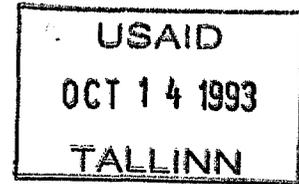


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**American Bar Association**

**Central and East European Law Initiative**

**(CEELI)**

**Country Strategies for the Rule of Law Program for  
Albania, Bulgaria, Croatia, Czech Republic, Estonia,  
Hungary, Latvia, Lithuania, Macedonia, Poland,  
Romania, and Slovakia**

**Submitted to The U.S. Agency for International Development**

**August 23, 1993**

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August 23, 1993

Gerald Hyman  
Democratic Pluralism Initiative  
Bureau for Europe  
U.S. Agency for International Development  
Washington, D.C. 20523

Dear Jerry:

We are enclosing for your review the country strategies for CEELI's rule of law program in Albania, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, and Slovakia. For informational purposes only, we have included a section summarizing CEELI's activities to date in each country. The country strategy follows this summary for each country. These country strategies are not static but rather will be continually re-evaluated by CEELI as events develop in these countries.

Please note that we have removed commercial law activities from our summary of activities; however, we have left references to legal assessments prepared on commercial law topics. As you are aware, due to the relatively low cost of these legal assessments, we have prepared them even for countries for which commercial law funding has not yet been extended.

We would also like to mention that we have included in the summary section the activities conducted under our Sister Law School Program, which is funded by the USIA Citizen Exchanges Program and the USIA Rule of Law Program. We have included the Sister Law School information for background, as well as to lay a foundation for our expansion of the rule of law program into the realm of legal education.

As we prepared these country strategies, it became readily apparent that the demand for CEELI's legal assistance far outweighed its resources to fulfill this demand. As a result, we have included several instances in which CEELI has been asked to provide assistance (primarily legal specialists) but will not be able to do so due to insufficient funding at this time. We have included this information, however, to

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demonstrate the untapped potential for legal assistance that exists in these countries.

After you have had time to review these strategies, please feel free to call me. As you requested, I have included a copy of the country strategies on the enclosed disk. We look forward to receiving your comments.

Sincerely,



Mark Ellis  
Executive Director

cc: Linda Bernstein, U.S. AID  
Homer E. Moyer Jr., Chairman, CEELI Executive Board  
CEELI Executive Board  
R. William Ide III, President ABA  
J. Michael McWilliams, ABA Board of  
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1

ALBANIA

**I. INTRODUCTION**

Pursuant to discussions with officials of the Albanian government, in August 1991 CEELI initiated a program in Albania. This report summarizes CEELI's past work and anticipated future activities in Albania in the rule of law area.

**II. SUMMARY OF CEELI ACTIVITIES IN ALBANIA  
AUGUST 1991 - AUGUST 1993**

**A. Resident Liaison Activities**

Nancy Goodman and Michael Froman were selected to serve as CEELI's first attorney liaisons to Albania, and were posted in Tirana from April to September 1992. They were succeeded by Donn Rubin, who was in Tirana from September 1992 to March 1993. Greg Lusitana served as CEELI's liaison to Albania beginning in March; unfortunately, in late July unforeseen personal economic circumstances forced him to return to the United States earlier than originally scheduled. CEELI now is actively seeking a replacement for Mr. Lusitana. In the meantime, Roland Bassett, CEELI's recently-posted commercial law liaison in Albania, will coordinate both rule of law and commercial law activities in-country.

In addition to commenting (formally and informally) on numerous legislative proposals, responding to various short-term requests for information and written materials on a wide array of legal topics, lecturing to and meeting with attorneys, judges, law students, and government officials, and coordinating CEELI's assistance from the United States and within Albania, the liaisons to Albania have provided direct assistance to various governmental and non-governmental entities. Their activities have included the following:

- Assisting the Office of the President in generating options for death penalty clemency
- Developing methods for coordinating legislative reform for the Legal Bureau of the Council of Ministers
- Providing analysis of constitutional and supreme courts for the Ministry of Justice
- Preparing a delegation from the Ministry of Trade and Foreign Economic Cooperation for the negotiation of trade and intellectual property agreements

- Reviewing foreign investment proposals for the Ministry of Trade and Foreign Economic Cooperation
- Assisting Parliament by facilitating participation in U.S. Congressional Gift of Democracy Program
- Developing a legal education program for the Society for Free Elections and Democratic Culture
- Discussing the development of legislative proposals with the Democratic League of Women
- Establishing the first lending law library in Albania, currently comprised of over 100 titles

Additionally, during his tenure in Tirana, liaison Donn Rubin identified a need for publication and dissemination of the Official Gazette, in which laws and decrees are printed. Mr. Rubin subsequently drafted a proposal, which was signed by Pjeter Arbnori, Speaker of the Parliament, to establish a publishing center in Parliament. In early 1993, the Soros Foundation and German Marshall Fund of the United States jointly awarded a grant for the purpose of establishing the publishing center.

#### **B. Legal Specialists**

In response to requests from Albanian officials, CEELI has posted a number of legal specialists to Albania under the Rule of Law grant, as follows:

##### **1. Legal Specialists to the General Prosecutor's Office**

In Spring 1992, the then recently-appointed General Prosecutor, Maxim Haxhia, and the Ministry of Justice requested that CEELI send a legal specialist to assist Mr. Haxhia in organizing his office, and to address its relationship with law enforcement investigators, the police, and the Ministry of Justice. Accordingly, in July and August 1992, John J. Douglass, Dean of the National College of District Attorneys, was posted in Tirana, where he advised the General Prosecutor on the organization and functioning of his office. Dean Douglass also worked with prosecutors, defense attorneys, and judges on criminal trial skills.

Earlier this spring, CEELI received another request for assistance from Edison Heba, Director of Legal Studies and External Relations for the General Prosecutor's Office. Accordingly, in late June CEELI posted to Tirana David B. Pearson, a recently-retired Los Angeles district attorney, for an eight-week period. Mr. Pearson has advised Mr. Heba on a wide array of criminal justice issues, and has identified additional criminal justice projects on which CEELI assistance is desired (see discussion at Part III, below).

## 2. Legal Specialists on Constitutional Issues

As is discussed further below, Albania has been working for several years on, but has not yet adopted, a new constitution. CEELI has been actively involved in constitutional drafting efforts. Specifically, in October 1991, a CEELI delegation met with Albania's Constitutional Drafting Commission to discuss a number of issues, including the division of responsibilities between the Parliament and the President, human rights, judicial restructuring, and regional and local government. In December 1991, a CEELI delegation met with the Local Government Subcommittee of the Drafting Commission, as well as mayors from various towns, to discuss local government issues.

Additionally, in November and December 1992, Professor John P. Jones of the University of Richmond traveled to Tirana to assist the Constitutional Drafting Commission. Professor Jones, drawing on his experience as a member of state commissions dealing with regulatory reform and lawyer advertising, also assisted an attorney with the Ministry of Justice in drafting the law on advocacy. Professor Jones returned to Tirana in January 1993 for one week of intensive work with the drafting group responsible for Part III of the Constitution (which addresses the structure of the government).

## 3. Legal Specialist to Ministry of Labor, Social Assistance, Emigration, and the Ex-Politically Persecuted

In November 1992, Professor James Nafziger of the Willamette College of Law, on his way to an academic conference in Greece, spent 11 days working with Vice-Minister Eduard Ypi, who is responsible for the emigration wing of the Ministry of Labor, and with three members of the Ministry's legal department. Professor Nafziger's work focused on a draft emigration law, and he also held a workshop on immigration laws, discussing the features of the American system and identifying issues that the Albanians will have to address when revising their own laws. Additionally, the professor provided advice on the restructuring of Vice-Minister Ypi's wing of the Ministry.

### C. Long-Term Training

CEELI has undertaken the following training activities in Albania:

#### Legislative Drafting and the Rule of Law

In July 1992, CEELI sponsored a workshop on legislative drafting and the rule of law. In attendance were 35 Albanian attorneys, from various governmental ministries, the Parliament, the Council of Ministers, the Central Bank, the Confederation of Trade Unions, and the Tirana Law Faculty. CEELI faculty members discussed the relationship between various drafting issues and the rule of law, as well as practical drafting techniques.

District Courts in Tirana. Judge Craske gathered information about the structure of and procedures used in the Albanian judicial system and the training of Albanian judges, and provided Albanian judges with similar information about the American system. Judge Craske also assessed the viability of a longer-term CEELI judicial training program for Albania.

**D. Technical Legal Assistance Workshops**

CEELI has sponsored the following technical legal assistance workshops in Albania:

**1. Judicial Restructuring**

In November 1991, CEELI held a workshop with members of Parliament's Subcommittee on Judicial Restructuring.

CEELI Participants: Judge Dorothy Toth Beasley, Court of Appeals of Georgia; Gerald Caplan, Deputy Director, Bureau of Consumer Protection, Federal Trade Commission; and Lou Fisher, Separation of Powers Specialist, Congressional Research Services.

**2. Constitutional Democracy in Albania: The Judicial Perspective**

In July 1992, CEELI sponsored a workshop on the structure of Albania's draft Constitution, the protection of rights, the structure of government, and the specific problems confronting the Albanian judiciary. Albanian participants included judges on Albania's Constitutional Court, its Court of Cassation, and Tirana's Appellate and District Courts, as well as the Minister of Justice, the General Prosecutor, attorneys from various governmental ministries, constitutional scholars, and private attorneys.

**E. Assessments of Draft Laws**

From August 1991 to date, CEELI has provided written assessments of numerous draft Albanian laws (both commercial and rule of law), including:

- Central Bank Law (6/92)
- Bankruptcy of State Enterprises (5/92)
- Draft Constitution (9/91 and 8/92)
- State Control Commission Law (2/92)
- Law on the Sanctioning and Protection of Private Property, Free Initiative, and Independent Private Activities and Privatization (11/91)

- Decree on Economic Activity of Enterprises with the Participation of Foreign Capital (11/91)
- Foreign Investment Act (5/92)
- Law on Advocacy (7/92)
- Law on the Status of Magistrates and on Supreme Council of Justice (7/92)
- Law on Trade Unions (5/92)
- Press and Media Law (5/92)
- Local Government Law (6/92)
- Land Use Law (7/92)
- Civil Code (12/92)
- Hazardous Waste Law (4/93)

**F. Legal Education/Sister Law School Program**

CEELI's Sister Law School Program has paired the Law Faculty at the University of Tirana with Vanderbilt Law School, Temple Law School, and Hamline University School of Law. In September 1992, two professors from the Law Faculty in Tirana attended CEELI's Law Faculty Training Institute in Lodz, Poland. Additionally, the vice dean of the Tirana Law Faculty has travelled to the United States for an intensive training program for Central and East European law faculty administrators. Follow-up programs undertaken by Tirana's sister schools include visits to Tirana by Hamline and Vanderbilt law professors and the donation of computer equipment to Tirana.

Additionally, pursuant to a request from officials of the newly-formed Law Faculty at the University of Shkodra, CEELI currently is working to incorporate Shkodra in the Sister Law School Program.

### III. RULE OF LAW COUNTRY STRATEGY FOR ALBANIA

#### A. Current Status of Legal Reform

In 1992, the Albanian Democratic Party (ADP) defeated the Socialist (formerly Communist) Party. Albanian President Sali Berisha leads the ADP. President Berisha's government has been under attack, from various political opponents, including the Socialists. Despite President Berisha's attempts to stabilize the economy, the country is in a dire economic situation. Albania suffers from drastically high unemployment. An estimated 38% (approximately 400,000 person) are currently unemployed. Foreign investors remain hesitant to invest in Albania and industrialization is at a near standstill. President Berisha has stated that Albania's "top priorities were to distribute property, encourage private farmers, and respect the right to own private property". (See Radio Free Europe/Radio Liberty Research Report) 16 July 1993 at 25.

The troubled economy continues to plague President Berisha's government and poses a continued threat to the viability of democracy in Albania. Apart from enactment of a new constitution, discussed further below the main focus of Albanian reform efforts now is on jump-starting the country's stagnant economy. The large number of legal reforms enacted last year now has dwindled, and the main focus has shifted to the adoption of laws and decrees that promote foreign investment, privatization, and commercial development.<sup>1</sup>

#### B. Priority Issues for CEELI Assistance

CEELI's primary method of providing legal assistance will continue to be via its resident liaison. Because CEELI has identified constitutional and criminal justice reforms as priority areas for assistance during the next six months, in seeking a replacement for its recently-departed Rule of Law Liaison CEELI will seek an individual with background and expertise in those areas.<sup>2</sup>

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<sup>1</sup>President Berisha has declared 1993 to be "The Year of Privatization," in recognition of the country's need to develop a functioning economy and lower the current 70 to 80% unemployment rate.

<sup>2</sup>CEELI's Albanian hosts have asked that David Pearson, CEELI's current Legal Specialist in the Office of the General Prosecutor, be replaced upon completion of his assignment in August. Due to limited resources, however, CEELI does not expect to do so, at least in the immediate future. Rather (and as noted above), in selecting a new Rule of Law Liaison for Albania, CEELI will attempt to select an individual with the background knowledge necessary to provide substantive assistance on the criminal justice reforms on which Mr. Pearson focused.

1. **Priority Issue # 1: Criminal Justice Reform**

(a) **Goal Statement**

CEELI's goal is to assist the Albanians as they seek to restructure and improve their prosecutorial system and to reform their criminal law, criminal procedure, and penal codes.

(b) **Factual and Legal Background**

As noted above, David Pearson, a recently-retired Los Angeles County deputy district attorney, has spent eight weeks this summer working in the General Prosecutor's Office in Tirana. In the course of assisting his hosts with various matters, Mr. Pearson has identified a variety of issues related to criminal justice reforms, on which assistance is desired.

First, as noted above, the Albanians have not yet adopted that portion of the draft Constitution that establishes the structure of their new governmental system. Carrying over from the old system, the Prosecutor's Office currently is separate from the Ministry of Justice, but does not constitute a stand-alone ministry. The question of what role the Prosecutor's Office should play within the criminal justice system as a whole is a hotly-debated topic: Should the prosecutorial function be a part of the judicial or the executive branch of government? Should the prosecutors be supervised by the Ministry of Justice. The Ministry is regarded as having considerable power, and many prosecutors believe they would benefit by operating under the Ministry, as in some European countries; however, some prosecutorial officials also have expressed strong interest in the American model, under which the prosecutor is an independent public official. As former U.S. Supreme Court Justice Robert Jackson said, "The prosecutor has more power over life, liberty and property than any other person in America. His discretion is tremendous." This independence and power have much appeal to Albanian prosecutors.

Second, the Albanian penal code revision project also is at a critical stage. The Penal Code Revision Committee is now revising and reviewing some 600 sections of the Italian Penal Code. When complete, the Committee will transmit its recommendations to Parliament. Third, the Albanians also are working on new criminal law and criminal procedure codes. Finally, Mr. Pearson and his hosts have discussed the vital role that the prosecutor must play in ensuring that laws are enforced uniformly and fairly throughout society. The General Prosecutor's Office currently has no formal, written legal policies. Nor does it have any formal external personnel policies. The value and necessity of having such policies as a means of ensuring fundamental fairness to the public and to office employees is being explored.

The General Prosecutor's Office has sought CEELI's ongoing counsel, advice, and assistance as it seeks to address the above issues. In view of CEELI's access to practitioners and academics knowledgeable in the field of criminal law and justice, CEELI is well-suited to provide the requested assistance.<sup>3</sup> Finally, assistance with criminal justice reform is a priority in view of the significant role that the criminal justice system plays in safeguarding personal freedoms and democracy.

Mr. Pearson is scheduled to complete his work in Albania on August 20. CEELI does not at this time intend to send another Legal Specialist to replace him, but instead intends, in selecting its new Rule of Law Liaison for Albania, to try to choose an individual qualified to provide substantive assistance on criminal law and justice issues.

**(d) Benchmarks -- Targeted Areas of Improvement**

Assistance with criminal reform can be broken down into the following benchmarks:

**(i) Training Seminars**

While in Albania, Mr. Pearson initiated a series of seminars for prosecutors and judges, the purpose of which was to improve understanding of the structure of the United States government and the role of the prosecutor within that system; and to contrast and compare the American model with European models. The audience included a variety of officials employed by the Prosecutor's Office, as well as judges. CEELI intends to have its new Rule of Law Liaison continue and expand this seminar series.

**(ii) Criminal Law Reforms**

The Penal Code Revision Committee currently is in the process of deciding whether to model Albania's new code on the Italian Penal Code, or whether to follow another (possibly the American) approach. During his tenure in Tirana, Mr. Pearson has met with members of the Committee, and has provided information about the American approach to specific issues, in an effort to ensure that the Committee has sufficient information to make a meaningful comparison and reasonable, informed choice. CEELI intends for its new Rule of Law Liaison to continue to work with the Revision Committee in this manner.

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<sup>3</sup>For example, Mr. Pearson has 30 years of experience as a prosecutor in the largest district attorney's office in the United States.

CEELI also hopes to provide assistance as the Albanians work toward the adoption of draft criminal law and criminal procedure codes. These codes have been translated into English, and CEELI hopes to provide comments on them.

### **(iii) Development of Uniform Crime Charging Standard**

During his tenure in Tirana, Mr. Pearson has prepared a draft policy to guide all Albanian prosecutors in filing formal criminal charges against an individual accused of a crime, and CEELI expects to have its new Rule of Law Liaison assist the Albanians in finalizing and implementing the draft policy. Developing a formal, step-by-step crime charging standard will ensure that all prosecutors apply the same standard to all crimes and suspects. The use of the standard also will safeguard the prosecution from being unduly influenced by the press, the public, or politics in high publicity cases. The public must be assured that the General Prosecutor is applying the law to all citizens in a fair, impartial manner. This is essential to establishing confidence in the Prosecutor specifically, and in freedom and democracy generally.

### **(iv) Personnel Policies**

Critical to ensuring due process and fundamental fairness to all employees of the General Prosecutor's Office is the adoption, implementation, and publication of equitable, written personnel policies. Mr. Pearson has begun working with his hosts on a personnel manual, and CEELI intends to have its new Rule of Law Liaison continue work on this project.<sup>4</sup>

### **(e) Intended Result/Impact**

CEELI's goal is to help the Albanians to improve their prosecutorial system, a vital element in promoting democracy and the rule of law. The result of the projects outlined above will be to ensure that the Albanians are well-informed in determining the role of the prosecutorial function in their new governmental system; and in adopting new penal, criminal law, and criminal procedure codes. Additionally, by providing Albania with its first set of written guidelines for filing criminal charges, CEELI will help the Albanians to take a giant step towards ensuring fairness, uniformity and freedom from outside pressure in making the single most important decision that a prosecutor makes in performing the duties of that powerful office. Finally, the creation of a formal, written personnel policy for the General Prosecutor's Office will provide for fairness and sense of stability for the employees of that office.

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<sup>4</sup>This project is an example of how CEELI liaisons and specialists are able to respond to the needs of their hosts as they arise. The issue of employee personnel policies was not one that had been identified before Mr. Pearson's arrival in Tirana, but when it arose during his stay, because he had expertise in this area, he was able to provide assistance.

The Prosecutor's Office should serve as a role model of fair dealings not only with the public but also with its own employees. This should lead the way for other governmental agencies to also put their own internal employee policies in written form for the benefit of their employees.

## 2. Priority Issue # 2: Constitutional Reform (on hold)

As noted above, the Albanians continue their work on a new constitution. The current draft Constitution is divided into three sections: Part I sets forth "General Principles;" Part II addresses human rights; and Part III addresses the structure of the government. Efforts to adopt the draft apparently were at a standstill last winter, as the Government (i.e., President Berisha's ruling Democratic Party) decided whether to submit Part II of the draft for ratification, without waiting for a unified draft. In March, President Berisha submitted Part II to Parliament. Rather than ratifying that part as the first segment of a modular Constitution, the section was voted on (and passed, by the bare minimum of required votes)<sup>5</sup> as an amendment to the 1991 Law on the Main Constitutional Dispositions. To win support for passage of the amendment, Prime Minister Meksi (who officially heads the Constitutional Drafting Commission) promised Parliament a comprehensive draft constitution by mid-June. However, the draft still remains tied up in a drafting committee at the Ministry of Justice. The committee currently is working on a fourth draft of the document, and is considering inclusion of some aspects of Western European law. Accordingly, there appears no realistic possibility of delivery of a final draft to the Parliament before December of this year (at the earliest).

CEELI hopes to continue to be involved in constitutional drafting efforts over the next six months.

## 3. Priority Issue # 3: Judicial Training

Using the findings and recommendations of Judge Craske (a legal specialist sent to Albania under the commercial law grant), CEELI is considering whether to develop a judicial education and training program for Albania. Albania's needs in this regard will be considered by a Washington-based CEELI working group that has been formed to examine the viability of judicial training across the region served by CEELI. Most Albanian judges are young (ages 25-40) and work in poor conditions, with very little administrative support.

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<sup>5</sup>This minimum consisted of the votes of deputies from the majority Democratic Party and the Social Democratic and Republican parties. Members of the minority Socialist Party opposed the amendment, not on substantive grounds, but because they supported submission of the draft Constitution as a whole. Apparently President Berisha has resisted enactment of the entire Constitution, however, because of the likelihood that, following enactment, the Socialists will seek new elections.

Due to the legacy of the socialist regime, the judiciary is neither well-respected nor viewed as independent. To break away from this legacy, the Albanian judiciary needs to develop means to provide judicial training, perhaps through nongovernmental means. CEELI strongly encourages the establishment of an Albania Bar Association or Judges Association. These organizations would help provide the additional support, technical, administrative and moral--that the Albanian judiciary is lacking. These organizations would also help to increase the professionalism of the judiciary.

4. **Priority Issue # 4: Legal Education/Sister Law School Program**

Finally, CEELI will work to strengthen ties between the Law Faculty at Tirana and its sister American schools, and to encourage exchanges of information, faculty members, and students between the American and Albanian schools. CEELI also will seek to establish a sister relationship between the Law Faculty in Shkodra and American Sister Schools.

