

# *Annual Report 2001*



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CENTER FOR INTERNATIONAL LEGAL COOPERATION

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# I.

## Introduction

2001 was a significant year for the Center for International Legal Cooperation (CILC). The beginning of the year saw the launch of a landmark project for CILC: the EU/Phare project on “Reinforcement of the Rule of Law” in ten countries seeking to join the European Union. Not only is this the largest and most complex project CILC has ever undertaken, but it also marks an important regional shift in CILC’s portfolio, which up to that point had covered few projects in Central and Eastern Europe.

A number of projects were successfully wrapped up in 2001 or early 2002. These included a three-year project on “Strengthening the Rule of Law in Kyrgyzstan”; a four-year research project on Indonesian criminal law; and the provision to Eritrea of drafting assistance on its new Civil Code and Code of Civil Procedure over a four-year period. Therefore, a top priority in 2001 was the acquisition of new projects. Recent staff growth made it imperative to streamline acquisition procedures and ensure greater transparency.

As in previous years, CILC continued to actively look for new projects in the Newly Independent States (NIS), often by tendering for European Commission projects. CILC’s painstaking efforts to increase its activities in Indonesia, where it can offer substantial high-level expertise, bore fruit at the end of the year with the Dutch Ministry of Justice’s approval of a project proposal. In Africa, CILC explored the possibility of setting up a new legal cooperation project in Eritrea.

As foreseen in the budget for 2001, CILC closed the year with a small negative net worth. However, the Dutch Ministry of Foreign Affairs and the Ministry of Justice raised the level of fees which they pay CILC for the projects they finance, thereby laying the basis for sound financial results in 2002.

There was also less pleasant news in 2001, however. The fact that CILC’s activities are vulnerable to changing

political realities was repeatedly brought home. For example, CILC’s comprehensive legal development project in Moldova lost political support following the election of a new government in February 2001. A followup project now looks unlikely. A similar turnaround appears to be emerging in Georgia, which until recently was considered a model in the field of legal reform. But the current political situation is volatile and as a result, new cooperation projects in the country have become less viable.

Despite such setbacks, rule of law issues receive increasing attention from donor institutions. This trend was exemplified by the Forum on Legal and Judicial Reform, held in July 2001 as part of a World Bank conference in St. Petersburg. The Forum grew out of a shift in thinking on the part of the World Bank. Today the bank fully recognizes the need for “effective and equitable legal systems” as a precondition for progress in the fight against poverty. CILC’s director, Jan van Olden, was one of the speakers at the Forum.

**Rule of law issues are receiving increasing attention from donor institutions such as the World Bank.**

The present Annual Report begins with a brief overview of internal matters. In addition to providing the usual information about CILC’s project portfolio in the year covered, this Annual Report introduces a new feature: Individual project descriptions are preceded by an outline of the current conditions in the country concerned.

# 2.

## Internal Matters

CILC is a non-governmental, not-for-profit organization governed by a General Board and an Executive Board (see Appendix III). It is housed under the roof of Leiden University, which also formally employs CILC's staff. All costs incurred by CILC are reimbursed to the university. At the end of 2001 CILC employed 19 people, who filled the equivalent of 14 full-time positions.

CILC published two issues of its newsletter, *Focus on International Legal Cooperation*, in 2001 (see box). CILC regularly publicized its activities on its website ([www.cilc.nl](http://www.cilc.nl)).

Articles in the CILC Newsletter, *Focus on International Legal Cooperation* ([www.cilc.nl/focus.html](http://www.cilc.nl/focus.html)), in 2001

Focus No. 10 (May 2001):

- *The Georgian Young Lawyers' Association: A Bold New Generation Spearheads Reform*
- *Securities Law in Kazakhstan: A Precondition for Financial Market Growth*

Focus No. 11 (October 2001):

- *ECA Forum on Legal and Judicial Reform: No Winners, No Losers*
- *Training Judges in Mongolia: As Professional Standards Rise, So Will Public Trust*
- *Hungary's Civil Code: Standing By To Help*



CILC staff

As part of a process that began in 2000, CILC continued to explore ways of strengthening its position in the competitive field of legal development cooperation. It also debated improvements in its internal organization. The Executive Board contracted an external advisor to recommend changes. The resulting draft report was presented to the Executive Board in June. Its findings confirmed the need for new strategies and internal changes in order to bolster CILC's successful growth in the future. CILC followed up by hiring a management consultant in December to take an in-depth look at its internal organization and to review CILC's relationships within the Dutch institutional environment.

# 3.

## Countries and Projects

### 3.1 Africa

**CILC is currently active in two African countries, Eritrea and Mali.**

#### ERITREA

In December 2000, a ceasefire agreement between Eritrea and Ethiopia ended a two-and-a-half-year border war. The two countries agreed to allow a United Nations peacekeeping mission (UNMEE) to monitor the ceasefire and help restore normal living conditions. The Netherlands contributed troops to the UNMEE military force. The opening of a Dutch embassy in the Eritrean capital, Asmara, marked the strengthening of bilateral relations.

Although hampered by the country's severe poverty and ongoing domestic tensions, efforts to develop democratic governance regained momentum in 2001. Legislative reform continued to be a government priority. After Eritrea gained its independence from Ethiopia in 1991, it provisionally adopted Ethiopian legal codes en masse, with subsequent modifications. Ethiopia's Civil Code had been written by a French civil law expert and was outdated. Eager to finally replace it, the Eritrean Minister of Justice approached CILC for help in drafting a new Civil Code tailored to the country's needs.

#### CILC PROJECTS IN ERITREA

##### *Assistance in Drafting the Civil Code and the Code of Civil Procedure*

From 1997-99, CILC provided assistance in drafting a new Civil Code for Eritrea. In 1999, the Eritrean Ministry of Justice contracted CILC to handle the revision of the Code of Civil Procedure. This project was conducted along the same lines as the earlier code: Dutch experts proposed and revised draft texts based on instructions from the Eritrean working group. Most of the titles were completed in 2000. The project continued in 2001 with further revisions provided by Prof. Jan de Boer, a member of the Joint High Court of Justice of the Netherlands Antilles and Aruba, and Prof. Jan Vranken from the Catholic University of Brabant. The draft Code of Civil Procedure was thoroughly discussed and adapted at a workshop held in Leiden in November.

The Eritrean Ministry of Justice asked Prof. De Boer to carry out further revisions to the Civil Code. The final version of the Code was discussed at a closing workshop in Asmara in October.

The United Nations Development Programme (UNDP) financed both projects.

In November, the Eritrean Minister of Justice visited CILC to explore possible future cooperation fo-

**Like many African countries, Eritrea has a pluriform legal system. State law is largely the legacy of Ethiopian codes based on Continental law. At the same time local customary law is practiced in more than 12,000 village courts.**

cusing on providing legal training for Eritrean officials or students at a Dutch university. Discussions are still at a preliminary stage.

## MALI

Since 1997, the Malian government has been pursuing a decentralization policy. In practice, devolving executive and judicial powers to local bodies has led to disputes over land ownership. As empowered local authorities increasingly lay claim to previously state-owned property, the traditional inhabitants are staking competing claims to the land.

Some 98 percent of the population of this West African country is Muslim. Sharia (Islamic law) is widely applied, particularly in the areas of the law of persons, family law and land law.

The government's ambitious long-term judicial reform plan, *Programme Décennal de Développement de la Justice (PRODEJ)*, wrapped up its first four-year period in 2001. Funding is being sought for those program segments that do not yet receive support from foreign donor institutions.

One of PRODEJ's aims is to address a widespread lack of trust in the independence and competence of the Malian judiciary. Judges are generally perceived as corrupt and ignorant of locally accepted traditional regulations. Some unpopular judges have even been murdered. The use of the country's official language, French, in most court proceedings causes friction because a large part of the population is not proficient in it. The public is also frustrated by the long delays in bringing cases to trial.

In addition to institutional reform, there is an urgent need for improved legal education. The Law Faculty of the University of Bamako, the main state university, was repeatedly on strike in 2001. As a result, a number of fledgling private universities were founded during this period. A primary focus of CILC's current activities in Mali is on strengthening teaching capacity.

## CILC PROJECT IN MALI

### *Legal Cooperation Between Mali and the Netherlands*

Implementation of this three-year project to reinforce the democratic legal system in Mali began in January 2000. Funding is provided by the Dutch Ministry of Foreign Affairs through the Dutch Embassy in the Malian capital, Bamako. CILC is executing the project in cooperation with two Leiden University institutes, the



PHOTO: ALEXANDER VINOGRADOV

Visiting Malian researchers Djibonding Dembele and Boureima Maiga discuss their work with CILC project manager Laura Lancée

Van Vollenhoven Institute (VVI) and the African Studies Centre (ASC). The main partners in Mali are the Law Faculty of the University of Bamako and the country's judicial training institute, Institut National de Formation Judiciaire, also in Bamako.

There are four components to the project in Mali: establishment of a legal clinic attached to the Law Faculty; bolstering the Law Faculty's research capacity and providing training in research methods; promoting case-based teaching methods; and funding additions to the Law Faculty library's collection of legal resources.

A new project manager had to be recruited in the first half of 2001, delaying efforts to set up the legal clinic. Nevertheless, a major step was taken when a qualified Dutch expert was found to conduct a feasibility study in 2002. The search represented a challenge because so few legal specialists in the Netherlands have experience with the institution of a university legal clinic whose activities form part of the teaching curriculum.

