

FOCUS

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CILC CORE BUSINESS

New CILC initiative will enhance regional cooperation in the Balkans

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CILC is a Dutch non-governmental organization. CILC contributes to legal reform in countries all over the world, in close collaboration with local partner organizations and Dutch legal experts.

CILC's Executive Board and Board of Trustees consist of representatives of Dutch law faculties, ministries and legal organizations.

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While many people were enjoying their annual holidays in July and August last year, a small team – consisting of CILC's senior project manager Eric Vincken, the Board of Trustees member and key expert Jos Uitdehaag and the German lawyer Carsten Mahnke - 'toured' the seven countries of the Western Balkans. The aim of their sometimes adventurous mission was to assess the state of play in the field of enforcement law and to discuss the prospects for regional cooperation within the so-called 'Balkans Enforcement Reform Project'.



BERP Director Eric Vincken (left) and the key expert Jos Uitdehaag (right) 'en route'

The idea for a regional Balkans project on enforcement law is not new but it gained new momentum when the management of the Western Balkans programme under the "regional approach" of the Minister for Development Cooperation was transferred from the Ministry in The Hague to the Embassy in Belgrade. Contacts with the Embassy resulted in the assignment to conduct an assessment mission and develop a programme proposal.

Privatization of law enforcement

CILC's involvement in enforcement law in the Balkans goes back to 2003 when CILC became a subcontractor to the USAID-funded Macedonian Court Modernization

Project and the Judicial Reform Implementation Project. Within the framework of these projects, Jos Uitdehaag advised the Macedonian authorities on the development and introduction of a privatized system of enforcement. This system was introduced in 2005 and the first results have been very positive. In almost all other countries of the region, a discussion is now unfolding on how to make the present systems of enforcement, which are still largely based on concepts from the old Yugoslav Enforcement law of 1978, more efficient.

In Albania, the discussion resulted in the adoption of the privatized enforcement agent system as of 1 January 2009, which will exist

alongside the public system of enforcement agents under the Ministry of Justice. In the discussions among legal professionals and political decision makers in the other countries of the region, a privatized system seems to be prevailing as well. Also the majority of the member states of the European Union have a privatized enforcement system, mainly for efficiency reasons.

Regional network

Besides the discussion on reshaping the present systems of 'court-based' enforcement into 'out-of-court' enforcement, it should also

► be mentioned that the professionals dealing with enforcement law in the various countries are hardly equipped to meet their tasks. As these problems are more or less equal in all countries with the exception of Macedonia, the Balkans Enforcement Reform Project, which started on 1 January 2009, will address a number of these issues on a regional level. The philosophy behind the project is to stimulate a regional exchange of information and experiences as much as possible. As a result, the project will also support the establishment of a regional network

organization, which will later be integrated into the structure of the "Union Internationale des Huissiers de Justice", which is a CILC partner in this project. In the various countries, CILC will also cooperate with other international organizations. This complex project will focus on, besides the regional component, national action plans in Albania, Bosnia-Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia. For the management of the project CILC cooperates with the GTZ Open Regional Fund for Legal Reform.

Focal issue

Strengthening efficiency and effectiveness in enforcement is not only becoming more prominent in CILC's portfolio but is also becoming a focal issue for various donor organizations in recent years. As of 1 September 2008 CILC started a new Matra-financed project which aims to strengthen the privatized system of enforcement in Bulgaria which was introduced in 2005. The project further builds on the Dutch input through the USAID-funded Commercial Law Reform Project during the process of shaping

the new system. Earlier this year, CILC, in a consortium with the Royal Netherlands Organization of Bailiffs, the Bulgarian Chamber of Private Enforcement Agents and their Lithuanian counterpart, submitted a bid to the World Bank for a feasibility study to introduce a new system of enforcement in Armenia. At present, discussions on the reform of the systems of enforcement law are taking place in various countries such as Turkey, Moldova and Ukraine.

*Eric Vincken,
CILC Senior Project Manager*

CILC TOPICS

The rule of law revisited?

The Rule of Law has been an issue from the time when people started to settle down and live together in a more or less organised way. In that sense the rule of law can be seen as a yardstick for humanization, if not civilization. Ideally, it creates order and stability in society and brings about a degree of fairness and equity among individuals and between individuals and those in power.