C. **Conclusion**

CEELI's rule of law program in Albania continues to be aimed at teaching the Albanians how to build the infrastructure needed to ensure a functioning legal system based upon the rule of law. By assisting the Albanians in the areas of constitutional and criminal justice reform, CEELI will participate in teaching the Albanians how to construct two major building blocks of Albania's new legal system.

## BULGARIA

### **I. INTRODUCTION**

In May of 1991 Judge John P. Fullam visited Bulgaria and laid the foundation for much of CEELI's future work in that country. Judge Fullam met with numerous government officials and representatives of the private sector during his month in Bulgaria, as he assessed the country's needs and objectives in its drive for judicial reform. Judge Fullam also strengthened the relationship between CEELI and the Center for the Study of Democracy (CSD) in Sofia, a think tank comprised primarily of sociologists and economists, which acted as Judge Fullam's host organization throughout his stay in Bulgaria. Mr. Stephan Kyutchukov, Secretary of the CSD's Law Reform and Comparative Law Program, was instrumental in the development of CEELI's program in Bulgaria, both from a substantive standpoint, and with his tireless efforts to arrange the necessary contacts with Bulgarian officials. The CSD continues to provide CEELI representatives in Bulgaria with essential in-country support and assistance.

Judge Fullam determined that CEELI could provide assistance to the Bulgarian legal reform movement, while the CSD also became convinced that American lawyers could play a useful role in the Bulgarian democratization process. CEELI's work in Bulgaria has been funded, in part, by both rule of law and commercial law grant monies from the USAID. This report summarizes CEELI's work in the rule of law area in Bulgaria.

### **II. SUMMARY OF CEELI ACTIVITIES IN BULGARIA** **JANUARY, 1991 - AUGUST, 1993**

#### **A. Resident Liaison Activities**

Mr. William D. Meyer was selected to serve as CEELI's first resident liaison. The extensive groundwork CEELI had already completed in Bulgaria made that country the natural choice for the placement of CEELI's first resident liaison. Mr. Meyer worked in Sofia from September 1991 to September 1992. Currently serving as CEELI's liaison in Bulgaria is Mr. Harlan Pomeroy. Mr. Pomeroy will work in Bulgaria through the end of August 1993. Both Mr. Meyer and Mr. Pomeroy were funded to work on both rule of law and commercial issues. In June 1993, CEELI placed its first solely commercial law liaison, Linda Foreman, in Bulgaria. Mr. Pomeroy will be succeeded as liaison by Mary Noel Pepys, who will focus only upon rule of law issues.

In addition to commenting (formally and informally) on numerous legislative proposals, responding to various short-term requests for information and written materials on a wide array of legal topics, lecturing to and meeting with attorneys, law students, and

government officials, and coordinating CEELI's assistance from the United States and within Bulgaria, the liaisons to Bulgaria have provided direct assistance to various governmental and non-governmental entities. Their activities have included the following:

- Assisting in the establishment of the first Commercial Law Center to be established with CEELI under its recent USIA commercial law grant;
- Developing a library of English language legal reference materials at the CSD;
- Developing a comprehensive library of English language translations of Bulgarian laws at the CSD;
- Offering valuable assistance to the CSD ranging from working on the CSD's economic privatization project to teaching a course in American law to non-lawyers on the CSD staff;
- Working with the Bulgarian Ministry of the Interior in the creation of police and other government employee off-duty employment rules;
- Mediating between the Bulgarian government, the World Bank, and Harvard University in the negotiation of a \$1.1. million loan contract for the provision of assistance in the creation of a commercial law infrastructure;
- Providing advice to the Bulgarian Council of Ministers on a proposed bilateral investment treaty between Bulgaria and the United States;
- Serving as a resource to the Bulgarian Privatization Agency in solving practical, legal problems faced by that agency.

CEELI volunteers in Bulgaria have also coordinated their efforts with those of other foreign assistance programs. CEELI and its liaisons in Bulgaria have worked closely with:

- U.S. Justice Department representatives at the Bulgarian Ministry of Justice;
- the U.S. Departments of Labor, Agriculture, and Commerce;
- U.S. Commercial Attache in Sofia;
- the U.S. Treasury Department representative in Bulgaria;
- members of the Peace Corps to guide them in their work on various commercial projects;
- members of the Citizens' Democracy Corps;
- the U.S. embassy delegation;
- organizations attempting to locate participants for exchange projects;
- the Bulgarian-American Enterprise Fund;

- the International Executive Service Corps;
- American Lawyers in Bulgaria;
- and the European Community's PHARE program.

Additionally, during his tenure in Sofia, William Meyer identified a pressing need for the publication of materials on Bulgarian legal topics. Mr. Meyer personally wrote, and the ABA published, approximately ten articles, monographs, and books on topics relevant to major law reform issues in Bulgaria. Mr. Pomeroy has also written various articles. The list of books and articles published by the liaisons includes:

- "Laws on Foreign Investment in Bulgaria and Romania," published in three parts in The Bulgarian Watcher;
- "Media and the Law in Bulgaria: After the Constitution," a paper distributed to participants at a media seminar in Sofia;
- Lawyer's Private Practice, a ninety-page book on organizing the private practice of law, distributed to individual lawyers throughout Bulgaria;
- "Remnants of a Totalitarian Past, the Status of Legal Education in Bulgaria," a thirty page article on legal education;
- "Non-Monetary Contributions Under Bulgarian Corporate Law";
- "The New Foreign Investment Law: Guide for Foreign Investors";
- "The Legal Framework of Privatization in Bulgaria"; and
- "Bulgarian Government Structure and Operation" - An overview including constitution, legislature, executive, judiciary and local self-government (to be published).

**B. Legal Specialists**

In addition to long-term liaisons, CEELI sends legal specialists to host countries to provide assistance on specifically-identified legal reform projects. The specialists generally have substantial experience in the relevant area of the law. In response to requests from Bulgarian officials, CEELI has posted a number of legal specialists to Bulgaria, as follows:

**1. Legal Specialist on Judicial Restructuring**

Judge John P. Fullam spent May 1991 in Bulgaria, as a guest of the CSD, concentrating on the development of a constitutional framework for the Bulgarian judiciary.

**2. Legal Specialists on Court Computerization**

After a meeting in Washington between Bulgarian Minister of Justice Svetoslav Louchnikov and CEELI Executive Director Mark Ellis, arrangements were made for a two-person team of experts to visit Bulgaria in January 1992 to assess the needs and develop a plan of action for a Bulgarian court computerization project. Mr. Mark Zimmer, Clerk of the United States District Court for the District of Utah, and Mr. Richard Siedel, of the Administrative Office of the United States Courts, visited numerous courts in and around Sofia for two weeks in late January and early February, 1992. The experts' recommendations were accepted by the Ministry of Justice and implementation of the recommendations was commenced. CEELI has provided some funding to assist the Bulgarians in the purchase of some of the initial hardware and software needed to begin programming.

**3. Legal Specialist in Criminal Law**

Mr. Kurt Muellenberg was sent by CEELI in May 1992 to work with the Bulgarian Ministry of the Interior on criminal law reform. Mr. Muellenberg worked directly with the Ministry on a wide range of matters (including organized crime), presenting papers and lectures, as well as holding individual meetings with Ministry officials.

**4. Legal Expert in Judicial Training**

In January 1993, CEELI sent Mr. Robert Scherle, an expert in judicial training, to Bulgaria for a six-month period. Mr. Scherle ran a series of workshops in Sofia beginning in April 1993 designed to train the people who will eventually become judicial trainers. Mr. Scherle also worked with the Bulgarian Association of Women in the Legal Career.

## **5. Legal Expert in Law School Curricula and Accreditation**

Professor James White, consultant to the ABA on legal education, spent the week of October 25, 1992 in Sofia. He met with members of all of the Bulgarian law faculties plus Ministry of Education officials to discuss the issues of law school curricula and accreditation. Professor White paid for this trip with his own funds, and therefore, was not funded under the USAID rule of law grant.

### **C. Technical Legal Assistance Workshops**

CEELI has responded to a number of requests for technical legal assistance workshops. Workshops typically focus on a particular substantive area of law and involve the participation of four to six experienced lawyers or judges, usually including one from a civil law country.

The primary goal of CEELI workshops is to promote open dialogue among the participants so as to provide the host country with in-depth, immediate analysis of critical nuances in the law.

The following represents a listing of some of the workshops CEELI has sponsored to date:

#### **Judicial Restructuring**

1/28-2/1/91

Sofia

This workshop with governmental and non-governmental organizations focused upon the reorganization of the court system, and the selection, status, and disciplining of judges.

#### **Constitutional Drafting**

3/11-3/15/91

Sofia

This workshop was conducted in conjunction with Bulgaria's Grand National Assembly on issues relevant to the draft constitution.

#### **Follow-Up/Constitutional Drafting**

6/19-6/22/91

Sofia

This workshop provided additional follow-up assistance in the constitutional drafting area.

**Bankruptcy Reform**

2/24-2/28/92

Sofia

This workshop was held for the Council on Normative Acts on Bulgaria's draft Bankruptcy Law and draft Law on the Protection Concordat.

**Commodities Futures Seminar**

7/6-7/8/92

Sofia

This workshop focused on the functions and operations of commodities markets, and the regulatory framework governing exchanges in the United States.

**Draft Copyright Law**

10/11-10/17/92

Sofia

This workshop was held for officials of the Bulgarian government on Bulgaria's draft copyright law.

**Police Off-Duty Employment Rules**

10/92

This workshop was conducted with the Ministry of the Interior.

**Legal Aspects of Broadcasting in Bulgaria - Problems and Perspectives**

12/92

Sofia

This workshop was held in conjunction with the Bulgarian Posts and Telecommunications Committee and private broadcasters. At this seminar, Harlan Pomeroy lectured on regulation of broadcasting in the U.S.

**Ethical Codes of Conduct for Lawyers and Judges**

1/25-1/29/93

Sofia, Bulgaria/Bucharest, Romania

This workshop focused upon providing assistance in legal ethics.

**Judicial Training Project Workshops at New Bulgarian University**

4/10/93, 4/23/93, 4/30/93, 5/7/93

Workshops were conducted by Robert Scherle, judicial training expert. These workshops were held to train future judicial trainers.

**Friday Afternoon Workshops on Commercial Law Subjects (at the CSD)**

4/30-5/28/93

Workshops were conducted by Harlan Pomeroy, CEELI liaison.

- insolvency
- commercial law
- privatization
- taxation
- copyright and patent law

**Legal Perspectives on Private Broadcasting**

5/93

Co-chaired by Harlan Pomeroy and Guergui Sarakinov (Chief Legal Officer of the Bulgarian Copyright Agency and Chairman of the Interior Committee on Radio Frequencies and Television Channels).

**Legal Aspects of Privatization**

6/93

Chaired by Harlan Pomeroy

**D. Draft Law Assessments**

The resources of the ABA allow CEELI to respond quickly to requests for assistance from in-country drafting committees. When a request is received, CEELI offers immediate assistance by circulating the draft legislation within the U.S. for comment. By relying primarily on ABA sections with appropriate expertise, CEELI can provide expert assessments of draft laws. CEELI provides bound volumes of comments to those involved in the drafting process. The assessments are translated into the local language and generally are circulated to a wide audience, including political parties, academics, and other experts.

From January, 1991 to date, CEELI has provided written assessments of numerous draft Bulgarian laws, including:

- 1/91 Law Concerning the Ownership and the Use of Agricultural Lands
- 4/91 Draft Antitrust Law
- 8/91 Draft Decree on a Uniform System of Tax Administration and Proposed Legislation on the Supreme and District Courts of Auditors
- 10/91 Laws on Foreign Investment in Bulgaria and Romania
- 11/91 Draft Legislation on Oil Exploration
- 12/91 Draft Patent Law

- 2/92 Draft Banking Law
- 2/92 Draft Bankruptcy Law
- 4/92 Bulgaria's Act on Copyright
- 5/92 Draft Law on the Bar
- 5/92 Draft Law on the Structure of the Judicial System
- 5/92 Law on the Activity of the Supreme Administrative Court
- 6/92 Draft Marine Environmental Protection Act
- 6/92 Draft Law on Telecommunications
- 7/92 Draft Non-Profit Organization Law
- 9/92 Draft Law on Explosives
- 9/92 Draft Information Law
- 9/92 Draft Law on Special Investigative Means
- 5/93 Draft Law on Waste for Bulgaria

#### **E. Concept Papers**

CEELI agreed with the Bulgarian government, in the persons of Deputy Prime Minister Ilko Eskenazi and Dr. Misho Valchev, Chairman of the Council on Normative Acts, to prepare a series of "concept papers" on topics which would be the subject of drafting efforts by the Bulgarian government.

CEELI concept papers identify and discuss primary issues of law prior to the drafting process. The papers provide comparative analysis of leading world models with supporting materials, without judging which model would be best for the host country.

The following is a list of the concept papers supplied to date:

#### **10/92 Securities and Stock Exchange Laws**

The concept paper addresses matters such as the organization of exchanges, the right to join and trade on an exchange, types of securities, public offerings, the rights of buyers and sellers of stock, required disclosures, and the arbitration of disputes.

- This paper will be published in the Fall 1993 issue of International Lawyer.

- 10/92 **Currency Exchange Controls for Bulgaria**  
This paper addresses currency control laws/regulations as part of an overall economic stabilization package.
- 11/92 **Consumer Protection for Bulgaria (Regulation of Merchants)**  
This paper addresses the various issues that arise as an economy moves from a state controlled one to a market economy in the area of consumer protection.
- 11/92 **Government Procurement for Bulgaria**  
This paper discusses the development of a system for regulating government procurement, both at the national and local levels.
- 1/93 **Non-Bank Investment Entities for Bulgaria**  
Discusses the issues that should be considered in the drafting of a law in Bulgaria to regulate investment companies and investment funds. It focuses mainly on the types of investment funds and the approaches to their regulation.
- 5/93 **Money Laundering Controls for Bulgaria**  
This paper discusses the various means used by other countries of controlling the flow of illegal profits arising out of money laundering schemes.

#### F. Bulgarian Judiciary

- *Judicial Administration Project*

After months of discussions, culminating with the apparent support of the Justice Minister Louchnikov, CEELI was able to initiate in February of 1992 an ambitious plan to provide assistance in the implementation of a complete procedural and technical overhaul of the administration of Bulgarian courts. At the core of the plan is the conversion of court records in Bulgaria to a uniform computer system. The Varna district, because it has already started on computerization and because of its manageable size, was selected as the place to begin this project.

- *Judicial Training Project*

Over a period of many months CEELI managed to create a network of young, reform-minded judges and Justice Ministry officials who were open to the idea of American help in judicial training. CEELI had hoped to build an indigenous judicial training capability and in connection therewith created a series of planned series of regular training workshops. Mr. Scherle also worked with the Bulgarian Association of Women in the Legal Career.

- *Judicial Publication Project*

CEELI's judicial publication project involves the preparation and dissemination to the judiciary and Bar of a bi-monthly publication containing current legal developments, articles, and other information of interest to the judiciary and Bar.

- *Visit to the U.S./Orientation: 5/16 - 5/21/92*

In cooperation with Southern Illinois University at Carbondale, CEELI conducted an orientation on the U.S. legal system in Washington, D.C. for a group of Bulgarian jurists. The delegation included members of Bulgaria's constitutional court, regional court judges, prosecutors, and private attorneys.

### **G. Bulgarian Bar**

- *Democratization of the Bar*

Given the ideals to which the ABA subscribes, the ABA has an obligation to promote a professional, independent bar in Bulgaria. For this reason, the CEELI has taken a more aggressive role in promoting change in the Bulgarian Bar than in other areas of its work. CEELI enjoys a close working relationship with the Bulgarian Bar leadership thanks to early support shown by CEELI for reform-minded Bulgarian attorneys.

- *Publication of a Lawyer's Handbook to Private Practice*

William Meyer, CEELI's first liaison in Bulgaria, was the author of a ninety-page book entitled Lawyer's Private Practice. The book was written to fulfill a special need for advice on how to establish a private practice which Mr. Meyer found expressed by lawyers from throughout the country. The book, which was published by the ABA, became an instant success, with 1000 copies distributed across the country to government officials and practicing attorneys.

- *Lawyer Training Project*

At the request of CEELI, the Bulgarian Supreme Bar Council will appoint a committee on lawyer education to work with CEELI and, possibly, the International Development Law Institute (IDLI), in developing a training program for Bulgarian lawyers. The training program would emphasize transferable skills, such as negotiation and mediation skills, rather than substantive knowledge of Bulgarian law, which few American lawyers would possess. Cooperation with the IDLI on such a project would allow CEELI to take advantage of IDLI's experience in international lawyer education, while IDLI would gain the benefit of the infrastructure, support base, and relationship with the Bar which CEELI has developed since 1991.

- *Code of Professional Responsibility*

After months of persistent lobbying, CEELI succeeded in convincing the Bulgarian Bar of the necessity of adopting a code of professional responsibility. In mid-summer of 1992, the Bar publicly announced that work would begin on such a code. A workshop on the subject was held in January of 1993 in Sofia. CEELI seeks to keep the momentum going on this project, as resistance within parts of the Bar to a code of professional responsibility is widespread.

#### H. Law Schools

- *Sister Law School Project*

One of CEELI's main goals has been to encourage the various fledgling law schools in Bulgaria to join CEELI's Sister Law School project. Without an in-country liaison CEELI would have been unable to bring the new Bulgarian law schools into the program, as neither the Ministry of Education nor Sofia University (until 1991 the only Bulgarian law school) were inclined to assist the new law schools in contacting a Western group such as CEELI. Each Bulgarian law school was matched with a consortium of three law schools in the U.S. The following Bulgarian and American law schools now participate in CEELI's Sister Law School program:

#### Bulgarian Law School

- Sofia University  
Sofia, Bulgaria
- Plovdiv University  
Plovdiv, Bulgaria

#### American Consortium Schools

- Southwestern University School of Law  
Los Angeles, California
- Southern Illinois University School of Law  
Carbondale, Illinois
- University of Maine School of Law  
Portland, Maine
- Franklin Pierce Law Center  
Concord, New Hampshire
- University of San Diego School of Law  
San Diego, California
- Georgia State University College of Law  
Atlanta, Georgia

- Blagoevgrad University  
Blagoevgrad, Bulgaria
  - New Bulgarian University  
Sofia, Bulgaria
  - Free University Bourgas  
Bourgas, Bulgaria
  - *Visit to the U.S. of Bulgarian Law School Deans*
- Texas Southern University  
Thurgood Marshall School of Law  
Houston, Texas
  - Pace University School of Law  
White, Plains, New York
  - Oklahoma City University School of Law  
Oklahoma City, Oklahoma
  - Mississippi College School of Law  
Jackson, Mississippi
  - University of Pittsburgh School of Law  
Pittsburgh, Pennsylvania
  - Golden Gate University School of Law  
San Francisco, California
  - Pepperdine University School of Law  
Malibu, California
  - University of Colorado School of Law  
Boulder, Colorado
  - Willamette University College of Law  
Salem, Oregon

Seventeen Central and East European law school deans (including the deans of three new Bulgarian law schools) visited their consortium of sister law schools in September and October of 1992. Krassen Stoichev, Vice Dean of the Faculty of Law at Blagoevgrad University, was a faculty intern in the United States for six months with CEELI's commercial law program. Franklin Pierce Law Center hosted Tsvetana Kamenova, Dean of the Faculty of Law at Plovdiv University, as a faculty intern for six months with the same commercial law program. Georgia State University College of Law sent a professor to Plovdiv University for six weeks as a resource on curriculum development and to teach a course in public administration.

- *Translation of Legal Texts Into Bulgarian*

Few Bulgarian language legal texts have been produced since the changes of 1989. Pre-1989 texts are uniformly unsuitable due to their political ideology. In an effort to remedy this problem CEELI, in cooperation with the Notre Dame Law School and the faculties of the various Bulgarian law schools, is in the process of selecting a pair of texts on constitutional theory and comparative constitutional law which will be translated and published in Bulgaria. The CSD has offered to provide the facilities, translating, and publishing assistance to complete the project by August 1993.

- *Curricula and Accreditation*

Aside from a number of formal and informal discussions on the issues of law school accreditation and curriculum reform held with Ministry of Education officials and law school representatives, Professor James White, consultant to the ABA on legal education, travelled to Sofia at his own expense for a week in October of 1992 to conduct a workshop with all law schools and the Ministry of Education on these issues.

### **III. RULE OF LAW COUNTRY STRATEGY FOR BULGARIA**

#### **A. Current Status of Legal Reform**

The second half of 1992 was characterized by heated political debates between the former allies in the Bulgarian National Assembly--the ruling Union of Democratic Forces ("UDF") and the Movement for Rights and Freedoms--("MRF") neither of which had an absolute majority in the National Assembly. On October 28, 1992, the UDF lost a vote of confidence and on December 30, a new government was formed due to a coalition of the Bulgarian Socialist Party ("BSP") and the MRF. The other important political force, representing a coalition of parties, is the UDF. Although these parties have different political platforms, these parties nevertheless reached a consensus over the necessity of accelerating legislative reform. Recently, the various parties comprising the UDF coalition have been arguing among themselves. The political situation is constantly changing and new parties and coalitions are forming. Bulgaria's economic outlook is fairly bleak due to its foreign debt. Bulgaria also has difficulty attracting other foreign investment, due to among other reasons, the war in former Yugoslavia and the political sluggishness of plaguing Bulgaria.

Due to the paralyzing political situation, very little substantive legislation had been passed until the spring of 1993. Among the more important acts that were passed in 1993 by the new parliamentary majority are: (1) the Copyright Act; (2) the Patents and Useful Inventions Act; (3) Amendments to the Personal Income Act and the Excise Taxes Act; and (4) Amendments to the Ownership and Use of Agricultural Lands Act. Also, the National Assembly ratified a Bulgarian-United States Bilateral Investment Treaty. The passage of these acts is in large part attributable to the fact that they deal with economic issues and do not contain any controversial political issues that could cause a conflict between the BSP and the MRF. The government views economic development as a high priority and each of the major political parties are hesitant to assume the responsibility of introducing in the National Assembly any laws that may cause serious social debate and controversy.