In January 2001, two researchers from Mali spent two months at Leiden University researching decentralization and land law

Some 60 legal resources in French were donated to the library of the University of Bamako Law Faculty.

Many Malians don't speak French, the language in which court proceedings are usually conducted.



issues, followed by three months of fieldwork back in Mali. They reported their findings in September, and in December their reports were presented in Bamako at a Law Faculty course on juridical and sociological research methodology. A Dutch researcher from VVI observed the assessment of traditional land rights for two months in Douentza, the poorest region of Mali.

To improve teaching capacity at the Law Faculty, the project works with the Graduate School of Education at Leiden University (ICLON). Together with VVI, ICLON specially designed train-the-trainer courses for Law Faculty professors. The courses were held in Bamako at the end of 2001.

Under the project, in 2001 the Law Faculty's library received a major donation of around 60 French legal texts covering different fields, primarily legal anthropology, legal sociology, African law and legal reality, traditional law, women's rights and children's rights.

## 3.2 Asia, excluding NIS Countries<sup>1</sup>

### CHINA

The People's Republic of China continues to open up to the international community. This process cannot be achieved overnight, but steady progress is being made. China, with one of the fastest-growing economies in the world, became the 143rd member of the World Trade Organization in December 2001. To qualify for accession, China underwent extensive preparations that included an overhaul of its economic laws and regulations.

Another result of the opening-up policy is that China is paying increased attention to human rights aspects in its laws. Slow, modest changes have so far occurred primarily in the field of criminal procedure. China is still far from democratic and the Chinese Communist Party (CCP) remains the paramount source of power. The judiciary is formally independent, but in practice interference from the government and the CCP continues.

One of the main problems in the field of legislation is that often laws that are applied at one government level are at variance with those at another level. In addition, laws that are valid in the Special Administrative Regions of Hong Kong and Macau are not always compatible with those in mainland China. To increase legal certainty, China is working on improving its lawmaking system as well as its implementation procedures.

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### CILC PROJECT IN CHINA

*Study visit by the Legal Affairs Commission of China's National People's Congress and the Supreme People's Court to the Netherlands, France and Germany*

In October 2001, CILC organized a two-week study visit to the Netherlands, France and Germany for a delegation from the Legal Affairs Commission (LAC) of China's National People's Congress (the national legislature and highest organ of state power) and the Supreme People's Court (SPC). The LAC and SPC had requested the study

<sup>1</sup> In this report, the term Newly Independent States (NIS) refers to 12 of the 15 countries on the territory of the former Soviet Union, i.e., excluding the three Baltic states. References to the Commonwealth of Independent States (CIS) are to that loose alliance of the same 12 countries as an institution.



tour through the Hong Kong-based group China Law and Development Consultants. It was financed by the Dutch Embassy in Beijing.

All seven members of the delegation were directly involved in lawmaking and therefore highly motivated. They were particularly interested in lay assessment systems, criminal trial procedures and judicial fairness issues. In drawing up the program, CILC took advantage of its international network of contacts. In France, meetings took place at L'École Nationale de la Magistrature (National School for Judges and Prosecutors) in Paris as well as at the Tribunal de Grand Instance (Superior Court) in Mulhouse. In Freiburg, Germany, the delegation visited the University of Freiburg and the Max Planck Institute for Foreign and International Criminal Law. The visit to the Netherlands focused on the recent overhaul of the country's judicial system, including the establishment of a Council for the Judiciary. The visitors met with representatives of the Council, Erasmus University in Rotterdam and the Dutch Bar Association.

The project's remaining funds are allocated for the translation of legal materials in 2002.

## INDONESIA

Indonesia's first female president, Megawati Sukarnoputri, elected in 2001, is determined to maintain the country as a unitary state. At the same time she seems keen to advance the transition towards a more open and pluralistic society.

Her government is intensely focused on solving the country's economic problems, and much-needed economic reforms are moving forward. Bankruptcy legislation is under review, debt restructuring is widely debated, and the banking system is being overhauled. So far the government has shown much less interest in reforming the legal system. As a result, efforts by leading lawyers to improve conditions have often been unsuccessful.

Two major issues, decentralization and internal ethnic conflicts, preoccupied the nation in 2001.

With the passage of Law 22 on provincial and local governance, the relationship between the central ministries and local governments has been dramatically transformed. Yet so far the transfer of substantial political authority to regional level has not been accompanied by the necessary funds or infrastructure.

In 2001 an ad hoc human rights tribunal was set up in

the capital, Jakarta, in response to the violent conflicts in East Timor, Maluku, Irian Jaya (West Papua, New Guinea), and Aceh. Its jurisdiction is currently limited to human rights violations committed in East Timor from April to September 1999, and in Tanjung Priok in September 1984. Although these human rights issues triggered discussions about the criminal law system as a whole, the long-awaited new Indonesian Criminal Code was still not enacted. It will likely take several more years to review the drafts again.

The National Law Commission (NLC) was established by presidential decree in 2000 with a mandate to draw up an all-encompassing law reform plan. In 2001 the NLC laid the initial groundwork, formulated a strategy and appointed working groups whose recommendations will form the basis for concrete practical steps, be it new legislation, guidelines, procedures, organizations or policies.

Two far-reaching changes affecting the judiciary were achieved in 2001. Court management authority were formally transferred from the Ministry of Justice to the Supreme Court, in an important step towards increasing judicial independence. However, the Supreme Court has yet to be properly equipped to carry out its new tasks.

Another positive sign was that a new Chief Justice was finally named to the Supreme Court in May, fol-

lowing a fierce public debate, which was also carried out in the media, between various members of society with a vested interest in this appointment. The sensitive and influential post was given to an outstanding and highly respected reformer, Prof. Bagir Manan.

A leading judicial reformer was appointed Chief Justice of the Indonesian Supreme Court.

## CILC PROJECT IN INDONESIA

### *Common Roots, Separate Developments in Indonesian and Dutch Criminal Law*

Leiden University, CILC and Diponegoro University in Semarang launched this joint research project in 1997. It was originally supposed to end in April 2001, but was extended until the end of the year. The aim of the project was to produce comparative studies examining a variety of criminal law issues in light of the special historical relationship between the Dutch and Indonesian legal systems.



**On March 8, the Dutch Minister of Justice, Benk Korthals, presented the Indonesian-Dutch Dictionary on Private Law to the Indonesian ambassador to the Netherlands, Abdul Irsan. The event marked the end of an eight-year project initiated and executed by CILC. In their speeches, the Minister, the ambassador and CILC representatives spoke of the effort that went into preparing the work and the importance of legal dictionaries in an increasingly internationalized world.**

From left to right: CILC Vice-Chairman Fred Soons, Ambassador Abdul Irsan of Indonesia and Dutch Minister of Justice Benk Korthals

In 2001, Roelof Haveman published a 100-page study on *The Legality of Adat Criminal Law in Modern Indonesia*, and Jeroen Hennekam published an article on the criminal liability of legal entities. In addition, CILC project manager Laura Lancée completed her translation into Dutch of Indonesia's proposed new Criminal Code. This monumental task took longer than anticipated because the original draft of the Code underwent complete revision in 2000. Also published under the project was a 416-page doctoral dissertation in Indonesian, "The Legal Position of the Victim in the Criminal Law System," by Mudzakkir from the Universitas Islam Indonesia in Yogyakarta.

Two more publications will be forthcoming: a dissertation on press freedoms by Rudy Mukantardjo and a dissertation by Marjanne Termorshuizen-Arts on comparative law and legal translating, in which Indonesia's law on criminal procedure is taken as a case study.

## ACQUISITION OF NEW PROJECTS IN INDONESIA

### *Cooperation Between the Dutch and Indonesian Ministries of Justice*

In the wake of a turbulent period of far-reaching changes both in Indonesian politics and in Dutch development assistance policy, it was time for CILC to rethink opportunities for cooperation with Indonesia. Notwithstanding the enduring strong ties with the Indonesian legal community, CILC's efforts to formally resume activities in the country had shown little result since the

overthrow of the Suharto regime in 1998. At the end of 2000 the Executive Board decided that additional effort and investment were required, and an action plan for proposed initiatives was drawn up.

A needs assessment mission to Indonesia took place in January 2001, followed by discussions with Indonesian partners of those project proposals that had reached a fairly advanced stage. A policy report including these proposals was completed in July and approved by the Executive Board.

The report defined the basic level of stability that would have to be in place as a precondition for CILC involvement in Indonesia. It recommended small-scale activities at the outset, partly due to the current state of flux in the country, and partly because many key figures in the legal reform process are already overburdened by the enormous task facing them as well as by the complex environment in which they operate. A further recommendation was that CILC should work with the National Law Commission in Jakarta as its main partner for the time being, since the Commission has a mandate to spearhead legal reform issues and had shown keen interest in cooperating with CILC.

In November, CILC submitted to the Dutch Ministry of Justice a framework project proposal emphasizing one of the policy report's recommendations, namely that a high degree of flexibility be maintained to enable swift adjustment to fast-changing developments in Indonesia. The Ministry approved the proposal in principle at the end of December, but details remained to be agreed during the first months of 2002.