As a matter of fact, the Rule of Law in many countries is so diverse that it is difficult to provide a precise definition. No consensus exists on the ideal model or its applicability in a very heterogeneous world consisting of sovereign nation states with very different political systems, cultures and ambitions. Dogmatic or ideological views from Western donors are certainly not helpful, as experiences from many projects convincingly show. Modesty and sensitivity for other views are better commodities in the trade of Rule of Law than arrogant interference by outsiders.

The importance of the Rule of Law

Notwithstanding its diversity, the importance of the Rule of Law as a matter of common or even global concern is beginning to be acknowledged. In our globalised world the spillover effects of states with a deficient rule of law can

be widely felt. Somalia and other areas with piracy on the high seas are good examples. The same is true for Latin American states that are not in control of their internal security and the drug mafia, with worldwide repercussions. Failed states are increasingly considered to be a potential risk for the world community. Deficiencies in the internal rule of law are no longer seen as a sovereign matter for the country concerned, but attract international political attention.

Sustainable approach

It is to be hoped that this attention will not remain limited to the usual foreign policy reactions in terms of security only. Military intervention by the world community may be unavoidable in certain cases as a measure of last resort, but assistance in the legal field to restore or reform the rule of law will in most instances provide a more lasting and sustainable approach. This has



The Hague Legal Capital

already been recognised for Post-Conflict Situations (see also the CILC Seminar on Justice Reform in the Post-Conflict Environment held on December 7, 2007), but a number of countries are in fact in a comparable situation without a formal conflict.

By good fortune the United States under President Obama, formerly a Professor of constitutional law, seem to take a markedly more positive position towards the improvement of the rule of law in the world: "Transparency and the rule of law will be the touchstones of this presidency." This opens up possibilities for more action and coordination with regard to the improvement of the rule of law at large and in the many countries where the legal and judicial situation leaves a lot to be desired.

The Hague Legal Capital

The Netherlands, with a long tradition in international law and development assistance, could play an important role in the further development of the rule of law. It has a number of trump cards, not least the international recognition of The Hague as the World's Legal Capital. If these trump cards are well played, The Hague can develop its impressive array of International Courts, institutions, NGOs and Academies into a cohesive Centre for the Rule of Law in the World, thereby claiming a central topic in international politics and cooperation in the years to come.

CILC's assets and role

CILC would stand to benefit from increasing interest in the furtherance of the rule of law. Together with a number of other NGOs and institutions it is keen to play a part in the future developments with regard to the rule of law. To this end it will build on its track record of a small but pragmatic organisation that is willing to listen to the customer. Over the years, CILC has built up an impressive legal network in the Netherlands which can cater for almost all projects in the chain of projects from legislation to mediation and from legal institutions to improving access to justice. Equally, it has a wide network of contacts in many developing countries and in the major donor organisations.

The Netherlands does not only have a vast knowledge and experience in legal assistance to many countries but, perhaps more importantly, it can also muster many excellent legal professionals who are willing to assist their peers abroad in the difficult task of building up, reforming or modernising the rule of law in their country. These foot soldiers of the rule of law are perhaps less visible than the Dutch troops serving abroad, but they are vital for the much needed modernisation of the juridical infrastructure and the administration of justice.

*Sjoerd I.H. Gosses,
CILC Board Member*



CILC EXPERIENCE

Consultation on Competition Law in Turkey

One of the activities within CILC's project "Strengthening the capacity of the Turkish Judiciary in the field of European Law" is developing several training courses for Turkish magistrates. For this purpose, Turkish and Dutch experts have been jointly working in various working groups.

From March 1 to 3, I joined Ms Anna Gerbrandy from the Europe Institute at the University of Utrecht and Mr Marc Fierstra, a Judge at the Hague Court of Appeal for Trade and Industry. A first consultation meeting was scheduled with their Turkish colleagues in order to develop a course on competition law, which is a new and promising field of law in Turkey in light of recent legal and economic reforms and the privatization of many Turkish enterprises.

Arrival in Ankara

On Sunday March 1, we arrived late in the evening at Hotel Best Apart in the so-called Gazi Osman Pasha part of Ankara. After a modest dinner in a small and typical Turkish restaurant around the corner, the team joined for a first consultation meeting in the lounge of the hotel.