On July 1, 1993, the Vice President, Blaga Dimitrova, a member of the UDF, resigned based upon her stated dissatisfaction with the "moral crisis" in Bulgaria, the increasing number of socialists (former communists) in the Council of Ministers, and apparent differences with the President. On July 7, Nellie Kutzkova, Deputy Minister of Justice resigned to assume the position of Chairwoman of the Sofia Regional Court.

On July 8, the UDF submitted a draft resolution requesting early parliamentary elections to be held in mid-November. The UDF members of parliament who had walked out of the National Assembly in June may return.

On July 22, the National Assembly rejected the UDF's motion for a vote of no confidence in the government by a vote of 147 to 81. On July 29, the National Assembly again rejected a virtually identical motion by the UDF by about the same margin. The national Assembly session then came to an end on July 30, to be reconvened in September. None of the major pieces of legislation on the judiciary, taxes, bankruptcy, commercial code, and so forth, were resolved.

## **B. Priority Issues for CEELI Assistance**

CEELI's primary means of providing assistance will be through its rule of law liaison. The resident liaison consults daily with government and non-government officials regarding pressing issues of legal reform.

### **1. Priority Issue #1: Judicial Reform**

#### **(a) Goal Statement**

CEELI supports the Bulgarians' efforts to reform their judiciary, and thereby, promote a strong, independent judiciary in Bulgaria. Through its legal assistance, CEELI will strive to improve the public perception of the judiciary. An important component of judicial reform is the establishment of a self-sustainable, institutional framework for judicial training and education.

**(b) Factual and Legal Background**

As is true throughout Eastern Europe, the Bulgarian judiciary is not highly regarded. Under the communist regime, the general courts were rigidly controlled by the Communist Party and their decisions, if necessary, were consistent with party policy rather than the law. Very few issues concerning personal rights were heard by the courts and issues concerning conflicts between state enterprises were heard by the State Courts of Arbitration, a separate court system. The small variety of cases heard by the general courts, their lack of discretion, their subordination to the Communist Party, and the neglect by the government of the courts over the years has led to a multitude of problems for the courts. Some of these problems include: (1) treatment of judges as "state clerks"; (2) low stature; (3) low salaries; (4) absence of any training of judges after law school; (5) poor quality of work product; and (6) poor working conditions. The transition to a more democratic society based on a free market economy dramatically changes the role of the judiciary in Bulgaria. The implementation of principles of separation of powers imposes new responsibilities upon Bulgarian judges and will necessitate a higher professionalism and expertise among judges.

The Bulgarian court system is currently a unitary system comprised of three levels of courts: (1) Regional Courts (or courts of first instance); (2) District Courts (with jurisdiction comprised of both first and second instance); and (3) the Supreme Court (the highest appellate level). The Constitutional Court is separate from the other courts and its mandate is to decide upon the constitutionality of laws and the decisions promulgated by the National Assembly. Part of the reforms of the judicial system set forth in the 1991 Constitution of the Republic of Bulgaria include the creation of: (1) a system of Appellate Courts to act as courts of second instance, which exist in addition to the Regional and District Courts; and (2) two separate courts with parallel jurisdiction, namely the Supreme court of Cassation, which will act as a court of third instance with final jurisdiction, and a Supreme Administrative Courts, which will review the acts of the executive branch.

**(c) Priority Projects Identified by CEELI****1. Judicial Training Program****(a) Goal Statement**

The goal of CEELI's judicial training program is to assist the efforts of the Bulgarians in establishing a strong, independent and highly professional judiciary. CEELI will work toward creating a mechanism and/or a self-sustaining body to provide Bulgarian judges with continuing legal and related training.

**(b) Factual and Legal Background**

Due to the limited variety of cases heard by the general court judges, the judges' lack of independent authority, the domination of the communist party, and the neglect by the

government of the court during the past several decades, the judiciary is in dire need of further training. Currently, judges are treated as civil servants, enjoy very low social stature and low salaries. Judges receive barely any training after graduating from the law faculty and work under very difficult conditions.

**(c) Project Identified**

In close cooperation with the Bulgarian Ministry of Justice, the Bulgarian Association of Women in the Legal Career and some other lawyers' professional organizations CEELI will develop a program for judicial training in Bulgaria.

**(d) Benchmarks - Targeted Areas for Improvement**

(i) To raise the awareness of the Ministry of Justice to the problems faced by the judiciary.

(ii) To provide a forum for open, informal dialogue between professional organizations of judges and the Ministry of Justice, which is not yet available.

(iii) To assist the Ministry of Justice's efforts for improving the judges' competence through:

(a) co-sponsoring a series of seminars and workshops for Bulgarian judges on issues of topical interest; and

(b) co-sponsoring with the Ministry of Justice the publication of a journal for judges on issues of topical interest.

(iv) Coordinate CEELI's judicial training program in Bulgaria with the strategy being developed by the Judicial Training Working Group. Based upon the work begun by Robert Scherle in the area of judicial training, CEELI has organized in Washington a judicial training group, which will develop and implement a program of judicial training for the region.

**(e) Intended Results/Impact**

CEELI strives to assist the Bulgarians in the creation of a self-sustaining entity or mechanism to provide Bulgarian judges with training, both initial and continuing training. In achieving this goal, CEELI will have assisted in helping Bulgaria develop an independent and highly qualified judiciary able to cope with the new challenges facing the judiciary.

## **2. Judicial Ethics (In developmental stage)**

CEELI is also interested in working on judicial ethics issues. Due to the recent changes in the Ministry of Justice, CEELI is undergoing a new assessment of the best manner in which to address this important issue. The Deputy Minister of Justice, Pvalin Nedelchev, has expressed initial interest in this issue. CEELI will pursue this issue with Mr. Nedelchev, who will also raise the issue with the Supreme Judicial Council, the entity that has direct authority over the appointment and promotion of judges. Currently, judicial ethics is addressed marginally in current Bulgarian laws but there is no comprehensive legislative scheme and no separate judicial code of ethics exists. CEELI will also work with its liaison to encourage the Bulgarians to prepare a code of judicial ethics. If a draft judicial ethics code is prepared, CEELI would attempt to monitor and assess this code.

## **3. Computerization Project**

### **(a) Goal Statement**

To assist in the purchase of computers for the Varna Regional Court to improve the efficient administration of the court's workload.

### **(b) Factual and Legal Background**

Currently, Bulgarian judges are responsible for writing their own decisions, which are done on old, manual typewriters. Court reporters prepare their transcripts on typewriters during the court proceedings, causing a tremendous amount of disruption due to the noise. The Bulgarian courts are in the process of computerizing their court system to provide better case management, improve the operation of letter rogatory and notarial services, improve dissemination of the information collected at the Bureau for Issuing Convictions, establish a database of standardized documents and improve archive retrieval.

CEELI is working with Dushana Zdravkova, Chairman of the Varna Regional Court, and Eddy Chakurov, a computer expert with the Varna Regional Court, to provide assistance with National Report of Bulgaria for the European community's 11th Colony on Legal Data Processing in Europe (October 4-6, 1993). The Varna District Court computerization project is the pilot court project for court computerization in Bulgaria.

### **(c) Project Identified**

CEELI has committed to purchasing network software for the experimental Case Management Computer System in the Varna Regional Court. CEELI is the primary sponsor of this computerization project. CEELI, through its liaison, will also assist in consulting on court administration issues.

**(d) Benchmarks - Targeted Area of Improvement**

(i) Consult with Dushana Zdravkova and Eddy Chakurov of the Varna Regional Court regarding perceived needs for computerization.

(ii) Assist in the purchase of the necessary computer equipment.

**(e) Intended Results/Impact**

Through increased efficiency afforded by computerization, CEELI hopes to increase the professionalism of the judiciary by permitting judges to focus upon more substantive issues rather than merely administrative burdens.

**2. Priority Issue #2 Bar Reform: Legal Ethics**

**(a) Goal Statement**

To assist the Bulgarians in enhancing the professionalism of the bar.

**(b) Factual and Legal Background**

As the number of private lawyers continue to increase in Bulgaria, CEELI intends to focus its efforts upon promoting the professional integrity of lawyers. Enhancing the prestige and competence of the private bar will also enhance the stature of the judiciary. CEELI encourages the inclusion of all lawyers in a national bar association, which thereby subjects them to a code of legal ethics. Under the former centralized regime, which espoused the belief that the Communist Party--by virtue of its mass membership--expressed and stood for the interests of the entire nation, very few lawyers were necessary. Under communism, disputes regarding personal rights against the state or against state-owned enterprises rarely arose. Lawyers handled primarily small property disputes between citizens, divorces and wills. A separate system, the State Courts of Arbitration, was established to hear disputes between state enterprises. Legal ethics is not currently well appreciated in Bulgaria. As mentioned above, CEELI held a workshop on legal ethics in early 1993. This workshop opened the dialogue regarding professional ethics in Bulgaria. Some of the issues discussed included advertising, fees (including a discussion of potential conflicts with the law on the protection of competition), standards for admission to the bar, and relationships between lawyers.

**(c) Benchmarks - Targeted Areas of Improvement**

(i) CEELI provided comments on the Law on the Bar and the draft Amendments submitted to Parliament on March 31, 1992. These amendments are still pending in the National Assembly.

- (ii) CEELI continues to monitor this law and through its liaison, encourages the adoption of a legal ethics code. If a legal ethics code is prepared, CEELI would attempt to provide comments on it.
- (iii) Through its liaison, CEELI intends to provide advice to Bulgarian bar members regarding issues arising with bar organizations and others.

In light of the recent workshop on legal ethics conducted by CEELI in January, 1993, CEELI does not currently intend to hold any further workshops in Bulgaria during this grant cycle ending in March 1993, unless further funding becomes available. CEELI remains flexible in the types of assistance it will provide. Our new rule of law liaison will analyze the need for further workshops based upon new legislation in the rule of law area upon which we may be asked to comment and provide more in depth assistance.

**(d) Intended Results/Impact**

By increasing the professionalism of the bar, CEELI hopes to strengthen the legal reform movement occurring in Bulgaria. A more professional bar will enable the public to understand and exercise its rights more fully and thereby participate in the democratic reform process underway.

**3. Local and Regional Government (In the Development Stage)**

CEELI recognizes the important problems faced by regional and local governments as they move to a more decentralized form of government and absorb more powers as a result. CEELI is analyzing whether it may be useful to place a long term specialist in a city outside of Sofia, such as Varna or Bourgas, to work on regional or local government issues. The determination whether to place a long term specialist will be based upon the assessment of the new rule of law liaison working in close consultation with CEELI in Washington.

**4. General Legislative Reform (Ongoing)**

Many laws are currently pending at the National Assembly and CEELI will coordinate with our liaison to obtain copies and provide assessments of these laws as requested by the Bulgarian government. Mr. Nedelchev, Deputy Minister of Justice, has expressed interest in receiving assistance on legislative drafting. Our new rule of law liaison will follow up on this request upon her arrival in Bulgaria. Snezhana Botusharova (Vice President of the National Assembly), after meeting with CEELI in Washington, and our liaison in Bulgaria, has agreed to obtain assistance from CEELI on certain draft legislation identified by the National Assembly as being a part of the legislative agenda. In addition, Ms. Botusharova has expressed interest in CEELI conducting seminars on various legal topics specifically to educate members of parliament. Mr. Kotchev, Secretary General of the National Assembly, has been appointed the official liaison to work with CEELI. Mr. Kotchev expressed his hope to our liaison that CEELI's assistance will help the national

Assembly operate more effectively and efficiently.

The Judicial Organization Bill and the Supreme Administrative Court Bill are currently pending before the National Assembly. CEELI assessed these important laws last year. CEELI will continue to monitor these laws to determine whether any further assistance may be provided.

**C. Conclusion**

CEELI's rule of law program continues to develop at a fast pace. With the addition of a new liaison, devoted solely to rule of law issues, CEELI anticipates that its rule of law program will develop even faster. CEELI will reassess its rule of law strategy in light of the new perspective added by Ms. Pepys after her arrival in Bulgaria.

CEELI will coordinate with the staff of the CSD to publish papers on current topics affecting legal reform in the rule of law area in Bulgaria.

## CROATIA

### I. INTRODUCTION

In February 1993, CEELI's Executive Director, Mark Ellis, travelled to Zagreb, Croatia to meet with officials of the Croatian government and Law Faculty there. From his meetings, a tentative plan for CEELI assistance was developed. The plan included, as the keystone for CEELI's program in Croatia, the placement of an attorney liaison there.

Accordingly, in April of this year, CEELI posted Antonia Dolar as its first liaison to Croatia. Ms. Dolar is of partial Croatian descent, has previously travelled in Croatia, and speaks fluent Croatian. She will reside in the capital city of Zagreb until April 1994.

### II. SUMMARY OF CEELI ACTIVITIES IN CROATIA, APRIL - AUGUST 1993

#### A. Resident Liaison Activities

To date, the primary CEELI activity in-country has been the posting of Ms. Dolar. During her first three months on ground, Ms. Dolar has met with various government officials; members of Croatia's Constitutional Court; local government officials; officials, professors, and students at the law faculties at Zagreb, Osijek, and Rijeka; and representatives of the Zagreb, Osijek, Pula, and Croatian bar associations.<sup>6</sup>

Ms. Dolar also has provided information and written materials to various individuals on a variety of topics, including legal ethics, corporation law, real property law, the Uniform Commercial Code, environmental law, and the practice of law in the United States. She also has lectured on American legal education and practice, and arranged for nine Croatian law professors to attend CEELI's Law Faculty Training Institute, which was held in late June in Krakow, Poland, and addressed joint ventures and real property law.<sup>7</sup>

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<sup>6</sup>Members of CEELI's Washington staff also have met with Croatian officials over the past several months. In late June, the President of the Croatian Constitutional Court travelled to Washington, D.C., where CEELI staff arranged meetings for him with several federal appellate court judges, an official of the Federal Judicial Center, a Library of Congress specialist on separation of powers issues, and attorneys at the Office of Legal Counsel of the U.S. Senate. Several weeks later, CEELI's Country Director for Croatia spent several days in Zagreb meeting with Liaison Dolar and a number of her contacts there (including USAID representative Michael Zak), to discuss and develop the specifics of CEELI's program in Croatia.

<sup>7</sup>The Law Faculty Training Institute was funded under the commercial law grant.

Finally, based upon meetings and her work to date, Ms. Dolar has refined and developed CEELI's initial plan for assistance to Croatia. Based upon her recommendations and with her active participation, CEELI has developed and begun to implement the assistance strategy for Croatia outlined below.

### III. RULE OF LAW COUNTRY STRATEGY FOR CROATIA

#### A. Current Status of Legal Reform

In December 1990, the Republic of Croatia adopted a new Constitution, and some six months later it broke away from Yugoslavia and declared its independence. Under the "Constitutional Act for the Implementation of the Constitution," "[l]aws providing for the application of constitutional provisions which may not be applied directly shall be enacted by no later than December 31, 1993." Id. at Art. 3. Similarly, "[l]aws and other regulations and enactments, shall be made to conform with the Constitution by no later than December 31, 1993." Id. at Art. 4.

Pursuant to the above mandates, the Government and Sabor (the Croatian parliament) currently are drafting and enacting various new laws. Laws enacted to date include: Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia;<sup>8</sup> Law on Croatian Citizenship; Law on Self-Government and Administration; and Law on the Territories or Counties (Zupanije), Cities and Municipalities in the Republic of Croatia. Unfortunately, however, the war has delayed the enactment of legislation in many areas. Moreover, even where legislation has been enacted, its effectiveness has been hampered by lack of implementing regulations and enforcement mechanisms.

#### B. Priority Issues for CEELI Assistance

Because CEELI's program in Croatia has just begun, its country strategy is still evolving. During this initial phase of the program, CEELI's primary method of providing assistance will continue to be via its resident liaison, who will continue to expand CEELI's contacts in-country, and to lecture and provide (in response to specific requests) information on various topics, including the practice of law, administrative law, the structure, role, and functioning of local government, legal education, training, and ethics, and the independence of the judiciary. At the same time, Ms. Dolar will continue to work to identify concrete projects on which longer-term assistance is appropriate, desired, and feasible. At this point,

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<sup>8</sup> According to the 1991 Census, Croatia's 4.7 million population is made up of Croats (78%); Serbs (12%); "Yugoslavs" (2%); Slavic Muslims (1%); and other groups (e.g., Hungarians, Italians, Albanians, Czechs, etc.).

however, CEELI expects to provide long-term assistance in Croatia on the following matters:<sup>9</sup>

1. **Priority Issue # 1: Judicial Reform**

(a) **Goal Statement**

CEELI's goal is to assist the Croatians in their efforts to develop a strong, independent, and ethically-oriented judiciary.

(b) **Factual and Legal Background**

Under Croatia's new Constitution, governmental power is distributed among three branches: the legislative (the Sabor); the executive (President and Government); and judicial. The Constitution states that "[j]udicial power shall be autonomous and independent," and that "[c]ourts shall administer justice on the basis of the Constitution and law." *Id.* at Art. 115. In an effort to ensure an independent judiciary, the Constitution further states that each "[j]udicial office shall be permanent." *Id.* at Art. 120. It goes on to provide for the establishment of a "High Judiciary Council," which will appoint the country's judges. *Id.* at Art. 121.<sup>10</sup>

While these Constitutional provisions represent a step towards creating an independent judiciary, much remains to be done in this regard. Legislation restructuring the judiciary has been drafted, but not yet enacted. Moreover, there currently is no code of ethics for the country's judges.

(c) **Priority Project Identified by CEELI**

From the outset, CEELI's hosts in Croatia have expressed interest in assistance aimed at fostering an independent Croatian judiciary. In June, the Minister of Justice requested CEELI comments on the pending court restructuring legislation; CEELI expects to complete its comments on the legislation by late summer.

Additionally, the President of the Constitutional Court, the Croatian Bar Association,

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<sup>9</sup>In addition to the matters described above, the USAID representative for Croatia, Michael Zak, and officials of the U.S. Information Service in Zagreb have asked Ms. Dolar to coordinate CEELI's work with that of their agencies related to legal reform issues, and where appropriate to assist them with their own legal reform projects as they are developed.

<sup>10</sup>The members of the High Judiciary Council are to be proposed and elected by the Sabor, "for a term of eight years from among notable judges, public prosecutors, lawyers and university professors of law, in conformity with law." Constitution at Art. 121.

and members of the Law Faculty in Zagreb have requested that CEELI convene a workshop on the subject of judicial ethics. The goal of the workshop, which is tentatively scheduled for December of this year, will be to provide members of the Croatian judiciary with the information needed to enable them to begin drafting a code of ethics. If appropriate, following the workshop CEELI may send a Legal Specialist to Croatia to assist the judiciary in drafting efforts.

(d) **Benchmarks - Targeted Areas of Improvement**

The judicial ethics project can be broken down into the following benchmarks:

(i) **Preparation of Concept Paper**

The first step in the judicial ethics project is the preparation of a "concept paper"<sup>11</sup> that analyzes and compares the treatment of judicial ethics in the United States, Austria, Hungary, Germany, and Italy.<sup>12</sup> This concept paper will become the basis for the anticipated workshop on judicial ethics (see discussion below).

CEELI is currently compiling information for the concept paper; it is anticipated that the paper will be completed by early November 1993.

(ii) **Technical Legal Assistance Workshop**

The second step of the project will consist of a workshop, to be held in Croatia in early December 1993, and funded in part by the International Association of Trial Lawyers. Attendees will include members of the Croatian judiciary, and faculty members will consist of distinguished jurists, practitioners, scholars, and/or officials from some or all of the countries in which an interest has been expressed. The workshop will identify ethical issues with which members of the judiciary are regularly confronted (including issues related to the treatment of minorities and women in the courtroom and in the judicial system generally), and will discuss how such issues are resolved under the ethical codes or practices of the countries of interest.

CEELI's liaison, Ms. Dolar, shortly will begin a series of planning meetings with members of the Croatian judiciary, and it is anticipated that workshop faculty members will be selected by mid-September of this year. After that, Ms. Dolar, a member of CEELI's

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<sup>11</sup>CEELI "concept papers" frequently are provided prepared before legislative drafting efforts begin. They identify and discuss primary issues of law; set forth alternative solutions to the issues raised; and provided information regarding current trends in the law in the U.S. and Western Europe.

<sup>12</sup>CEELI's hosts have expressed an interest in the specified countries.

Washington staff, and the workshop faculty will work together to develop the structure and format of the workshop, in response to the needs of the Croatian judiciary.<sup>13</sup>

(iii) **Legal Specialist**

CEELI may follow up the workshop with the posting of a legal specialist, who can assist the Croatian judiciary in drafting its code of ethics. Due to limited funding, CEELI may only be able to fill this position if additional funding becomes available.

(e) **Intended Result/Impact**

The development of a concept paper on judicial ethics, the workshop at which Croatian judges can discuss the applicability of judicial codes of various countries to the ethical problems that they confront, and the posting of a legal specialist with knowledge of judicial ethics will provide the Croatians with the background needed to draft their own judicial code of ethics. Such a code is a vital step in the development of an independent and professional Croatian judiciary.

2. **Priority Issue # 2: Reform Related to the Practice of Law**

(a) **Goal Statement**

The integrity, professionalism, and knowledge of a country's practicing lawyers is key to ensuring the functioning of a legal system based upon the rule of law. CEELI's goal is to assist the Croatian bar in its efforts to develop higher standards in all of these areas.

(b) **Factual and Legal Background**

Although Croatia's "national" bar organization, the Croatian Bar Association, historically has been independent from the government, it has not been an effective advocate of legal reform or of the development of the rule of law. In fact, although all Croatian lawyers are required to join the Bar Association to be considered "practicing lawyers," apart from publication of a journal, the Association does little in the way of tracking legislation, disciplining its members, or setting standards for legal education. Moreover, the standard of private legal practice has been low in the past, due in part to (a) prohibitions on the formation of practicing groups of attorneys (*i.e.*, Western style law firms); and (b) a requirement that lawyers practice in all substantive areas, rather than specializing and becoming expert in one or two areas.

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<sup>13</sup>To ensure full participation of Croatia's judiciary in the workshop, Ms. Dolar also will coordinate planning of the program with the Ministry of Justice and administration and faculty at Croatia's law schools.