## MONGOLIA

The legal reform program which this vast country wedged between Russia and China adopted in 1998 as part of its democratization process continues to face daunting obstacles. The greatest problem is the grossly understaffed and underresourced justice system. There are only 360 judges in all of Mongolia, and they have to handle over 50,000 cases a year. Not only are they hampered by insufficient access to legal information, but they are also poorly trained and badly paid.

The state has no money to invest in improving working conditions for the judiciary. Mongolia depends heavily on agriculture and livestock breeding. The already precarious economic situation has worsened in recent years due to severe drought, snowstorms and other natural disasters.

In 2001, Mongolia's Association of Judges was accepted as an extraordinary member of the International Association of Judges. It is expected to fulfill the requirements for full membership in the near future.

### CILC PROJECT IN MONGOLIA

#### *Training of Judges*

The Dutch Embassy in Beijing, China, which handles Dutch relations with Mongolia, contracted the Mongolian Foundation for Open Society (MFOS) to carry out this project, which ran from October 2000 until December 2001. It was jointly drafted by CILC and MFOS.

As subcontractor on the project, CILC was responsible for the Dutch contribution. At the beginning of 2001,

six Dutch experts were selected to form the core group of resource persons for the duration of the project. They worked closely with 12 Mongolian judges who were preparing to become trainers for their colleagues in the judiciary. The Mongolian Steering Committee chose six subjects for the training courses to be developed: administrative law; land law; the role of the judge in a democratic society; international public law; economic and organized crime; and human rights.

The Mongolian and Dutch project members approached each course topic by first identifying existing needs. As experience and/or information were lacking

**Mongolia's 360 judges are swamped with an enormous caseload.**

in the case of all the planned topics, sufficient preparations had to be made. In April and May a meeting was held in Mongolia, followed by a meeting in the Netherlands in June. Once

the course content had been finalized, in October the Dutch resource persons (with the exception of those working on the land law course) travelled to Mongolia to sit in on the new trainers' pilot seminars for their colleagues. The Mongolians dubbed the seminars a great success in an evaluation carried out in December by the management mission sent to close the project.



Gers, traditional Mongolian felt tents

## 3.3 Newly Independent States (NIS)

### ARMENIA

Armenia is a small landlocked country bordering on Turkey, Georgia, Iran and Azerbaijan. Its population is around four million. After declaring independence from the Soviet Union in 1991, Armenia became embroiled in a war with Azerbaijan over the predominantly ethnic Armenian enclave of Nagorno-Karabakh in the neighboring former Soviet republic. The disputed territory is currently under Armenian control. Although a ceasefire was reached in 1994, the issue has by no means been settled. The OSCE and the Council of Europe, which Armenia joined in January 2001, continue their efforts to broker a solution.

Armenia adopted a new constitution in July 1995 following a national referendum. This marked the beginning of the legislative reform process. A series of key laws were redrafted and approved. The Criminal Code and Criminal Procedure Code were adopted in 1998. The Civil Code, tailored with Western assistance, entered into force in January 1999. New laws needed to support the transition to a market economy were passed in quick succession.

At the same time, the judiciary urgently required restructuring, and in January 1999 the Law on the Judicial System came into effect. A Constitutional Court was established, and new judges, many of whom had already served in Soviet times, were appointed throughout the judiciary.

In spite of the considerable effort invested in reforming the legal and judicial system, the judiciary is still held in low public esteem, partly due to allegations of corruption. In addition, independent organizations continue to report human rights violations.

### CILC PROJECT IN ARMENIA

#### *Strengthening the Capacity of the Judicial System*

A CILC-led consortium won the tender for this 18-month EU/Tacis project in February 2000. CILC's consortium partners were the Judicial Training and Study Center (SSR) in Zutphen, Deutsche Gesellschaft für Technische

Zusammenarbeit (GTZ) in Eschborn, Centro de Estudos Judiciários in Lisbon, L'École Nationale de la Magistrature in Paris, and Yerevan State University's Faculty of Law. The project beneficiary was the Council of Court Chairmen (CCC) in Armenia.

The planned project consisted of four components: court organization and management; training; training for the Armenian Judicial Training Center; drafting commentaries on Armenian laws; and a public information and awareness campaign.

As reported in CILC's 2000 Annual Report, the project was beset by repeated delays. There were communication problems between CILC and the CCC, primarily due to differences in their approaches to the project. In March 2001, Tacis and CILC jointly decided to cancel the project.

### GEORGIA

Georgia is a small mountainous country in the Southern Caucasus. It shares borders with Russia, Turkey, Azerbaijan and Armenia. For more than 70 years, Georgia was part of the Soviet Union. Having achieved independence in April 1991, the country was soon faced with economic collapse, political instability and armed conflicts in the breakaway regions of South Ossetia and Abkhazia.

The adoption of a new Constitution in mid-1995 finally ended the political and constitutional crisis in the country. The government proceeded to embark on legal and judicial reforms. High-level political backing combined with the unflagging efforts of Georgian legal reformers produced a string of successes: a new Civil Code, Civil Procedure Code, Criminal Code, Criminal Procedure Code, Administrative Code and Administrative Procedure Code were adopted in rapid succession. The judiciary underwent a personnel shakeup with most of its members being replaced after mandatory recertification was introduced. At the same time, judges' salaries were raised substantially.

Despite all the huge steps forward, Georgia seems to have reached a crossroads following an upsurge in political unrest in 2001. The legal reform process has been affected as well. Constitutional amendments proposed by President Eduard Shevardnadze generated widespread

In Georgia, the legal reform process was overshadowed by controversy over proposed constitutional amendments aimed at strengthening executive authority.

controversy over the alleged bid to broaden presidential powers at the expense of the legislature. The issue has monopolized the legal debate, stalling reform in other areas. Many Georgian legal professionals believe the time to strengthen the rule of law is now.

## CILC PROJECTS IN GEORGIA

### *Comprehensive Administrative Law Reform, Phase III*

This project is a continuation of earlier successful cooperation between CILC, the German organization GTZ and Georgia in the field of administrative law. The current activities got underway in February 2001 and will run through June 2002. The Dutch Ministry of Foreign Affairs finances CILC's contribution to the project.

The purpose of the project is to assist Georgian authorities and legal professionals in the implementation of the recently adopted General Administrative Code and Administrative Procedure Code. The focus is on areas where foreign expertise is needed and would be most effective, such as training judges and civil servants, and familiarizing the public and legal professionals with the two new codes.

The project also provides for the drafting of commentaries on the codes. In 2001, Zurab Adeishvili and Dima Kitoshvili, working in close consultation with Prof. Gerd Winter from the University of Bremen, wrote a commentary on the General Administrative Code. Its publication was expected in early 2002.

CILC organized a study tour to the Netherlands and Germany for Georgian judges in early June. During their stay in the Netherlands they attended a three-day seminar in Leiden at which the role of administrative law in a democracy and the current situation of administrative law and procedure in Georgia were discussed. Members of the delegation presented five recent cases from their daily practice for analysis at the seminar. The group also visited legal institutions in The Hague to learn about complaint procedures in Dutch administrative law.

CILC was involved in preparing the content of a seminar on civil service reform and personnel management which took place in late June in the Georgian capital, Tbilisi. Around 70

Having already conducted a highly effective public awareness campaign for the Georgian Civil Code, the Georgian Young Lawyers' Association was asked to do the same for the new General Administrative Code.

Georgian civil servants attended. Following two plenary days, the third day was devoted to workshops held at the Georgian Supreme Court, in parliament and at the Ministry of Finance. CILC arranged for a Dutch civil servant and legal advisor to be present to offer recommendations and feedback.

In November, the Georgian Young Lawyers' Association (GYLA), GTZ's Tbilisi office and CILC coorganized a seminar in Gudauri for Georgian judges. The first part of the seminar was a followup for participants in the above-mentioned June study trip to the Netherlands and Germany. The second part was an introduction to modern administrative law for first instance judges. A Dutch judge and a German judge were among the trainers.

As part of the CILC project, in 2001 GYLA was asked to launch a public awareness campaign on behalf of the General Administrative Code. The young legal reformers had a proven track record, having successfully generated publicity for the Civil Code (see below) the year before. Newspaper articles, information brochures and broadcast media reports on different aspects of the Administrative Code will be produced in 2002.

### *Implementation of the Civil Code*

CILC has been cooperating with Georgian partners in the field of civil law since 1995. Dutch experts assisted Georgian drafters in drawing up a new Civil Code. The code was adopted in June 1997. In view of their role in the drafting process, CILC, GTZ in Germany and the U.S. Agency for International Development (USAID) were subsequently approached by the Georgian government to help implement the new code.

In 1998, GTZ, Amex International and CILC launched a joint three-year project covering the preparation of a commentary on the Civil Code; providing training for Georgian legal professionals and producing the necessary training materials; and running a public awareness campaign. The Dutch Ministry of Foreign Affairs financed the Dutch input into the project.

The Georgian project partners were the Judicial Training Center (JTC) in Tbilisi, the Georgian Ministry of Justice, the Civil Code drafting team and GYLA.

During 2001, a team of authors headed by Prof. Lado Chanturia, president of the Georgian Supreme Court, prepared and published the final two volumes of the commentary on the Civil Code. The first volume dealt with general and the second volume with specific obligations.

An existing manual on family law was updated and reissued in December.



In June, a three-day “Institutional Problems and Practice” seminar for Georgian notaries was held in Gudauri. One of the speakers was a Dutch professor who described the notary system in Europe.

