contractor will provide a Senior Program Team Leader with experience in managing and carrying out evaluations and assessments of development programs. This person should have experience in evaluating rule of law programs and programs in Eastern Europe and Eurasia. The Senior Program Team leader will be responsible for providing overall technical direction for all work provided under the task order. The Senior Program Team Leader will assure that all country assessments are carried out in a professional manner and in accordance with the approved methodology, and that all deliverables are of high technical quality. The Contractor will also provide a senior evaluation advisor who will be responsible for assisting with the development of the CAM, providing technical backstopping as needed throughout the country assessment period, and assisting as necessary with the preparation of the CLLA. This expert should have an educational background and technical expertise in program and project impact evaluation, including substantial knowledge of evaluation methodologies, techniques and statistical and other data gathering practices; and at least 10 years experience in carrying out evaluations of development projects. This professional should also have experience in evaluating rule of law programs and programs in Eastern Europe and Eurasia. The Contractor will provide such other personnel as are required to adequately manage and carry out the task order.

Country Assessment Team Members. A team of no fewer than three people will perform the assessment in each country. It is preferable that the same team members conduct all of the country assessments under the task order, but individual team members may be changed if an individual cannot be available for all country assessments as scheduled. If the Contractor elects to use qualified local experts as third team members, different individuals can be used from one country to another in order to obtain necessary local expertise or local language capability. Any change in, or additions to the Contractor's team after commencement of work must be submitted and approved in advance by E&E/DG, unless the proposed substitute was included in and approved as part of the Contractor's proposal.

Each field evaluation team will be composed as follows:

(1) **Team Leader:** a senior professional with at least 15 years of progressively more capable professional work and 5 years experience in international development work. This person should also have substantial experience managing and participating in project/program evaluations and in designing and implementing projects, preferably rule of law projects.

(2) **Second Team member:** will be an attorney with experience in international development work; and experience with designing, developing, assessing or implementing rule of law projects. This person should have a minimum of 5 years of legal experience and have experience in working in the CEE and/or NIS regions.

(3) **Third Team Member:** will be a person with substantial background and experience in project evaluation and assessment. Experience with assessing legal reform projects, and particularly in the CEE and NIS, is highly desirable. This person may be a local expert with the foregoing qualifications who has expert knowledge of the local legal system and local language capability.

No substitutions of personnel will be made by the Contractor following signing of the task order without the written approval of E&E/DG. If substitutions have to be made and if the Contractor cannot find substitutes acceptable to E&E/DG, the assessment or portions thereof may be cancelled or postponed at the option of E&E/DG.

D. Methodology

As indicated above, during the preparatory stage of the assessment program the Contractor will prepare, and submit to USAID for approval, a planned common methodology for the conduct of all assessment work, including an explanation of the specific methods to be used to collect information necessary to assess the effectiveness of ROL assistance activities that have been undertaken in the region. This common methodology will be used as the basis for country-specific assessment plans to be prepared by the Contractor for each country assessed.

It is the Contractor's responsibility to assure that its findings and conclusions about the effectiveness of ROL assistance activities are based on available data that is both accurate and reliable, and that information gathered is representative of and reasonably reflects results actually achieved. Emphasis will be on collection, where available, of reliable empirical data indicating success or failure, as opposed to anecdotal evidence. Where surveys or interviews must be used to assess impact, appropriate sampling and questioning techniques will be used to ensure representativeness of results. If the Contractor is not sure about the availability of certain data in country at the time that a country assessment plan is prepared, alternate methodologies will be presented for use depending on what is found during the actual fieldwork.

The Contractor will assess all ROL activities that have been undertaken in the selected countries unless otherwise agreed by USAID at the time the country assessment plan is approved. During the preparatory

stage of the country assessment plan, the Contractor should identify instances in which the low level of ROL programming in a certain area, lack of comparable activities in other countries assessed, or the age of the most recent activities in a country warrant exclusion of the particular activity from significant assessment effort. The number and types of activities carried out in each country may vary significantly. Annex A contains a listing of the various types of activities that have been undertaken in countries in the region over the past 7-8 years.

It is important to note that several different approaches may have been taken (at the same or at different times) in providing one type of ROL assistance, such as law drafting assistance---assistance for actual drafting, training to improve the skills of law drafters, assistance to strengthen legal drafting bodies (such as computers and legal reference materials), and sponsorship of conferences and workshops for law drafting purposes. Each of these different approaches needs to be separately evaluated.

For the purposes of the assessment, the Contractor should focus on ROL assistance provided under activities that have had, as their principal objective, the strengthening of the legal system itself. The Contractor is not expected to examine the effectiveness of law-related components of assistance efforts designed primarily to achieve economic or other non-democracy/governance objectives (such as commercial, environmental, energy or health sector objectives), except to the extent such efforts have included legal institutional strengthening elements (such as training for judges or lawyers, support to bar associations or assistance for improvement of court operations) and the impact and effectiveness of such activities can be easily assessed as part of a review of other activities (e.g., a review of training provided to a particular court should include a look at training provided under both ROL and economic restructuring activities). Law drafting assistance financed under non-ROL activities but which are designed to put into place the infrastructure for the legal system itself (such as assistance for development of constitutions or for laws on the judiciary, the operations of the courts, the establishment of the bar, judge selection, etc.) should be reviewed to determine the effectiveness of such efforts.

The assessment will focus on gathering data indicative of the success or failure of specific ROL activities, both in terms of accomplishing their immediate objectives as well as their impact on the legal system as a whole. The in-country assessment will include information gathering from mission and embassy staff, assistance recipients and providers, persons or organizations affected by changes in the legal environment, as well as from other parties in a position to assess the extent of change (or lack thereof) in the functioning of the legal system as a direct result of the assistance.

The effectiveness of the ROL activities carried out by other U.S. Government agencies and non-USG assistance providers during the period covered by the assessment will also be reviewed to determine their overall effectiveness in achieving results. In assessing those activities, emphasis will be placed on determining how effective the assistance approach has been, particularly if the approach has differed from that used under USAID ROL assistance efforts and would be instructive to USAID. The Contractor should also focus attention on other donor programs which have worked in areas which have not been emphasized or supported by USAID assistance, particularly in cases in which the other donor's experience can be particularly instructive to USAID (either good or bad).

The Contractor will assess each identified ROL assistance activity in order to determine the extent to which the assistance provided has significantly improved the performance of the individuals and institutions assisted, the extent of any improvement, and whether such effects have been only temporary or longer term. Emphasis will be placed on the gathering---where possible---of objective, empirical data demonstrating improvement in the quality or amount of work performed or in efficiency of operations; or, in the case of support for law faculties and non-governmental organizations, the extent to which assistance enabled such organizations to more effectively carry out their principal function, be it educational, advocacy, service, or informational. The Contractor will also focus specific attention on the

extent to which such activities have or are likely to become self-sustaining, as well as the effectiveness of assistance designed to enhance sustainability.

Where the only available evidence of impact is self-evaluation by participants, the Contractor will seek from those individuals specific, concrete examples of how performance was directly affected. In cases in which abilities and performance have not been improved, the Contractor will identify the reasons for that. The assessment is to be focused on the extent of change made in the individual or institution that was the immediate target of the assistance provided.

Based on its assessment of the impacts of assistance in each country, the Contractor will also review and determine the relative effectiveness of different types of ROL assistance in producing significant, durable improvements in both the structure and staffing of entities in the legal system and the relative effectiveness of different types of assistance in causing change to occur in the basic structure or operation of the legal system as a whole. This comparison should be done for similar activities within each country. In the case of training, the Contractor will separately consider and compare long-term vs. short-term training; U.S. vs. in-country training; individual training programs vs. training through judicial training centers vs. training-of-trainer approaches; substantive law vs. skills training; and training provided primarily by foreign vs. local trainers. The Contractor should also review whether training provided by certain types of legal professionals, such as lawyers/judges from the civil law tradition vs. lawyers/judges from the common law tradition, is more responsive to host country needs or more effective in achieving results.

The principal objective of these comparisons is to determine if, in general, investments in some types and modalities of ROL assistance have been more effective than others in producing significant and lasting changes in what happens in legal systems. If meaningful comparisons are not possible, or are of limited value because of various factors, the Contractor should so indicate and explain why that is the case.

As indicated above, the main purpose of the assessment is to obtain information on the actual impact and effectiveness of rule of law assistance activities over the assessment period. Although the information obtained may be useful in making judgments about past ROL strategy (strategies) in the region and should be useful in determining the direction of future strategy, the principal job of the Contractor is to find out what has happened over time, and not to design new ROL strategies, programs or activities. The limited time and resources available for the assessments dictate that the Contractor's effort be focused primarily on determining, assessing and documenting its findings regarding the results and effectiveness of prior ROL efforts, rather than designing new strategies and activities. This does not preclude the Contractor from providing its views to mission or AID/W staff regarding effective approaches used by other assistance providers that may be worthy of adoption by USAID.

Key Questions to be Addressed. The proposed assessments also offer the opportunity to gather information to assist USAID in answering a number of key questions that have arisen with regard to ROL programming in the region over the past few years. These questions relate to the issues of appropriate assistance sequencing; the relative effectiveness of different modes of ROL assistance; whether ROL assistance has been effectively targeted, the extent and nature of results achieved by various ROL assistance programs; and the extent to which the good or bad coordination of ROL assistance activities among donors has made any difference in the effectiveness of ROL assistance. A non-exclusive listing of these questions are set forth in Annex B. The Contractor should design and carry out the assessment in such a way as to ensure that these questions are addressed during the course of the assessment and that sufficient information is gathered to permit these questions to be answered, if at all possible. The Contractor will also include a specific section in its final comparative analysis/lessons learned report providing its findings and conclusions with regard to the key questions presented in Annex B.

II. Deliverables

The Contractor will provide the following deliverables:

- 1) Written draft and final versions of the CAM and all CAPs, in English, to be submitted to E&E/PCS/NPSA and E&E/DG/ROL, in accordance with the time deadlines set forth in Section III.B;
- 2) As requested by E&E/PCS and E&E/DG, brief oral and written progress reports as required throughout the task order period;
- 3) Written draft final and final country assessment reports, in English, to be submitted to E&E/PCS and E&E/DG, in accordance with the schedule set forth in Section III.B. Each final country assessment report will include:
 - An Executive Summary;
 - A discussion of the background and rationale for the assessment;
 - An explanation of the methodology used and field work done in each country;
 - Findings and conclusions for each country (summary can be in main text, with details in annexes); and
 - A listing of all documents reviewed and persons contacted and interviewed during the assessment
- 4) A written draft and final comparative analysis/lessons learned report, in English, which will include:
 - Findings and conclusions with regard to cross country comparisons;
 - Lessons learned regarding rule of law programming from a regional perspective;
 - Identification and discussion of factors that have limited or enhanced the effectiveness of ROL programming in the region;
 - Differences, if any, observed in impacts of rule of law activities between Eastern Europe and Eurasia;
 - Findings and conclusions with regard to any lessons learned by analyzing rule of law program experience and impacts using the E&E/DG political regime typology;
 - Findings and conclusions with regard to the usefulness, efficacy, and limitations of the methodology (methodologies) used in the assessment program and recommendations for changes with regard to future assessments; and
 - A section addressing the key questions posed in Annex B.
- 5) Oral debriefings as specified in this statement of work.

Written reports and plans required above will be submitted in an original and ten hard copies and also in an electronic version in Microsoft Word format.

The Project Office's "ANNEX A AND ANNEX B" is attached hereto as part of the Statement of Work and is located at Attachment A.