Legislation that would permit the formation of Western style law firms currently is pending before the Sabor. The Croatian Bar Association realizes that changes such as are contemplated in the Sabor legislation, as well as legal reforms in Croatia generally, require a re-education and re-orientation of the country's lawyers on an unprecedented scale. The Bar Association perceives itself to be in a position to take a leading role in the coming changes, and thereby to develop into a crucial element of Croatia's new legal infrastructure.

**(c) Priority Projects Identified by CEELI**

As an initial step towards providing assistance to the Croatian legal profession, Ms. Dolar has established contacts with the Croatian Bar Association as well as with local bar groups. In response to their requests, she plans to assist these groups in a variety of ways.

**(d) Benchmarks**

(i) CEELI will provide the Croatian bar with information on such topics as:

- (a) the structure, functioning, and role of the American legal profession;
- (b) the activities and role of local, state, and national bar associations;
- (c) laws and regulations governing the activities of attorneys;
- (d) bar admission and continuing legal education requirements;
- (e) participation of the bar in selecting judges;
- (f) malpractice law and insurance; and
- (g) organization and management of, and the use of technology in, American law firms.

(ii) In the fall, Ms. Dolar will deliver a series of four lectures to law students and attorneys, on the topic of legal ethics.

(iii) Translation of a draft law on reorganization of the bar is currently underway, and CEELI expects to assess and provide comments on the draft to the Croatian Bar Association and Ministry of Justice this fall.<sup>14</sup>

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<sup>14</sup>Bar officials also have asked CEELI for a Croatian language translation of the ABA Model Rules of Professional Responsibility.

(e) Intended Result/Impact

The activities described above will help to revitalize the Croatian bar, and transform it into a key element in Croatia's new legal infrastructure.

3. Priority Issue # 3: Criminal Reform (In Developmental Stage)

Croatia currently is revising its codes of criminal law and criminal procedure, and the Minister of Justice has requested CEELI assessments of the current draft codes. The drafts now are in translation, and CEELI expects to begin work on assessments by mid-September. The principle drafter of the criminal code (the dean of the Law Faculty in Zagreb) also has asked that CEELI's written assessment of his code be followed up by sending a Legal Specialist to work on revisions to the draft. Ms. Dolar is exploring this request further.

4. Priority Issue # 4: Local Government Reform (In Developmental Stage)

Under the new Constitution, Croatia's citizens are "guaranteed the right to local self-government," including "the right to decide on needs and interests of local significance, particularly of localities and housing, public utilities, child care, social welfare, culture, physical culture, sport and technical culture, and the protection and promotion of the environment." Constitution at Art. 128. Pursuant to the Constitution, in December 1992 a "Law on Local Self-Government and Administration" was enacted, establishing municipalities, towns, and counties as units of local self-government, *id.* at Art. 3-5, and establishing mechanisms for local self-government. However, while local units of government are responsible for enacting laws and regulations to govern their own affairs, and while local elections were held one year ago, few laws have been enacted at the local level.

Ms. Dolar has met with local government officials in two major cities, Osijek and Rijeka, and plans to meet with local officials in Split, Varazdin, Karlovac, Dubrovnik, and Zagreb. The officials with whom Ms. Dolar has met to date are eager for assistance in developing laws and regulations at the local level and in developing systems for more effective local government administration, and they have asked that CEELI post a legal specialist (such as a city or county attorney) to Croatia, to work on local government issues. Ms. Dolar currently is assessing the requests for a specialist, and will make recommendations to CEELI staff in Washington regarding this issue.<sup>15</sup> Unless additional funding becomes available, CEELI will probably be unable to fill this position.

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<sup>15</sup>Several cities also have sought information from CEELI on administrative law, intergovernmental administration, and local government finance.

5. Priority Issue # 5: Sister Law School Program/Legal Education  
(In Developmental Stage)

In its work with Croatian Law Faculty officials, professors, and students, CEELI's goal is to strengthen ties between the Croatian Law Faculties and their sister law schools in the United States, and thereby increase opportunities for direct communication and dialogue related to legal education and the legal profession. The ultimate goal is to raise the standards of legal education and practice in Croatia.

Despite sweeping changes to the country's government and economic systems, few changes have been made to the curricula of the four Croatian Law Faculties (Zagreb, Split, Rijeka, and Osijek). Courses continue to be taught in a lecture format, with little interaction between teachers and students; no time is allotted to elective courses; and students are given no practical, "hands on" experience while in law school. Only upon completion of the four to five-year program do students select one of three areas in which they "intern" for an additional two to three years: judicial work; administrative law; or private practice (encompassing work in a company or in a private "law firm").

The changes in Croatian law permitting formation of Western style law firms, and virtually wholesale revision to its governmental and economic systems, require drastic changes to the content of Croatian legal education and to the teaching methods used therein. As an initial step towards assisting the Croatians to make these changes, CEELI's liaison has met with Croatian law school officials, professors, and students. She has discussed with them issues of interest, and provided them with information on miscellaneous topics (such as forming a law student organization). As a means of increasing direct communication with their American counterparts, Ms. Dolar has obtained and provided students in Zagreb and Osijek with information about computerized "Electronic Mail" ("E-Mail"). As a result, CEELI hopes that "E-Mail" links can be established this fall between the Law Faculties in Zagreb and Osijek and their sister American schools.

Ms. Dolar also has discussed with faculty and students in Zagreb and Osijek the possibility of establishing a pilot "legal clinic," and hopes to provide assistance on this matter.<sup>16</sup> The development of clinical programs in Croatia would respond to two important needs: first, clinics would provide law students with practical experience in a particular area of law, and would enable them to more knowledgeably select their preferred practice area (as well as providing them with useful practice experience generally); and second, it also would provide badly need legal services for persons unable to pay the fees charged by practicing attorneys. CEELI currently is gathering information about the role of clinics in American law schools, which Ms. Dolar will distribute to (and discuss with) faculty and students at Croatia's law faculties. Ms. Dolar also is exploring whether CEELI can provide additional assistance regarding clinical education.

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<sup>16</sup>Ms. Dolar will meet with faculty and students in Rijeka and Split in September.

## 6. General Priority Project: Legislative Assessments

In addition to the assessment of Croatia's draft court restructuring legislation currently underway, and the draft criminal law and procedure code assessments that CEELI expects to begin in September, CEELI is at work on comments on draft antitrust and securities regulation statutes. CEELI expects to assess a draft law on reorganization of the Croatian bar and, at the request of USAID and Embassy officials in Zagreb, it will translate and provide comments on Croatian amnesty law.

Also, in response to a request from bar association officials, CEELI may prepare a concept paper on the subject of legal ethics.

### C. Conclusion

As noted above, in response to the requests of CEELI's hosts in Croatia, CEELI's program there is aimed at assisting the Croatians to establish a functioning legal system based upon the rule of law. In terms of the specific elements of CEELI's program (as outlined above), obviously a strong, independent, and ethically-oriented judiciary is an essential element in a country's legal infrastructure. As a result of CEELI's anticipated work with the Croatian judiciary, it is expected that a code of judicial ethics based upon the experiences of Croatia's judges will at some point be adopted.

Similarly, assisting the national and local bar associations in the development of their professional activities will strengthen another key element of Croatia's legal infrastructure; as will the promotion of well organized, professional law firms.

Finally, assisting law students to develop active organizations that place pressure on the law faculties and professors to develop programs and curricula that are responsive to the practical needs of the legal profession is yet another way to strengthen Croatia's legal infrastructure.

## FORMER CZECHOSLOVAKIA

### I. INTRODUCTION

CEELI has been involved in the process of legal reform in the Czech and Slovak Republics (formerly Czechoslovakia, the "CSFR") for over two years. CEELI has concentrated in the areas of constitutional law, local government, administrative law and procedure, criminal law and procedure, and judicial training and restructuring. In addition, five Czech and Slovak law schools participate in CEELI's Sister Law School Program.

Since the inception of its program in the CSFR, CEELI has been associated with the legal communities and lawmakers of the Czech and Slovak Republics as well as the federal government. As a result, CEELI was well situated to continue its work after the dissolution of the federation on January 1, 1993.

In response to discussions with Czech and Slovak judges, government officials, legislators, law professors, and lawyers, CEELI has focused its efforts in two areas. First, CEELI believes that technical assistance in the area of judicial training and restructuring, including issues of judicial ethics, court administration, and judicial independence, is essential to assist an understaffed, often demoralized judiciary in enforcing the constitutional, criminal, and commercial law. Second, CEELI assists in the development of legislation and regulatory structures in a variety of fields, such as criminal law and procedure (including white collar crime), ethical conduct of the legal profession and civil service, the law of nonprofit organizations, urban planning, and local government financing.

### II. SUMMARY OF CEELI'S ACTIVITIES IN FORMER CZECHOSLOVAKIA, NOVEMBER 1990-DECEMBER 1992

#### A. Resident Liaison Activities

CEELI places resident liaisons in host countries to facilitate long-term technical legal assistance. CEELI liaisons interact with government officials, legislators, judges, law professors, legal practitioners, law students, nongovernmental organizations, American and foreign assistance organizations, and American government and nongovernment officials visiting the host country. The liaisons work with the local legal community to identify legal reform priorities, coordinate project activities, respond to requests for legal materials, and provide direct legal assistance in their individual areas of expertise.

CEELI conducted the following workshops in the CSFR:

**1. Criminal Law Revision**  
**November 12-16, 1990**  
Prague, Czechoslovakia

The Criminal Law Revision Workshop in November 1990 was one of CEELI's first projects in Czechoslovakia. Czech and Slovak representatives<sup>17</sup> gave short presentations, and observers from Hungary, Bulgaria, Yugoslavia, Poland and Romania also attended the workshop. The CEELI participants<sup>18</sup> spoke on various criminal law and procedure topics, including the nature and conduct of preliminary proceedings in Continental and American law, the role of the state's attorney in a democratic society, and the role of lay judges and juries. One workshop session was devoted to the question--what types of speech should be forbidden by the penal law? The workshop allocated several hours per topic to group discussion involving U.S., European, Czech, Slovak, and other Central and East European participants.

**2. Follow Up/Judicial Restructuring**  
**April 22-26, 1991**  
Prague, Czechoslovakia

In cooperation with the Ministry of Justice of the Czech Republic and the Czech Association of Judges, CEELI sponsored a workshop in April 1991 as a follow-up to the Criminal Law Revision Workshop five months earlier. Five American judges and a German law professor<sup>19</sup> chaired group discussions and presented on topics related to judicial

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<sup>17</sup>From the Czech and Slovak Supreme Courts, the General Attorneys of the Czech and Slovak Republics, the Czech and Slovak Ministries of Justice, the Czech and Slovak Bar Associations, and various universities.

<sup>18</sup>Professor Mirjan Damaska, Ford Foundation; Professor Sheldon Krantz, American University; Professor Helmut Fuchs, University of Vienna; Professor Ennio Amodio, University of Milano; Stephen Sachs, former Maryland State's Attorney; Justice Richard Huffman, California Court of Appeal; Professor Joachim Herrman, University of Augsburg; Judge Jon Newman, United States Court of Appeals for the Second Circuit; Kim Taylor, head of the D.C. Public Defender Agency; Professor W. Cole Durham, Brigham Young University; Professor Pnina Lahav, Boston University; Professor Herman Schwartz, American University; and Professor Jan Stepan, Swiss Institute of Comparative Law.

<sup>19</sup>Judge Wilfred Feinberg, United States Court of Appeals, Second Circuit; Judge Patricia Wald, United States Court of Appeals, District of Columbia Circuit; Judge Walter Skinner, Federal District Judge, District of Massachusetts; Judge Leonard Wexler, U.S. District Court Judge, Eastern District of New York; and Joachim Herrman, Professor of Law, University of

restructuring. The participants examined how the structure and organization of the court system affect judicial independence, judicial selection and discipline, methods of professional training and continuing education of judges, court administration procedures, and various European models of judicial independence.

**3. Judicial Training Seminar**  
**Workshop on the Adversary Legal System**  
**October 28-November 1, 1991**  
**Bratislava and Trancianske Teplice, Czechoslovakia**

CEELI conducted a third workshop in Bratislava and Trencianske Teplice in Fall 1991. Organized in conjunction with the Law Institute of the Slovak Ministry of Justice, the workshop focused on the adversary legal system. It featured an overview of the adversary system, including sessions devoted to a comparison of U.S. and Czechoslovak legal systems, the role of the judge in an adversary system, criminal and civil procedure, trial practice, and appeals. Each session was jointly moderated by a CEELI representative<sup>20</sup> and a spokesperson from the Law Institute of the Ministry of Justice of the Slovak Republic.

**4. Follow Up/Judicial Training Seminar**  
**March 23-27, 1992**  
**Bratislava, Czechoslovakia**

**B. Technical Legal Assistance Workshops**

Through its technical legal assistance workshops, CEELI provides practical legal training to judges, government officials, legislators, lawyers (advocates and commercial practitioners), legal academics, and law students. Workshops are developed through consultation with the CEELI resident liaison, AID officers, and host country representatives. The purpose of a technical assistance workshop is to provide substantive, practical, comparative training that advocates the development of the rule of law and enhances the participants' understanding of legal principles relevant to the Czech and Slovak legal infrastructures.

Technical legal assistance workshops focus on a particular substantive area of the law and involve the participation of experienced lawyers, judges, and professors, usually including one from a civil law country. CEELI workshops are designed to promote energetic and open dialogue among participants and provide host countries with an in-depth, immediate

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Augsburg.

<sup>20</sup>William Hendricks, III; Charles Sifton, United States District Judge, Eastern District of New York; Alan Sundberg, former Chief Justice, Florida Supreme Court; George Tompkins, Jr.; and Edwin Wesely were the CEELI representatives.

analysis of critical nuances in the law.

The first on-site liaison in Czechoslovakia was Doug Rutzen. Mr. Rutzen arrived in Prague in January 1992 for a six-month stay. He was succeeded by Kent Sinclair, who served as CEELI's resident liaison in the CSFR from July to December 1992. The following are examples of projects undertaken by CEELI's resident liaisons in the CSFR:

- Consulted with Ministry of Finance officials and members of the nonprofit community on the Czech nonprofit law (August-September 1992).
- Met with the Office of the Chief Architect of Prague, which requested a CEELI concept paper on how to draft and implement zoning regulations (September 1992).
- Consulted with Kamila Meelova, Director of the Federal Women's Prison in Pardubice, regarding prison reform and new government regulations for prison administration (September 1992). Visited the prison in October 1992.
- Travelled to Bratislava in September 1992 to coordinate placement of a CEELI resident liaison in Slovakia. Met with members of the Slovakian legal community, including Dr. Robert Fico of the Law Institute, Dr. Stefan Detvai and Dr. Katarina Cechova of the Slovak Bar Association, and Dr. Peter Blaho, Dean of the Komenius University Faculty of Law.
- Developed a joint proposal with the Association of Judges of the Czech Republic concerning judicial training and support (November 1992). The proposal calls for cooperative educational programs which offer a comparative analysis of American, Western European, and Czech legal concepts, long-term visits by legal specialists, and creation of a publicly accessible collection of translated written materials.

### C. Legal Specialists

In response to requests from host countries, CEELI sponsors technical legal specialists to assist with specifically-identified legal reform projects. The specialists, who typically have substantial experience in the relevant area of law, spend several weeks observing particular aspects of the Czech and Slovak legal systems, meeting with judges, government officials, and attorneys, and making recommendations.

1. **Francis X. Gindhart**  
**Brno, Czechoslovakia**  
**September 1991**  
**Constitutional Court Reform; Court Administration**

2. **Kristin DeKuiper**  
**Bratislava, Czechoslovakia**  
**February-May 1992**  
**Judicial Training on Commercial Law**

3. **Legal Specialist to the Czech Bar Association**

At the request of the Czech Bar Association, which provided an office in its building in Prague, Judge Charles Sifton visited the CSFR from March to May 1992 as a legal specialist for reform of the recently privatized legal profession. At the invitation of the Bar Association President, Dr. Karel Cermak, the Judge attended Executive and committee meetings. He wrote an article and consulted with Bar Association members about the need to establish a sort of legal aid society to represent indigent criminal defendants. Judge Sifton also advised the Bar Association on issues relating to foreign legal practice in Czechoslovakia.

Judge Sifton established a relationship with the Office of the Procurator General, Ludvik Brunner, and conducted regular teaching seminars on the prosecution of white collar crime for members of Brunner's staff. In addition, he met with government officials, parliamentarians, judges, and lawyers to encourage the formulation of a code of ethical conduct for the legal profession.

Together with resident liaison Douglas Rutzen, Judge Sifton advised several federal parliamentarians on draft laws relating to mutual funds, ethics in government, taxation, nonprofit corporations, and the environment. He conferred with the head of the Czech Judges' Association, the Czech Institute for the Training of Judges, and individual judges in the Czech and Slovak Republics to address some of the problems facing the current judiciary, like the drain of judicial talent to more lucrative private practice.

#### **D. Assessments of Draft Laws**

Another key element of CEELI's activities in Czechoslovakia was the provision of written assessments of draft legislation. Through the assistance of hundreds of judges, law professors, and legal practitioners, CEELI gathers comments on proposed laws and compiles reports for liaisons to deliver to the individuals and committees that are drafting legislation. CEELI provided the following assessments to CSFR officials:

- CSFR's Statute 498 Concerning Refugees  
February 1992
- Czechoslovakia's Draft Law on Provisions Connected with the Protection of the Public Interest  
March 1992

- CSFR's Draft Nonprofit Law  
June 1992
- Comparison of the CSFR Nonprofit Law to the Bulgarian and United States' Nonprofit Law  
December 1992

#### **E. Legal Education/Sister Law School Program**

CEELI's Sister Law School Program promotes cooperation between American and Central and East European law schools by pairing each European law school with three American sister schools. Under the auspices of the Sister Law School Program, participants explore possibilities for faculty and student exchange programs, opportunities for joint research, proposals for graduate study programs, and ways in which U.S. law schools can assist Central and East European law schools with respect to curriculum development, library resources, and continuing legal education programs for law professors and deans.

1. **Sister Law School Program Workshop, Phase II**  
December 9-12, 1991  
Stirin Castle  
Prague, Czechoslovakia

In December 1991, Czechoslovakia hosted the second phase in a series of Sister Law School Program Workshops. Twenty Central and East European law school deans, vice deans, and professors attended the workshop.<sup>21</sup> The University of Masarykovy, Safarika University, and Charles University attended from the CSFR. Discussion topics included the process of legal education in the United States and in Central and Eastern Europe, specific needs of law schools, prioritization of goals, and law school administration techniques.

2. **Participating Czech and Slovak Law Schools and Their American Sister Schools**

Charles University, Czech Republic  
University of San Francisco School of Law  
Creighton University School of Law  
University of Nebraska School of Law  
South Texas College of Law

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<sup>21</sup>The CEELI delegation consisted of thirteen U.S. law school deans.

Komenius University, Slovakia

Loyola University School of Law

Texas Tech University School of Law

American University, Washington College of Law

Palacky University, Czech Republic

Tulane University School of Law

Hofstra University School of Law

Georgetown University Law Center

Safarik University, Slovakia

University of Tulsa College of Law

University of Pennsylvania School of Law

Memphis State University, Cecil C. Humphreys School of Law

Masarykov University, Czech Republic

John Marshall Law School

Seton Hall University School of Law

Cumberland School of Law, Samford University

### III. SUMMARY OF CEELI'S ACTIVITIES IN THE CZECH REPUBLIC, JANUARY-AUGUST 1993

#### A. Resident Liaison Activities

After the dissolution of the CSFR on January 1, 1993, Kent Sinclair continued to coordinate CEELI's technical legal assistance efforts as the resident liaison in the Czech Republic. Mr. Sinclair will be posted in Prague until July 1993. Jana Kurka, who is fluent in Czech, will replace Mr. Sinclair in August 1993. The following is a sample of Mr. Sinclair's activities in the Czech Republic since January 1, 1993:

- Arranged a lecture series for members of the Association of Judges of the Czech Republic, including presentations by foreign lawyers on anti-monopoly law, the U.S. Constitution and the Judiciary, American criminal law, and European Community law (March 1993).
- Conferred with Jana Wurstova, Director of the International Section of the Ministry of Justice regarding potential concept papers and workshops on civil and criminal procedure. Provided the Ministry of Justice with a copy of the Louisiana Criminal Procedure Code. (March 1993).
- Commented on the current Law of Political Parties and Political Movements at the request of a member of the Czech parliament (April 1993).

- Coordinated CEELI's participation in the May 1993 Criminal Procedure Conference, sponsored by the Ministry of Justice and the Council of Europe. Discussed future seminars with Ministry of Justice officials, including workshops on judicial ethics/conflicts of interest and judicial independence.
- Met with the Deputy Minister of Agriculture in May 1993 to consider potential CEELI assessments, workshops, and long term assistance related to the legal aspects of regional water distribution systems, clean air legislation, and local environmental management.

## **B. Legal Specialists**

### **1. Legal Specialist on Nonprofit Law**

Milt Cerny, a specialist on nonprofit organizations, travelled to Prague in March 1993. He collaborated with Mr. Pelant, Deputy Minister in charge of legislation at the Ministry of Justice, and with Ministry of Finance officials in reviewing the current draft of the nonprofit and foundations laws. In addition, Mr. Cerny met with people at the Ministries of Culture, Health, and Education and lectured to representatives of nonprofit organizations.

### **2. Legal Specialist to the Criminal Procedure Code Drafting Group of the Ministry of Justice**

CEELI envoy Abe Goldstein attended the May 1993 Criminal Procedure Conference, where he commented on a concept paper on the new criminal procedure code. Mr. Goldstein also spent two days advising the Criminal Procedure Code Drafting Group. The working group addressed numerous issues, including the introduction of prosecutorial discretion, alternatives to prosecution, restitution, right to counsel for indigent defendants, and contempt of court.