Meeting with counterparts at the Ministry of Justice

On Monday March 2, we were expected at the Ministry of Justice

at 9.30 a.m. Mindful of the heavy traffic in Ankara in the morning, we took a taxi rather early in order to be on time. Upon arrival at the Ministry, we met with Judge Celalettin Dönmez, responsible for the project on the Turkish side. Mr Dönmez explained the current state of affairs in the field of competition law in Turkey. As this is a new field of law, only a few lawyers have so far specialized in competition law. Consequently, Mr Dönmez underpinned the need for the course and the material to be developed during the project.

Meeting at the Turkish Competition Board

The Dutch experts indicated beforehand that they first wanted to become more acquainted with the Turkish institutions that are dealing with competition cases in order to get a clear idea and background information about the functioning of these institutions and the level of applying competition law in Turkey. Therefore, Mr Dönmez had

arranged a meeting with Mr Tahir Saraç, a Judge at the Competition Board. Mr Saraç explained to the delegation that the Turkish Law on Competition had been adopted in 1994. It is a modern law that is in line with European best practices. Established in 1997, the Competition Board consists of seven members. The main three areas on which the Board focuses are mergers and acquisitions, abuse of rights, and exemptions. Mergers and acquisitions are the main focus as they form 80 per cent of the workload. The Board meets weekly and receives about 10 cases a week. Mr Saraç also provided details on certain topics among which were the limited investigative powers of the Board, injections, violations of competition, and collusion in tenders. Again, the need for training Turkish magistrates in the new field of competition law was stressed.

Turkish generosity

Back at the Ministry of Justice, we were invited to the restaurant on the tenth floor where we enjoyed our meal with our Turkish counterparts. While enjoying one of the many Turkish cups of tea or coffee served during the consultation meeting, Mr Ali Bilen, Vice-Director of General European Affairs and an alumnus of Utrecht University, shared with us his positive experiences in the Netherlands and at Utrecht University by recalling some jokes and articulating some Dutch words that are difficult for non-native speakers to pronounce.

Later, the working group convened once again in the meeting room of the Ministry and started a brainstorming session on the outline of the course. The discussion eventually led to the conclusion that a two-level course is needed: one level for beginners lasting for three days and a more advanced one for five days.

Meeting at the Council of Justice

On Tuesday March 3, we met Mr Dönmez at 9.00 a.m. at the Ministry where he explained the Role of the Council of Justice in applying competition law. We then left by the Ministry bus to the Council of Justice where we met Judge Ahmet Egerci. Mr Egerci explained that the Turkish Competition Law foresees the establishment of special courts for competition cases. For that aim, the 13th Chamber of the Council of Justice serves as the Court of First

Instance and in some cases it hears appeals against the decisions of the Competition Board. Decisions of the 13th Chamber can be appealed against at the General Board of the Council of Justice. During a useful and in-depth discussion with the Dutch experts, Mr Egerci answered questions relating to investigation and legal review, privatization and the use of precedents from other European Courts. He also pointed out that indemnity cases are dealt with by the Commercial Courts inasmuch as they involve private litigators.

Round up of the first consultation

Back at the Ministry of Justice, the team worked on fine-tuning the first drafted outline of the course. Besides, the team discussed the available Turkish legal literature on competition law and agreed on a list of European documents to be included in the course. The team also discussed the importance of enrolling Mr Saraç in the working group. In order to gather more information on the state of affairs and to check the preliminary outline of the course, it was agreed to devote some time at the next consultation to meeting judges from the Commercial Courts and practising lawyers in the field of competition law.

Dinner

At the invitation of Mr Ali Bilen, the team joined for dinner at a Greek/ Turkish restaurant close to Tunali Hilmi Street. After evaluating the consultation exercise, Mr Bilen expressed his satisfaction with the cooperation with the Dutch experts. While enjoying a nice meal, the delegations had useful discussions on Turkey's pre-accession process, the legal and judicial reforms in Turkey and the good and historic relations between Greece and Turkey. Paradoxically, a missing partner and a good friend of ours, Mr Cuneyt Er, was always in our talks and thoughts. He is one of the victims of the Turkish aircraft that crashed nearby Amsterdam Schiphol Airport and he is still in a coma. As the Greek music was still playing and the atmosphere was becoming even more convivial, the delegates had to leave the restaurant since our flight back home on March 4 was scheduled rather early the following morning.