Types of Rule of Law Assistance

I. Technical advice for:

A. Law drafting

1. Framework laws
2. Criminal laws
3. Commercial/civil law
4. Consensus building activities (forums, focus groups)

B. Institutional capacity building

1. government organizations
 - a. law drafting centers/departments
 - b. reform process planning/implementation (strategic plans; working group establishment)
 - c. establishment of special bodies/procedures (arbitration courts, pilot courts, jury trials, court administrative offices)
 - d. establishment of new management groups (judicial councils/conferences/committees)
 - e. judicial selection procedures
 - f. court monitoring programs
 - g. public outreach programs
 - h. law classification/codification projects
 - i. development of national anti-corruption strategy
2. non-governmental organizations
 - a. General management
 - b. Fundraising
 - c. Budgeting/Financial Management
 - d. Lobbying
 - e. Media Relations
 - f. Project/program design; proposal preparation
 - g. Project Implementation (legal advocacy/clinics)

C. Court operations

1. Case/docket management and processing
 - a. automated case management systems
 - b. manual case processing procedures
2. Courtroom management
3. Court Administration (conferences/training/manuals)
4. Physical facilities management
5. Personnel management
6. Procurement management
7. Publishing judicial decisions/laws/commentaries
8. Legal/statistical data management
9. Decision enforcement (establishment and operation of bailiffs' service---study tours, seminars/manuals)

D. Judicial training facilities/centers (curriculum development, staff training, training material development)

E. Legal information systems

1. PCs/LAN systems (court automation plans; design, procurement, and installation of hardware; software design, development and installation)
2. Internet/Web Connection
3. Establishment/operation of legal information centers

F. Law Faculty development

1. Curriculum development
2. Establishment of special programs (clinical/skills)
3. law school association development

G. Public education programs (seminars/radio & TV programming/publications/high school programs)

H. Bar Association development/lawyer support networks

I. Law Student/law student association development

II. Training

A. Long-term overseas (U.S./other) (individual)

B. Short-term overseas (individual & group)

C. Short-term local (individual & group)

D. Substantive law vs. procedural/skill vs. general principles (judicial role, function, status, ethics, independence, etc.)

E. Type of trainer (foreign/local/judge vs. non-judge)

F. Audience (lawyers/judges/staff/law faculty/law students)

G. New entry/continuing

III. Commodity Assistance

A. Law Books

B. Publications (codes, manuals, reports, translations, commentaries)

B. Equipment

C. Facilities (courtrooms/furniture/space)

IV. Other

Funding (budget support) for non-governmental organizations (incl. support for legal reform activities of business, trade, environmental, health, watchdog, and court monitoring groups)

Gender-related activities (domestic violence programs; women's clinics)

Ombudsman assistance

Parliamentary assistance

Partnership activities (Karelia)

Public awareness activities

Rule of Law Assessment --- Issues/Questions to be Examined

Assistance Sequencing

Was the rule law assistance provided appropriate in terms of the needs of the sector and the prevailing conditions in the sector at the time it was provided?

Would it have been more effective to have first provided another type of rule of law assistance than what was provided?

Were certain types of assistance more or less effective because they preceded or followed other types of assistance?

Were there synergies between different types of rule of law assistance that made those types of assistance more/less effective when provided together?

How was the sequencing of assistance interventions affected, if at all, by any changes in conditions in the host country? Were appropriate adjustments to assistance interventions made to reflect or respond to these changed conditions? What factors affected the ability of rule of law programs to adjust to changed circumstances?

What does experience in the countries studied tell us, if anything, about the sequencing and effectiveness of assistance focused on the governmental versus non-governmental sectors?

Assistance Modality Effectiveness

What types of rule of law assistance have been the most effective in achieving results?
Has this been true throughout the region or has it been largely country-specific?

Which have been the least effective? Has this been the pattern in the region (or at least in the countries studied) or has it been country specific?

What factors have made certain types of rule of law assistance more/less effective in achieving results?
Are these factors common from one country to another or have they been largely country-specific?

Within the basic types of assistance provided, have certain modalities of assistance been more effective than others in achieving results? E.g., when assistance has been provided in the form of training, has a certain type of training (i.e., long-term vs. short-term, overseas vs. local, group vs. individual; institutionalized vs. ad hoc training; use of judges vs. law faculty trainers; etc.) been more/less effective in changing attitudes or serving as a catalyst for change within the legal system? Is this true throughout the region (or in the countries studied)?

Assistance Targeting

At the time it was provided, did ROL assistance provided address the principal constraints at the time to legal system development? If not, why not? Was targeting adjusted over time?

Was assistance targeting appropriate in terms of type of assistance provided, parties assisted, and duration of assistance?

Would assistance have been more effective or had greater results if certain areas of assistance/assistance recipients had been targeted that were not? E.g., should more attention have been focused on the governmental vs. non-governmental sector assistance; greater investments in institutional capacity building versus law drafting; to enforcement issues; long-term vs. short-term training; public defender/legal aid programs; defense counsel training; ADR; programs directed at changing the underlying legal culture; or programs designed to build government consensus on/capacity for broad legal system reform?

To what extent did assistance recognize, target or deal with any gender issues arising in the administration of law? Were there gender issues that were not addressed by assistance programs that should have been? Why not? Was assistance more or less effective in achieving results because gender concerns were or were not factored into rule of law assistance programs?

Assistance Results

What results did the various types of rule of law assistance provided achieve, in terms of:

- influencing the direction and content of the legal reform process
- changing attitudes of key players in the process
- changing the way in which key institutions/institutional processes operate
- creating constituencies for reform?

Have certain types of rule of law assistance consistently produced results, while others have not? Has this been true across the region or are results largely country-specific?

Have certain types of assistance produced more results than others? E.g., has training been more effective, in general, than technical assistance for law drafting?

To what extent did these results lead to broader systemic change, if at all?

To what extent have results achieved been sustainable? If they have not been sustainable, why not? What factors have effected the achievement of sustainability, and to what extent? To what extent has success or failure in achieving sustainability affected the ability of rule of law programs to have an impact on legal system reform and development, in the short and long term?

If an assistance activity was designed as a pilot to be replicated, if successful, has replication occurred? If not, why not? What factors effected whether an activity was successfully replicated or not?

To what extent were changes produced or impacts made by various types of ROL assistance long or short-term? What factors affected whether results achieved were long or short-term?

Have ROL assistance activities of other assistance providers been more or less effective in achieving results? Why? If other providers have financed the same type(s) of assistance that we have, and have been more or less effective, what factors accounted for that?

Assistance Coordination

Have rule of law assistance interventions been adequately coordinated with similar activities of other assistance providers (international organizations, NGOs, other bilateral donors)?

What external or internal (conditions within the host country) factors affected (positively or negatively) the ability of the various assistance providers to effectively coordinate rule of law assistance activities? E.g., to what extent did the presence or absence of a host country strategy for legal system reform affect the ability of donors to provide effective assistance?

To what extent have ROL programs funded by other providers positively or adversely affected the results and effectiveness of USAID-funded rule of law programs?

Annex 3

Country Assessment Plan

RULE OF LAW PROGRAM ASSESSMENT - BULGARIA

1. Purpose/Objectives of the Assessment

The objective of this assessment is to determine the effectiveness of ROL assistance in promoting reform in the law and legal institutions in the E&E region over the past ten years; to identify the various factors and conditions which have enhanced or limited the effectiveness of ROL assistance; and to determine the relative effectiveness of various types of ROL assistance provided in the region in strengthening law and legal institutions.

The findings and conclusions generated as the result of this assessment are intended to assist rule of law strategists and mission DG officers to formulate more effective ROL strategies, both regionally and on a country-specific basis, based on lessons learned from past programming in the region. The principal aim of the assessment is to determine what has worked and what has not worked and why, and whether certain means of delivering assistance have been more effective than others in achieving change in participants and institutions in the legal system.

The assessment is also intended to serve as a tool to assist ROL activity designers to:

- decide what their best investments are likely to be when putting new ROL projects together;
- make appropriate adjustments in ongoing programming as required; and
- better evaluate whether proposals put forward for ROL programming (whether from internal or external sources) are likely to produce results and what level of results can be expected.

The information gathered should also assist Bureau planners in better understanding and demonstrating the results of programming in this key area.

Another important objective of the assessment is to assist the missions participating in the assessment to get another perspective on the effectiveness of their ROL programming, past and present, and to systematically gather for them important information about developments in the legal sector that they might not otherwise be able to obtain.

Results from field assessments will be provided to USAID/Missions and will also be used to prepare a multi-country synthesis of lessons learned concerning program impact and the relative effectiveness of different modalities of assistance.

2. Summary Description of Methodology to be Used

All field assessments will incorporate two perspectives for answering the research questions posed in the E&E bureau's Scope of Work for this series of assessments. One perspective or approach will focus on the intended impacts of ROL programs. Assessment teams will gather data on the current ROL situation in a country and trace backward to identify changes that have occurred and to ascertain the degree to which programs of foreign donors, government, etc., contributed to those changes. The other perspective or approach will focus on important, but not necessarily all, elements of USAID programs and the impact these programs may have had. This perspective will trace cause and effect hypothesis forward from

activities to see if the intended results of those activities (beyond the output level) were actually achieved, and whether these programs produced unanticipated effects.

Data collection for both assessment perspectives will involve a blend of document reviews and interviews as well as limited surveys and focus groups where applicable to deepening the team's understanding of impact.

Document review: It is important, given the methodology for these assessments, for team members to be aware of all of the basic facts concerning the USAID program over the past decade before they begin to interview program stakeholders and others operating in the program environment. For this reason, the team's review of documentary material will begin in Washington, using whatever materials are available there and supplementing these information sources upon arrival in country with documentary information that is only available on-site.

Interviews undertaken for the purpose of defining the current ROL situation and identifying the causes of reported changes in that situation will be undertaken with representatives of key stakeholders, i.e., USAID, the Ministry of Justice, the judiciary, prosecutors, lawyers, other donors and "watchdog" elements of society (NGOs, the press, etc.), members of parliament, and parliamentary staff. Given the limited time allocated for these assessments, the team hopes to use primarily but not exclusively a "wise men" approach for these overview interviews. Where possible, it would like to interview small groups of individuals who represent these different stakeholder perspectives (e.g., several USAID staff in one interview; several judges and perhaps a representative of the judicial association in another interview, etc.) rather than conduct a large number of one-on-one interviews with individuals. Numerous one-on-one interviews will also be conducted with key program implementers and beneficiaries. The team also intends to make use of a survey on the impact of training of judges.

Assessment teams will undertake sufficient analysis of their data while in country to be able to provide Missions with an oral briefing on key findings prior to their departure. Written versions of country assessments will be produced for each country visited within a reasonable time and will be shared with both the Mission and the E&E Bureau. All country level reports will serve as inputs to the ROL assessment synthesis, which will begin after the first few country reports are completed and continue through the end of this assessment.

3. Proposed Schedule for Assessment

Deskwork and local interviews in Washington will begin in December. The team's Bulgarian lawyers will begin trying to collect judicial statistics and other quantitative information (such as lists of trained judges) prior to the arrival of the expatriate members in the field.

A team planning meeting will be held on January 9. The team will begin work in Bulgaria on January 13th and will remain for three weeks. The team will work with USAID to identify which locations outside Sofia will need to be visited during this period. Towards the end of their visit, the team will outline their findings and provide a briefing for USAID.

The team will depart Bulgaria o/a 1 February. A draft report will be produced o/a 26 February. Subsequent to receiving the mission's comments and also those from DCHA staff, a final version will be produced two weeks after receiving the final comments. A debriefing for Washington-based staff will then be scheduled at a time convenient to all the parties.

4. Team Members & Functions

Richard Blue will serve as team leader. The team leader is responsible for the overall plan of the assessment, for coordination across component topics and team members, for structuring debriefings and the final report.

