The Legal Profession Reform Index for Bulgaria, 2006: Executive Summary

Brief Overview

Over the past two years, the Bulgarian legal landscape has undergone significant changes as the country moves toward entry into the European Union. The National Assembly has enacted a number of laws, including new criminal and administrative procedure codes, which directly affect attorneys engaged in the practice of law. By in large, the active and progressive leadership of the Supreme Bar Council of Bulgaria [hereinafter “SBC”] has led to improvements in issues facing the legal profession. For example, the SBC has implemented a number of initiatives that are intended to improve the skills, quality and professionalism of attorneys in Bulgaria.

Overall, the legal profession in Bulgaria is free, independent, and self-regulating. The SBC has been proactive in improving the environment for legal professionals by instituting an Attorneys Ethics Code, developing a standardized Bar Examination, and creating an Attorneys’ Training Center. Still, legal education and preparation to practice law remain a significant challenge. As illustrated in the Table of Factor Correlations, Bulgaria scored positively on eight of the twenty-four LPRI factors with an upward trend in Factor 11 (Non-discriminatory Admission). The 2006 LPRI assessment also resulted in a scoring of fifteen neutral correlations, with an upward trend relating to Factor 3 (Access to Clients), Factor 9 (Qualification Process), Factor 13 (Resources and Remuneration), Factor 19 (Legal Services for the Disadvantaged), and Factor 23 (Public Interest and Awareness Programs). The 2006 LPRI assessment scored only one negative correlation, which related to Factor 8 (Preparation to Practice Law). This negative correlation was based on the quality of legal education and problems relating to post-law school preparation to practice law.

Positive Developments Relating to the Legal Profession

The Constitution of Bulgaria specifically provides that the “Bar shall be free, independent, and self-regulating”. Generally, these assurances are honored both in
Attorneys practice without government oversight or interference. Attorneys are free to practice law independently or in a variety of cooperative arrangements provided for in the Attorneys Act.

The SBC is democratic and has actively promoted the interests and independence of the legal profession. The SBC has taken an active role in advocating new and proposed legislation before the National Assembly that affect the legal profession and the legal system as a whole. However, the SBC still needs to become more active in advancing the role of attorneys in protecting the public interest and in drafting normative legislation affecting the public at large.

Another significant advancement in the past two years has been the SBC’s adoption of the Attorneys Ethics Code. The Attorneys Ethics Code, together with applicable provisions of the Attorneys Act, provides a reasonably complete set of ethical standards to govern the conduct of practicing attorneys. However, the new Attorneys Ethics Code has not been universally accepted, and the SBC and the local Bar Councils need to promote the importance of professional standards to foster public trust in attorneys and the legal profession through educational and training programs. The SBC has detailed procedures and a well-structured set of disciplinary courts to hear disciplinary cases. However, disciplinary enforcement remains inconsistent and uneven.

There are a sufficient number of qualified attorneys practicing law in all regions of the country. In addition, new legal aid legislation was enacted in 2006 and was being implemented at the time of the LPRI visit. While funding, administrative, and other issues need to be addressed, the new law promises greater access to legal services by disadvantaged persons throughout the country. There are also a number of mediation centers and arbitration courts in which persons may resolve their disputes without having to resort to costly and time-consuming litigation through the court system. Under the Attorneys Ethics Code attorneys are ethically required to advise their clients of the availability of such alternative dispute resolution (ADR) mechanisms.

A very positive development has been the SBC’s institution of a bar examination requirement in 2004. The bar examination, which is both fair and comprehensive, has filtered out less-qualified candidates and improved the overall quality of new attorneys entering the profession.

Another significant achievement has been the SBC’s establishment of a national Attorneys’ Training Center in December 2005. Planned training programs at the new center include continuing legal education (CLE) courses in a number of substantive disciplines, as well as a basic course for new attorneys entering the profession. More broadly, the SBC and local Bar Councils continue to act impartially in administering entry to the bar and admission is non-discriminatory. Minority groups and women are well-represented in the profession, with the exception of the Roma minority.
Remaining Concerns Relating to the Legal Profession

Although law students must complete a five-year university program, Bulgaria’s legal education system does not fully provide graduates with the skills necessary to practice law effectively. The causes are well-documented and include the predominantly theoretical nature of teaching and the dearth of training in the practical skills required to practice law.

Another area of concern relates to remuneration. The 2006 LPRI assessment indicates that attorney compensation remains generally low. This is particularly true in smaller cities and economically distressed areas where clients frequently do not earn enough money to afford even the minimum attorneys’ fees established by the profession. The proliferation of attorneys over the past 15 years and weak economic conditions remain the most significant factors in substandard attorney compensation. The minimum fees specified in the SBC’s Minimum Fee Tariff are low by international and EU standards. A significant development for attorneys’ remuneration was the recent enactment of the Legal Aid Act, which established a fee schedule for legal aid services.

Finally, attorneys continue to have problems gaining prompt access to detained clients and sometimes experience practical hindrances in obtaining and reviewing case files. Essentially, while the primary legislation provides a solid framework for prompt access to an attorney and private attorney-client consultations, conflicting secondary legislation and police actions continue to dilute these protections in practice. For example, the Regulation for the Implementation of Penalties Act requires attorney-client meetings to be conducted “on preliminary determined days and in the presence of an employee of the administration”. In addition, a provision of the same regulation permits detainee telephone calls only to family members, and by implication not to attorneys. Additionally, while there has been some improvement in recent years, facilities for meeting with clients are often inadequate.