## **C. Draft Law Assessments**

CEELI provided the following draft law assessments to officials in the Czech Republic:

- Czech Republic's Conflict of Interest Law  
February 1993
- Draft Law on Nonprofit Legal Entities  
April 1993
- Draft Law on Political Parties and Political Movements  
June 1993

#### **IV. RULE OF LAW COUNTRY STRATEGY FOR THE CZECH REPUBLIC**

##### **A. Current Status of Legal Reform**

The separation of the former CSFR brought about not only new constitutions but two separate legal and economic systems. On February 8, 1993 the Czech Republic and Slovakia introduced separate currencies - the Czech koruna (CEK) and the Slovak koruna (SOK). Many of the Czech industries, once the envy of the communist block, were technological antiques. Markets vanished with the collapse of the USSR and new taxes and inflation ate into the worker's wages. Despite these setbacks, unemployment remains low due in part to direct foreign investment. The Czech National Bank reported in mid-May that direct foreign investment in the first quarter of 1993 amounted to \$302 million, 31% higher than for the same period last year. Czech President Vaclav Havel remains very popular as does the Prime Minister Vaclav Klaus, while the opposition parties continue in disarray. Law reform continues on a methodical pace and due to several factors, foreign legal assistance is not as eagerly solicited as it is in other countries in the region.

The Czech Republic has now been living under its new constitution for eight months, which provides for a form of government that is a parliamentary democracy with a bicameral legislature. The House of Representatives has 200 members elected for four-year terms on the basis of proportional representation and the Senate has eighty-one members elected for six-year terms in single member districts.

The President, elected by a majority of all members in both chambers of the parliament acts as the head of state and commander-in-chief of the armed forces. The President may dissolve the House and exercises a suspensive veto power over legislation with the exception of constitutional amendments. The President appoints and recalls the Prime Minister, members of the government, and members of the Supreme Court and the Constitutional Court (the latter with the approval of the Senate).

The Government, better known as the cabinet, is the supreme organ of executive authority, responsible to the House. The judiciary is composed of a Constitutional Court, a Supreme Court, chief courts, regional courts and district courts.

##### **B. Priority Issues for CEELI Assistance**

CEELI's primary method of providing legal assistance is through its liaison, Ms. Jana Kurka, who is fluent in Czech, arrived in Prague on August 1993 to continue the work begun by her predecessor liaison. This assistance includes providing much needed information, organizing meetings to discuss aforementioned areas which coincide with the expertise of the liaison and determining what other forms of assistance are appropriate.

CEELI has identified the following projects in the Czech Republic to provide assistance.

**1. Priority Issue #1: Judicial Reform**

**(a) Goal Statement**

CEELI's goal is to assist Czech judges and the Ministry of Justice as they seek to draft, enact, and implement laws, court rules and training programs that will promote judicial independence, ethics and continuing legal education.

**(b) Factual and Legal Background**

The Czech legal system is a European civil law system which draws heavily from the Austrian and German models. As in those countries, Czech judges are basically career civil servants. Despite current efforts to create a more independent, motivated and self-confident judiciary, the central role of the Czech Ministry of Justice is still to supervise and train judges.

The first Constitution of the Czechoslovak Republic was ratified in 1920 and firmly provided for an independent judiciary. For forty years, however, under the Communist regime, judges in Czechoslovakia were among the least prestigious governmental officials. They were paid low wages and had poor working conditions. Judges were "elected" for ten years by the federal assembly at a young age, roughly 25 or 26 years old, just after completing the three-year judicial clerkship following receipt of a law degree. The judiciary included both Communist Party members and non-party members. Once every two years, each judge was called to party headquarters and given a "report card" on how he or she was doing. If the judge had ruled on politically sensitive cases and had not followed the Party line, the judge would not likely be "re-elected" upon expiration of the first ten-year term. Bonuses were awarded based on achieving docket-clearing quotas.

Consequently, during the period of communist rule, judges in Czechoslovakia earned the reputation of being an effective and feared tool of oppression. Throughout society, judges were generally both despised and mistrusted. Even now, so firmly entrenched is the perception that the judiciary is not independent, but rather an arm of the state, that all efforts to reform must compete with the lingering memory of more than four decades of corruption.

After World War II, Czechoslovakia became a satellite of the USSR. National Assembly Law No. 319/1948, enacted on December 22, 1948, concerned the "democratization" of the judiciary. Under this law, lay judges replaced professionally trained jurists.

The judiciary was seen as a political tool during the purge trials of the 1950s. In 1962, the 12th Party Congress, the Communist leadership in Czechoslovakia, agreed to review the

purge trials of the 1950s. This effort proved to be one the most significant moves toward de-Stalinization. The Czechoslovak Press Bureau published a report by the Central Committee the following year criticizing the political trials from 1949-1954. Of the 481 cases the Committee reviewed, it was determined that 411 of the sentences were unjust. Even this review, however, was more a political act than a judicial act.

In the years following the 1968 invasion of Czechoslovakia by troops from five Warsaw Pact countries, the judiciary was considered to be even more of a part of the communist state. For example, numerous trials in February and March, 1972, convicted supporters of Alexander Dubcek, the former First Secretary of the Czechoslovak Communist Party. Dubcek was expelled June 26, 1970. Additionally, in July and August several prominent intellectuals were tried and sentenced. These trials were criticized not only in the Western press, but by Communist Party leaders in several European Countries.

The most infamous action by the Czechoslovakian judiciary was its campaign against intellectual dissidents in the late 1970s and 1980s. One of the most prominent individuals among those targeted was then-playwright Vaclav Havel. The avant-garde writer was arrested on October 23, 1978, and convicted later that same day on charges of having engaged in subversive activities and collaborating with foreign agents. He was sentenced to four-and-one-half years' imprisonment. Also similarly sentenced at the same time were other original signers of Charter 77, a series of documents calling attention to the fact that basic rights and fundamental freedoms were being ignored in the country. Other well-known signers of Charter 77, including author Milan Kundera, were deprived of their citizenship.

Since the Velvet Revolution of 1989, the independence of judges has gradually been strengthened (for example, salaries were increased). In 1991, the parliament adopted the Law on Judges and Courts, which contains provisions to further promote independence. While judges during the communist regime were appointed for ten-year terms, this new law states that judges will be appointed for life. The law also contains provisions that will make it possible to recall compromised judges. Additionally, judges are no longer required to prepare reports for the government.

One of the other initial changes in the judiciary was the effort taken to remove judges who actively collaborated with the communist regime. The purge and voluntary resignations of many judges who wished to avoid the scrutiny of their past actions by the legislature's Screening Law have severely reduced the total number of judges. Those that remain are working through an independent association of judges to not only educate themselves and their colleagues, but to reform society's pervasive view that the judiciary is still not much more than an arm of the state.

The Czech Constitution, adopted on December 16, 1992, defines judicial power within the concept of a state based on the rule of law. the separation of powers provisions preclude a judge from also holding the office of president, parliamentary deputy, or any other state official. Judges may be dismissed only for reasons strictly specified in law and transferred to

a different location only with their consent. Under the Criminal Act, interference with the independence of courts is a criminal offense punishable by imprisonment for six months to ten years.

The Czech judicial system is four-tiered: the Supreme Court, the Chief or High Courts, the Regional Courts (in Prague, the City Court) and Regional Commercial Courts, and the District Courts. There are also the Military District Courts and Higher Military Courts, which are the special courts of the first and second degrees in charge of criminal matters of military personnel and armed corps members. On January 1, 1994, the military courts shall be wholly integrated into the unified system of general courts.

The courts of first jurisdiction are the District Courts, which handle the majority of criminal and civil matters. The Regional Courts hear appeals from the District Courts, however they also are courts of first instance in certain criminal proceedings and certain civil law cases. The Regional Commercial Courts have so far been established only in Prague, Brno, and Ostrava, since they are commercial centers. These courts exercise jurisdiction in commercial matters where otherwise the Regional Courts were the courts of first competency. High Courts exercise jurisdiction over certain judgments of the Regional Courts and over decisions of certain state authorities. The Supreme Court, being the highest court of the judicial system, exercises jurisdiction over judgments from the High Courts as well as in other cases specified by law.

**(c) Priority Project Identified by CEELI**

CEELI entered into a joint proposal with the Association of Judges of the Czech Republic ("Joint Proposal") to develop a series of educational programs and other support activities for the judges of the Czech Republic continues to be a high priority for CEELI's rule of law program.

This Joint Proposal has raised the awareness of the judges that they may act independently of the Ministry of Justice. Our liaison has identified several foreign lawyers in Prague who are able to lead discussions in conjunction with our liaison at informal meetings with the judges on various topics, such as anti-monopoly law, the U.S. Constitution and the Judiciary, particularly the independence of the judiciary, American criminal law, and European Community law. The judges have also expressed an interest in obtaining further information concerning conflicts of interest, judicial ethics and the structure of the judiciary in different legal systems.

CEELI also considers judicial training, especially in the area of bankruptcy training, to be a high priority.

CEELI intends to work with judges outside of Prague. For example, our liaison has made contacts with judges in Brno, which has become increasingly important because the Czech government moved the Constitutional Court, the Supreme Court and the Competition Office to that city. In doing so, the Czech Government apparently hoped to increase the

stature of Moravia in light of the Moravian separatist movement.

**(d) Benchmarks -- Targeted Areas of Improvement**

CEELI's liaison will provide information on many of the aforementioned topics to the Judges Association and members of the judiciary. The liaison will also organize presentations using foreign lawyers present in the country and her own expertise. CEELI will assess various pieces of legislation as requested, and may write a Concept Paper in the area of judicial ethics.

**(e) Intended Result -- Impact**

The Czech Judges Association recognizes the fundamental importance of an independent judiciary and of a judiciary guided by ethical principles. The Judges Association along with judges at all levels have asked CEELI to provide them with this technical assistance. In view of the Czech judicial experience of the last 45 years, steps need to be and can be taken to address these areas, but legal training and retraining must accompany this process. The proposed projects in the target areas are designed to meet these goals. The involvement of the Czechs in setting the goals and creating the projects will ensure not only their participation but the impact of the project.

**2. Priority Issue # 2: Criminal Law**

**(a) Goal Statement**

CEELI seeks to assist the Czech government in drafting its new criminal procedure code. The Czech Criminal Procedure drafting group plans to streamline the law, eliminate overlaps and inconsistencies, make the code more flexible and less formalistic, and consider moving toward an adversarial system in some respects. CEELI has identified criminal law (both substantive and procedural) as an important area for CEELI to provide legal assistance.

**(b) Factual and Legal Background**

The current criminal procedure code of the Czech Republic was drafted in 1961 and has been amended ten times since then. The system embodies an almost pure form of the hierarchical or inquisitorial process which allots greater authority to the government and places more emphasis on crime control than have coordinated or adversarial, Anglo-American common-law systems. It is heavily influenced by Austro-Hungarian and French experience, and of course reflects communist legal concepts. Additionally, the Czechoslovak criminal system was premised on the idea that the goal of the laws was to ensure that the state could guard its own interests.

After more than 29,000 people were sentenced for political crimes in the Supreme Court building since 1956, the 45 years of communism diminished society's regard for the procedure of implementing criminal law.

In the past 20 years there has been a category of criminal trials with no regular procedure, just police hearings. The suspect was charged with being a "danger to society." The content of the prosecutor's file was supposed to be the most important factor in pretrial proceedings, but in practice, the judge often tried to adjust the statements of the accused to match the prosecutor's charge.

Under Czechoslovak communist law, the prosecutor supervises the police. Only the prosecutor can place the accused under detention, tap a phone, or search mail. Only the prosecutor can present the indictment. In the pretrial proceedings the prosecutor has extensive power. If there is an objection to the police, the superior prosecutor makes the decision as to the correctness of the police action.

Despite this history, there were some instances of criminal law reform. In 1968, broad rights of the defense counsel to be present at the investigations were granted. In contrast to some European procedures, the entire file was made available to counsel for motions.

**(c) Priority Project Identified by CEELI**

CEELI was asked by the Legislative Section of the Ministry of Justice to provide assistance on the new criminal procedural code because they are examining the adversarial system as a source of reform. The drafting group has looked at the Italian experience closely because Italy overhauled its code of criminal procedure in 1988, discarding many aspects of the hierarchical system in favor of numerous principles and processes of Anglo-American adversarial procedure.

The Czech Criminal Procedure Drafting Group is approaching the drafting in a process similar to the Hungarian approach. The drafting group, comprised primarily of high-level government officials, judges and legal scholars meets almost weekly for as long as practicable -- sometimes only a few hours. Then periodically they go on retreat for a few days to further develop their thinking in the form of a concept paper. They plan to continue redrafting these concept papers until it reaches a level of development where they will begin drafting the actual code.

CEELI responded to this request by forming a Czech Criminal Procedure Working Group comprised of a judge, a law professor, a prosecutor, and several practitioners. CEELI sent Yale law professor and comparative criminal procedure authority Abe Goldstein to participate in a workshop which focused on the latest concept paper, and to meet with members of the drafting group. Professor Goldstein chairs the working group as it continues to provide assistance.

(d) **Benchmarks -- Targeted Areas of Improvement**

The project can be broken down into the following benchmarks:

(i) The liaison will provide information to the drafting group, translate and deliver the work of the working group, and coordinate all aspects of the project.

(ii) The working will continue to respond to issues raised by providing information and advice. Issues raised to date include: discretion in prosecution, guilty pleas and bargaining, judicial proceedings, victims, providing counsel for the indigent, and investigative procedures.

(e) **Intended Result -- Impact**

The planned impact of this project is the adoption of a fairer criminal procedure code which in turn will, it is hoped, raise public confidence in the process of criminal proceedings.

3. **Priority Issue # 3: Court Administration**

(a) **Goal Statement**

CEELI's goal is to assist the Czech government in effectively administering their courts through the development of a court administration plan, instruction in docket management, and technology advancements such as computerization.

(b) **Factual and Legal Background**

Effective court administration includes docket management systems, computerization and case load management. This area has become a major concern for the Czech government as they attempt to reform the judiciary. Consequently, the Ministry of Justice is trying to create a coherent and systematic plan for the development of court administration.

In the 40 years of communist rule, not many technological advances were made in this area. Court effectiveness within the context of justice was not a main concern. The main problem facing the Czechs in this area is not a lingering memory of communism, but the physical skeletal remains of a communications infrastructure that was outdated even in the 1940s. The phone lines and relay systems simply do not work well, if at all. Consequently, one goal of the Czechs is to find a way to automate their courts and to communicate with other courts without using the phone lines. An overall analysis of court administration, however, must precede the move to computerization and other technological improvements.

(c) **Priority Project Identified by CEELI**

CEELI has been asked by the Ministry of Justice to provide a legal specialist in the area of court computerization and court administrative issues. Due to limited resources, CEELI will not be able to fulfill this request unless additional funding becomes available.

(d) **Benchmarks -- Targeted Areas of Improvement**

The establishment of a comprehensive court administration plan is the primary benchmark. The legal specialist would assist in identifying the issues which the plan ought to address. The second benchmark is the development of the computer and other automation options.

(e) **Intended Result -- Impact**

The intended result is a more efficient and effective administration of the courts in the Czech Republic.

**SLOVAKIA****V. SUMMARY OF CEELI ACTIVITIES IN SLOVAKIA,  
JANUARY - AUGUST 1993**

Shortly following the dissolution of the CSFR in January 1993, CEELI sent Gary Davidson to serve as its resident liaison for Slovakia. Mr. Davidson lived in Bratislava, and acted as CEELI's liaison from February to June 1993. In late July 1993, Jean Garland succeeded Mr. Davidson as liaison in Slovakia. Ms. Garland will remain in Bratislava until at least January 1994.

During his tenure as CEELI's first liaison in Bratislava, Mr. Davidson devoted much of his time to developing local contacts, explaining the purposes and capabilities of CEELI, and working to identify specific rule of law projects in which CEELI can become involved (as well as becoming acquainted with individuals who can work with CEELI on a regular basis). More specifically, while in Bratislava Mr. Davidson conducted the following activities:

- Met on numerous occasions with the heads of the Slovak Judges' Association; identified key problems of the Slovak judiciary (including the lack of judges, judicial applicants, and alternative dispute resolution techniques, inadequate judicial training, lack of judicial independence, and strained relations with the Slovak Ministry of Justice); and took steps toward organizing a judicial training workshop, which will be jointly sponsored by CEELI and the Council of Europe in late Fall 1993 (CEELI expects to fund the workshop with monies from the International Association of Trial Lawyers)
- Attended a conference of the Slovak Judges' Association in March 1993, at which a draft proposal for a new judicial code was circulated and discussed
- Conferred with the Milan Simecka Foundation, a human rights organization, regarding possible CEELI assistance in obtaining materials for law-related educational seminars in Slovak primary and secondary schools
- Lectured on economic sanctions under international law at a course sponsored by the British Jan Hus Foundation, and identified potential joint projects with the Foundation (such as a program designed to increase access to American and European law books and computer-assisted legal research)
- Consulted with the assistant director of the Institute of Law at the Ministry of Justice regarding future CEELI assistance on issues such as judicial caseload management and prison overcrowding

- Consulted with the director of the International Law Department of the Foreign Affairs Ministry, regarding assistance in developing a plan that would enable Slovakia to succeed to more than 800 multilateral treaties that were ratified by the former Czechoslovakia
- Moderated the Kosice Student Conference on the Transition, a gathering of students from Central and Eastern Europe that discussed the legal, social, and political implications of nationalism and discriminatory behavior in the region

## **VI. RULE OF LAW COUNTRY STRATEGY FOR SLOVAKIA**

### **A. Current Status of Legal Reform in Slovakia**

Despite optimistic hopes for a smooth dissolution of the Czechoslovakian federation (the dissolution was dubbed the "velvet divorce"), newly independent Slovakia is experiencing serious economic and political difficulties. Unemployment hovers at more than 11 percent (compared to two to three percent in the Czech Republic), and inflation is accelerating. Contributing to the bleak economic picture are Slovakia's decrepit infrastructure, its inefficient industrial base, a stalled privatization program, and a desperate shortage of domestic capital and foreign investment.

Although the Czechs and Slovaks negotiated a customs and currency union prior to their split, relations between the Czech and Slovak Republics have deteriorated. Bilateral trade decreased by almost 70 percent during the first four months of 1993, and the two countries introduced their own currencies in early February, causing Slovaks to withdraw their money from Bratislava's banks. Moreover, the Czechs and Slovaks are engaged in a bitter dispute over the division of some of the former Czechoslovakia's assets.

On the political front, the Government of Prime Minister Vladimir Meciar has been faced with increasing pressure from within its own ranks. The foreign minister was dismissed in mid-March, after he had criticized Meciar's style of governance. The minister of the economy, Ludovit Cernak (lead of the Slovak National Party, or SNP), resigned in February to protest the appointment of a former communist as defense minister. Cernak's departure, and subsequent mud-slinging between Meciar and Cernak, threatened Meciar's Government because his ruling Movement for a Democratic Slovakia (MDS) is two votes short of a parliamentary majority and must depend upon opposition support to pass legislation.

Notwithstanding the personal animosity between Meciar and Cernak, leaders of the two parties are attempting to put together a coalition in order to preserve the present Government. Meciar and Cernak, while continuing to hurl personal accusations at each other, take the public position that a workable coalition would be best for Slovakia. Nonetheless, chances for a successful "marriage" are low. Several other ministers have issued statements contradicting some of Meciar's positions, and Slovak President Michal

Kovak, who was elected with the support of the parliamentary opposition, also is critical of Meciar's style of governance. The privatization minister was dismissed in July as a result of his criticism of Meciar's Government, and the education minister "resigned." Both posts remain vacant, and Cernak is demanding that they be filled by SNP members in return for political cooperation.

The MDS came to power in 1992 largely by blaming Slovakian economic ills on federal reforms initiated in Prague. Because of economic downturns in Slovakia since independence, the public increasingly attributes the worsening economy to poor management by the Meciar Government. Currently, opinion polls place Meciar's popularity at only 25 percent. Mr. Meciar's declining public support is due, in part, to several highly regressive and unpopular policies. Specifically, his Government forced the closing of a leading opposition newspaper and passed a new law requiring the removal of Hungarian language signs (there are over 600,000 ethnic Hungarians living in Slovakia). In addition, the current administration canceled some major plans to convert state enterprises to private ownership and precipitated a confrontation with Hungary over Slovakia's diversion of the Danube. Concerns about Mr. Meciar's autocratic tendencies have prompted fears of a "creeping dictatorship" in Slovakia.

Despite its often regressive outlook, the Meciar Government appears strongly interested in obtaining membership in the Council of Europe and the International Union of Magistrates. As membership in such organizations cannot be attained without attention to human rights, human rights issues are beginning to gain attention at high levels of the Government. Because the judiciary can play a key role in guaranteeing human rights, judicial reform is expected to become a significant issue in the coming months.

## **B. Priority Issues for CEELI Assistance**

CEELI's program in Slovakia is relatively young. Since initiating the program in Bratislava in early 1993, CEELI has primarily worked with the judiciary on judicial reform issues. CEELI's new liaison, Jean Garland, will continue to expand CEELI's contacts in-country, to assess the status of legal reform, and to identify specific projects on which CEELI assistance will be provided. At this time, CEELI anticipates that its primary method of providing assistance in Slovakia will be through its resident liaison. The issues on which CEELI expects to work are described below.

### **1. Priority Issue # 1: Judicial Reform**

#### **(a) Goal Statement**

CEELI's goal is to assist the Slovaks in establishing a strong, independent judiciary.

**(b) Factual and Legal Background**

The Slovak judiciary currently is plagued with a wide variety of problems, including a lack of qualified judges, inadequate training, and lack of judicial independence. Also, while the judiciary operates under the Ministry of Justice (hence, its lack of independence), relations between the sitting judges (many of whom are fairly progressive in outlook) and the Minister of Justice (who does not appear reform-minded) are apparently strained.

Nonetheless, in 1992 a commission was created within the Ministry of Justice, with the mandate to prepare a new judicial code. While the commission has not yet issued a draft code, the Slovak Judges' Association has completed its own preliminary draft, aimed at addressing some of the problems confronting the judiciary.