Dr. Blue recently completed a parallel assessment in the Ukraine. He holds a PhD in Politics from the Claremont Graduate University. He joined USAID in 1975, where he developed and led a 12-week mid-management course called The Development Studies Program. He joined the USAID Office of Evaluation in 1978. He was co-founder of the Center for Development Information and Evaluation. In 1982 he joined the Foreign Service as Director of the Office of Egypt Affairs, and became a Senior Foreign Service Officer as Deputy Director of the USAID India Mission. He served as Advisor to the US House of Representatives Foreign Affairs Committee during the 1989-90 rewrite of the Foreign Assistance Act and was instrumental in making democracy and governance one of the main objectives for USAID programs. He returned to USAID as Deputy Director for Technical Resources in the Asia, Near East and Europe Bureau, where he developed the Democratic Pluralism Initiative, the first comprehensive democracy development strategy in USAID. Leaving USAID in 1990, he joined The Asia Foundation as Representative for Thailand, Cambodia, Laos and Vietnam, developing programs in Civil Society and Rule of Law for the region. Returning home in 1996, he has become a consultant focused mainly on evaluations of democracy, governance and rule of law programs in countries of the former Soviet Union and elsewhere.

Brian LeDuc is responsible for the court administration component and for taking on or helping with other components as decided by the team during the planning phase.

He is a lawyer with the Administrative Office of the US Courts, where he has served as a member of Case Management/Electronic Case Files (CM/ECF) Project Team, charged with development of national next-generation case-management system. He has special expertise in the integration of new technologies and procedures into courts. He served with the ABA CEELI program in Macedonia for two years advising the Ministry of Justice on rule of law issues and where he secured significant international funding for various court-related technology and information projects, including public information brochures, electronic library of local legal information and national court technology conference. He also worked as Associate Chief Deputy Clerk of the U.S. Court of Appeals for the Federal Circuit, Washington, D.C. He holds a JD from Notre Dame.

Two Bulgarian lawyers have been identified and rates are being negotiated as of December 19.

5. Tentative Listing of Activities to be Reviewed

The primary areas on which Dr. Blue will focus will be judicial training and education, judicial association development, and other areas of judicial reform (especially the impact of the government's long term legal reform plan on progress⁸³). Dr. Blue will also review some issues relating to legislative drafting, but only in order to obtain information confirming (or not) findings from other country reports. He will also conduct a limited review of efforts to introduce the seemingly more modest efforts to introduce bar reform, strengthen legal NGOs and improve clinical legal education in Bulgaria. Mr. LeDuc will take primary responsibility for examining donor efforts in the court administration arena. He will also help in some of the areas under Dr. Blue's charge or may take the lead in them – for example, he may

⁸³ Does the hypothesis that countries with such plans do a better job of advancing and managing reform hold water in the Bulgarian case? If it does, why/how does it help? How did the plan evolve? Are the government and donors following the plan – is it a constant reference point for decisions in the sector?

take the lead on Bar reform and judicial association development; he may also be able to assist with judicial training. The precise division of secondary topics will take place at the team planning meeting – shifts may also be made in the field as it becomes clear that some topics merit more time than others.

The team does not plan to look at parliament (except for its legislative drafting function), corruption (except as it relates to judicial reform), media development, law school education (except for clinical legal education), commercial law reform, or labor law issues. The team also will not closely examine the prosecutorial reform. Finally, the team will not be able to reach any detailed conclusions concerning the quality of specific laws that have been enacted, although it will of course report on the consensus of expert informants.

6. *Tentative List of Persons to be Interviewed/Organizations to be Contacted*

IN BULGARIA:

USAID

Debra D. McFarland, Mission Director
Nadereh C. Lee, Chief, Democracy and Local Governance Office
Gene Gibson, DG/ROL Advisor

DONORS

Dutch Embassy

Bert Van der Lingen, DCM

European Union

Christof Stock, Second Secretary, Political Affairs
Milena Damyanova, Advisor, Judiciary & Public Administration

Open Society

Simona Milanezi, Coordinator
Ivanka Ivanova, Coordinator

UK Embassy

Christine Winterburn, Second Secretary (Political/Press)

UNDP

Maria Zlatareva-Pernishka, Programme Analyst

World Bank

Onik Karapchian, Public Administration & Judiciary

EXECUTIVE BRANCH

Ministry of Justice

Anton Stankov, Minister
Miglena Tacheva, Deputy Minister
Sevdalin Bojnikov, Deputy Minister
Theodor Skotchov, Head of IT Department
Jeana Sharankova

JUDICIAL BRANCH

Blagoevgrad District Court (Model Pilot Court –MPC)

Elena Avdeva, Chair

Constitutional Court

Hristo Danov, Chair

Gabrovo District Court (MPC)

Minko Minkov

Gabrovo Regional Court (MPC)

Galina Marinov

Plovdiv Appellate Court (MPC)

Zdravko Kirov, Chair

Shumen District Court (MPC)

Silvia Peneva, Chair

Smolyan District Court (MPC)

Radka Svirikova, Chair

Smolyan Regional Court (MPC)

Ignat Kolchev, Chair

Sofia Appellate Court (MPC)

Evgeni Staikov, Chair

Sofia District Court (MPC)

Nelly Koutzkova, Chair

Sofia Regional Court —Family Law Chamber (MPC)

Kapka Kostova, Chair (also head of the Bulgarian Judges Association)

Supreme Administrative Court

Vladislav Slavov, Chair (also Chairman of the Union of Jurists)

Supreme Court of Cassation

Ivan Grigorov, Chairman

Rumen Nenkov, Deputy Chair & Chair of Criminal Law Chamber

Supreme Judicial Council

Vellelina Karagonova, General Secretary

Lyubka Ilieva-Vandeva (also, Justice Supreme Court of Cassation),

Expert Council on Problems of Computerization of the Judicial System

Alexander Arabadjiev, former member of Constitutional Court, author of EU monitoring report

PARTNERS

American Bar Association

Keith Thomas, Liaison
Remy Kormos, Liaison
ABA/CEELI
135A Rakovsky

ProMedia/IREX

Petko Georgiev, Resident Advisor

USAID Judicial Development Project

East West Management Institute
Judge Ken Stuart, Chief of Party
Virinnia Leavit, Judicial Trainer

USAID Open Government Initiative

Jack Reynolds, Chief of Party
Jeanne Wehlau, Government Advisor Manager
Irina Faion, Civil Society Manager
Ventsislav Karadjov, Legal Advisor

World Learning

Matt Brown, Country Director

NGOS

Alliance for Legal Interaction

Ivan Dimov, Chair

ACCESS to Information Program

Fani Davidova

Arbitration Court of the Bulgarian Chamber of Commerce and Industry

Silvy Chernev, Attorney at Law & President

Black Sea Law Community

Mila Georgieva

Bulgarian Helsinki Committee

Jynako Grozev
Boyko Boev

Bulgarian Institute for Legal Development

Nelly Ognianova, Director

Center for the Study of Democracy

Ognian Shentov, Chairman
Maria Yordanova, Law Director

Magistrates Training Center

Dragomir Yordanov, Executive Director

Sofia Bar Association

Maria Serkedjieva

PRIVATE ATTORNEYS

Valentin Braykov

Attorney at Law (may be affiliated with Bulgarian/American Enterprise Fund)

Dr. Tsvetanka Spassova

Attorney at Law (member of commercial law assessment team)

LAW PROFESSORS

Krassi Dimitrov

Professor of Clinical Legal Education
Rousse University Law Faculty

MEDIA

Sega Daily

Krassimir Dobrev

OUTSIDE OF BULGARIA:

Angela Conway

ABA/CEELI
Washington, DC

Keith Henderson

IFES/American University
Washington, DC

Nicholas Mansfield

East West Management Institute
New York, NY

Annex 4

Team Schedule

MSI RULE OF LAW EVALUATION TEAM

JANUARY 12 – 31, 2003

RICHARD BLUE – MSI, Washington –

BRIAN LEDUC – MSI, Washington –

TSVETANKA SPASSOVA-STOYANOVA - lawyer

VENTSISLAV TANEV - lawyer

GEORGI LEKOV – interpreter

RENETA BARRETT – interpreter

KATYA DYANKOVA – logistics

Time of arrival – Sunday, January 12, at 1:35 h

*Lodging – Sheraton Hotel, RB – room 325, BL – room 305
5 Sveta Nedelia square*

TENTATIVE SCHEDULE

First week

SUNDAY, JANUARY 12

Lufthansa from Frankfurt, Flight number 3402

Time of arrival: 1:35 p.m.

Sheraton Hotel pick-up service

Team meeting at 5 p.m. at the Sheraton, lobby-bar

MONDAY, JANUARY 13

9:15 – 13:30 **USAID office**

Gene Gibson, ROL Senior Advisor,
Misho Boiadjev, ROL Specialist,
Ted LaFarge, Private Sector Officer

10:30 – 11:15 **Entry briefing with Debra McFarland, USAID Mission Director**

1:00 – 2:00 Karen Kramer, USDOJ / Legal Advisor
Alain Norman, PolEcon Officer

3:00 – 5:00 **East-West Management Institute**

Judge Ken Stuart, Chief of Party
Virginia Leavitt, Trainer

TUESDAY, JANUARY 14

9:30 – 11:15 **American Bar Association – CEELI**

RB, BL Doug Fransis, Liaison

11:30 – 12:30 **Supreme Administrative Court**

RB, BL, interpreter Judge Svetla Petkova, Deputy Chair
BL, interpreter Nina Spassova, Administrative Secretary

2:00 – 3:00 **Supreme Court of Cassation**

RB, BL Judge Roumen Nenkov, Deputy Chair
BL, interpreter Maria Dilova, Court Administrator

4:00 – 5:00 **LEX.BG**

BL Nadia Rangelova, Chair of Law and Internet Foundation
Miroslav Ognianov

4:00 – 5:00 **National Assembly of the Republic of Bulgaria**

RB, interpreter Ms Anelia Mingova, Chairwoman, Legal Affairs Committee

WEDNESDAY, JANUARY 15

9:30 – 10:30 Ministry of Justice

RB, BL Sevdalin Bozhikov, Deputy Minister
interpreter

12:00 – 1:45 Team Building for Court Employees

RB, interpreter Eliana Angelova

12:30 ABA / CEELI

BL Biliana Giaurova

2:00 Court of Appeal

RB, interpreter Judge Staikov, Chair

2:00 – 2:40 World Bank

RB Onik Karapchian, Public Administration and Judiciary

3:00 – 3:50 UK Embassy

RB Christine Winterburn, 2nd Secretary Political/Press

RB, BL Milena Damianova, Advisor Judicial and Public Administration

THURSDAY, JANUARY 16

10:00 Regional Court – Samokov

RB, BL, interpreter 2 Kiril Pavlov, Chair (might not be available)
VT, TSS Elena Todorova, Administrative Secretary
4 judges - all trained

afternoon MTC seminar for judges in Borovets

RB, BL, interpreter Katya Dormisheva,
Petar Bedrov – Logistics Support
Civil Procedure Module
Judge Dona Gencheva, Lecturer
Judge Daria Prodanova, Lecturer
Criminal Procedure Module
Judge Galina Zaharova, Lecturer
Judge Maria Miteva, Lecturer

FRIDAY, JANUARY 17

9:30 – 10:30 Business Center – Sheraton Hotel

RB, interpreter Alexander Kashumov, Access to Information
Elena Trifonova, Institute for Regional and International Studies (advocacy program)
Gergana Vasileva
Luben Panov, Bulgarian Center for Non-Profit Law
Jonko Grozev, Bulgarian Helsinki Committee

11:30 – 12:30 Open Government Initiative

RB Ventsislav Karadjov, Legal Advisor

4:00 – 4:30 US Embassy (walking distance from Sheraton)

RB Ambassador James W. Pardew

5:00 – 6:00 LGI

RB Anelia Atanasova –

10:00 Regional Court – Dupnitsa

VT, TSS Ms Kioseva, Chair
BL, interpreter

2:00 Regional Court – Blagoevgrad (MPC)