*Abdeljalil Taktak,
CILC Senior Project Manager*

EDITORIAL

Silk is considered the ideal fabric: it is strong, lightweight, resists soiling (because of the smoothness of its fibers) and is rarely susceptible to mildew. It can absorb a considerable amount of water without feeling wet to the touch and it has a unique ability to absorb dye while retaining an illuminating luster. According to Confucius, five thousand years ago the Chinese Empress Xi Ling was having tea under a mulberry tree when a silkworm cocoon fell into her cup. As she fished it out, she noticed that it had begun to dissolve into a mesh of fine thread, marking the discovery of the fiber that would make China one of the greatest powers on earth. Silk became an important trading commodity between China, India, Persia and the Mediterranean. The

Silk Road extended over 4,000 miles, enabling people to transport trade goods, especially luxuries such as silk, satin, and other fine fabrics, musk and other perfumes, spices, medicines, precious stones, glassware and even rhubarb, while simultaneously serving as a conduit for the spread of knowledge, ideas, cultures, and diseases.

Saying it out loud, the connection between CILC and silk is easily made. But it is not only the pronunciation that relates the two. CILC generates precious products for its partners and its donors and CILC works along its own CILC road of legal cooperation.

In recent years, CILC has made progress in many ways. CILC

is 'in motion': new working areas and working themes have been adopted, for example stipulating law enforcement in the Balkans and assistance in human rights reporting in Afghanistan; short-term consultancy assignments have been accepted in Guyana. Moreover, discussions have been initiated on new possibilities for legal cooperation in Palestine, Morocco, Macedonia, China and the Great Lakes Region. The innovation of the rule of law concept is also an important new line of thought for the near future. Last but not least, CILC has recently moved to new offices in the heart of The Hague Legal Capital.

Most importantly, CILC is reflecting on its identity, its added value to the development

of the rule of law all over the world. Discussions take place with members of the executive board and board of trustees on how to amplify the CILC's identity, mission and impact. The discussions have not yet been finalized but are becoming more focused. The demand-driven method and practical approach of CILC prevails as the solid network of partner organizations and legal experts. Simultaneously CILC is considering the financial sustainability of its organization. In order to increase the visibility of CILC's impact a new website will soon be launched with an intriguing but hopefully promising new theme: 'Going along the CILC road of legal cooperation'.

*Marie José Alting von Geusau,
CILC Director*

QUEEN'S CANAL COCKTAIL GATHERING



The first Queen's Canal Cocktail Gathering took place on 17 February 2009 to celebrate the opening of the new CILC offices in The Hague.

On the photograph above at this convivial occasion are from left to right: Council of Trustees member Daan de Snoo, Council of Trustees Chairman Joep Verburg and the Chairman of the Board Marten Oosting.



In memoriam: Ko Winters



Much to our sorrow, we have been informed that our former colleague Ko Winters unexpectedly passed away on 1 April 2009. Ko Winters joined CILC in 2001 and served as a project manager dealing with projects in Ukraine and other countries of the former Soviet Union. The development of the Rule of Law in these countries was close to Ko's heart. In his last year at CILC, Ko also represented CILC in a Twinning project with the Estonian Law Centre in Tartu as a Resident Twinning Advisor, a project that turned out to be very successful. Ko's role as an intermediate between the Law Centre and CILC experts was an important element of this success. Ko was a warm, creative and passionate personality. Life is fragile. With Ko's demise, CILC and many colleagues in partner countries have lost a much appreciated colleague and a dear friend.

Пора, мой друг, пора! покоя сердце просит —
Летят за днями дни, и каждый час уносит
Частичку бытия, а мы с тобой вдвоем
Предполагаем жить... И глядь — как раз — умрем.
На свете счастья нет, но есть покой и воля.
Давно завидная мечтается мне доля —
Давно, усталый раб, замыслил я побег
В обитель дальнюю трудов и чистых нег.

Александр Пушкин

It's Time, My Friend...

It's time, my friend, it's time!
The peace is craved by hearts...
Days flow after days -- each hour departs
A bit of life -- and both, you and I,
Plan a long life, but could abruptly die.
The world hasn't happiness,
but there is freedom, peace.
And long have I daydreamed the life of bliss --
And long have planned, a tired slave, the flight
To the removed abode of labour and delight.

Alexander Pushkin