**(c) Priority Projects Identified by CEELI**

CEELI's contacts within the Judges' Association have emphasized the significance of the new judicial code, and have sought CEELI's assistance in further developing it. CEELI plans to provide comments on the code, and may sponsor a workshop (or participate in a workshop sponsored by a German foundation) later this year. Ms. Garland currently is working with Slovakian contacts to identify the issues to be addressed; at the moment, however, it appears that the workshop may address issues raised in the proposed judicial code.<sup>22</sup>

CEELI also is exploring the possibility of assisting the Slovak judiciary in the development of a self-sustaining judicial training system; in learning how to prepare reasoned court decisions based upon a review of all sources of law; and in developing conflict of interest/ethical guidelines.<sup>23</sup>

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<sup>22</sup>In addition to American judges, CEELI will attempt to include at the workshop representatives from the Council of Europe and other European experts. CEELI will also seek to include a representative from the International Union of Magistrates ("IUM")(Slovakia's admission to the IUM is contingent upon the favorable report of an IUM observer who will soon be sent to Slovakia to determine whether Slovakia's courts comply with international human rights standards).

<sup>23</sup>Finally, CEELI contacts in Slovakia have noted that the introduction of an alternative dispute resolution system or other forum for the resolution of commercial disputes is viewed as important to the success of continued economic reforms. Commercial disputes currently become bogged down in the very slow-moving court system.

(d) **Benchmarks - Targeted Areas of Improvement**

The judicial reform project described above can be broken down into the following benchmarks:

(i) **Assessment of Draft Judicial Code**

During the first phase of the project, CEELI will prepare comments on the Judges' Association draft of the proposed judicial code. CEELI expects to complete its comments in late September.

(ii) **Technical Legal Assistance Workshop**

The next step in the project is a workshop, which CEELI hopes will be scheduled for later this year.

(e) **Intended Result/Impact**

CEELI expects that through this project, it will assist the Slovaks -- in taking the first steps towards making an independent judiciary a reality. CEELI hopes that its assistance will heighten the awareness of the Ministry of Justice and the Parliament regarding the importance of an independent judiciary.

2. **Priority Issue #2: Criminal Justice Reform (In Developmental Stage)**

Slovakia's Office of the Chief Prosecutor has two mandates: (a) to protect the rights of citizens vis-a-vis the government; and (b) to prosecute crimes.<sup>24</sup> The Slovak Constitution establishes the office of the public prosecutor. The head of the Office, the "Chief Prosecutor" or "Attorney General", is nominated by the President and confirmed by the Parliament. Under the Constitution, the Office technically is "independent" from the Ministry of Justice, and responsible only to Parliament. However, it is the judges -- operating under the Ministry of Justice -- who determine which cases to prosecute, and direct activities at trial. A current issue is how to make the Prosecutor's Office more independent in fact. Accordingly, in recent meetings with Ms. Garland, officials at the Office of the Chief Prosecutor have requested assistance in developing legislation that will restructure the Office and define its function and place within the Slovak criminal justice system.

Officials at the Office of the Chief Prosecutor also have asked for assistance in developing legislation aimed at combatting Slovakia's growing organized crime problem. Unfortunately, because much of the new organized crime activity results from Slovakia's

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<sup>24</sup>The Prosecutor's Office also may file complaints in the Constitutional Court to challenge the legality of certain actions (e.g., strikes).

struggling economy, the problem will be difficult to resolve without improvement to the economy as a whole.<sup>25</sup>

The Office also is interested in learning about prosecutorial discretion (most particularly, plea-bargaining); how to simplify their currently cumbersome court procedures; undercover investigative techniques and the U.S. federal witness protection program; and American law on "environmental crimes."

### **3. Priority Issue # 3: Bar Reform (In Developmental Stage)**

Ms. Garland already has met Dr. Stefan Detvai, President of the Slovak Bar Association, and CEELI plans to work closely with the Bar Association on issues relevant to improving the functioning of the legal system in Slovakia (such as enhancing professionalism of the bar, and developing mechanisms for continuing legal education).

### **4. Priority Issue # 4: Human Rights (In Developmental Stage)**

As a result of various minority groups among the Slovak population, the guarantee of human rights is a very important issue in Slovakia. CEELI previously has conferred with the Milan Simecka Foundation, a group that has sponsored an experimental program to teach elementary and secondary school teachers how to incorporate human rights into existing curricula. During his tenure in Bratislava Mr. Davidson also facilitated cooperation between the Simecka Foundation and National Institute for Citizen Education Law, Georgetown University Law Center program aimed at establishing a human rights project in Slovakia. One of Ms. Garland's tasks as CEELI's new liaison in Bratislava will be to explore further CEELI work in Slovakia on human rights issues.

### **5. Priority Issue # 5: Legal Education/Sister Law School Program**

As noted above, two Slovakian law faculties, Komenius University and Safarik University, have been paired with "sister" law schools in the United States. CEELI's new liaison will meet with officials of these Slovakian faculties to explore their interest in strengthening ties with their sister schools, and to discuss the possibility of encouraging exchanges of information, faculty members, and students between the American and Slovakian schools.

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<sup>25</sup>The Attorney General also has approached the charge d'affaires at the U.S. Embassy in Bratislava and requested assistance on the matters described above.

**C. Conclusion**

At this preliminary stage of CEELI's program in Slovakia, it is difficult to identify with certainty the precise impact that the program will have. CEELI expects to play a major role in assisting the Slovaks as they take the first step towards restructuring their judiciary. CEELI also hopes to assist the Prosecutor's Office in its efforts to improve the criminal justice system, and to assist the Slovak Bar in identifying and implementing reforms aimed at improving the functioning of the Slovak legal profession.

## ESTONIA

### I. INTRODUCTION

Shortly after the failure of the August 1991 coup in the USSR and the Declaration of Independence of Estonia and its recognition by the United States and other nations, CEELI made contact with the government of Estonia. CEELI's Executive Director, Mr. Mark Ellis, visited Estonia in May of 1992. Mr. Ellis explained to the Minister of Justice and other members of the government, members of the Estonian Bar, and law professors what assistance CEELI might offer this new nation in re-establishing the self-government it lost in 1940.

CEELI received a request for a liaison to be sent to Estonia, especially to Tartu University, home of the country's only law school. Various members of the law faculty of Tartu University have been very active in the drafting of new bills to bring about legal reforms and establish a market economy. The Chair of the Civil Law Faculty of Tartu University is also the Chair of the Estonian Law Review Commission.

### II. SUMMARY OF CEELI ACTIVITIES IN ESTONIA SEPTEMBER, 1992 - AUGUST, 1993

#### A. Resident Liaison Activities

Mr. McNeill Smith was selected to serve as CEELI's first resident liaison in Estonia. Mr. Smith arrived in Tartu, Estonia in September of 1992 and remained there as CEELI's liaison until the end of July 1993. Mr. Smith's replacement, Mr. Juri Taalman, who was born in Estonia and is fluent in Estonian, arrived in Tartu on July 30, 1993 and will remain in Estonia until at least January 1994. Mr. Smith's principal Estonian contact and professional host is Professor Paul Varul, Chair of the Civil Law Faculty at Tartu University and Chair of the Estonian Law Review Commission. Various members of the law faculty and their students at Tartu University have been working on drafting new bills to bring about legal reforms. The law faculty as a whole is an important resource for the Estonian parliament, as few lawyers actually serve in the parliament.

In addition to commenting (formally and informally) on numerous legislative proposals, responding to various short-term requests for information and written materials on a wide array of legal topics, lecturing to and meeting with attorneys, law students, and government officials, and coordinating CEELI's assistance from the United States and within Estonia, Mr. Smith and the CEELI resident legal experts in Estonia have provided direct assistance to various governmental and non-governmental entities. CEELI's liaison's activities have included the following:

- Helping the law faculty of Tartu University create an Institute of Government (based upon contacts with the North Carolina Institute of Government) for the continuing

education and training of elected and appointed public officials and administrators;

- Assisting in the development of a generic English-language law library in Estonia with the donation of numerous English-language legal materials to the law library of Tartu University;
- Teaching a Fall semester course in Contracts and a Spring semester course in Company Law at Tartu University;
- Offering critical advice to law students at Tartu University on papers dealing with advanced legal topics;
- Reviewing English translations of scholarly papers written by members of the Tartu University law faculty;
- Helping in the preparation of an Estonian-English glossary of legal terms which most frequently impair translation work;
- Arranging interviews with Estonians involved in the legal reform process for an American educational documentary crew filming in the country;
- Supporting the activities of the Estonian Association of Lawyers and the Estonian Bar Association.

#### **B. Legal Specialists**

In addition to long-term attorney liaisons, CEELI sends legal specialists to host countries to provide assistance on specifically-identified legal reform projects. The specialists generally have substantial experience in the relevant area of the law. In response to requests from Estonian officials, CEELI has sent the following legal specialists to Estonia:

**Professor A.N. Yiannopoulos**  
**Comparative Law Specialist**  
**Estonian Civil Code-Property Section**  
**February 1993**  
**Tallinn, Estonia**

Professor Yiannopoulos provided assistance to Professor Varul, Chair of the Civil Code Drafting Commission on revisions of the property law section of the 1940 Civil Code. In addition to meetings with Professor Varul, Professor Yiannopoulos met with other members of the Civil Law Drafting Commission; the Minister of Justice; Chancellor of Justice; and Members of Parliament. Professor Yiannopoulos' visit was coordinated in association with the Center for International Management Education (CIME).

**John Burke**  
**Criminal Law Specialist**  
**6/93-8/93 (three months)**  
**Tartu, Estonia**

Mr. Burke is assisting Erik Kergandberg, Professor of Criminal Procedure, with criminal procedure code and alternate dispute resolution issues. Estonians are currently reforming their criminal code and have asked for CEELI's assistance in this vast undertaking.

**C. Technical Legal Assistance Workshops**

To date, CEELI has not conducted a technical legal assistance workshop in Estonia.

**D. Draft Law Assessments**

The resources of the ABA allow CEELI to respond quickly to requests for assistance from in-country drafting committees. When a request is received, CEELI offers immediate assistance by circulating the draft legislation within the U.S. for comment. By relying primarily on ABA sections with appropriate expertise, CEELI can provide expert assessments of draft laws. CEELI provides bound volumes of comments to those involved in the drafting process. The assessments are translated into the local language and generally are circulated to a wide audience, including political parties, academics, and other experts.

From September, 1992 to date, CEELI has provided written assessments of numerous draft Estonian laws, including:

- Draft Law on Contractual Security Interests in Property (10/92)
- Draft Copyright Law (10/92)
- Draft Concession Agreement on New Telephone System (10/92)
- Draft Bankruptcy Law Regulations (11/92)
- Draft of Chapter Five of the Enterprise Law Regarding Termination of the Activity of an Enterprise (2/93)
- Draft Securities Act (2/93)
- Analysis of Book Four, Property Law, of the Draft Civil Code (assessed in cooperation with the Center for International Management Education) (2/93)

### **E. Legal Education/Sister Law School Program**

The chairman of the Civil Law Department of the University of Tartu Faculty of Law will visit UNC-Chapel Hill, Georgetown University Law Center, and Notre Dame Law School in mid-September 1993.

## **III. RULE OF LAW COUNTRY STRATEGY FOR ESTONIA**

### **A. Current Status of Legal Reform**

On September 20, 1992 voters in Estonia endorsed sweeping economic changes by voting into office the Pro Patria coalition, a coalition of five parties with a strong pro-market orientation. The Pro Patria party won 29 of 101 seats in parliament. Secure Home, a party favoring the delay of market reforms, won 17 seats in the parliament. Lennart Meri, of the Pro Patria party, was elected President on October 6, 1992, in a special parliamentary run-off election. Mart Laar, a thirty-three-year-old historian and member of the Pro Patria party, is the country's new Prime Minister. The Laar Government is a coalition composed of members of the Pro Patria, Moderate, and Estonian National Independence parties. Noteworthy is the fact that Estonia's former communists, now renamed the Left Opportunity party, were not able to get a single parliamentary seat in the September elections.

Based upon the information received by our liaison, we anticipate that there will be at least 50 major bills considered by Parliament and the various ministries in Estonia during the remainder of 1993. The major pieces of legislation to be considered in Estonia are the remaining sections of the Civil Code, which have yet to be passed by the Estonian Parliament. Most other legislative activities are effectively on hold until the Civil Code is passed. Estonia is the first of the former republics of the USSR to complete any portion of a new Civil Code since its independence. The remaining parts of the Civil Code, namely General Provisions, Obligations, Family Law and Inheritance, are currently being drafted. The second most important concern for Estonians is the drafting and passage of a Commercial Code. Prime Minister Mart Laar has identified privatization of the economy as a priority for Estonia. A new State Property Agency has been created under the new privatization law and commercial sales of property are beginning under the new privatization law. The creation of a civil code will facilitate and stabilize the commercial transactions occurring in Estonia.

### **B. Priority Issues for Providing CEELI's Assistance**

CEELI's primary means of providing assistance is through its resident liaison, Juri Taalman. Since his arrival in late July, Mr. Taalman has contacted several government officials and is responding to their requests.

## **1. Priority Issue # 1: Criminal Law**

### **(a) Goal Statement**

The primary objective of American legal assistance in criminal law reform in Estonia is to enable the Estonian government to produce a modern comprehensive statutory scheme achieves a balance among competing interests in the detection, prosecution and punishment of criminal conduct and incorporates generally recognized human rights.

### **(b) Factual and Legal Background**

The Republic of Estonia declared its independence from the Union of Soviet Socialist Republics in August 1991. Prior to declaring its independence, the criminal law in Estonia was governed by the Soviet codes. The Soviet criminal law outlawed private commercial activity, as well as generally recognized criminal conduct. The Soviet procedural code authorized state action against individuals inconsistent with internationally recognized norms of individual rights.

The existing practices of criminal procedure are based on the Soviet legal scheme. Sharp distinctions are made between the roles of the police and prosecutor. Unlike the American system, where police and prosecutor often work in conjunction to detect, investigate and solve crime, the Estonian system assigns the investigative function to the police and requires the prosecutor to supervise the legality of the pre-trial procedures the police use. Similarly, the Estonian system distinguishes sharply between the "preliminary investigation" stage of the prosecution and the trial. The court plays a very limited role during the preliminary investigation stage. It is believed that an active court during this stage would taint its impartiality during the trial.

Estonia adopted a new constitution in July 1992. The constitution provides for three branches of government and separation of powers, gives the judiciary rights and liberties. The constitution thus invalidated several provisions of existing criminal law and provisions inconsistent with constitution and democratic government. Other provisions were repealed to facilitate the transition from a planned to a market economy. Many new provisions are interim decrees of the executive branch of government. The new provisions of the procedural code limit the exercise of state authority against persons suspected of committing crimes, and adopt some legal precepts based on the rule of law.

During the Soviet period, Estonia had an average rate of 10,000 crimes per year. In 1992, after independence, it is estimated that 43,000 crimes were committed. The rate of crime and the violence of criminal activity is increasing. Organized crime accounts in part for the increase in number and character of crime. Estonia is a transit point for smuggling of non-ferrous metals, such as copper, and drugs. The growing number of unemployed may also account for the increase in the rate of crime.

These changes pose serious problems to the Estonian criminal justice system. First, the criminal justice system is understaffed and underpaid. The shortage of staff applies especially to the judiciary. Second, there are only 150 members of the Estonian bar specializing in criminal work. Private lawyers do not want to accept the low wage paid to represent indigent defendants because the lawyers now pay income taxes and business expenses resulting from privatization. Third, the court system is in the process of transition, and the procedure and law are unsettled.

Existing criminal practices and the European tradition are likely to influence the revision of criminal law in Estonia. The revision takes place in the context of practices established during the Soviet occupation. Fundamental change in many areas raises serious political problems since the thinking of government officials derives from the Soviet period. The German code also is regarded as a model for the draft Estonian Criminal Procedure Code due to the historical relationship between Germany and Estonia.

**(c) Priority Project Identified by CEELI**

CEELI has placed a Criminal Law Legal Specialist in Tartu to assist and advise in the drafting of the Criminal Procedure Code and review of the Code of Criminal Law. CEELI will also assist with training of attorneys and judges in the intricacies of the new codes. Participation in the drafting process enables CEELI to have an impact when it is most likely to produce concrete results. The basic concepts of the law are under consideration and, as a result, there is an opportunity to effect basic changes which would help ensure the development of an orderly and fair criminal process and a well-defined law protective of human rights.

**(d) Benchmarks - Targeted Areas of Improvement**

This project will include the following benchmarks:

- (i) The CEELI Legal Specialist will advise and assist with the drafting of the Code of Criminal Procedure.
- (ii) The CEELI Legal Specialist will review and submit comments on the draft Code of Criminal Law prior to its consideration by the Ministry of Justice.
- (iii) The CEELI Liaison will track the legal developments and identify legal and practical problems that arise after the codes are implemented.
- (iv) The CEELI liaison will organize in-country training seminars for public officials and practicing attorneys, subsequent to the enactment of the Codes, to discuss nuances in the laws and practical problems of implementation.

(e) **Intended Result/Impact**

The intended result of the CEELI strategy for criminal law reform in Estonia is the development of an orderly and fair criminal process that strikes a balance between rights of the accused and defense counsel, and the authority of the investigating magistrate/prosecutor. In short, CEELI hopes to impact upon the development of a well-defined and predictable process that is protective of human rights.

2. **Priority Issue #2: Civil Code**

(a) **Goal Statement**

CEELI has identified as a high priority assisting the Estonians in developing a comprehensive Civil Code by providing expert commentary, during the drafting process, on the remaining sections of the civil code, namely General Provisions, Obligations, Family Law and Inheritance.

(b) **Factual and Legal Background**

The major pieces of legislation to be considered in Estonia are the remaining sections of the Civil Code, which have yet to be passed by the Estonian Parliament. Most other legislative activities are effectively on hold until the Civil Code is passed. Estonia is the first of the former republics of the USSR to complete any portion of a new Civil Code since its independence. The remaining parts of the Civil Code, namely General Provisions, Obligations, Family Law and Inheritance, are currently being drafted. Prime Minister Mart Laar has identified privatization of the economy as a priority for Estonia. A new State Property Agency has been created under the new privatization law and commercial sales of property are beginning under the new privatization law. The creation of a civil code will facilitate and stabilize the commercial transactions occurring in Estonia.

(c) **Priority Project Identified by CEELI**

CEELI, through a working group comprised of American professors with comparative law background and Canadian professors, will provide expert commentary on the remaining sections of the Civil Code, namely General Provisions, Obligations, Family Law and Inheritance.

(d) **Benchmarks - Targeted Areas of Improvement**

(i) CEELI through its working group will continue to advise in the drafting of the remaining sections of the Civil Code.

(ii) The CEELI liaison will track the legislative consideration of the draft legislation comprising the sections of the Civil Code.

(iii) The CEELI liaison will participate in training seminars and workshops that the Estonian drafters and government officials would convene around the remaining areas of the Civil Code.

(e) **Intended Result/Impact**

The intended result is to assist in the development and implementation of a comprehensive system of civil law for Estonia, which becomes increasingly important as the privatization process moves forward. CEELI will provide additional comparative perspective to the drafting process. The expert advice that CEELI provides will serve to help the Estonians improve the quality of the new legislation being prepared in Estonia.

**3. Priority Issue #3: Judicial Reform**

CEELI's primary method of providing assistance in the judicial reform process in Estonia will be through the activities of its resident liaison. The CEELI Liaison will assist in organizing the first Baltic Judicial Conference to be held in September, 1993, which will help to foster dialogue and communication between the judiciaries of the three Baltic countries.

(a) **Goal Statement**

CEELI hopes to foster a strong and independent judiciary, and promote an efficient and effective judicial system in Estonia.

(b) **Factual and Legal Background**

The Estonian court system is in its infancy. The Estonian constitution adopted July 4, 1992 established an independent judiciary headed by the National Court. The latter court held its first session in Tartu on August 10, 1993, and heard arguments concerning the legality of the Narva referendum. The court issued its decision that day and invalidated the referendum because local governments do not have the authority to initiate referenda to determine autonomy from the state. Although the Parliament has authorized the creation of 200 judgeships, only 20 positions have been filled. The remaining positions must be filled by September when the courts reconvene.

(c) **Priority Project Identified by CEELI**

CEELI has organized a working group in Washington, D.C. to formulate a plan for a judicial training program to be used throughout the region. CEELI is drawing upon the experience of its judicial training specialists that were sent to Albania, Latvia, Lithuania, and Bulgaria to prepare a comprehensive program.

The CEELI Liaison will utilize the materials and techniques developed by the CEELI Judicial Education Group to bolster and augment fledgling educational programs in the courts.

**(d) Benchmarks - Targeted Areas of Improvement**

- (i) CEELI will support the formation of an Estonian Judges Association.
- (ii) CEELI liaison will support the nascent judicial education programs.
- (iii) CEELI will promote and provide commentary on a judicial code of conduct.
- (iv) CEELI intends to hold a conference of judges from Central and East Europe in the late Spring of 1994.

**(e) Intended Result/Impact**

The Estonians are aware that a competent and independent judiciary will be essential for the future success of their nascent democracy and free society and through a comprehensive and well thought-out plan of judicial education, the independence and vitality of their judiciary will be assured.

**4. Priority Issue #4: Institute of Government**

**(a) Goal Statement**

To facilitate the establishment of means to provide practical training and short refresher seminars for public servants, and to monitor its development.

**(b) Factual and Legal Background**

With the encouragement of the Law Faculty of Tartu University, the approval of the Office of the University Rector, and the interest of the University of North Carolina School of Law, CEELI's liaison prepared and refined drafts of a proposal to establish an Estonian Institute of Government to provide practical training and short refresher seminars for public servants (elected, appointed, or hired) who deal with the public on an everyday basis - e.g. police officers, clerks of the court, registers of titles and liens, tax collectors and assessors, inspectors, city and district commissioners, judges, legislators, and others. In establishing and maintaining the rule of law, these public servants need to know the answers to such questions as:

- What is the scope of his or her authority?
- How can the job be done most efficiently?
- What forms can simplify the task for the official and the citizen?

The aim of the Institute of Government is to provide practical training, and thereby, bridge the gap between law in the books and law in action. The model and would-be partner in this project is the Institute of Government founded at the University of North Carolina during the New Deal era.