VT, TSS Petar Pandev, Chair
BL, interpreter Daniela Ivanova, Administrative Secretary /substitute/

District Court – Blagoevgrad (MPC)

BL, interpreter Elena Avdeva, Chair
Vaska Georgieva, Administrative Secretary

Second week

MONDAY, JANUARY 20

9:30 – 10:30 French Cultural Institute

RB Fabrice Guingand, Science and Technology Attaché

2:00 – 3:30 Open Society Foundation

RB Ivanka Ivanova, Coordinator

10:30 Court of Appeal - Plovdiv (MPC) – 19 judges (only a few trained)

VT, TSS Zdravko Kirov, Chair

BL, Reni

afternoon **Regional Court Plovdiv** – over 30 judges
VT, TSS Judge Stanislav Georgiev, Chair
BL, Reni Judge Kolev, Deputy Chair
 Seizova, Administrative Secretary

Lodging in Plovdiv:

TUESDAY, JANUARY 21

8:00 – 9:30 **Sheraton Hotel, Lobby-bar**
RB Hristo Ivanov Commercial Law – ABA/CEELI Consultant

10:30 – 11:30 **ProMedia / IREX**
RB Petko Georgiev, Resident Advisor -

1:30 – 2:30 **Center for the Study of Democracy**
RB Maria Yordanova, Law Director
 Boyko Todorov (may be)

3:00 – 4:00 **MSI**
RB Howard Ockman

5:00 – 6:00 **Parliamentary Center for European Law**
RB Georgi Genchev
 Prof. Trendafilova, Chair of the Board

9:00 **Regional Court – Assenovgrad - 6 judges**
VT, TSS Judge Lukov, Chair BL,
 Reni Kostadinova, Administrative Secretary

afternoon **Regional Court - Smolyan**
VT, TSS Judge Kolchev
BL, Reni

Lodging in Smolian:

WEDNESDAY, JANUARY 22

9:00 – 10:00 **Sheraton Hotel, Lobby-bar**
RB Temenuzhka Todorova, UNDP, Administrative Justice Review
 Daniel Bilak, International Project Director

12:00 – 1:00 **USAID**
RB Mihail Boiadzhiev
 Gene Gibson

2:00 – 3:00 **Dutch Embassy**
RB Ber Van der Lingen, Mission Director
 Jos van Dinter

morning **Regional Court - Smolyan**
VT, TSS Judge Kolchev
BL, Reni

THURSDAY, JANUARY 23

11:00 – 12:00 **Supreme Administrative Court**
BL, interpreter Nina Spassova, Administrative Secretary

16:00 – 17:00 **Sheraton Hotel, Business Center**
BL, interpreter Lazarina Dimirova, National Clerks Association
 Zoia Marinova

11:30 **Regional Court – Veliko Turnovo**
VT, TSS Emil Demirev, Chair - 062/ 226-49
RB, interpreter Petya Stoyanova, Deputy

Lodging in Veliko Turnovo.

FRIDAY, JANUARY 24

9:00 **Brian meets Misho Boiadjiev at USAID**

9:30 – 11:00 **Boyana Residence**
BL *National Conference on “Administrative Justice Reform in Bulgaria: Necessity and Opportunity”*

9:30 – 10:00 – Opening Remarks

Mr. Sevdalin Bojikov, Deputy Minister of Justice

Mr. Vladislav Slavov, Chairman of the Supreme Administrative Court

Ms Marta Ruedas, Resident Representative, UNDP

10:00 – 10:15 Presentation of the final report on the “Comprehensive Review of the Administrative Justice System in Bulgaria”

Mr. Daniel Bilak, International Project Director

Prof. Denis Galigan, International Project Consultant

10:15 – 11:00 Presentation of the report of the working group

Working group 1, Chairperson: Establishing a System of Administrative Courts and Superior Administrative Bodies

Working group 1, Chairperson: Creating an Administrative Justice Code

16:00 – 16:30 Boyana Residence

BL *National Conference on “Administrative Justice Reform in Bulgaria: Necessity and Opportunity”*

16:00 – 16:30 – Concluding Remarks

Mr. Sevdalin Bojikov, Deputy Minister of Justice

Mr. Vladislav Slavov, Chairman of the Supreme

10:00 Regional Court - Rousse

VT, TSS Judge Todor Petkov

RB, interpreter

afternoon Meeting with Rousse Law Clinic

Judge Petkov will arrange the meeting with Prof. Krassimir Dimitrov

Lodging in Rousse

Third week

MONDAY, JANUARY 27

10:00 – 11:00 Sheraton Hotel, Business Center

RB, BL Nelly Koutskova, Chair of Sofia District Court
interpreter (Spokesperson for the Supreme Judicial council)
Philko Rozov, General Secretary SJC

1:00 – 2:00 Special Investigative Service

BL, interpreter Rumen Georgiev
Rumen Andreev

3:00 – 4:00 Sofia District Court

BL, interpreter Zoia Marinova, Administrative Secretary

4:30 – 5:30 East-West Management Institute

BL Virginia Leavitt

5:00 – 6:00 Sheraton Hotel, Business Center

RB, interpreter Stephan Kiutchukov, Lawyer
Dokovska, Lawyer
Braikov, Lawyer
Atanasov, Lawyer

7:30 meeting with Silvey Chernev at the Sheraton

RB, BL

TUESDAY, JANUARY 28

11:00 – 12:00 **Supreme Bar Council (walking distance from Sheraton)**
BL, RB, interpreter Traian Markovski, Chairman

7:30 **Brian, meets Bob Page DPK Consulting / Open Government Initiative at the Hotel.**

WEDNESDAY, JANUARY 29

9:00 – 10:00 **Ministry of Justice**
BL, interpreter Ms Tonchovska, Head of IT Department

11:30 – 12:00 **Information Services Company**
BL, interpreter Tzvetan Gelev, Director

3:30 – 4:30 **Supreme Court of Cassation**
BL, interpreter Judge Belazelkov, Board Member & Executive Secretary of BG Judges Association

THURSDAY, JANUARY 30

9:00 **USAID**
Exit team meeting with Gene Gibson

10:30 **US Embassy**
Debrief for Ambassador

Annex 5

Persons Interviewed

MSI RULE OF LAW EVALUATION TEAM

JANUARY 12 – 31, 2003

USAID

Debra McFarland, Mission Director
Gene Gibson, Senior Advisor ROL and Governance
Mihail Boyadjiev, ROL Project Management Specialist
Edward LaFarge, Private Sector Officer

US Embassy

James W. Pardew, US Ambassador to Bulgaria
Karen Kramer, Resident Legal Advisor, US Department of Justice
Alain G. Norman, Second Secretary
Carol A. Kelley, Advisor, US Department of Treasury

USAID Partner Organizations

Angela Conway, Director for Bulgaria, ABA/CEELI, Washington DC
Douglas Fransis, American Bar Association – CEELI, Liaison
Robert Lochary, American Bar Association – CEELI, Liaison
Bilyana Giaurova, American Bar Association – CEELI, Staff Attorney
Violetta Kostadinova, American Bar Association – CEELI, Staff Attorney
Hristo Ivanov, American Bar Association – CEELI
Todor Dotchev, American Bar Association – CEELI, Legal Advisor
Valentin Bojilov, American Bar Association – CEELI, Legal Advisor
Judge Ken Stuart, East-West Management Institute, Chief of Party
Virginia Leavitt, East-West Management Institute, Deputy Chief of Party/Judicial Training Specialist
Anelia Atanasova, Local Government Initiative, Policy Team Leader
Howard Ockman, Management Systems International-Bulgaria, Director
Filip Stojanovich, Management Systems International-Bulgaria, Deputy Director
Judge Dona Gencheva, Magistrate Training Center, Lecturer
Judge Daria Prodanova, Magistrate Training Center, Lecturer
Judge Galina Zaharova, Magistrate Training Center, Lecturer
Judge Maria Miteva, Magistrate Training Center, Lecturer
Katya Dormisheva, Magistrate Training Center, Deputy Director
Bob Page, DPK Consulting / Open Government Initiative
Ventsislav Karadjov, DPK Consulting / Open Government Initiative, Government Liason/Legal Advisor
Petko Georgiev, ProMedia / IREX, Resident Advisor

Foreign Assistance / Donors

Ber Van der Lingen, Dutch Embassy, Mission Director
Jos van Dinter, Dutch Embassy
Milena Damianova, Delegation of the European Commission to Bulgaria, Advisor Judiciary and Public Administration

Fabrice Guingand, French Embassy, Science and Technology Attaché,
Ivanka Ivanova, Open Society Foundation, Coordinator Legal Program
Christine Winterburn, UK Embassy, Second Secretary Political/Press
Temenuzhka Todorova, UNDP, Administrative Justice Review
Daniel A. Bilak, UNDP, International Project Director (Cowling Consulting, Director, Central
and East European Affairs)
Onik Karapchian, World Bank, Advisor Public Administration and Judiciary

Bulgarian Judicial Institutions

Judge Staikov, Court of Appeal - Sofia, Chair
Zdravko Kirov, Court of Appeal - Plovdiv (MPC), Chair
Julian Russinov, Court of Appeal - Plovdiv (MPC), Deputy Chair
Elena Avdeva, District Court – Blagoevgrad (MPC), Chair
Vaska Georgieva, District Court – Blagoevgrad (MPC), Administrative Secretary
Judge Lukov, Regional Court – Assenovgrad, Chair
Kostadinova, Regional Court – Assenovgrad, Administrative Secretary
Petar Pandev, Regional Court – Blagoevgrad (MPC), Chair
Daniela Ivanova, Regional Court – Blagoevgrad (MPC), Administrative Secretary
Ms Kioseva, Regional Court – Dupnitsa, Chair
Judge Stanislav Georgiev, Regional Court Plovdiv, Chair
Judge Kolev, Regional Court Plovdiv, Deputy Chair
Ms Seizova, Regional Court Plovdiv, Administrative Secretary
Judge Hristo Kracholov, District Court – Plovdiv, Deputy Chair
Judge Todor Petkov, Regional Court - Rousse, Chair
Judge Maria Velkova, Regional Court - Rousse
Kiril Pavlov, Regional Court – Samokov, Chair
Elena Todorova, Regional Court – Samokov, Administrative Secretary
Judge Ignat Kolchev, Regional Court - Smolyan, Chair
Judge Radka Svirikova, District Court - Smolyan, Chair
Emil Demirev, Regional Court – Veliko Turnovo, Chair
Petya Stoyanova, Regional Court – Veliko Turnovo, Deputy
Judge Svetla Petkova, Supreme Administrative Court, Deputy Chair
Nina Spassova, Supreme Administrative Court, Administrative Secretary
Judge Roumen Nenkov, Supreme Court of Cassation, Deputy Chair Head of Criminal Colledge
Maria Dilova, Supreme Court of Cassation, Court Administrator

Bulgarian Institutions

Sevdalin Bozhikov, Ministry of Justice, Deputy Minister
Tonchovska, Ministry of Justice, Head of IT Department
Anelia Mingova, National Assembly of the Republic of Bulgaria, Chairwoman
Commission on Legal Issues
Rumen Georgiev, Deputy Director, National Investigative Agency
Rumen Andreev, Deputy Director, Special Investigative Agency

Bulgarian NGOs / Professional Associations

Maria Yordanova, Center for the Study of Democracy, Director Law Program
Dimitar Markov, Center for the Study of Democracy, Project Coordinator Law Program