GYLA, GTZ and CILC organized a seminar on contract law for Georgian judges in early November. Dutch and German experts participated.

The campaign to raise public awareness of the new Civil Code was such a success in 2000 that GYLA, GTZ and CILC decided to extend it into 2001. Additional brochures were written and distributed, and 15 radio programs and five newspaper supplements produced.

## KYRGYZSTAN

Unlike the countries of Central and Eastern Europe, the former Soviet Central Asian republics owe their independence not to popular movements for change or the reformist drive of enlightened politicians, but to the Soviet Union’s abrupt disintegration in 1991. Local Communist leaderships survived the transition by transforming themselves into proponents of the national interest and market capitalism. These ruling elites determine the pace of political, economic and institutional reform.

Since the events of September 11, the United States has courted support from Central Asian governments in its war against terrorism with offers of military and other aid. At the same time, the EU doubled its technical assistance to Central Asia and shifted the focus from national development to regional cooperation projects aimed at promoting political and economic stability.

Ever since independence was virtually thrust upon it in 1991, Kyrgyzstan has sought Western support as a counterweight to its fears of Russian hegemony and rising Islamic fundamentalism. For a time Kyrgyzstan was regarded as the most democratic and reform-minded state in Central Asia.

President Askar Akayev backed the introduction of sweeping legal reforms as a vital prerequisite for the success of his economic reform policy. Moreover, international lending institutions made their assistance contingent on the modernization of the legal and judicial system. The reforms are largely initiated by the presidential administration’s legal department, which

The presidential administration implemented major legislative and institutional reforms in Kyrgyzstan.



A brochure on legal assistance published in frame of the Kyrgyzstan project

can point to major legislative and institutional achievements.

At the same time, reform of the executive branch has stagnated. Allegations of government interference in judicial decision-making have increased over the past five years. The political climate as a whole deteriorated in 2000. Presidential and parliamentary election results were declared invalid by the Organisation of Co-operation and Security in Europe (OSCE). The government tightened its control over political parties, the media and non-governmental organizations.

## CILC PROJECT IN KYRGYZSTAN

### *Strengthening the Rule of Law*

This project provided legal assistance to Kyrgyzstan in three areas: implementation of the new Civil Code; judicial reform; and training in legislative drafting. Launched in late 1998, the project ran for nearly three years, finally winding up in November 2001. It

received a nearly one-year extension to compensate for delays caused in part by political changes in the country. The Dutch Ministry of Foreign Affairs funded the project. To execute it, CILC cooperated with two USAID-funded American organizations in the Kyrgyz capital of Bishkek: ARD/Checchi (on the implementation of the Civil Code and judicial reform components); and the American Bar Association's Central and East European Law Initiative (ABA/Ceeli) (on the legislative drafting component).

In 2001, a working group made up of seven Kyrgyz judges, attorneys and other legal professionals completed its series of commentaries on Part II of the Civil Code. Each article of the code is accompanied by an example of legal practice and explanatory commentaries. The working group had convened regularly since mid-1999. Because domestic legal practice could not always offer adequate examples for some of the modern civil law concepts laid down in the new code, examples often had to be drawn from legal practice abroad. At seminars in Amsterdam and Bishkek, the working group discussed questions of interpretation with colleagues from Russia, the Netherlands and the United States.

The finished commentaries underwent thorough editing. They will be published in spring 2002 along with the commentaries to Part I of the Civil Code, which were written as part of the ARD/Checchi project. USAID is funding their publication.

As in 2000, early in 2001 a training seminar on civil law issues was held for Kyrgyz trainers and higher court judges at the Judicial Training Center (JTC) in Bishkek. The participants engaged in lively discussions over hypothetical legal cases with guest lecturers from the Netherlands and Russia.

The Kyrgyz Lawyers' Association prepared 10 public information brochures on how the new Civil Code will affect citizens. Publication is scheduled for spring 2002.

In 2001, Kyrgyz lawyers completed their review of a new handbook on legislative drafting techniques that had been developed in 2000 with input from Dutch and U.S. lawyers. After undergoing final editing, the drafting handbook was published and distributed in cooperation with ABA/Ceeli.

The activities related to the judicial reform component were all implemented during the first two years of the project.

EU technical assistance to Central Asia has doubled since September 11.

## COMMONWEALTH OF INDEPENDENT STATES (CIS)

In the mid-1990s, the CIS member states began working closely with one another to develop model legislation in a variety of fields.<sup>2</sup> Model laws and the drafting process itself reap important benefits for the participating countries. Legal reformers throughout the former Soviet Union confront very similar issues as they seek to democratize Soviet structures and move towards a market-based economy. In addition, growing calls for the economic reintegration of the CIS region have spurred demand for compatible legal systems.

The usefulness of model legislation for CIS members has been amply demonstrated. While no country has slavishly adopted any model law as its national law, the drafts are generally accepted as a basic guideline or reference. They also aid legal reformers in the debate against opponents of reform. CILC is administering two projects which support the development of model legislation for CIS countries.

### CILC PROJECTS IN THE COMMONWEALTH OF INDEPENDENT STATES

#### *Model Securities Legislation*

This project, which has been extended beyond the end of 2001 by a few months, was launched in fall 1998 with funding from the Dutch Ministry of Foreign Affairs and GTZ. The European Bank for Reconstruction and Development (EBRD) and GTZ have cofinanced it since November 1999. The project assisted the introduction of landmark legislation safeguarding the rights of securities holders as a prerequisite for the establishment of functioning capital markets in the CIS.

Several drafting sessions and hearings led to the finalization of the text of a Model Securities Law. On October 9, the CIS Interparliamentary Assembly (IPA) Commission on Economy and Finance debated the final draft and approved the bill with some minor adjustments.

The Model Securities Law was then submitted to the IPA plenary session on November 24 and quickly adopted.

That should have marked the official end of the project, but the EBRD extended its support through April 2002 to enable the development of guidelines for the

<sup>2</sup> Though not a CIS member, Mongolia is involved in this cooperation.



national securities commissions in the individual CIS member countries on how the legislation should be implemented and adapted to national requirements.

### *Model Labor Law*

Launched in January 2000, this project supports labor law reform in the CIS member states. CILC, GTZ and the Center for Private Law in Moscow (CPL) designed the project based on the outcome of a seminar on labor law that took place in Bremen in February 1998. The project, cofinanced by the Dutch Ministry of Foreign Affairs and GTZ, foresaw two meetings with international experts, one conference, revision and publication of the Model Labor Law, and consultations in a number of CIS member states on the law's implications for national legislation.

The joint drafting of model laws plays a valuable role in the legislative reform process in the participating CIS countries.

After the first international experts' meeting in September 2000, a smaller drafting team met in Leiden for a week in spring 2001 to work intensively on the model law. On the last day, the team met with labor law specialists from Germany and the Netherlands to discuss issues that had arisen during the week. Selected members of the team then prepared a new version of the model law, which was distributed to everyone in the overall working group for their comments.

This draft was expected to be discussed at an IPA seminar in St. Petersburg in October with representatives of trade unions and employers' associations, international experts and members of the IPA. The draft would also be submitted to the IPA's Commission on Social Policy and Human Rights for review.

To CILC's disappointment, unforeseen political and logistical complications resulted in the IPA seminar taking place without the participation of the working group members and international experts.

The project was scheduled to end in November 2001 but may be prolonged until mid 2002.

## MOLDOVA

Since independence in 1991, two closely linked issues have dominated the political agenda of this small, poverty-stricken country sandwiched between Romania and

Ukraine. The first is the still unresolved dispute over the breakaway eastern region of Transnistria; the second is economic development.

Although successive Moldovan governments pursued economic reforms with even greater vigor than in most other CIS countries, political opposition as well as division among reformist legislators themselves usually blocked their implementation. By contrast, an ambitious program of legal and judicial reforms got underway in 1994 with the adoption of a new Constitution. In 1996 a new court organization was introduced and work began on recodifying major legal codes. All this progress has been seriously threatened since the Communist Party gained an absolute majority in the February 2001 parliamentary elections and its leader was subsequently elected president.

The changed political landscape also affected CILC's activities last year, in particular its large UNDP-funded project, "Supporting Moldova's Judicial Development." A number of laws that had been drafted with the input of Dutch experts failed to gain parliamentary approval as the result of a government policy reversal. Judicial independence appeared to be at risk after the Communists gained control over the legislative and executive branches. Efforts by the Moldovan Judges' Association, one of CILC's project partners, to safeguard judicial independence are facing increasing obstacles.

The stability of the legislative process also suffered in 2001. While the Judicial Training Center, with support from the CILC project, was in the process of organizing training seminars on the Law on Administrative Jurisdictions, which had been enacted in 2000, parliament changed the law overnight without consulting legal experts, let alone permitting a public debate.

## CILC PROJECTS IN MOLDOVA

### *Supporting Moldova's Judicial Development*

The project started in November 1999 and will run through October 2002. It follows up on the UNDP project "Strengthening Moldova's Judicial and Legislative Systems," which was funded by the Dutch government. The current project is also being implemented under UNDP auspices. The main source of its funding is the Dutch Embassy in Kyiv, in neighboring Ukraine. CILC's project partners are the Zutphen-based Judicial Training and Study Center (SSR) and the Netherlands Association for the Judiciary (NVvR).