During the past year, Tartu University has negotiated with the Institute of Government of the University of North Carolina School of Law to create an Estonian model. A representative from the Institute of Government in North Carolina visited Estonia in late June to assess the feasibility of establishing a sister Institute of Government in Estonia. In August 1993, Professor Varul of the University of Tartu will visit North Carolina to further discuss the program.

**(c) Priority Project Identified by CEELI**

The CEELI Liaison will monitor this project and facilitate its creation. CEELI, however, will not take the primary role in establishing this institute. That role will be left to the University of North Carolina and the Estonians. CEELI will furnish logistical support, but the actual details of planning, staffing, and directing the establishment of the Institute in Estonia will be handled by the University of North Carolina and the Institute of Government in North Carolina. Through its liaison, CEELI will facilitate the creation of an Estonian Institution of Government.

**(d) Benchmarks - Targeted Areas of Improvement**

The CEELI Liaison will provide logistical support for the Institute, but the actual details of planning, staffing, and directing the establishment of the Institute in Estonia will be handled by the University of North Carolina and the Institute of Government in North Carolina.

**(e) Intended Result/Impact**

To facilitate the establishment of the Institute of Government which will provide practical training, and thereby, bridge the gap between law in the books and law in action.

**C. Conclusion**

Through CEELI's work on the civil code, criminal code and criminal procedure code, as well as other draft legislation, CEELI will provide additional comparative perspective to the drafting process. The expert advice that CEELI provides will serve to help the Estonians improve the quality of the new legislation being prepared in Estonia. CEELI's working group for the Civil Code is comprised of American professors with comparative law background and Canadian professors. CEELI will seek to include other foreign experts in its working group as the need arises. CEELI's assistance on the Property Section of the Civil Code has helped to clarify the rights of property owners, which will become increasingly

important as the privatization process moves forward.

CEELI's participation in the Baltic Judicial Conference will assist the Estonian judiciary in identifying common issues facing the judicial branches in the Baltic countries. CEELI will follow up on the information gathered from this conference by devising methods of assisting the judiciary in methods of judicial training.

The establishment of an Institute of Government in Estonia will help to achieve the goal of developing a well-trained civil service to implement the newly enacted legislation. Through the efforts of its liaison, CEELI will facilitate the work of the University of North Carolina to create this institute.

## HUNGARY

### I. INTRODUCTION

CEELI's involvement in programs in Hungary began in October 1991. A technical legal assistance workshop held that month on public administration law laid the groundwork for the posting of CEELI's first full time liaison. This report summarizes CEELI's work in Hungary in the rule of law area.

### II. SUMMARY OF CEELI'S ACTIVITIES IN HUNGARY OCTOBER 1991 - AUGUST 1993

#### A. Resident Liaison Activities

CEELI has provided long-term legal assistance to Hungary through the efforts of on-site attorney liaisons. Stephen Stec, who served as the first resident liaison in Hungary from January 1992 to January 1993, was sponsored by the Chief Public Prosecutor's Office, and worked on various projects during his term. He continues to reside in Hungary and is currently acting as CEELI's Regional Environmental liaison, a position not funded by AID. David Gustafson replaced Mr. Stec in January 1993 and will serve as the CEELI liaison until January 1993.

CEELI's liaisons have provided direct assistance to various governmental and non-governmental entities. CEELI has provided informal assistance and responded to requests for information on computer crime issues at the request of the Hungarian government. CEELI has also responded to requests for comparative information on the training of Civil Servants to assist in governmental reform efforts. Mr. Gustafson worked with the Ministry of the Interior concerning the sharing of power and information between the central and local governments, as well as with the Ministry of Justice. Mr. Stec has been working with the Ministry of Justice and the Public Prosecutor's Office and has provided information on the American criminal justice system. Mr. Gustafson has specifically provided information on the workings of the Department of Justice and the U.S. Attorney's Offices, as well as providing comparative information on how the procuracy works in other countries. Mr. Gustafson has also provided information regarding the training of civil servants. Their activities have also included organizing technical legal assistance workshops and short-term expert consultations as described further below.

#### B. Assessments

CEELI has provided the following assessments of draft laws:

- Amendments to the Penal Code relating to Bankruptcy (January 1992)
- Radio and Television Law (August 1992)

- Offenses Violative of Obligations concerning Economic Activity (October 1992)
- Draft Law on Criminal Procedure (October 1992)
- Amendments to the Criminal Code (June 1992)
- Environmental Protection (November 1992)
- Personal Data Protection
- Habeas Corpus Law (March 1992)
- Law on the Police (April 1992)

#### C. Legal Specialists

Robert King, Chief of Staff to Congressman Tom Lantos, advised the government of Hungary on the legislative process.

#### D. Technical Assistance Workshops

CEELI has sponsored the following Technical Assistance Workshops:

Administrative Law Reform, Budapest, October 28-31, 1991. Participants included Eldon H. Crowell, Esq.; Jeffrey S. Lubbers, Esq.; Marianne K. Smythe, Esq.; Thomas S. Susman; and Elmar Giemulla, Esq. The workshop was made possible by a grant from the National Endowment for Democracy and organized and carried out in cooperation with the Hungarian Lawyers' Association.

Criminal Procedure, December 16-18, 1992. Participants included Andrew Fois, Chief Counsel, Committee on Crime and Criminal Justice, U.S. House of Representatives; Professor Abraham Goldstein, Yale University; Professor Joachim Herrmann, University of Augsburg; Joseph Jones, Esq.; Reid H. Weingarten, Esq. The discussion in this workshop centered on the two main proposals for reforming the criminal procedure system. CEELI has worked with the Ministry of Justice on this project.

### **E. Legal Education/Sister Law School Program**

CEELI's Sister Law School Program has paired the law faculties at four Hungarian universities with a consortium of three law schools in the United States. The deans from the participating American and Hungarian law schools work together to explore possibilities for faculty and student exchanges, joint research projects, and assistance in library development, curriculum reform, and law school administration. The following Hungarian and American law schools now participate in CEELI's Sister Law School Program:

#### Eotvos Lorand University

University of California School of Law, Boalt Hall, Berkeley  
 Santa Clara University School of Law  
 University of Connecticut School of Law

#### Miskolc University

University of Illinois College of Law  
 Baylor University School of Law  
 Nova University Center for the Study of Law

#### Jozsef Attila University

University of Topeka, Washburn School of Law  
 California Western School of Law  
 Emory University School of Law

#### Janus Pannonius University

Wake Forest University School of Law  
 Northwestern University School of Law  
 College of William and Mary, Marshall-Wythe School of Law

### **III. RULE OF LAW COUNTRY STRATEGY FOR HUNGARY**

#### **A. Current Status of Legal Reform in Hungary**

Unlike many of its neighbors in Eastern Europe and the former Soviet Union, Hungary's transition from communism to democracy occurred in an evolutionary fashion and was virtually without large-scale upheaval or violence. As a fledgling democracy moving toward a free-market economy, Hungary's political system has been notably stable during the three years since the fall of the Soviet empire. While extremist nationalist sentiment does exist [and takes political shape in the form of the Magyar ut ("Hungarian Way") party], such extremism gathers support from only 3-4 percent of the public. Despite the dislocations caused by the change in economic systems, no large-scale constituency exists for a return to the old system or for any other form of totalitarian government.

There is presently significant dissatisfaction with the ruling Democratic Forum Party (MDF) because the public perceives a drift in policy, ever-increasing budget deficits, and economic changes that are occurring too slowly or do not result in tangible benefits to the population at large. At present, most polling data shows that the FIDESZ (Young Democrats) party has more support than other political parties, including the MDF. FIDESZ's party platform emphasizes faster-paced privatization and lessened government involvement in the lives of citizens generally. Despite the apparent popularity of FIDESZ, however, political analysts have concluded that the next national election (scheduled for Spring 1994) is essentially up for grabs. Voter apathy is high, and FIDESZ's popularity may be more a reflection of disenchantment with the governing MDF and the promised benefits of the changeover to a free-market economy than a reflection of genuine support for FIDESZ.

As a result of the shifting political atmosphere, resolution of controversial issues like promulgation of a media law (which would determine in part how much governmental involvement there will be in the flow of information) has been postponed at least until the upcoming elections in 1994. Similarly, while there is support for drafting a new constitution (the present one is a patchwork of amendments from the old socialist constitution), no efforts will be made to do so until the elections occur and greater consensus is achieved.

Privatization will probably continue at its present modest pace because there is not much support for the shock therapy approach used in Poland and elsewhere. Hungary has generally been considered by Western investors to be a relatively hospitable venue for investment, and Hungary has in fact eliminated many restrictions against foreign ownership. The Hungarian forint however has yet to be made fully convertible, and the banking system remains a largely intact oligopoly, charging usurious rates. Thus, movement towards free-market operation will continue but probably not at an accelerated pace due to the unwillingness of the government to make its currency convertible and to reform the banking system to provide investment financing at commercially viable interest rates. These impediments to economic change are reflected in Hungary's recent slip from first to third (or fourth) among East European countries providing the best business climate.

#### **B. Priority Issues for Providing CEELI Assistance**

CEELI's primary method of providing legal assistance is through its liaison. CEELI's assistance has been most effective in its daily presence of its liaisons, which permits consultation with and the provision of answers to specific legal questions asked by individual Hungarian officials in the various ministries. The liaison is able to engage in discussions in depth regarding Western legal systems. Local officials in Hungary have been skeptical of western promises of assistance and the continuous presence of the CEELI liaison has enabled CEELI to develop relationships of trusts with Hungarian officials. The exposure to sharing information and working in a cooperative manner benefits the Hungarians who, due to their communist legacy, are generally reluctant to share information. Mr. Gustafson provided assistance on a daily basis to the Ministry of Justice on a variety of topics, including questions of civil procedure, constitutional law, and litigation, among others. Mr.

Gustafson's work is done primarily for the Public Law Section, the Civil Section and the Judicial Section of the Ministry.

Mr. Gustafson is also involved in assisting the local AID office in establishing a local legal defense fund for Hungarian minority groups by providing comments upon the proposal and in providing legal training when the office has been established.

CEELI has identified the following issues as those upon which it will focus its efforts during the remainder of the grant cycle:

**1. Priority Issue #1: Judicial Reform**

**(a) Goal Statement**

To encourage the judiciary of Hungary to become a strong, independent branch of government on a co-equal basis with the executive and legislative branches. CEELI also hopes to increase the status of the judiciary by encouraging a professional adherence to an ethical code. In connection with judicial reform and promoting the independence of the judiciary, CEELI has also identified judicial ethics and court administration as important issues. The Hungarian Constitutional Court, for example, has requested that CEELI provide an expert in docketing and creating an efficient administrative office. Due to limited funding, however, CEELI will not be able to fill this position unless additional funding becomes available.

**(b) Factual and Legal Background**

Hungary has had a turbulent and oftentimes troubled history resulting from a succession of foreign invasions, unsuccessful rebellions against foreign dominance, lost wars, and totalitarian governments. Hungary's legal traditions spring principally from German influence, both directly and through the dual monarchy existing with the Austrian Hapsburg empire. As a result, the judiciary in Hungary has suffered and judges have seen themselves as instruments of state power rather than as bulwarks existing between the rights of citizens and the unrestrained power of the state. Added to this pre-disposition has been the unfortunate legacy of a succession of totalitarian governments in the 20th Century. During World War II, the government allied with Nazi Germany, and was followed by a succession of Stalinist and post-Stalinist communist governments following World War II. In none of these governments was the judiciary viewed by the public (or by itself) as a creature divorced from the comprehensive power of the State. In the post-World War II era, especially during the formative years of Hungarian communism influenced by Stalin, the judiciary was nothing more than a vehicle of repression (and sometimes terror) visited upon the public by the government.

Despite the lessening of governmental terror and repression following the 1956 Revolution, the courts continued to operate under socialist principles, neither independent of other branches of government nor protective of the rights of Hungary's citizens. Today despite the institution of the Hungarian Constitutional Court (widely respected by Hungarians generally and looked to as a model for emulation by other Eastern European countries), the remainder of the judiciary (from the local courts to the Supreme Court in Budapest), remain largely oriented toward the old model of structure and behavior. Because the Constitutional Court's jurisdiction is limited to determining constitutional questions (often in the abstract), the remainder of the judicial hierarchy exercises great involvement in the lives of Hungarian citizens. Most criminal and civil matters are ultimately resolved in this hierarchy without recourse to the Constitutional Court.

In addition to the problems resulting from past legacy, the judiciary in Hungary is underpaid and, not professional and, therefore, does not exercise a major influence in society or engender the respect of any sizable part of the public. Most members of the judiciary are selected directly out of law school (at approximately 22 years of age), do not possess vast legal (or life) experiences that they can draw upon to carry out their judicial tasks. The judiciary is beholden to the Ministry of Justice for its budget, for judicial training, and for representation before Parliament. The status of judges remains low; many existing judges were politically compromised during the communist regime and consequently enjoy no respect from the public. Because judicial officials were considered part-time employees, Hungarian society deemed these jobs to be appropriate for women, who would then have free time for child-rearing and housekeeping. The low status of the judiciary and the lack of true judicial independence are long-term problems which will remain until the judiciary is restructured and reconfigured with a new generation of judges. Moreover, because law school training throughout Hungary is almost exclusively theoretical, it does not prepare prospective judges for the basic, practical problems that they are called upon to solve as judicial officers. Although there is a post law-school training period for judges, this is carried out under the auspices of the Ministry of Justice which has a vested interest in discouraging true judicial independence or any acknowledgement that the courts should be separate and distinct from other governmental branches.

Without fundamental changes made in strengthening the judiciary in Hungary, it cannot be expected that public respect for judges will be created, that adherence to the rule of law will be observed.

**(c) Priority Project to Meet Goal**

CEELI will conduct a technical legal assistance workshop for members of the Hungarian Supreme Court and lower court. The workshop will focus on issues relating to separation of powers and independence of the judiciary. CEELI will provide expert judges from the United States and European jurisdictions to speak on these issues and to answer questions from members of the Hungarian judiciary. CEELI hopes to coordinate this program with similar programs in Croatia and Slovakia, and thereby, encourage dialogue between members

of the judiciary in these countries on common problems and issues. CEELI anticipates that the Hungarian Judiciary may send a representative to the judicial reform workshops in Croatia and Slovakia to explain the problems faced in Hungary and proposed solutions.

**(d) Benchmarks- Targeted Areas of Improvement**

- (i) Publication of ABA Model Code of Judicial Ethics in Hungarian Supreme Court monthly journal for dissemination among Hungarian judiciary and to provide a background for which to base discussions at CEELI's workshop. This has already been completed.
- (ii) Translation/publication/dissemination of various law review articles, scholarly texts, codes of conduct regarding judicial ethics/separation of powers. 1993)
- (iii) Invitation of members of judiciary and conducting of workshop in Budapest and in one other Hungarian city (or more).
- (iv) Invitation to of selected members of the Hungarian judiciary to participate in judicial ethics workshops to be held in Croatia and Slovakia.
- (v) CEELI will also assess the statute redefining the jurisdiction of the Hungarian Constitutional Court to limit access to the court to only certain defined circumstances. The CEELI liaison has been attempting to secure funding for the Hungarian Constitutional Court to translate the Court's decisions into English and Russian for publication and dissemination throughout the region of eastern Europe. CEELI has also undertaken to select appropriate U.S. Supreme Court decisions for translation into Hungarian and publication in the monthly journals of the Hungarian Supreme Court and the Hungarian Constitutional Court. This project is funded by the local USIA office and CEELI will ask U.S. constitutional scholars to select those decisions of the U.S. Supreme Court that are appropriate.

**(e) Impact/Intended Results**

To expose members of the Hungarian judiciary to the western view of the high stature of judges and their status as final arbiters of societal conflicts and determiners of law. Also, CEELI hopes to provide opportunities for judges to discuss important issues with one another, and thereby, break down the isolation and lack of professionalism that many members of the judiciary operate within.

**2. Priority Issue #2: Local Government**

(a) Goal Statement - To assist the Hungarians in determining which functions should be carried out by central ministries and which functions should be carried out by local governments.

**(b) Factual and Legal Background**

Under communist rule, Hungary was entirely centralized. The concept of local autonomy is essentially new and the Ministry of Interior has been charged with determining how to allocate government functions between local governments and the central ministries. The Parliament has now passed a statute establishing local governments. Part of this effort will focus on how such services are to be financed. This project will be carried out over the course of the next few years.

CEELI has identified providing legal assistance in local government issues outside of Budapest as a priority for its rule of law program. CEELI intends to work with the Ministry of the Interior as it attempts to determine governmental responsibilities among the various ministries and the local governmental bodies. Also, Mr. Gustafson will assess the needs of the Hungarian legal community outside of Budapest. He intends to travel to the towns of Mkskolc, Pecs, and Szeged to arrange meetings with members of the judiciary, academics and private attorneys to discuss their perceived needs for legal reform.

Hungary, like much of both Western and Eastern Europe, has never been structured as any sort of federalized system of government. All power has been centralized exclusively in Budapest at the various ministries and decisions made there have been universally applied throughout all regions of Hungary regardless of region all differences and local needs. Neither input to these decisions nor responsibility for solving problems has been granted to local jurisdictions, resulting in a cumbersome and bureaucratic approach to governmental problem solving.

Since the transition to representative democracy has occurred in Hungary, however, this structure has started to change. The 1990 Self-government Act passed by Parliament initiated the establishment of a modern liberal system of local self-government where various tasks, such as education, road-building, police and fire services, and so forth, may be transferred to local authorities. This experiment in local government, however, is a new experience for Hungarian authorities, and as a result, a number of problems have arisen. Among the problems faced by the Ministry in carrying out this tasks have been: (1) determining which functions to transfer to local governments and how to finance such transferred responsibilities in light of Hungary's budget deficit and weak economy; (2) developing administrative and fiscal expertise at the local level; (3) preventing local politicians from using the transfer of government power as a basis for corrupt wealth generation or establishment of local kingdoms not responsive to public needs. (4) encouraging local authorities and citizens to take responsibility of their own problems when they are used to having the central government solve their problems; and (5) establishing the structure and form of local government (mayor/town council/ manager/etc.)

Success in establishing local authority and control over certain governmental services and in financing such tasks appropriately will serve a number of purposes. For example, it will

(1) decentralize political and economic power in Hungary and, thereby, discourage centralized planning that is often inappropriate to local needs; (2) strengthen political democracy in Hungary by spreading power over a wider range of individuals and governmental bodies; increase the perception (and reality) that citizens can often settle their own problems at a local level by their own actions and create a greater sense of citizen employment and participation in society; and (4) discourage the passivity that exists among large number of Hungarians as a result of having the central authorities in Budapest "solve" all problems.

(c) **Priority Project to Meet Goal**

CEELI hopes to provide a legal specialist in local and state government to be placed in the Ministry of the Interior. The placement of this expert is dependent upon sufficient funding being available. If CEELI is unable to provide a legal specialist, the liaison will provide consultation on local government issues, as possible.

(d) **Benchmarks - Targeted Areas of Improvement**

- (i) Consult with Ministry of Interior's regarding request for assistance with local government issues, including assisting in determination of projected tasks to be accomplished.
- (ii) Provision of CEELI legal specialist. (Pending sufficient funding).

(e) **Impact**

By providing a legal specialist in local government issues, CEELI hopes to facilitate the decentralization of power from the central government to local governments. By doing so, Hungarians will have a greater sense of participation in their government.

3. **Priority Issue #3: Criminal Law**

(a) **Goal Statement** - To assist in the reform of the prosecutor's office so that there is greater public control over the prosecutor, whose power was virtually unrestrained during the Soviet period.

(b) **Factual and Legal Background**

As mentioned previously, Hungary has had an unfortunate history of authoritarian or totalitarian governments. Both as a consequence of its civil law tradition and its legacy of socialist legal doctrine, the power of the public prosecutor's office had not been restrained by public influence or other governmental organs. The Hungarian government has

acknowledged this problem and is attempting to make the Office of the Public Prosecutor more responsive to outside control and more of a servant of Hungarian citizens rather than their master. The government has proposed placing the Public Prosecutor under the limited authority of the Minister of Justice and has drafted legislation to accomplish this goal. Debate has ensued over how increased control over the prosecutor's office can be established without making the office too susceptible to public capriciousness and political pressure. CEELI in the past has provided comments on a number of legislative modifications to the criminal law code and the criminal procedure code and expects to continue its assistance when the government revisits the issue of criminal law reform in the future. Because the government is pre-occupied with the elections that are scheduled for approximately May of 1994, it is expected that criminal law reform will not be addressed until mid-1994.

In the meantime, the principle on-going effort in the criminal area remains the restructuring of the public prosecutor's office. The government (both the Public Prosecutor's office and the Ministry of Justice) have expressed interest in obtaining CEELI's comments on such restructuring, especially in light of similar experiences and efforts being made elsewhere in Eastern Europe and the former Soviet Union and the resulting successes or failures of various approaches taken. The issue is a region-wide problem faced generally by most countries of the socialist bloc.

(c) **Priority Project Identified by CEELI**

CEELI has agreed to prepare an assessment of the draft Law Reorganizing the Public Prosecutors' Office. This law is necessary to strike a balance between restraining prosecutorial power but not allowing unbridled public control that would politicize the public prosecutor's office.

(d) **Benchmarks - Targeted Areas of Improvement**

- (i) Providing assistance to Public Prosecutors Office and Ministry of Justice in the form of an assessment of the Law Reorganizing the Public Prosecutor's Office.
- (ii) Consultations via the CEELI liaison with the Public Prosecutor's Office and the Ministry of Justice regarding suggestions set forth in the assessment.

(e) **Impact**

Through its assessment and consultations, CEELI hopes to encourage the Hungarians to consider the trade-offs between unrestrained prosecutorial power and too much public input/politicizing of the public prosecutor's function.

**C. Conclusion**

Through the daily presence of its liaison in Hungary, CEELI is able to provide expert advice to the Hungarians in a timely fashion. During the remainder of this grant cycle and in the near future, CEELI will focus its efforts in Hungary on judicial reform, local government issues and criminal law reform.