Nadia Rangelova, Chair of Law and Internet Foundation, LEX.BG
Miroslav Ognianov, Project Manager, LEX.BG
Alexander Kashumov, Access to Information Program, Attorney at Law
Elena Trifonova, Institute for Regional and International Studies, Program Director
Gergana Vasileva, Institute for Regional and International Studies, Program Coordinator
Luben Panov, Bulgarian Center for Non-Profit Law, Director
Jonko Grozev, Bulgarian Helsinki Committee, Attorney at Law
Lazarina Dimirova, National Clerks Association
Zoia Marinova, National Clerks Association (& Administrative Secretary, Sofia District Court)
Georgi Genchev, Parliamentary Center for European Law, Executive Director
Prof. Dr. Ekaterina Trendafilova, Parliamentary Center for European Law, Chair of the Board (& Sofia University, Faculty of Law)
Dr. Silvey Chernev, Bulgarian Chamber of Commerce and Industry, President of the Arbitration Court
Traian Markovski, Supreme Bar Council, Chairman
Judge Borislav Belazelkov, Bulgarian Judges Association, Board Member & Executive Secretary (Supreme Court of Cassation)
Nelly Koutskova, Supreme Judicial Council, Spokesperson (& Chair of Sofia District Court)

Faculty

Prof. Krassimir Dimitrov, Legal Clinic Foundation – Rousse, Manager (& Commission for Personal Data Protection, Member)
Prof. Dr. Georgi Boyanov, University of National and World Economy, Dean Law Faculty

Private Practitioners

Daniela Dokovska, Legal Company, Attorney at Law
Georgi Atanasov, Legal Company, Attorney at Law
Valentin Braykov, Braykov's Legal Office, Attorney at Law
Borislav Boyanov, Borislav Boyanov & Co., Attorney at Law
Alexander Katzarsky, Georgiev, Todorov & Co., Lawyer

Private Companies

Tzvetan Gelev, Information Services Company, Director
Milen Boichev, Prista Oil, Deputy Chairman Supervisory Board

Annex 6

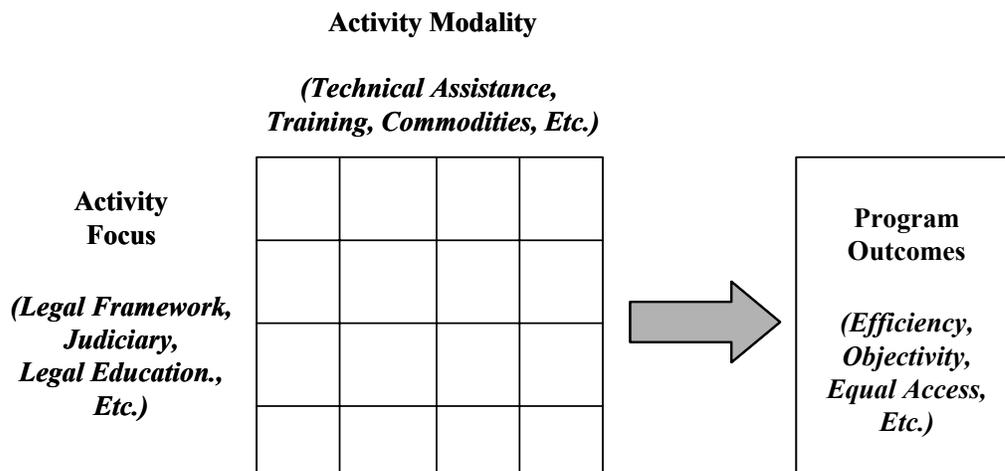
MSI Methodology

E&E ROL Assessment Methodology Discussion Paper

E&E's Scope of Work (SOW) for its multi-country Regional Rule of Law Assessment is expected to determine, through an analytic and comparative process, what types of assistance, and more particularly, what assistance modalities, produce significant and lasting changes in the legal systems of countries in this region. Significant and lasting changes, or program outcomes, are the proving ground against which the relative effectiveness of different assistance modalities is to be judged.

In practice, assistance modalities, i.e., technical assistance, training, commodities, etc., are not the primary way in which USAID thinks about program interventions. More commonly, programs are designed with a technical focus, i.e., they address specific weaknesses or opportunities in a sector. Assistance modalities are drawn upon, as appropriate, to bring about change in the sector or sub-sector on which an activity focuses. This general model, or program logic, applies to E&E Rule of Law initiatives as well as to other types of USAID-funded programs, as the diagram below suggests.

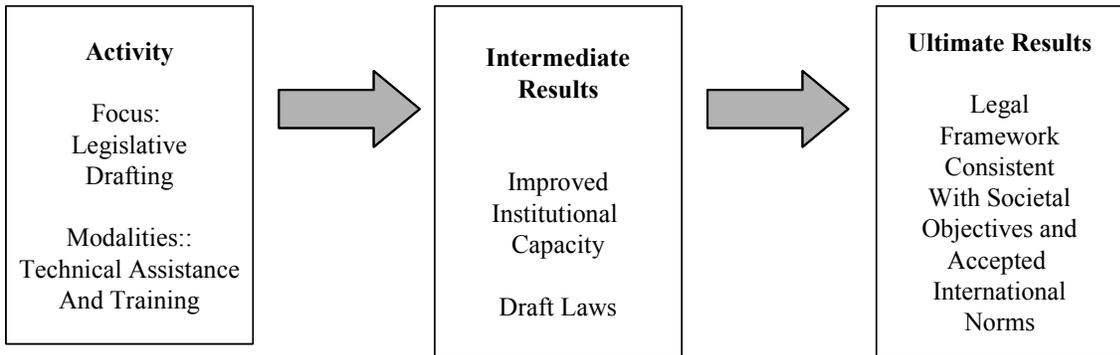
Rule of Law Program Logic



Program outcomes, as suggested in this diagram, are results that lie beyond the direct control of USAID activities, yet represent the reason or justification for investments in assistance activities. The program outcomes, or results, USAID seeks to achieve as a result of its activities include both fairly direct and immediate outcomes (intermediate results) and longer-term, or second-stage, outcomes (ultimate or broad results). USAID is also concerned about the sustainability of the results its programs produced, which, in turn, often necessitates a concern with the sustainability of activities initiated by an assistance program, and the following figure shows.

Assistance Activities

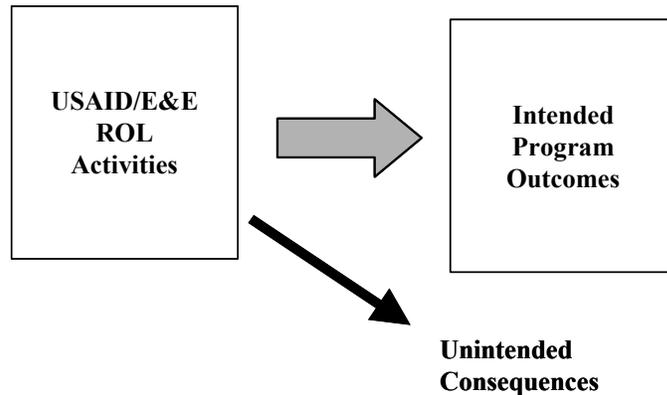
Program Outcomes



Sustainability Is A Concern Across an Entire Program Strategy

The cause and effect logic inherent in USAID programs provides a clear basis for choices with respect to approaches for examining the impact of activities on intended program outcomes, or results.

- One option, and the option most often used for performance monitoring and project level evaluations, starts with activities and moves to the right along the figure above, trying to determine whether activities led to intermediate results and, in turn, whether intermediate results led to ultimate results. This option can also be useful, in evaluations, for “discovering” what unintended results an activity may have had.



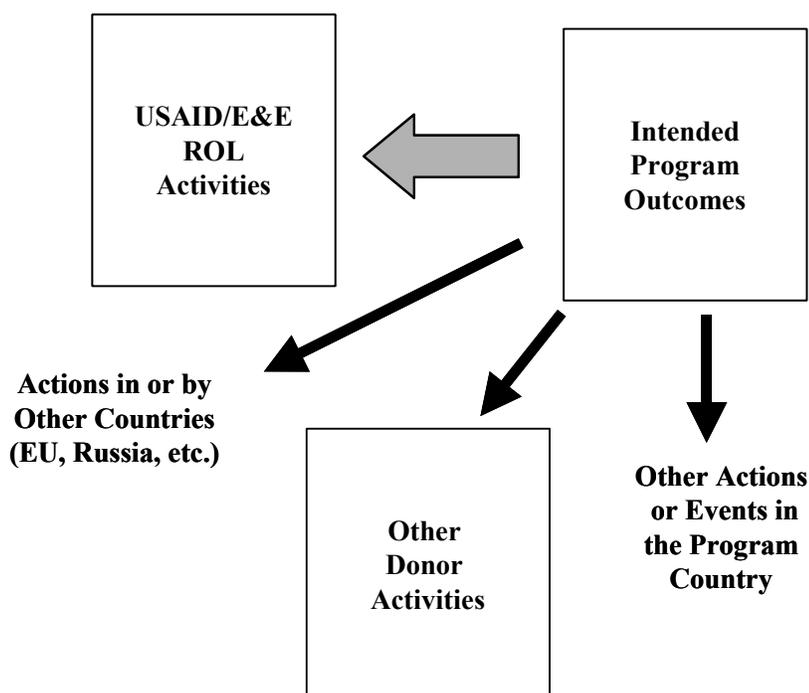
- Positive
- Negative

- A second option, which is better suited for program assessments than project evaluations, involves starting with results (on the right) and moving toward the left to ascertain their causes (or, where there do not seem to be results, to learn what programs were trying to do to bring about these results and what impeded their progress.

This second of these option is well suited to an effort that needs to “discover” the role other donor programs and external factors in producing or impeding change as well as assess the degree to which a

USAID program did or did not produce outcome level results. In order to use this option, a team has to be able to identify the kinds of results the programs it will examine are expected to produce. To the degree that program results can be identified that are important on a region wide basis, i.e., all rule of law program, this option can function as a framework for comparative analysis

Moving Analytically from Results to Causes



The two options described above need not be considered to be exclusive. In practice, the MSI team hopes to use both, i.e.:

- Work backward from intended results to determine (a) what has been achieved at a broad level in terms of rule of law improvements in study countries over the past ten years, (b) what causal factors, including assistance programs, explain positive changes and (c) what factors, if any, slowed or impeded change, and (d) what factors, if any, operated in a way that prevented an erosion or worsening of rule of law conditions.
- Work forward from selected activities to determine what (output and outcome level) results they produced.

MSI proposes to use these two approaches in the sequence shown above. The “working backward” option would be used initially to develop a “big picture” view of what has changed in study countries and the primary causes associated with those changes. The “working forward” approach would be used, after the “big picture” view is developed, to begin to learn why certain types (and modalities) of USAID-funded (or other donor) assistance produced more important and/or lasting results than did others.

1. Working Backward to Develop the “Big Picture”

MSI proposes to use a “working backward” from results to causes approach in an initial round of interviews in study countries to develop a big picture of changes in the rule of law situation over a ten year period and explanatory factors associated with these changes (or the absence of change, or, in some cases, factors that helped to stem an erosion of the situation).

This aspect of the assessment approach requires, as minimum:

- A clear view of the intended results of E&E rule of law programs against which both current situations and changes over time can be arrayed. The intended results, in this sense, are broad program results rather than activity-specific results. As such, these intended results may include desirable outcomes with respect to rule of law in which a particular country program may not have invested. (See Attachment 1).
- An approach for expressing the status of a study country with respect to each important intended program result along a continuum that can (a) be defined a priori, (b) linked to clear types and sources of data and (c) be applied in any country and by different teams. (See Attachment 2).
- Data collection approaches that will generate information valid information about both present conditions and conditions in the past. Both documents and interviews are potential sources of information. MSI anticipates combining data sources in such a way that data points (findings) are supported by multiple sources of information, i.e., agreement between documents and interview data, agreement or consensus on answers from more than one interviewee, etc.
- Data collection approaches that, to the degree possible, organize information derived from this aspect of the analysis in any one country in ways readily allow comparison to information derived from the same stage of the work in other countries, i.e., interview instruments that are readily coded if not pre-coded.
- Data gathering instruments and approaches facilitate the “discover” of causes of intended results other than or in addition to USAID-funded activities, i.e., neutral (“what caused”) questions versus leading (“what impact did USAID have”) questions. (See Annex 3)

Data developed at the start of a country assessment would be used to (a) diagram both changes over time with respect to important outcomes and (b) causal factors associated with specific results (in the manner suggested by some of the preceding graphics).