Members of the Moldovan Judges' Association and Moldovan Minister of Justice Ion Morei visited the Netherlands in June 2001

The project supports the development of leading legal institutions in Moldova: the Judicial Training Center (JTC) in the capital, Chisinau; the Constitutional Court; the Moldovan Judges' Association (MJA); and the Procuracy, or Public Prosecutor's Office. CILC project manager Eric Vincken was appointed International Project Advisor in Chisinau for the duration of the project.

The full range of activities in 2001 was so extensive that only a few can be highlighted here. Numerous activities were undertaken to strengthen the JTC's training mission. The JTC held a seminar on court administration, and five training seminars on administrative law were run in Chisinau, Balti and Cahul. JTC trainers visited L'École Nationale des Greffes (National College for Registrars) in Dijon. CILC undertook an expert mission to Moldova to discuss a training program currently being developed for court employees and the preparation of a training manual (*Vademecum*). Two Moldovan judges held internships at L'École Nationale des Greffes, where they received instruction in training methods and prepared a course for court employees that will be taught at the JTC in 2002.

In terms of institutional development, the project supported the production by the JTC of a draft long-term strategy paper covering its legal status, curriculum, training methodology, etc. The Moldovan Minister of Justice visited neighboring Romania's National Institute of Magistrates to learn from its experience in training judges. In addition, a new photocopier was supplied to the JTC.

Moldovan and Dutch experts met in Leiden and Chisinau to continue their work on drafting regulating laws on the Procuracy.

The MJA visited the Netherlands in June, accompanied by the Moldovan Minister of Justice. The MJA adopted new bylaws at its Annual Meeting in November. The project financed the equipment of all Moldovan courts with computers and software, including the legal database "Moldlex." Court staff were trained to work with the software.

Organizational and logistical support was provided to an international forum in Chisinau for chairmen of the Constitutional Courts in countries represented in the Parliamentary Assembly of the Black Sea Economic Cooperation Organization (BSECO PA). The forum was organized in December by the Constitutional Court of Moldova.

The project also funded the publication of the Constitutional Court's collected cases from 1999 and 2000.

In cooperation with the Moldovan Bar Association's Law Center, four training courses on the European Convention on Human Rights (ECHR) and European Court of Human Rights application procedures were organized for young lawyers in Chisinau, Balti and Cahul. An advanced seminar on the ECHR was held in November. Finally, the project funded the preparation of a manual on European Court of Human Rights application procedures.

In July, the UNDP commissioned a team of external evaluators to assess the project. Their report concluded

that “the project performed virtually all of its activities on schedule. These activities have always been conducted in an appropriate and professional matter.”

While the individual project activities have been highly successful, not all project objectives have so far been met. The original project proposal had emphasized institutional development, but this goal turned out to be elusive. As the evaluation report noted, major political and personnel changes in the project environment were partly responsible. For example, the JTC’s institutional framework has not changed for the better, and the draft legislation package on the legal status of the Procuracy was rejected by the new government and parliament.

### *Reform of the Penitentiary System*

As a followup to the needs assessment mission in October 2000, CILC organized a project formulation mission in July 2001 aimed at exploring ways to support penitentiary reform in Moldova. A Dutch expert and CILC’s Chisinau-based International Project Advisor carried out the mission in July. It was funded by the Dutch Embassy in Kyiv and the Soros Foundation Moldova.

The mission led to a project proposal, but CILC will not be involved in executing the project. It will be handled by the Center for Assistance to Penitentiary Reforms in the Republic of Moldova, the Netherlands Helsinki Committee and the Netherlands Prison Administration.

## RUSSIAN FEDERATION

The Russian economy recovered remarkably well from the 1998 financial crisis, showing growth in 2001 for the third consecutive year. Each economic success enhances the standing of President Vladimir Putin’s government, boosting public confidence and paving the way for further reform.

The president has made judicial and legal reform a top priority and proposed extensive legislative changes. It will take several years to adopt and implement these laws at all levels of government, but their future impact on the business and investment climate, as well as on citizens’ rights, is bound to be substantial.

Fall 2001 was a productive season for new Russian legislation. When implemented, the new Tax Code will create a taxation system comparable to those in advanced market economies. The new Labor Code, adopted by parliament in December following years of polemical debate,

is a compromise with the still-powerful Soviet-era trade unions. It covers specific aspects of individual labor agreements, allows for flexible and fixed-term work contracts and regulates strikes. At the same time it leaves many of the traditional worker’s privileges intact. Part III of the Civil Code was finally adopted, as were the new Land Code and the Law on Environmental Protection. The new Civil Procedure Code was adopted in its first reading.

International human rights standards, including those laid down in the 1993 Constitution, are not yet fully institutionalized. Serious problems remain with regard to the independence and freedom of the media, conditions of pretrial detention, and the treatment of prisoners. Despite the formal measures taken to guarantee independence of the judiciary, the judiciary is still vulnerable to outside interference, especially at regional and local level.

## CILC PROJECT IN THE RUSSIAN FEDERATION

### *Monitoring and Supporting the Implementation of the Russian Civil Code*

The Civil Code project continues the long-standing cooperation between Russian and Dutch legal experts in developing civil legislation for the Russian Federation. The project began at the end of 1999 and runs through September 2002. It is funded by the Dutch Ministry of Foreign Affairs. One of the project partners is the University of Leiden’s Institute for East European Law and Russian Studies, which is overseeing the publication of a casebook and commentaries.

The passage of wide-ranging legislation in fall 2001 underscored President Putin’s commitment to legal reform.

Under the project, CILC and the Moscow-based Research Center for Private Law, under the auspices of the Russian president, had planned to jointly organize workshops for Russian legal professionals. However, workshops scheduled for 2001 were postponed at the request of the Research Center, following President Putin’s decision to give priority to the preparation of Part IV of the Civil Code.

The public information activities that were to be carried out in 2001 in cooperation with the Russian Young Lawyers’ Association and the Russian Foundation for Legal Reform (RFLR) were postponed for the same reason.

Nevertheless, the Research Center was able to distribute, via the networks of the Young Lawyers’ Asso-

ciation and the RFLR, the first three of a series of ten brochures explaining the new Civil Code to a general audience. The three brochures cover mortgages, consumer rights and the new role of legal professionals as defenders of citizens' rights.

## UKRAINE

In 2001, Ukraine passed landmark legislation relating to the judiciary. Under the provisions of the 1996 Constitution, the government was required to reorganize the Ukrainian court system before June 28, 2001. The issue generated heated debate and parliament was unable to reach a consensus until summer 2001, when it finally adopted a package of ten judicial and legal reform bills. The new laws, which are intended to bring Ukrainian legislation into conformity with Council of Europe standards, included a new Criminal Code and Criminal Procedure Code, as well as laws amending existing legislation on the judiciary, the Procuracy, or Public Prosecutor's Office, the police and the rules of pretrial detention. A Council of Europe delegation concluded during its visit to Ukraine in December that judicial reform was moving into the right direction.

Now that reform legislation is in place, the problem of insufficient training for judges has become even more acute. In the spring, President Leonid Kuchma signed a decree establishing the Ukrainian Academy of Judges. So far it exists only on paper and no budget has been allocated for it. The only institute currently engaged in judicial training is the Supreme Court Training Center, a beneficiary of the two CILC projects in Ukraine.

Progress was also made in the area of civil law. Parliament adopted four out of five chapters of the new Civil Code, which is scheduled to enter into force at the beginning of 2003.

## CILC PROJECTS IN UKRAINE

### *Strengthening the Judiciary*

This train-the-trainer program for the Ukrainian Supreme Court is funded by the Dutch Ministry of Foreign Affairs' Matra Pre-accession Program. CILC's project partners are SSR and the Netherlands Helsinki Committee.

The project, which started up in late 1999, gained momentum in 2001. Ukrainian legal experts were twinned with trainers from the Netherlands with whom they developed training programs and course material. In May, the first series of training seminars

took place in Zhitomir (court management) and Vinnytsia (the European Convention on Human Rights and European Court of Human Rights case law), and in June in Chernihiv (civil law). At this stage the Dutch trainers played a leading role in developing the "train-the-trainer" concept together with their Ukrainian colleagues. When a new round of seminars kicked off in Kirovohrad and Cherkasy in December (civil law), the contribution of the Dutch trainers was largely confined to observing and evaluating the Ukrainian trainers' performance.

Preparations were made for a criminal law seminar in January 2002 and a conference on the jurisprudence of the European Court on Human Rights to be held in 2002 in the Ukrainian capital, Kyiv.

### *Strengthening the Capacity of the Judicial System*

Officially launched in August 2000, this two-year EU/Tacis-funded project only began its activities in June 2001. CILC's project partners are the Ukrainian Legal Foundation, SSR, the Bonn-based Stiftung für Internationale Rechtliche Zusammenarbeit (IRZ), and L'École Nationale de Magistrature. As with the project on strengthening the Ukrainian judiciary, the local beneficiary is the Ukrainian Supreme Court. The reason for the project's late start was a disagreement between the partners and the European Commission over the compensation of the participating judges.

The overall aim of the project is the development of an efficient training system for Ukrainian judges. The immediate goals are to improve the management and training capabilities of the Supreme Court Training Center (SCTC) and four new regional training centers, as well as to train a number of judges' trainers from the Arbitration Court Training Center. The project is coordinated with the "Strengthening the Judiciary" project to avoid overlap and optimize mutual benefits.

In April and November, Ukrainian judges visited Western Europe to study training methodology and the design of training curricula in six different subjects. Seminars were held in Kyiv in June and November on drawing up a national training policy paper and a national training center management plan. At these seminars EU experts and Ukrainian judges exchanged views and determined which methodologies and curricula to implement. Four regional training centers were established, equipped and staffed, and the SCTC was upgraded with additional equipment and staff training.

## 3.4 Central And Eastern Europe

***CILC significantly increased its presence in Central and Eastern Europe in 2000 and 2001. The bulk of the activities undertaken in the region in partnership with other organizations are connected with the preparations EU candidate states are making to comply with accession requirements. CILC carries out activities on its own in four of the countries, Hungary and the Baltic states. In 2001, CILC began for the first time to look into opportunities to develop legal cooperation projects on the territory of the former Yugoslavia.***

### **EU MEMBERSHIP CANDIDATE STATES**

Accession negotiations are well underway with all the current EU candidate members (Hungary, the Czech Republic, the Slovak Republic, Poland, Slovenia, Latvia, Lithuania, Estonia, Bulgaria, Romania, Malta and Cyprus), with the exception of Romania and Bulgaria. The negotiations are expected to be finalized in 2004.

The 1993 European Council meeting in Copenhagen confirmed the prospect of membership for these countries and set the requirements for accession, known as the Copenhagen criteria. In 1997, individual Accession Partnerships were drawn up for all the candidates, identifying priority areas in which they needed to advance the progress of their preparations. Chapter 24 on Justice

and Home Affairs was aimed at strengthening capacity in those areas. Its focal points were: enforcement of legislation; putting in place appropriate structures, particularly in the areas of organized crime, terrorism and human and drug trafficking; establishment of effective border controls; and harmonization of asylum, visa and immigration procedures with international standards.

A further criterion was that the candidates must align their judicial systems with specified EU standards. By the close of 2001, the countries were at very different stages in this process. But some conclusions apply to nearly all of them. Most could point to substantial progress. The ad hoc legislative changes that characterized the early 1990s had generally given way to a more integrated approach to reform.

Nevertheless, there is still some way to go in all the countries before the judiciary is universally accepted as a full-fledged branch of government. Nor has the relationship between state power and citizens' rights been fully resolved. Efforts to move in that direction continue unabated, even though by the end of 2001, Hungary, the Czech Republic, Cyprus and Slovenia had wrapped up their negotiations over Chapter 24, with a number of other candidates expected to follow suit in the first half of 2002.

**The Rule of Law project comprises four modules: judicial independence; the public prosecutor's role; court procedures; and the safety of participants in court cases. In 2001, desk studies were prepared for each one of the ten EU candidates and experts from the EU embarked on a series of verification missions.**

### **CILC PROJECT IN THE EU CANDIDATE STATES**

#### ***EU/Phare Horizontal Programme Project on the "Reinforcement of the Rule of Law" in the EU Candidate States***

In 1999, the Dutch Ministry of Justice asked CILC to submit a proposal for an EU/Phare-funded project to advance the reform of four key fields of the Rule of Law in the Central and East European countries that have applied to join the EU. These fields were to be covered in four modules: independence of the judiciary; the status and role of the public prosecutor; court procedures and execution of judgments; and the safety of victims, witnesses, judges, prosecutors, defense attorneys and jurors. CILC's partners in the project are the Netherlands Hel-



sinki Committee, IRZ in Germany, the Italian Ministry of Justice, the British Home Office and, in France, L'École Nationale de la Magistrature and the *Association pour la Coopération Juridique et Judiciaire Internationale (ACOJURIS)*. Each project partner is responsible for a different module. In addition to managing the project, CILC is handling the Independent Judiciary module. The key CILC expert involved in the project is Paul Broekhoven, president of the district court of Utrecht on special leave and former dean of SSR. The Dutch Ministry of Justice bears political responsibility for the project.

From the beginning the project has been adjusted several times to conform to the existing reality in the ten candidate countries.

The two-year project got underway at the start of 2001 with an inception phase to identify the specific needs of each of the countries involved. The resulting desk studies prepared for each country appeared to be incomplete. Therefore, all ten countries were asked to provide additional information relevant to the four modules covered by the project. Verification missions to each country were organized, with high-ranking experts from different EU member states participating. The desk studies will be adjusted on the basis of the outcomes of these missions and analyze gaps and needs, identifying the priority areas in each country. At the same time, recommendations for future activities within the scope of the project will be formulated, along with suggestions for new projects.

The first three verification missions took place in November and December. The remaining seven countries will be visited in the first quarter of 2002. The comprehensive country reports and recommendations are expected to be finalized by April 2002.

## THE BALTIC STATES

In 1990, Lithuania and Estonia were the first Soviet republics to declare their independence, although Moscow refused to recognize their attempt to secede until after the failed hardline coup in 1991, when Latvia also regained its sovereignty. The three Baltic states had been independent nations before their annexation to the Soviet Union in 1940. Unlike most of the other former republics, they immediately looked westward. Application for NATO and EU membership are high on their agendas. Lithuania and Estonia joined the Council of Europe in 1993; Latvia followed in 1995. All three



PHOTO: MATHIEU CHARDON

Participants in a seminar in Riga, Latvia, on civil execution and bailiffs

have signed most international conventions. Estonia's Constitution dates from 1992 and Lithuania's from 1993; Latvia restored its 1922 Constitution.

Judicial reforms are well underway and fundamental human rights are generally respected. Court organization must still be improved. Both Lithuania and Latvia have a shortage of qualified judges. Execution of judgments is not yet sufficiently guaranteed, but serious efforts are being made to reform the bailiff system. In Estonia a fully privatized bailiff system is already functioning.

All three countries quickly grasped the need to modernize their civil legislation. They embarked on complex reforms, all the while keeping an eye on legal developments in the EU. Lithuania decided to draft a whole new Civil Code. It came into force in July 2001. Latvia and Estonia opted for a revision of their Civil Codes dating from 1937 and 1936 respectively, during their original, prewar period of national independence. From the beginning the three countries have sought drafting assistance from Western legal experts, resulting in several successful cooperation projects.

## CILC PROJECT IN THE BALTIC STATES

### *Modernizing Civil Legislation in Latvia and Lithuania*

January 1, 2000, marked the start of this cooperation project between the Dutch, Latvian and Lithuanian ministries of justice, which ended in October 2001. It was funded by the Dutch Ministry of Foreign Affairs' Matra Pre-accession Program. The aim of the project was to support civil law reform in Latvia and Lithuania by providing Dutch expertise at joint seminars in the

two Baltic states. A further objective was to promote harmonization of the civil legislation in all three Baltic countries. Legislators from Estonia were therefore invited to attend the seminars. IRZ, which was already active in the Baltic states, agreed to support the activities of the Dutch project by sending German civil law experts on request.

In April, a joint seminar on civil procedural law was organized in Leiden. Dutch experts from different legal professions shared their experiences with legislators from the three Baltic countries. Two bilateral seminars took place in September, one in Lithuania which focused on civil appeal procedures and summary proceedings, and the other in Latvia, where family law issues were discussed. A pair of Dutch experts participated in each of these two seminars, which were organized by the justice ministry in the host country, and IRZ arranged for a German expert to take part in the Latvian seminar. The Latvian capital, Riga, was the venue for the last joint seminar in the project, which dealt with laws on civil execution. Two bailiffs from Western Europe, one Dutch and the other French, exchanged experiences with bailiffs and legislative drafters from Latvia and Lithuania.

After the project finished in October, Lithuania initiated discussions with CILC on a possible followup project, for which a funding proposal was submitted to the Matra program.

## HUNGARY

Hungary became a unicameral parliamentary democracy in 1990. The Hungarian Constitution dates from 1949 but has undergone repeated revision, notably in 1989, when it was amended to safeguard individual rights, provide checks on the authority of the prime minister, and establish the principle of parliamentary control.

The latest amendment, in 1997, dealt with the reorganization of the judiciary, which was further regulated that same year in the Law on the Organization and Administration of Courts and the Law on the Legal Status and Remuneration of Judges. The reforms introduced under these laws introduced making the judiciary fully independent, creating the National Council of Justice, and setting up appellate courts. This last reform, aimed at reducing the workload of the courts, was amended in 1999 to enable the establishment in 2003 of a single Regional Court of Appeal, to be located in the capital, Budapest.

As a front-line candidate for accession to the EU, over

the past few years Hungary has worked hard to adapt its legislation to West European standards. The EU reported that considerable progress had been made since the start of the judicial reforms in 1997 in institutional-

**Hungarian Civil Code drafters appreciated the support provided by civil law experts from the EU.**

izing democracy, the rule of law, human rights and protection of minorities. The overall efficiency of the courts improved. Among the problems still facing the judiciary are a large backlog of cases before the Supreme Court and prison

overcrowding. Scarce budgetary resources hamper implementation of remaining elements of the reforms.

Hungary has ratified all the human rights legal instruments that are part of the EU Justice and Home Affairs *acquis communautaire*.