The information generated by this process would then be used, in concert with inventory information on the USAID country program over the ten year period (developed in part based on E&E/Washington records prior to country visits), to customize the second, or “working forward”, stage of the assessment.

2. Working Forward to Understand the Relative Effectiveness of Activities and Activity Modalities

The discovery process described in (1) above is expected to work its way backward through cause and effect chains to identify those activities that have or are “producing significant and lasting changes” in the legal systems of study countries. A likely result will be the identification through the “working back”

process of some, but not necessarily all USAID-funded activities (or components thereof) and some, but not necessarily all other donor and government financed activities.

Almost by definition, the assessment team will be interested in the details of those activities (USAID, other donor or government) that a preponderance of the evidence suggests played an important role in bringing about (and/or sustaining) an important rule of law outcome. In addition, the assessment team will be interested in examining those USAID-funded rule of law activities that the discovery process, in (1) above, did not identify as being a cause of any important rule of law outcome. The team will need to determine, in at least a broad way, whether such projects were not identified by the discovery process because they:

- Are not far enough along to have resulted in important outcomes;
- Were overlooked by the discovery process and yet did have a discernable impact, i.e., their impact was real but relatively “invisible”;
- Did not, for some identifiable reason, have an impact on the rule of law situation at the outcome level, i.e., poor design, poor implementation, intervening/external factors, etc.

In order to “work forward” through a USAID country portfolio in this manner – and to support a useful synthesis effort for the region as a whole --- the assessment team will need:

- As rich an inventory of USAID-funded activities for study countries as can be developed using E&E library and file resources, Congressional Presentation materials for the entire, and Mission resources.
- As much baseline data as can be extracted from said documents as is relevant and available from such sources or from other sources identified by teams when in country.
- Data collection methods and approaches that focus on the cause and effect logic that was intended to link activities to outcome in such a way as to identify how systematically and effectively that linkage worked and, if it broke down, where, how and why that occurred, i.e., activities that successfully produce outputs but cannot show direct impact any of the intended rule of law program outputs defined through process described in (1) above, would be judged, for purposes of this assessment, to have “broken down” along the cause and effect chain, no matter how good a job they did at delivering inputs or producing outputs.
- Data collection methods and approaches that collected sufficient appropriate data on modalities to facilitate an assessment of the relative effectiveness of different modalities for achieving important rule of law outcomes (within study country programs and, on aggregate, among them) – but which do not collect modality data in excess of the assessment’s capacity to use that data for analysis purposes, i.e., the assessments will bog down if they attempt to collect comprehensive data on activities in the manner that might be expected in a project evaluation.

USAID’s SOW for the assessment identifies in a systematic manner the range of modalities the agency uses to deliver assistance, i.e., technical advice or assistance, training, and commodities (Annex A). Under some of these modalities, the SOW provides a useful breakdown of sub-sets under modalities, e.g., training is sub-divided into long and short term, in country and other country, etc.

In addition to modality, assistance in most rule of law programs is thought of by practitioners as having a particular focus, i.e., legal framework/legislative reform or legal education. To some extent, the SOW for the assessment considers the question of focus in its description of modalities in Annex A, i.e., technical advice in what, e.g., law drafting.

In terms of developing an inventory of USAID portfolios for study countries, it is MSI's sense that distinguishing between the focus of a program activity and its modalities will both make the task of inventory development simpler and more useful from an analytic perspective. To that end, we have begun to develop a matrix approach for classifying activities and their components/modalities. The left hand focus column shown below is a summary version. A more detailed list of the kinds of activities under each of these major headings is provided in Annex 4.

Activity Focus	Activity Modality			
	Technical Advice/ Assistance	Training	Commodities	Other
Legal Framework				
Judiciary				
Prosecutory				
Bar/Legal Professionals				
Alternative Dispute Resolution				
Legal Education				
Access to Justice/Public Awareness				

This matrix, which is displayed in its most aggregate form above has several potential uses, including:

- Identifying where in the region USAID is using specific combinations of focus and modality, i.e., this table can be filled in with project identification numbers in the cells – either for a single study country to help focus an assessment, or for the region as a whole, to help inform and focus the synthesis product to which country assessments contribute.
- Displaying program patterns over time, by adding rows that indicate when activities took place, e.g., early (1990-1994), mid (1995-1998), recent (1999-present)
- Comparing what was done in different programs that used the same modality, by changing the columns so that they describe aspects of only one modality, e.g., training duration, location, types of trainers, etc.

Through the use a combination of “working backward” and “working forward” approaches to examining USAID activities over the past ten years, MSI anticipates that teams will address the majority of the questions USAID’s SOW, Annex B, describes under Assistance Results and Assistance Modality

Effectiveness, with the option (1) approach being more keyed to the former and the option (2) approach being somewhat more useful for the latter.

SOW questions under the headings and Assistance Sequencing, Assistance Targeting and Assistance Coordination are of a somewhat different order than are USAID's questions about results and modality effectiveness. Questions in these clusters can only be addressed based on a body of information of the type that will be collected about results and modalities, as outlined above. They also require a larger dose of judgment, as opposed to raw evidence, than do the former. In addition, a number of these questions are likely to be answerable, in a useful way, only after several country assessments have been complete.

MSI's work on the methods for the assessment thus far is sufficient to indicate what we see as the optimal sequencing of the country assessment work. During the next several weeks, further attention will be given to approaches, methods and instruments appropriate for each of the aspect or steps in these assessments outline here in a preliminary and broad manner.

Annex 7

Magistrates Training Assessment Questionnaire

DRAFT LETTER SENT BY POST/E MAIL/ OR FAX TO ALL RESPONDENTS. LETTER WILL BE FOLLOWED UP BY PERSONAL COMMUNICATION TO SET UP INTERVIEW. K.DYANKOVA WILL BE REPOSNSIBLE FOR SCHEDULING, WITH ASSISTANCE FROM TSS AND AK.

DATE _____

Dear _____

Greetings.

The purpose of this letter is to request your cooperation as a participant in a major study of Rule of Law developments in Bulgaria, sponsored by the United States Agency for International Development (USAID). The study is being conducted by a US-Bulgarian team under the supervision of Management Systems International, Inc. USA.

This study in Bulgaria is part of a multi-country assessment of 10 years of Rule of Law development assistance in countries that emerged from the collapse of the Soviet Union. Previous studies have been conducted in Kazakhstan, Kyrgystan, Armenia, Georgia and Ukraine.

Bulgaria has received significant assistance in developing its current legal system from the EU, from France, the Netherlands, the UNDP and the United States, among others. Bulgaria appears to have made important progress in developing rule of law standards and institutions that will be a necessary condition for its accession to the European Union later in the decade.

USAID is especially interested in assessing the progress that has been achieved since 1991. It wants to understand the principle factors that have promoted progress, and what have been the principle constraints to that progress in the development of a Rule of Law. Most important, it wants to know whether foreign assistance in general, and USAID in particular, have been effective or not in delivering foreign assistance to the development of the legal system. Only by understanding what has worked, what has not and why will USAID be able to be a more effective development partner in the future.

You have been selected on the basis of a random selection procedure to become a respondent in this study. A questionnaire has been prepared which will take about 30 minutes to complete. We hope you will agree to complete the questionnaire. Your response to the questionnaire will not be attributed to you by name and will be kept secure from any other use. We urge you to be as frank and thoughtful as possible in giving your responses to the questionnaire. If you agree, you will be met and assisted by one of our Bulgarian colleagues, both experienced attorneys at law, who are working with us to conduct this important research.

You will soon be contacted by Ms. Katya Dyanova, who is the Administrative Officer in Bulgaria for this project. Should you agree, the questionnaire will be given either by Dr. Tsvetanka Spassova-Stoyanova or Dr. Angel Kalaidjiev.

Thank you for your assistance and future cooperation.

Sincerely,
Richard N. Blue, PhD (or this could be from Gene Gibson)
Team Leader
Bulgarian Rule of Law Assessment

USAID
BULGARIA RULE OF LAW ASSESSMENT
January 2003

QUESTIONNAIRE FOR MAGISTRATES AND JUDICIAL OFFICIALS

Instructions for Interviewer: Introduce yourself and explain again the purpose of the interview. Assure the Respondent that no names will be used in the report.

Introduce the questionnaire and stress that it is important to move through the questionnaire in a measured and efficient manner. This questionnaire is in the form of predetermined response choice. Please give the Respondent a copy of the questionnaire in Bulgarian. Read each question aloud, make sure they understand it, and ask them to GIVE YOU their response to each question. You will mark their answer on an English language version you will have for each Respondent.

There are several tables that the Respondent and you are asked to fill out regarding their training experience and ratings of that experience. These make up the main focus of the questionnaire. Please urge the Respondent to be as frank and thoughtful as possible in completing these tables.

At the end of the formal questionnaire, ask the Respondent if he has time to share with you additional thoughts about ROL development in Bulgaria. The separate in depth question guide attached should be used to structure this discussion.

Thank the Respondent for their patience and for sharing their insights and views.

Sample # _____

**Magistrates Questionnaire
INTERVIEWERS COPY - ENGLISH
Bulgarian ROL Assessment
January 2003
Management Systems International Inc.**

I. Introduction:

(Interviewer Instruction:

This interview is in two parts: part one is a formal questionnaire; part two is an informal but structured discussion with the Respondent. It is essential to finish part one as quickly as possible. Then proceed to part two. The entire session should last no more than 1.5 hours. It is possible to do the interview in 1 hour.

You will be responsible for entering the Respondents answers on this questionnaire. Please give the Respondent a copy of the Questionnaire in Bulgarian language. Read each question out loud, ask for the response, and enter the response on your questionnaire containing the Respondent's ID #____. Make sure the Respondent understands each question. Tell the Respondent that after the questionnaire is complete, any of the issues may be revisited and discussed in more detail.

There are several questions that ask the Respondent to refer back to a previous answer. You will be instructed to re-read the original question and Respondents answer, after which you will record his follow-up response.

When the formal questionnaire is completed, set the questionnaire aside and proceed with Part 2, the open ended dialogue.

ID # _____

(Interviewer READ)

Hello:

My name is _____. I am part of a team from MSI Inc., a US based consulting firm. MSI has been requested by USAID to conduct a multi-nation study on the development of Rule of Law in states that were part of the former Soviet Union. The purpose of the study is to assess the progress over ten years toward establishing a Rule of Law in Bulgaria. We are especially interested in assessing the value of foreign assistance programs that provide training and technical assistance to Bulgarian magistrates. We have prepared a formal questionnaire that asks for your assessment of the training you have received, as well as your views on several other dimensions of Rule of Law development in Bulgaria.

Thank you for agreeing to answer this questionnaire. Here is a copy of the - questionnaire in Bulgarian language. Please use it to follow along as we complete the questionnaire. To insure that each question is clearly understood, I will read each question. Please listen to the question, examine the possible answers and tell me your response. Please feel free to ask clarifying questions. The answers will be yours alone and will be kept completely anonymous. After we complete the questionnaire, we can engage in a more in depth discussion of your views.