Most of the laws inherited from the Communist era were based on Soviet models. The existing Civil Code, which dates from 1959, contained few articles on contracts and commercial transactions, for example, as economic activity was largely restricted to state enterprises. After the country's return to a market economy, Hungarian drafters opted for recodification rather than trying to revise obsolete laws or drafting new ones piecemeal. A Civil Law Codification Committee was set up to define general principles. The actual drafting of the new code will begin in fall 2002. Up-to-date EU legislation will be incorporated right from the start, an enormous advantage. It is, however, an enormous task, and bilateral cooperation has provided welcome assistance.

## CILC PROJECT IN HUNGARY

### *Civil Law Legislation*

In 1999, CILC won the tender issued by the Dutch Ministry of Foreign Affairs for the execution of a project to assist in the codification of an entirely new Hungarian Civil Code. Following an inception mission to Budapest in spring 2000, project activities were kicked off in September of that year and completed in October 2001.

The basic idea behind the project was to create a one-on-one support system for the Hungarian drafters working to integrate EU directives on company law, securities, insurance law, consumer protection and financial institutions into their draft legislation. They had continuous access to





The Hungarian parliament building in Budapest

civil law specialists in the Netherlands, whom they could use as a sounding board by e-mailing them for advice on whichever issues they wanted to discuss. Seminars, workshops and study trips were also organized.

In practice, the consultation mechanism created unforeseen problems. Progress inevitably became contingent on the course of the codification process, which in its unpredictability was reminiscent of the history of the Dutch Civil Code.

The cooperation extended for over a year and a half. At seminars which took place in Budapest in spring 2001 and covered each of the selected legal areas, five Dutch experts explained how EU directives and regulations had been incorporated into Dutch legislation. This experience was discussed again at the wider forum of the final conference in Budapest in September. In addition, the Dutch advisors commented on the working papers which the Hungarian colleagues prepared in advance of the actual drafting of the Civil Code, which is to start in fall 2002.

Even though the concept of ongoing consultation turned out to be less practical than anticipated, the Hungarian participants were very positive about the project results.

## THE REPUBLIC OF SERBIA

Following the secession of their fellow republics, Serbia and tiny Montenegro were the only republics left in the Yugoslav federation. Throughout the 1990s, the Serbian leadership was accused of fomenting instability in the region. Domestically, public institutions in Serbia were crippled by political turmoil and international isolation. Grave damage was inflicted on the rule of law, respect for human rights, governmental checks and balances, and oversight mechanisms. The independence and effectiveness of the judiciary were among the institutional casualties of President Slobodan Milošević's rule.

The leadership that succeeded Milošević's after his overthrow on October 5, 2000, has sought to establish a decentralized federal state based on the rule of law, democratic governance and a market economy. Desperate to rebuild the shattered economy, the federal and Serbian governments acknowledged the need for a modernized and independent judiciary to help restore investor confidence.

As a result, the Serbian government launched a large-scale legal and judicial reform program in 2001. Despite the clear political will behind the reforms, their progress has at times been hampered by insufficient coordination and implementation capacity, an inadequate legal framework, problems with human resource management, an inefficient court system, lack of appropriate facilities, and corruption.

Nevertheless, encouraging steps in the right direction were taken in the course of 2001. The UNDP was among the first donors to offer Serbia assistance in implementing the reform program.

UNDP asked CILC to prepare a technical proposal for setting up a Judicial Training Center in Belgrade. The assignment represented CILC's first involvement on the territory of former Yugoslavia.

## CILC ACTIVITIES IN SERBIA

### *Judiciary Reform Mission*

At the request of the UNDP office in Belgrade, CILC's International Project Advisor in Chisinau, Moldova, Eric

Vincken, participated in a mission to Belgrade to assess the state of the judicial system in the Republic of Serbia and formulate reform proposals. The mission took place from September 24 to October 5. Mr. Vincken wrote an assessment report and a technical proposal for the establishment of a Judicial Training Center in Serbia. The UNDP will submit the technical proposal to potential bilateral and multilateral donors for funding.

The mission was organized under the auspices of the Capacity Building Fund, which was set up by various donors including UNDP, the Fund for an Open Society, and the Serbian government.

## 3.5 The Middle East

### YEMEN

Today's Republic of Yemen came into being in May 1990, when the former Yemen Arab Republic (YAR), better known as North Yemen, merged with the former People's Democratic Republic of Yemen (PDRY), also called South Yemen. Yemen is a Muslim country. Its official language is Arabic. Tribes are strongly entrenched in Yemeni society. Forty percent of the population lives in poverty.

Coexisting legal traditions are a legacy of Yemen's rich and fascinating history. The legal system is based on a mixture of Sharia (Islamic law), local tribal law, socialist legislation in the former South Yemen, English common law from the colonial period and modern Western law. This extraordinary complexity poses many challenges for Yemeni legal and judicial professionals, in particular for the reformers among them who seek to professionalize the judiciary and safeguard its independence.

Yemen is often described as an emerging democracy in the Arab world. Elections are generally considered to be free and fair, despite concern over some voting procedures. There are numerous outspoken opposition newspapers. At the same time, international human rights organizations continue to report serious human rights violations.

In 1997, the Yemeni government launched a comprehensive judiciary reform program funded by the World Bank. A range of training activities for judges and prosecutors have been organized in Yemen and Egypt. Under this program, the Minister of Justice, Judge Ahmed Abdallah Akabet, has spearheaded a drive to purge the judiciary of unfit and corrupt members. In August 2001 he ordered a rotation of judges, as a result of which 20 judges were dismissed.

These achievements notwithstanding, Yemen has few financial and organizational resources to tackle the many problems confronting the judiciary. The Dutch Embassy in the capital, Sana'a, therefore decided to reinforce the government's efforts by funding a project which CILC developed jointly with its Yemeni partner.

Yemen's pluriform legal system and diverse cultural traditions complicate the task of legal reform.

## CILC PROJECT IN YEMEN

### *Judicial Support Program*

This project is CILC's first in the Middle East. CILC conceived it together with the Forum for Civil Society (FCS), a Yemeni NGO, based on a 1999 needs assessment mission. The contracting party is the Dutch Embassy in Sana'a. In drawing up the project proposal, CILC relied on experts from two Dutch institutes, SSR in Zutphen and the International Institute for the Study of Islam in the Modern World (ISIM) in Leiden. The project is divided into five modules: setting up a legal information center; upgrading two courts to serve as model courts; improving judges' training; supporting the Technical Bureau of the Supreme Court; and strengthening the Public Prosecutor's Office.

In view of the country's pluriform legal system and the complex cultural and religious factors that affect Yemeni society, CILC, FCS and the Dutch Embassy agreed to start off with a six-month inception phase. The final details of the planned three-year project will depend on the outcome of the inception phase. The Embassy will await the results of the inception phase and the finalized work plan before deciding whether or not to finance the project.

The contract for the inception phase was signed in August 2001. In September, CILC project manager Abdeljalil Taktak went to Yemen for two months on the first of three missions during which he will consult with Yemeni government representatives, members of the judiciary and local NGOs.

The aim of Mr. Taktak's inception mission was to garner support for the wide-ranging activities planned under the project and to fine-tune the initial proposal. Mr. Taktak met with the ministers of justice, legal & parliamentary affairs, human rights and planning, as well as with judges, lawyers and members of local NGOs working on legal issues, human rights and the rights of women. To avoid duplication with other legal and judicial initiatives, he also talked to representatives of donors currently active in the country. In preparation for the project module on model courts, Mr. Taktak visited several primary courts



Yemeni Minister of Justice  
*Ahmed Abdallah Akabet*

in Sana'a and Aden, and the appeals courts in both cities. Mr. Taktak submitted a detailed mission report in November.

A second mission by Mr. Taktak was planned for early 2002, to be followed by a third round of consultations in April 2002, in which Dutch and Arab legal professionals will participate.

## APPENDIX I

# Local Partners

### ARMENIA

Constitutional Court  
Court of Cassation  
Council of Court Chairmen (CCC)/Judicial Training Centre (JTC)  
Law Faculty of Yerevan State University  
Legal Department of the National Assembly of the Republic of Armenia  
Ministry of Justice  
Research Training Center of the Prosecutor General's Office  
State Committee on Legal and Judicial Reforms

### BALTIC STATES

Ministry of Justice of Latvia  
Ministry of Justice of Lithuania  
Ministry of Justice of Estonia

### BULGARIA

Ministry of Justice

### CHINA

China Law and Development  
Legal Affair Commission of the National People's Congress  
Supreme People's Court

### COMMONWEALTH OF INDEPENDENT STATES (CIS)

Inter-Parliamentary Assembly of the CIS  
Scientific Consultative Center for Private Law of the CIS

### CZECH REPUBLIC

Ministry of Justice

### ERITREA

Ministry of Justice

### GEORGIA

Council of Justice of Georgia  
Court of Appeal in Tbilisi  
Georgian Young Lawyers Association  
Judicial Training Centre  
Ministry of Justice  
Parliament of Georgia  
Prosecutor General's Office  
Supreme Court of Georgia

### HUNGARY

Civil Law Codification Commission  
Ministry of Justice

### INDONESIA

Islamic University Indonesia, Yogyakarta  
Ministry of Justice  
National Law Commission (Komisi Hukum Nasional/KHN)  
University Diponegoro, Semarang  
University Indonesia, Jakarta

### KYRGYZSTAN

Association of Lawyers  
Council of Judges  
Judicial Training Centre  
Legal Department of the Presidential Administration  
Ministry of Justice