Respondent Background

1. Name and type of court where Respondent works

Name of Court _____

Type of Court _____

2. Is this a Model Pilot Court?

- a. Model Court
- b. Regular Court

3. Interviewer please note the Respondent's Gender

- a. Male
- b. Female

4. When you entered the Judiciary, was training a mandatory requirement before you could become a Magistrate?

- a. Yes, training was mandatory _____
- b. No, training was not mandatory _____

5. Please look at the responses and tell me which Age category you belong to. (Circle one)

- a. 20 - 35
- b. 36 - 50
- c. 51 - 60
- d. 60 plus

6. In addition to being a judge in this court, do you hold any specific title?

(Record title/position) _____

7. What is the Highest Level of Formal Education you have achieved?

- a. Doctorate
- b. Masters or equivalent
- c. Bachelor of Law or equivalent
- d. Certificate Course
- e. Other: (Int.: please note down)

8. Where was your highest degree earned?

- a. Bulgaria
- b. Russia

- c. Other Former Soviet State
- d. Western Europe
- e. USA
- f. Other (please note down)

9. How many years since your Appointment as a Magistrate?
- a. 1-4 years
 - b. 5-10 years
 - c. Over 10 years
 - d. Other _____

Training:

Now we would like to ask you about what kinds of training opportunities you have had since becoming a professional in the Bulgarian legal system.

10. Since receiving your law degree, have you ever studied law abroad for a period of six months or more? Yes No

If you answered yes, please answer the following:

- 11. In what year did you study abroad? _____
- 12. What certificate did you earn? _____
- 13. In what country did you study? _____

14. During the past ten years – or since receiving your law degree if that was less than 10 years ago -- have you attended any short-term (less than six months) training, in law or legal administration, or on some related topic? Yes No

15. If you answered yes, please explain what you studied, where, when, for how long and with what sponsorship in the table below. When you complete this table, please use the last set of columns to characterize your perception of each training program.

Short Term Training EXPERIENCES 1992 - 2002									
Topic or Subject of Short Term Training (less than 6 months)	Year Training Took Place	Length (Number of days)	Training Location (Name of country)	Sponsor (Who paid the costs? If no one, answer "Self")	Utility of the Training Program				
					Very Useful	Useful	Somewhat Useful	Only very limited use	Not Useful at All
1.									
2.									
3.									
4.									
5.									
6.									

16. As you think back over these short-term trainings can you describe for one or more of these training programs how you have applied what you learned? Go back and identify the program first and then explain what you were able to apply. **(Interviewer: here please keep notes of verbal response and which course he/she referred to. Number the courses as they are listed to facilitate linking the application to the right course.)**

16.1 Course number _____

16.2 Course number _____

17. Again, thinking back over your short term training experiences, can you think of any that you have found difficult to apply in your daily work in court? a. ___ Yes b. ___ No

If you answered yes:

18. Which of the training courses or topics you studied in short courses have you found it difficult to apply and why? **(Interviewer: here please keep notes of verbal response and which course he/she referred to.)**

18.1. Course Number _____
(Enter Response)

18.2 Course Number _____

19. In the following table are some statements that observers have made about the value of various solutions to the need to provide good in service training for Bulgarian magistrates.

Training	Degree of Agreement or Disagreement with Statements				
	Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree

19.1	Sending people abroad for long-term training may have been helpful in the past, but now there is little need for such training for magistrates.				
19.2	Training in Bulgaria using strong expatriate trainers from European civil law countries is the best approach to upgrading our knowledge and skills.				
19.3	Training for Bulgarian judicial officials should be done primarily by Bulgarian experts.				
19.4	There is a pressing need for systematic approach to in service training for Bulgarian Magistrates.				
19.5	The Magistrate Training Center has developed into a very effective resource for upgrading Magistrate knowledge and skills.				

Access to Justice

Bulgarian law states that all persons have a right to adequate defense in criminal and in some civil trials. The following questions ask for your views on how well this right is being realized in Bulgaria.

20. In your experience, do Bulgarian defendants actually receive competent legal counsel?

- 1. Yes**
- 2. Most do**
- 3. Less than half**
- 4. Most do not**

21. (If the answer above is 3 or 4, ask this question) What are the obstacles to a citizen securing competent legal counsel? (Circle one below)

- 1. Many are too poor to pay.**
- 2. Advocates don't want to take on cases where there is no money.**
- 3. Bar Associations don't pressure their members to do pro bono work.**

22. In the balance of power between the state prosecutor, the defendant's advocate, and the Magistrate, which generally prevails in the courtroom.

1. The State Prosecutor usually prevails
 2. It is an even balance
 3. Strong advocates usually prevail
23. Some NGOs are starting to provide legal assistance to people, such as in the environmental area. What is your view of these efforts? (Select one)
1. These NGOs provide a much needed service.
 2. It is a useful thing, but the problems are too big for NGOs.
 3. NGO law clinics only take on cases with visibility.
 4. NGOs are not competent to provide legal assistance
 5. I have no experience with NGOs.

Formal Education for a career in Law: Clinical Education

There has been some attempt to introduce “law clinics” in major Bulgarian law schools. These clinics are supposed to provide supervised practical experience for senior law students before they graduate.

24. Should law students be given more clinical experience before graduating, even at the cost of less emphasis on theory and legal reasoning?
- a. Yes
 - b. No
 - c. It depends
25. What is your experience with the level of preparation of graduates today compared to 10 years ago?
1. They are better prepared
 2. About the same
 3. Less well prepared

Priorities for Continued Reform (Should this go into a table?)

There are many suggestions made for improving the efficiency, effectiveness and fairness of the Bulgarian judicial system. Listed below are a number of “recommendations” we have heard. Please review these recommendations, and indicate what would be your first, second and third priority recommendation for near future improvement of the judiciary here. Select three only.

26. A major overhaul and reform of the Bulgarian court administration system is needed, from technical support to information technology access.
- a. First priority
 - b. Second priority
 - c. Third priority
27. A major investment needs to be made in making basic legal education more practical and relevant to modern Rule of Law conditions.
- a.
 - b.
 - c.
28. The most important investment should be made in improving Judges salary, their status, and independence of the Judges role in the Judicial Process.
- a.
 - b.
 - c.

29. **There must be reform in the way judges are selected and promoted. Judges should be selected and promoted by objective merit through a rigorous examination process.**
a. b. c.
30. **A Code of Ethics with serious enforcement is necessary for all professionals in the legal system.**
a. b. c.
31. **A way must be found to make sure poor people in criminal and civil cases have competent advocates to represent them.**
a. b. c.
32. **There must be a thorough going reform of the procuracy towards greater professionalism and balance in the judicial system.**
a. b. c.
33. **The number one priority is to reform the process and system whereby legal decisions are carried out. Unless legal decisions are implemented, they can have no impact.**
a. b. c.
34. **A systematic and comprehensive in service training program for judges and judicial administrators needs to be set up and enforced for all members of the judiciary.**
a. b. c.
35. **The Bulgarian legislative framework needs immediate reform towards greater consistency, coherence and clarity.**
a. b. c.

This completes the Questionnaire. Thank you for sharing with us your knowledge and views. Your responses will be combined with others and presented in statistical tables in the final report.

We now turn to a more in depth discussion of your views about the development of Rule of Law in Bulgaria.

(See next sheet for In Depth Question Guide)

Annex 8

Glossary of Acronyms

ABA/CEELI	American Bar Association/Central and East European Law Initiative
ADR	Alternative Dispute Resolution
BJA	Bulgarian Judges Association
CMS	Case Management System
DOJ	Department of Justice (US)
DemNet	Democracy Network
E and E/DG	Europe and Eurasia Bureau/Democracy and Governance
EU	European Union
EWMI	East-West Management Institute
GDP	Gross Domestic Product
IDLI	International Development Law Institute
IPR	Intellectual Property Right
IS	Information Systems Inc.
IT	Information Technology
JSA	Judicial System Act
MOJ	Ministry of Justice
MTC	Magistrate Training Center
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
OSF	Open Societies Foundation
PAO	Public Affairs Office
PTO	Participant Training Observation
SAC	Supreme Administrative Court
SCC	Supreme Court of Cassation
SJC	Supreme Judicial Council
TIFF	Tag Image File Format
UDF	Union of Democratic Forces
UNDP	United Nations Development Program
USAID	United States Agency for International Development

Annex 9

ABA/CEELI Legislative Framework Chart

5 February 2003

ABA CEELI MEMO ON STATUS OF MAJOR LEGISLATION IN BULGARIA

NOTE: This is an internal ABA CEELI Memo.
 Comments and X's apply to existing law; and not to pending draft legislation which is designed to correct problems.
 Where the square is blank the staff did not feel it had sufficient information to express an opinion.
 See methodology comments at the end.

Commercial Law

	Statutory Instrument (Date of Enactment)	Major Amendments	Adequacy		Implementation			Comments	ABA CEELI Assistance
			Minor Revisions needed	Major Revisions needed	Good	Fair	Poor		
<i>General</i>	• Commerce Act, Book I (18 June 1991)	Several amendments 1991 – 2002	X			X		Implementation of the provisions relating to the commerce register needs improvement.	
	• Commodity Exchanges and Commodity Markets Act (1 Nov. 1996)								
	• Foreign Investment Act (24 Oct. 1997)			X			X	Need for improvements to the foreign investment regime.	X
	• Consumers Protection and Trade Regulation Act (2 April 1999)	No				X		Harmonized with the EU legislation in the field of consumer protection; Introduces ADR for certain consumer disputes.	X
	• Public Procurement Act (22 June 1999)	2002		X		X		The law created a decentralized procurement framework with enforcement by the Procurement Directorate (Council of Ministers). Needs harmonization with EU Legislation. Procurement office needs further institutional strengthening.	X
	• Electronic Document and Electronic Signature Act (6 April 2001)	No		X			X	Need for training of the CRC members and the judiciary and legal professionals on the implementation of the law.	X
<i>Corporate Law</i>	• Commerce Act, Book II (18 June 1991)	Pending amendments	X		X			New corporate governance and M&A provisions pending in the Parliament.	

	Statutory Instrument (Date of Enactment)	Major Amendments	Adequacy		Implementation			Comments	ABA CEELI Assistance
			Minor Revisions needed	Major Revisions needed	Good	Fair	Poor		
Commercial Transactions	<ul style="list-style-type: none"> Commerce Act, Book III (1 Oct. 1996) 		X		X			More detailed legislative framework for some types of commercial transactions needed.	X
Secured Transactions	<ul style="list-style-type: none"> Registered Pledges Act (22 Nov. 1996) 	Pending amendments			X			Good legal framework; Need for training among judges and other legal professionals.	X
Bankruptcy	<ul style="list-style-type: none"> Commerce Act, Book IV -- Bankruptcy (5 Aug. 1994) 	19 June 1998, 13 Oct. 2000. Pending draft amendments will substantially amend the bankruptcy section of the commercial code.		X			X	Major draft amendments submitted to parliament 9 Dec. 2002. Improvement in the appointment, selection and training of trustees needed. Better definition of insolvency, the role of trustees and their remuneration to be addressed.	X
	<ul style="list-style-type: none"> Bank Bankruptcy Act (27 Sept. 2002) 	New law						Effective from 28 December 2002 – not yet implemented.	X
Banking	<ul style="list-style-type: none"> Banking Act (1 July 1997) 	1997 - 2002				X		Structural law providing the basic framework of banking system in Bulgaria.	X
	<ul style="list-style-type: none"> Bank Deposits Guarantee Act (29 April 1998) 	2002				X			
Securities Regulation	<ul style="list-style-type: none"> Public Offering of Securities Act (30 Dec. 1999) 	1999 - 2002				X			X
	<ul style="list-style-type: none"> Mortgage Bonds Act (10 Oct. 2000) 		X					Relatively new statute, part of the new secured financing legislation in Bulgaria.	X
	<ul style="list-style-type: none"> Financial Supervision Commission Act (Jan. 2003) 							The FSC replaces Securities Commission, Insurance Supervision Agency and Social Security Supervisory Body. Restricted judicial review of Commission's decisions.	
Competition Protection	<ul style="list-style-type: none"> Competition Protection Act (8 May 1998) 	2002 - 2003				X		Law introduced basic elements of modern competition law; Latest amendments approved Jan. 2003 – aimed at better harmonization with the European Competition Legislation.	X
Concessions	<ul style="list-style-type: none"> Concessions Act (17 Oct. 1995) 	Numerous amendments 1995 – 2002. Additional amendments pending.		X		X		Need for training of Ministry of Transport and Communication staff.	X
Insurance Law	<ul style="list-style-type: none"> Insurance Act (11 Oct. 1996) 								
Currency Controls	<ul style="list-style-type: none"> Currency Act (21 Sept. 1999) 			X				Amendments under discussion.	

	<i>Statutory Instrument (Date of Enactment)</i>	<i>Major Amendments</i>	<i>Adequacy</i>		<i>Implementation</i>			<i>Comments</i>	<i>ABA CEELI Assistance</i>
			<i>Minor Revisions needed</i>	<i>Major Revisions needed</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>		
	<ul style="list-style-type: none"> SMEs Act (24 Sept. 1999) 								

Civil Procedure and Enforcement of Judgments

	Statutory Instrument (Date of Enactment)	Post-1991 Major Amendments	Adequacy		Implementation			Comments	ABA CEELI Assistance
			Minor Revisions needed	Major Revisions needed	Good	Fair	Poor		
Civil Proceedings	Civil Procedure Code (8 Feb. 1952)	23 Dec. 1997 16 July 1999 8 Nov. 2002				X		Execution of judgments remains a major problem in Bulgaria. Latest amendments attempt to alleviate the workload of the SCC and balance the rights of debtors and creditors in the enforcement proceedings. Ongoing discussions on introducing ADR.	X

Tax Legislation

	Statutory Instrument (Date of Enactment)	Post-1991 Major Amendments	Adequacy		Implementation			Comments	ABA CEELI Assistance
			Minor Revisions needed	Major Revisions needed	Good	Fair	Poor		
Tax Legislation	Value Added Tax Act (1998)	2002						Comprehensive reform of the entire public financial sector, including social security and healthcare reform.	
	Corporate Income Taxation Act (1997)								
	Taxation of Natural Persons Incomes Act (1997)								
	Tax Procedure Code (2000)	2002							

Judicial System and Legal Profession

	Statutory Instrument (Date of Enactment)	Major Amendments	Adequacy		Implementation			Comments	ABA CEELI Assistance
			Minor Revisions needed	Major Revisions needed	Good	Fair	Poor		
Judiciary	Judicial System Act (22 July 1994)	1997, 1998, 2002		X		X		2/3 of the 2002 amendments were struck down by the Constitutional Court. Wide public discussion of the need for Constitutional amendments relating to the judiciary. (See CEELI JRI and MOJ letter requesting ABA CEELI assistance).	X

	<i>Statutory Instrument (Date of Enactment)</i>	<i>Major Amendments</i>	Adequacy		Implementation			Comments	ABA CEELI Assistance
			<i>Minor Revisions needed</i>	<i>Major Revisions needed</i>	Good	Fair	Poor		
	Supreme Administrative Court Act (1997)				X			Act established effective judicial review over administrative acts.	
<i>Bar Development</i>	Attorneys Act (27 Sept. 1991)	Draft pending in the Parliament.		X		X		Entirely new draft Attorneys Act introduced in Parliament (Dec. 2002). The draft provides for major amendments – bar exam, organization of law firms, qualification requirements & code of ethics. (See CEELI Concept Paper).	X
<i>Notaries</i>	Notary Publics Act (6 Dec. 1996)	Minor amendments related to selection criteria for notary publics and structure of the Chamber of Notaries pending in the Parliament.			X			Major reform in the notary system in Bulgaria. Notaries are now private practitioners with public functions. Need for better oversight.	

Intellectual Property Legislation

	<i>Statutory Instrument (Date of Enactment)</i>	<i>Major Amendments</i>	Adequacy		Implementation			Comments	ABA CEELI Assistance
			<i>Minor Revisions needed</i>	<i>Major Revisions needed</i>	Good	Fair	Poor		
<i>Patents</i>	Patent Act (2 April 1993)	2002				X		Major amendments enacted in 2002 – new chapter regulating European Patent applications and European patents under the European Patent Convention was introduced in the act. (See CEELI IPR Memo)	X

	<i>Statutory Instrument (Date of Enactment)</i>	<i>Major Amendments</i>	<i>Adequacy</i>		<i>Implementation</i>			<i>Comments</i>	<i>ABA CEELI Assistance</i>
			<i>Minor Revisions needed</i>	<i>Major Revisions needed</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>		
<i>Copyright</i>	Copyright and Neighboring Rights Act (23 June 1993)	1993 - 2002				X		The legislative framework is good and it is harmonized with the EU legislation. With the latest amendments the copyright term of protection was extended from 50 to 70 years (Art. 27); amendments introduced better enforcement regime and refined the regulation of the collective management organizations. (See CEELI IPR Memo).	X
<i>Industrial Property</i>	Protection of New Varieties of Plants and Animal Breeds Act (4 Oct. 1996)	No				X		The legal framework is adequate. (See CEELI IPR Memo).	X
	Industrial Design Act (14 Sept. 1999)	No				X		Same as above.	X
	Marks and Geographical Indications Act (14 Sept. 1999)	No				X		Same as above.	X
	Topologies of Integrated Circuits Act (14 Sept. 1999)	No				X		Same as above.	X

Penal law

	<i>Statutory Instrument (Date of Enactment)</i>	<i>Post-1991 Major Amendments</i>	<i>Adequacy</i>		<i>Implementation</i>			<i>Comments</i>	<i>ABA CEELI Assistance</i>
			<i>Minor Revisions needed</i>	<i>Major Revisions needed</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>		
<i>Criminal law</i>	Criminal Code (2 April 1968)	Second half of 2002	X			X		Introduction of computer crimes and human trafficking (see Chapter 9a, art. 319 a; Art. 159 a). Serious discrepancy between particular crimes and the corresponding penalties; refined definition of giving and taking a bribe; organized crime; introduction of probation.	X
<i>Procedure</i>	Criminal Procedure Code (15 Nov. 1974)	1999 - 2001		New CPC under Development.				Introduction of plea bargaining procedure (Art. 414g); Harmonization of the penal procedure with the requirements under the ECHR. Introduction of judicial control over the pre-trial proceedings.	X

	Statutory Instrument (Date of Enactment)	Post-1991 Major Amendments	Adequacy		Implementation			Comments	ABA CEELI Assistance
			Minor Revisions needed	Major Revisions needed	Good	Fair	Poor		
<i>Other</i>	Special Intelligence Means Act (Oct. 1997)	1999					X	Introduction of judicial control in order to comply with the international standards provided by the ECHR.	
	Measures against Money- Laundering Act (24 July 1998)	Jan. 2001	X			X		Enlarging the list of entities required to report suspicious transactions under Art. 3.	X
	Draft Trafficking in Human Persons Legislation (see the list of pending legislation)								X
	European Convention on Cyber crime – ratification procedure under way								X

Anti-corruption Legislation and Civil Society

	Statutory Instrument (Date of Enactment)	Major Amendments	Adequacy		Implementation			Comments	ABA CEELI Assistance
			Minor Revisions needed	Major Revisions needed	Good	Fair	Poor		
General	Access to Public Information Act (7 July 2000)					X		Continued training needed to build on 2002 CEELI/AIP initiative. (See www.aip-bg.org).	X
	Public Registry Act (9 May 2000)	Draft pending in Parliament.		X			X	Sanctions for non-compliance are inadequate. Amendments will address this issue.	X
	Political Parties Act (28 March 2001)	Draft Political Parties Act submitted to Parliament (May 2002), intended to replace the current statute.		X		X		New draft introduced in the Parliament. Proposals for a more restrictive registration regime.	X
	Non-Profit Legal Entities Act (6 Oct. 2000)		X		X			Special registry at MOJ for the NGOs in public interest.	X
	Draft Ombudsman Law	Drafts submitted to the Parliament						Several drafts were presented to the Parliament. Ongoing debate.	X
	Child Protection Act (13 June 2000)		X		X			New piece of legislation in Bulgaria implementing the UN Convention; regulates the principles, measures and bodies (Child Protection Agency) for protection of children's rights.	

Methodology: the Bulgarian legal staff of ABA/CEELI developed this chart. It is based on the staffs' opinion of: (1) the major Bulgarian laws in each category; and, 2) their personal/group assessment of the adequacy and implementation of the laws. It was designed to track Bulgarian legislation and to serve as an ongoing indicator of the perception of the laws by the ABA/CEELI legal staff. It does not follow statistically valid sampling techniques.

This chart should be read in connection with the list of all Bulgarian laws enacted since 1991 and the list of laws/amendments pending in Parliament.

Please note that where ABA assistance is indicated, such assistance was provided at one or more points during the period of 1991-2001. In most cases assistance to a particular area has not been ongoing during the full duration of this period.

Annex 10

Summary of Online Legal Resources in Bulgaria

Website	Content	Fees
Private Companies		
http://www.apis.bg	Links to: <ul style="list-style-type: none"> • Information about Apis • All Apis law and finance products • Frequently asked questions 	CD UPDATE 200-400 BGN INTERNET UPDATE 400-800BGN
http://www.ciela.net	Links to: <ul style="list-style-type: none"> • All Ciela software products • Books • Information about the activity of Ciela Publishing House • Update of every issue of the State Gazette 	Monthly update on CD 235 BGN Two-week update on CD 400 BGN Weekly on CD 560 BGN With each issue of the State Gazette via E-mail 235 BGN  Ciela.Net Monthly - 19.50 BGN , Annually - 195 BGN  Specialized products on CD or via E-mail (with monthly update) Procedures 290 BGN Constructor 295 BGN Energetics 180 BGN Ciela Expert - full package 305 BGN Ciela Expert - separate module 87 BGN Ciela LAW 970 BGN Ciela RU 970 BGN
http://www.digesta.com	Links to: Legal Acts Court and Arbitration practice State gazette Law magazines and literature Analyzed texts /only for Bulgaria/ The most utilized legal acts / Top 100/	Individual <i>limited</i> subscription – 48 BGN/ 6 months Individual <i>full</i> subscription – 48 BGN/ 6 months
http://www.is-bg.net (18 County courts - Varna, Shumen, Turgovishte, Blagoevgrad, Pernik, Sliven, Iambol, Kustendil, Silistra, Ratzka, Razgrad, Dobritch, Montana, Plovdiv, Pazardjik, Pleven, Haskovo, Burgas)	Case information, including case opening, hearing dates, resolutions, appeals;	-10 inquiries - BGN 50 -20 inquiries - BGN 100
Eight Regional courts - Varna, Provadia, Blagoevgrad, Parvomai, Vidin, Pazardjik, Gotze Delchev, Novi Pazar One Court of Appeal - Varna		

Website	Content	Fees
http://www.lex.bg	Links to Bulgarian and other legal sites Chat forums for legal topics News Databases of attorneys, notaries, judges, courts All Bulgarian laws All issues of the State Gazette since 1993	No fee, but limited to law students and lawyers
Government Sites		
http://www.apelsad-pd.bg	Court information Case data Links to other courts and government sites Information about USAID project	
http://www.parliament.bg	Links to: The Constitution History of the Parliament; Database of the deputies, parliamentary commissions and delegations of the 39 th Parliament Database of draft laws deposited; information about legislative process; Commission for European integration; Center for European documentation; Legislative Activity and European law News; weekly program of the Parliament	
http://vos.ultranet.bg		
http://www.sac.government.bg/	History Normative base Structure Competence Case management system Address News from SAC Archive Contacts	
http://www.court-gbr.org	Links to: Information about the activity of District court – scheduled cases, decided cases Information about the activity of Regional court – scheduled cases, decided cases Map of the administrative units of Judicial district of Gabrovo Information about the services at Judicial Palace in Gabrovo; news; essential law information Other web sites providing law information	