## MALI

Deme So  
Faculty of Legal and Economic Sciences, University of  
Mali  
Institut National de Formation Judiciare

## MOLDOVA

Law Center of the Republic of Moldova  
Ministry of Justice  
Moldovan Constitutional Court  
Moldovan Judges Association  
Moldovan Judicial Training Centre  
Office of the Prosecutor General  
Penitentiary Department of the Ministry of Justice  
Soros Foundation Moldova  
State University of Moldova

## MONGOLIA

General Council of Courts  
Judicial Re-Training Center  
Ministry of Justice  
Mongolian Foundation for Open Society  
Supreme Court

## POLAND

Ministry of Justice

## ROMANIA

Ministry of Justice

## RUSSIAN FEDERATION

Foundation for Legal Reform  
Highest Arbitration Court of the RF  
Institute for Legislation and Comparative Law under  
the President of the RF  
Moscow State Institute for International Relations/  
Institute of European Law  
Research Center for Private Law under the President of  
the RF  
Young Lawyers' Association

## SLOVAK REPUBLIC

Ministry of Justice

## SLOVENIA

Ministry of Justice

## UKRAINE

Supreme Court of Ukraine  
Ukrainian Legal Foundation

## YEMEN

Appeal Court Aden  
Appeal Court Sana'a  
Forum for Civil Society  
High Institute for the Magistrate  
Ministry of Justice  
Ministry of Human Rights  
Office of the Attorney General  
Supreme Court

## APPENDIX II

# International and Dutch Contacts

### DONOR ORGANIZATIONS

Bureau CROSS (a Dutch Ministry of Education, Culture and Science agency)  
European Bank for Reconstruction and Development (EBRD)  
European Union (Tacis and Phare programmes)  
Deutsche Gesellschaft für Technische Zusammenarbeit GmbH (GTZ), Eschborn  
Koninklijke Nederlandse Akademie van Wetenschappen (Royal Netherlands Academy of Arts and Sciences)  
The Dutch Ministry of Foreign Affairs and Dutch embassies  
The Dutch Ministry of Justice  
Senter International Den Haag (a Dutch Ministry of Economic Affairs agency)  
Stiftung für Internationale Rechtliche Zusammenarbeit (IRZ), Bonn  
United Nations Development Programme (UNDP)  
United States Agency for International Development (USAID)

### OTHERS (\*)

African Studies Centre, Leiden University  
Agence de coopération juridique internationale (ACOJURIS), Paris  
American Bar Association/CEELI, Washington, D.C.  
Amex International, Washington, D.C.  
ARD/Checchi-Rule of Law Consortium, Washington, D.C.  
Association for European Law Enforcement Cooperation (EULEC), Brussels  
British Home Office, London  
Centro de Estudos Judiciários, Lisbon  
Checchi and Company Consulting Inc., Washington, D.C.  
Catholic University of Leuven  
Centre for European Constitutional Law, Athens  
Constitutional and Legal Policy Institute (COLPI), Budapest  
Council of Europe, Strasbourg  
L'Ecole Nationale de la Magistrature (National School for Judges and Prosecutors), Paris  
E.M. Meijers Institute, Leiden University  
IRIS Center, University of Maryland  
Istituto Affari Internazionali (Institute of International Affairs), Rome  
Johann Wolfgang Goethe University, Frankfurt  
King's College, London  
Netherlands Helsinki Committee, The Hague  
The Italian Ministry of Justice  
University of Paris I  
University of Bremen

\* The institutions represented on CILC's General Board are listed in Appendix III.

# CILC's Executive and General Board

## EXECUTIVE BOARD

Prof. E.M.H. Hirsch Ballin  
(chairman)  
Prof. C.P.M. Cleiren (Leiden  
University)  
Judge R.H.M. Jansen (Utrecht  
District Court)  
Prof. A.H.A. Soons (Utrecht  
University)  
H.J. Vriesendorp (Nuffic)

## GENERAL BOARD

### Chairman

Prof. E.M.H. Hirsch Ballin

### Amsterdam University Law Faculty

W.T. Eijsbouts

### T.M.C. Asser Institute for Private and Public International Law (The Hague)

Prof. F.A. Nelissen  
A.E. Kellerman

### Erasmus University Rotterdam

J.M.P.H. Noortmann (as of  
September)  
Prof. J.W. de Zwaan (until  
September)

### 'Vrije Universiteit' Amsterdam Law Faculty

Prof. Gr. van de Burght  
Prof. P. Vlas

### Groningen University Law Faculty

B.C. Vis

### Institute for East European Law and Russian Studies, Leiden University

Prof. W.B. Simons  
Prof. F.J.M. Feldbrugge

### Leiden University Law Faculty

Prof. C.P.M. Cleiren  
Prof. Th.G. Drupsteen (until  
December)

### Maastricht University Law Faculty

Prof. G.A.A.J. van den Heuvel  
Prof. J.H.M. van Erp

### Ministry of Justice (The Hague)

J. Demmink  
S.A. Kuipers

### Ministry of Foreign Affairs (The Hague)

vacancy

### Netherlands Association of the Judiciary (The Hague)/ Netherlands Training Center for the Judiciary (Zutphen)

Judge R.H.M. Jansen  
Judge J.J.I. Verburg (until  
September)

### Netherlands Bar Association (The Hague)

J.J.H. Suijver (as of May)  
F. Heemskerck (until May)  
L.B. Vossenbergh-Ferdinandus

### Nijmegen University Law Faculty/Institute for Anthropology of Law

Prof. P.J.P. Tak  
Dr. H.M.C. Slaats  
Dr. M.K. Slaats-Portier

### NUFFIC, Netherlands Organization for International Cooperation in Higher Education (The Hague)

H.J. Vriesendorp

### Royal Association of Public Notaries (The Hague)

A.D.G. Heering

### Tilburg University Law Faculty

Prof. A. Prechal  
Prof. P.H.J. Essers

### Utrecht University Law Faculty

Prof. A.H.A. Soons  
Prof. M.L.P. Loenen (as of  
November)  
Prof. K.R.S.D. Boele-Woelki (until  
November)

### Van Vollenhoven Institute (Leiden)

Prof. J.M. Otto  
B.M. Oomen



## APPENDIX IV

# CILC's Staff

### BOARD OF DIRECTORS

Jan van Olden, Director  
Hester Minnema, Deputy Director/Policy Coordinator

### PROJECT MANAGERS

Bernedine Bos (until September 1)  
Marieke Breimer (as of March 1)  
Renate Hartman  
Anne-Marie Heemskerk  
Laura Lancée  
Marja Lenssen (as of May 1)  
Nicole Mathôt  
Abdeljalil Taktak  
Eric Vincken  
Ko Winters (as of September 1)

### CRIMINAL LAW PROJECT

Marjanne Termorshuizen-Arts, Researcher

### EU/PHARE HORIZONTAL PROGRAMME PROJECT ON THE "REINFORCEMENT OF THE RULE OF LAW" IN THE EU CANDI- DATE STATES

Gert den Hollander, Project Manager  
Susan Groen, Project Assistant

### FINANCIAL ADMINISTRATION

Henk Gaasbeek, Head  
Alenka Bajc (as of September 1)  
Paul Koster (until May 15)  
Lenie van Rooijen-Peet

### SECRETARIAT

Annemarie Woudstra, Office Manager  
Mirjam Driessen, Documentation and Files

## APPENDIX V

# Balance Sheet

AS ON DECEMBER 31, 2001

	December 31, 2001 EUR	December 31, 2000 EUR
<b>Assets</b>		
Inventory	25.703	27.956
Work in progress	0	0
Claims	538.972	1.075.999
Prepayments and accrued income	0	4.951
Liquid assets	939.383	127.889
	<hr/> 1.504.058 <hr/>	<hr/> 1.236.795 <hr/>
<b>Liabilities</b>		
Net assets	409.389	465.859
Provisions	0	42.327
Longterm liabilities	15.882	24.958
Current liabilities		
Other debts	408.165	394.415
Accruals and deferred income		
Amounts received in advance	670.622	309.236
	<hr/> 1.504.058 <hr/>	<hr/> 1.236.795 <hr/>

## STATEMENT OF OPERATIONS

	Budget 2001	Actual expenditure 2001	Actual expenditure 2000
	EUR	EUR	EUR
Fees for projects	3.854.863	2.225.774	1.855.155
Direct costs	-3.601.654	-1.965.354	-1.538.318
	<hr/>	<hr/>	<hr/>
Gross results projects	253.209	260.420	316.837
Indirect costs	-399.327	-414.785	-359.708
	<hr/>	<hr/>	<hr/>
Net result projects	-146.118	-154.365	-42.871
Other profits and losses	88.487	97.895	116.797
	<hr/>	<hr/>	<hr/>
Annual result	-57.631	-56.470	73.926
	<hr/>	<hr/>	<hr/>



## COLOPHON

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**Center for International Legal Cooperation (CILC)**

**Visiting address: Einsteinweg 2, Leiden, the Netherlands**

**Mailing address: P.O. Box 65, 2300 AB Leiden, the Netherlands**

**Telephone number: +31-(0)71-5240940**

**Fax number: +31-(0)71-5240950**

**E-mail address: [office@cilc.nl](mailto:office@cilc.nl)**

**Website: [www.cilc.nl](http://www.cilc.nl)**