LATVIA**I. INTRODUCTION**

CEELI has been active in Latvia since November 1992 when it sent its first liaison, Mr. William Condrell, to Riga for six months. CEELI's principal contact in Latvia is Mr. Valdis Birkavs, who was appointed the new Prime Minister on July 20, 1993 after the recent elections of the Saeima (the Latvian Parliament) held in June 1993. Mr. Birkavs had been one of two Deputy Chairmen of the Supreme Council, the temporary parliament of Latvia.

**II. SUMMARY OF CEELI ACTIVITIES IN LATVIA  
AUGUST, 1992 - AUGUST 1993****A. Resident Liaison Activities**

Mr. William Condrell was selected to serve as CEELI's first resident liaison in Latvia. Mr. Condrell arrived in Riga in November 1992 and worked there as CEELI's liaison through May 1993. Ms. Donna Stinson, an attorney from Tallahassee, Florida, replaced Mr. Condrell in May 1993 and will serve as CEELI's liaison in Latvia until May of 1994.

In addition to responding to various short-term requests for information and written materials on a wide array of legal topics, lecturing to and meeting with attorneys, law students, and government officials, and coordinating CEELI's assistance from the United States and within Latvia, CEELI liaisons and resident legal experts in Latvia have provided direct assistance to various governmental and non-governmental entities. CEELI's activities in Latvia have included the following:

- Creating a Latvian-English-Latvian legal dictionary. CEELI is donating approximately 950 of these dictionaries to the Ministry of Justice, which is planning to sell them to raise revenues to conduct its judicial training sessions. This document contains approximately 5000 words and is probably the first document of its kind to contain modern commercial and trade terms.
- Establishing an Association on Legal Translation to coordinate and improve translations of laws and legal documents, primarily from Latvian to English. CEELI encouraged the establishment of a working group comprised of the Chairman of the Supreme Court (Guido Zemribo), Mr. Birkavs, the British, Canadian and American Embassy representatives, the United Nations staff, and various others.
- Preparing a regular memorandum in Latvian to approximately 100 policy makers describing CEELI's work in Latvia and other countries.

- Helping the staff of the Standing Commission on Legislation to create a draft of Latvia's new equal time rules for political advertising.
- Writing an article entitled, "The Rule of Law and the CEELI Program in Latvia," prepared and published by the Law Society.

#### **B. Legal Specialists**

In addition to long-term attorney liaisons, CEELI sends legal specialists to host countries to provide assistance on specifically-identified legal reform projects. The specialists generally have substantial experience in the relevant area of the law. In response to requests from Latvian officials, CEELI has posted a number of legal specialists to Latvia, as follows:

**Stephen Ryan**  
**February 1993 (three weeks)**  
**Riga, Latvia**

Assistance with white-collar crime issues.

The Latvians are concerned about corruption in government which stems from public officials taking advantage for personal benefit of the change to a private market economy. Mr. Ryan worked for three weeks with Latvian prosecutors. His background as a prosecutor, defense lawyer, legislative draftsman and policy maker in the area of government corruption made him an invaluable resource to Latvian prosecutors interested in controlling economic and white-collar crime. Mr. Ryan, with the help of some key people in the Latvian Procurator's office, and Mr. Ivars Kreivans, a USIA expert in the field of criminal procedure, developed a list of questions for discussion which in Mr. Ryan's opinion the Latvians have to answer in order to make progress in the control of corruption. Mr. Ryan also helped with legislative drafting and other practical matters.

Mr. Ryan's discussions with the Latvians centered on:

- conflicts of interest
- disclosure rules
- enforcement practices
- systems for protection of the treasury (sale of public property)

Mr. Ryan's recommendations for legislative changes were well received. Mr. Aivars Endzins, Chairman of the Legislative Committee of the Parliament scheduled Mr. Ryan's recommendations to be considered by parliament. Mr. Ryan's final report was widely distributed in Latvia. Mr. Ryan also gave a lecture at the

University of Latvia Law School on Criminal Law in the United States and the results of his work in Latvia.

**Douglas Lanford**  
**March 22-May 11, 1993**  
**Riga, Latvia**

Assistance with training judicial trainers.

A working group on judicial training was set up by the Deputy Minister of Justice, Mr. Andris Gulans. The working group included judges, parliamentarians, members of the Bar Praesidium (the official Bar), the Supreme Court, and others in the government in addition to CEELI's liaison and legal expert.

Mr. Douglas Lanford, CEELI's legal expert in judicial training, resided in Latvia from March through June 1993. Mr. Lanford is the Executive Director of the American Academy of Judicial Education.

As is common throughout Central and Eastern Europe, the Latvian judiciary is not highly regarded. A program of judicial training was suggested to the Ministry of Justice to focus on strengthening the judiciary by providing needed training to the new judges who lacked experience.

CEELI's program focused on providing a month long training program for 22 of the least experienced judges, of which CEELI's portion lasted for one week and the remainder of the program was conducted by members of the Latvian Supreme Court. The program included instruction in the areas of court discipline, judicial demeanor, witness psychology, judicial fact finding, and other matters related to the functioning of the judge in the courtroom. The methods of training used included role playing, videos and interactive dialogue, which were new to the Latvians. CEELI coordinated its efforts with the German Bar Association, which sent Klaus Heising, an experienced trial lawyer. Judge Joseph Nadeau of the Superior Court of New Hampshire also participated.

CEELI has been asked to participate in a similar training program in November 1993.

### C. Technical Legal Assistance Workshops

Other than the Latvian Judicial Training Workshop mentioned above, CEELI has not, to date, conducted any technical legal assistance workshops in Latvia.

### D. Draft Law Assessments

To date, CEELI has provided written assessments of the following draft Latvian laws:

- Draft Patent Law (August 1992)
- Draft Law on Trademarks (August 1992)

### E. Law Schools

#### ● Sister Law School Project

Under CEELI's Sister Law School Program the Law Faculty of the University of Latvia has been paired with a consortium of three law schools in the U.S. The Sister Law School Program includes exchanges of faculty and students, joint research projects, and assistance in library development, curriculum reform, and law school administration. The following Latvian and American law schools now participate in CEELI's Sister Law School program:

#### Latvian Law School

- University of Latvia  
Riga, Latvia

#### American Consortium Schools

New York Law School  
New York, New York

University of North Dakota  
School of Law  
Grand Forks, North Dakota

University of Arkansas  
School of Law  
Fayetteville, Arkansas

Professor Valter Sulcs, Vice Dean of the University of Latvia Law School, visited all three sister law schools in the United States in Spring 1992. The Latvians are interested in the possibility of bringing over an American law school administrative official for a period of several months under CEELI's law faculty advisor program.

- **Law Faculty Training**

- Law Faculty Training Institute I

- 8/30-9/13/92

- Lodz, Poland

- Law professors from Central and Eastern Europe were provided with intensive training in legal teaching techniques and instruction on human rights and intellectual property. One or two faculty members from Latvia represented.

- CEELI Law Faculty Seminar

- The University of Latvia formally offered to host the second CEELI Law Faculty Seminar in the resort area of Jurmala, a short way from Riga.

- **Soros Foundation LL.M. Program**

- 5/92-5/93

- Under the USIA-sponsored Benjamin Franklin Fellowship Program, the Soros Foundation asked CEELI to implement the placement component of the program for students seeking graduate legal training in American law schools. CEELI assisted the Soros Foundation by locating placements and securing full and partial tuition waivers for twenty-seven graduate students from all nations of the former Soviet Union.

- Latvian Participants:

- Ilze Bukane

- Armants Chapkevich

- Vita Kivleniece

### III. RULE OF LAW COUNTRY STRATEGY FOR LATVIA

#### A. Current Status of Legal Reform

On June 6, 1993, Latvia held its first election since its independence. Approximately 90% of the electorate turned out for the election; about half of the ethnic Russian residents of Latvia did not, however, have the right to vote. The Latvia's Way party, a coalition of parties with a right-of-center political orientation, won 36 of the 100 seats in the Latvian parliament, or "Saiema." The National Independence Movement of Latvia ("NIML"), a group further to the right than Latvia's Way, won 15 seats in the Saiema. Latvia's Way is currently attempting to form a successful coalition with other parties in the Saiema. The NIML will not work with Latvia's Way and is already allying itself with other right-wing parties to form a strong opposition.

The inaugural session of the new parliament was held on July 6. The Saeima approved the new cabinet of ministers on July 20, 1993. The government is currently in the process of establishing committees of the Saeima and appointing the members and chairs of these committees. The formation of these committees will be very important in structuring CEELI's assistance. In the interim, CEELI intends to contact the new ministers to provide information regarding CEELI's assistance program.

The new government will operate under the Latvian Constitution of 1922, although there has been some discussion of revising this Constitution. CEELI is currently in the process of translating the leading party's plan for the first 100 days of the Saeima. This document should set forth the most pressing needs identified by the Latvians and will help CEELI structure its assistance in the most effective way.

## **B. Priority Issues for CEELI Assistance**

CEELI's primary means of providing legal assistance is through its resident liaison, Ms. Donna Stinson.

### **1. Priority Issue # 1: Constitutional Reform**

#### **(a) Goal Statement**

To promote a viable constitution that adequately protects human rights and prescribes the foundation of a working government.

#### **(b) Factual and Legal Background**

Latvia has a very short history of independence. During the brief period between the two world wars Latvia operated independently, under a constitution adopted in 1922. Due to paralysis of the government stemming from a lack of a coalition amongst the numerous parties, then-President Ulmanis took control of the government in 1934, in violation of the constitution. While Ulmanis is currently held in high regard (a descendent of his is currently President), the general dysfunction of the government in the 1930's was likely a factor in its takeover. Since then, restrictions have been imposed on how many parties can be elected to the Saeima (a party needs 4% of the vote) which hopefully will prevent the previous situation. Currently there is no firm coalition in the Saeima.

Additionally, the 1922 Constitution contains no provisions on human rights. The Supreme Council passed a "constitutional" law in December 1991, and there is discussion of including a version of this law into the Constitution.

(c) **Priority Project Identified by CEELI**

In light of the newly forming government, it is difficult to presage the direction of constitutional reform in Latvia. CEELI understands that a committee is likely to be formed in the Saeima on constitutional reform. If the Latvians decide to revise their Constitution, as we anticipate, CEELI plans to become actively involved in the revision process. CEELI will provide expert commentary and advise through the stages of revision. If Latvia revises its Constitution, CEELI will try to reach the following benchmarks.

(d) **Benchmarks - Targeted Areas of Improvement**

- (i) CEELI shall establish a Latvian Constitutional Working Group of U.S. and Western European constitutional law experts who will provide commentary on the Constitution to the Latvians during the period of its revision.
- (ii) Upon completion of the revision, CEELI will provide an expert assessment of the Constitution.

(e) **Intended Results/Impact**

To assist the Latvians to revise their constitution into a document that adequately protects human rights and prescribes the foundation of a democratic Latvia.

2. **Priority Issue # 2: Judicial Reform**

(a) **Goal Statement**

CEELI's goal is the promotion of a strong and independent Latvian judiciary.

(b) **Factual and Legal Background**

As in other countries formerly under Soviet domination, the judiciary was merely a puppet of the Prosecutor's office, and judges were not well respected. Currently, judges are poorly paid. The Latvian judiciary is predominately women who have just graduated from the law faculty. Courts are primarily seen in the light of the criminal system, because civil litigation is in its infancy in Latvia.

A new "regional" court has just been established, requiring the appointment of new judges, for which the country does not have the budget to pay, and who will need preliminary training. Judicial training is currently provided by the Ministry of Justice. Although concern has been expressed in the Ministry of Justice on the relevance of the American system to the Latvian judicial system, the new Minister of Justice, Eqils Levits,

has indicated that assistance may be appreciated especially in the area of conflict of laws. Mr. Levits appears receptive to, and interested in, assistance from CEELI, and he is generally regarded as one of the most competent ministers in the new government.

Finally, there is a need to establish a mechanism for testing the constitutionality of laws. It is somewhat unclear now whether there will be a new "constitutional" court, or whether procedures will be developed for constitutional challenges to be heard by the Supreme Court. In any event, it is recognized that the ability to invalidate unconstitutional laws is a necessity under a Constitutional government. This is an area where CEELI has received preliminary inquiries regarding assistance.

**(c) Priority Project Identified by CEELI**

CEELI has organized a working group in Washington, D.C. to formulate a plan for a judicial training program to be used throughout the region. CEELI is drawing upon the experience of its judicial training specialists that were sent to Albania, Latvia, Lithuania, and Bulgaria to prepare a comprehensive program.

The CEELI Liaison will utilize the materials and techniques developed by the CEELI Judicial Education Working Group to bolster and augment nascent educational programs in the Ministry of Justice and the Courts.

**(d) Benchmarks - Targeted Areas of Improvement**

- (i) The CEELI liaison will work with the CEELI Judicial Education Working Group to present to the Ministry of Justice some training materials and program on the area of the conflict of laws.
- (ii) The CEELI liaison will also work with the Ministry of Justice to try to develop a comprehensive and institutionalized approach to Latvian judicial education.
- (iii) CEELI may prepare a concept paper on constitutional review, and contribute assessments of draft legislation on this topic.

**(e) Intended Results/Impact**

The Latvians recognize that a strong, independent and well-trained judiciary is essential to a working democracy. CEELI hopes that through its plan of judicial education it will assist the Latvians in achieving this goal.

### **3. Priority Issue #3: Criminal Law**

#### **(a) Goal Statement**

To assist the Latvian government in the development of legislation and techniques to combat increasing economic crime, including white collar crime.

#### **(b) Factual and Legal Background**

Prior to declaring its independence, the criminal law in Latvia was governed by the Soviet codes. The Soviet criminal law outlawed private commercial activity, as well as generally recognized criminal conduct. Since its independence, the rate of crime and the violence of criminal activity is increasing. Organized crime accounts in part for the increase in number and character of crime.

These changes pose serious problems to the Latvian criminal justice system. The criminal justice system is understaffed and underpaid. Also, the Latvians are concerned about corruption in government stemming from public officials taking advantage for personal benefit of the change to a private market economy.

CEELI Legal Specialist, Mr. Stephen Ryan worked for three weeks with Latvian prosecutors. His background as a prosecutor, and policy maker in the area of government corruption made him an invaluable resource to Latvian prosecutors interested in controlling economic and white-collar crime.

Mr. Ryan's recommendations for legislative changes were well received. Mr. Aivars Endzins, Chairman of the Legislative Committee of the Parliament scheduled Mr. Ryan's recommendations to be considered by parliament. Mr. Ryan's final report was widely distributed in Latvia.

#### **(c) Priority Project Identified by CEELI**

Based upon the work of its legal specialist, Stephen Ryan, CEELI will continue to focus upon white collar crime and other economic crime issues. CEELI has been asked by the Latvian government to provide another legal specialist in the fall of 1993.

Vija Jakobsons, Vice Chair of the Latvian Bar Association, asked CEELI to assist in the development of a new criminal procedure code. CEELI will provide expert commentary on the draft of that code.

(d) **Benchmarks - Targeted Areas of Improvement**

(i) CEELI through its Criminal Law Working Group will provide assistance and materials on white collar and economic crime to the Ministry of the Interior.

(ii) CEELI will provide expert commentary on a draft of the criminal procedure code.

(iii) CEELI will assess whether it is able to send an economic crimes legal specialist to Latvia. CEELI's decision of whether to send a specialist will depend upon funding and the needs of the Latvians.

(e) **Intended Results/Impact**

To provide the Latvian government with the legal expertise in the development of legislation and techniques to combat the growing white collar and economic crime.

4. **Priority Issue #4: Bar Reform**

(a) **Goal Statement**

To develop the professionalism and integrity of the Latvian Bar.

(b) **Factual and Legal Background**

It appears that lawyers in Latvia have been primarily involved only in the criminal system, but that is changing rapidly. The fact that the Prime Minister Valdis Birkavs, is a lawyer has meant a good deal of prestige for the profession. Lawyers, however, are not utilized by managers to the extent they are in the United States. Only recently has the requirement of an examination, and an oath for lawyers been instituted. There is a good deal of interest in American lawyers, law office practice specialization, etc.

(c) **Priority Project Identified by CEELI**

The CEELI liaison is currently sharing office space with the "Latvijas Jurists Biedriba," the Latvian Lawyers Association ("LJB"). Valdis Birkavs, the new Prime Minister of Latvia, is the chairman of this group. This group is affiliated with the International Latvian Lawyer's Association, which has as members Latvian ethnic lawyers, from throughout the world. CEELI intends to work with the LJB and the "Advokatura", the official bar organization, to develop programs designed to strengthen the Latvian bar.

The CEELI liaison, acting with the benefit of the American Bar Association's extensive experience and resources will facilitate the flow of that wealth of information regarding the many and varied problems facing a organization.

(d) **Benchmarks - Targeted Areas of Improvement**

(i) The CEELI liaison has been asked to review the law establishing the Advokatura and has been asked to give lectures to the Advokatura on various areas of private practice.

(ii) The CEELI liaison attends meetings of the LJB and will provide pertinent information when requested.

(iii) The CEELI liaison will work with both bar associations to develop strong codes of ethical conduct.

(iv) The CEELI liaison will provide materials on the workings of U.S. bar associations, both voluntary and official.

(e) **Intended Results/Impact**

The above steps are means to assist the Latvians in establishing a strong, viable and independent bar, which has the ability to act as an independent and impartial participant in the process of legal reform in Latvia.

**5. Priority Issue # 5: Administrative Procedures Code**

(a) **Goal Statement**

To assist in the development of an administrative procedures code, necessary for the efficient organization and operation of the ministries, and government generally.

(b) **Factual and Legal Background**

Because everything in Latvia was controlled from Moscow, there had been no procedures for day-to-day operations, or for development of regulations in the government. An administrative procedures code is, therefore, very important to the organization and efficiency of the government. It is equally important that the governments regulations be transparent and available to the public. The Minister of Justice has been assigned this task, and has asked CEELI for its assistance.

(c) **Priority Project Identified by CEELI**

To review and participate in the drafting of an administrative procedures code for Latvia.

(d) **Benchmarks - Targeted Areas of Improvement**

(i) The CEELI liaison, who has considerable experience in administrative law will review and comment during the drafting period.

(ii) CEELI will provide additional expert commentary upon completion of the draft legislation.

(e) **Intended Result/Impact**

The preparation of an administrative procedures code, which would facilitate the efficient organization and operation of the ministries, and government generally.

**6. Priority Issue # 6: Conflict of Interest Law for Public Officers and Employees**

(a) **Goal Statement**

To enact a law minimizing the potential for corruption in government due to conflicts of interest.

(b) **Factual and Legal Background**

Under the Soviet system, there were no laws specifically regulating conflicts of interest, which was the result, in part, of a lack of that there was no private enterprise to foster such corruption. There is, therefore, no concept of what should be contained in such a law, and the Minister of Justice has asked CEELI for a concept paper on this issue, to include members of Saeima, public officers, and public employees.

(c) **Priority Project Identified by CEELI**

CEELI will prepare a concept paper on the area of conflicts of interest which should provide general guidance to the Latvians in the drafting of legislation on the subject. The CEELI liaison, who has some expertise in this area, will also consult with the drafters.

(d) **Benchmarks - Targeted Areas of Improvement**

(i) CEELI will prepare a concept paper on the area of conflicts of interest which should provide general guidance to the Latvians in the drafting of legislation on the subject.

(ii) The CEELI liaison, who has some expertise in this area, will also consult with the drafters in the actual drafting of the legislation.

(e) **Intended Results/Impact**

The preparation of a law governing conflicts of interest in government, thereby minimizing the potential for corruption.

C. **Conclusion**

If the Latvians decide to revise their Constitution, CEELI plans to become actively involved in the revision process. CEELI will also assist the Latvians in creating a professional and independent judiciary. Based upon the work of its legal specialist, Stephen Ryan, CEELI will continue to focus upon white collar crime and other economic crime issues in Latvia. CEELI through its Criminal Law Working Group will also provide assistance and materials on white collar and economic crime to the Ministry of the Interior. CEELI will provide expert commentary on a draft of the criminal procedure code.

Through its liaison, CEELI will assist in the strengthening of the Latvian bar. CEELI will also support the preparation of an administrative procedures, code, which would facilitate the efficient organization and operation of the Ministries, and government generally. Finally, CEELI will prepare a concept paper on the area of conflicts of interest.

## LITHUANIA

### I. INTRODUCTION

CEELI has been providing technical legal assistance in Lithuania since January, 1992. CEELI's preliminary contacts with Lithuania, however, began as early as October, 1991. It was during these preliminary contacts that CEELI was asked to provide technical legal drafting assistance to the members of the Constitutional Drafting Committee of the Supreme Council of the Republic of Lithuania. The resulting analysis of Lithuania's Draft Constitutional Principles and five-day Constitutional Drafting Workshop marked the first CEELI-sponsored technical legal assistance program in a former Soviet Republic. Since then, CEELI's activities have greatly intensified, due in large part to increased interest by the Lithuanian Government and the posting of a full-time liaison in Vilnius in August of 1992.

Although Lithuania has made great strides in the adoption of democratic principles and the principle of the rule of law, it has become clear that there is still a significant lack of understanding of the methods for implementing and incorporating those basic principles into a statutory and regulatory scheme. A number of fundamental issues, including the steps to be taken for the creation and structuring of an appellate court system and the adoption of civil and criminal procedure codes are yet to be resolved. Accordingly, CEELI's activities in Lithuania are focused on providing in-depth structural and technical legal assistance through draft law assessment, attorney and judicial training, and through the judicious use of long-term CEELI legal specialists. CEELI workshops will also be used when they can be appropriately and effectively targeted to meet the needs of the Lithuanian governmental or non-governmental organization requesting technical legal assistance.

### II. SUMMARY OF CEELI ACTIVITIES IN LITHUANIA JANUARY, 1992 - AUGUST, 1993

#### A. Resident Liaison Activities

Mr. John M. Zerr was selected to serve as CEELI's first resident liaison in Lithuania. Mr. Zerr, who is fluent in Lithuanian, arrived in Vilnius in August of 1992 and is scheduled to remain through August 1993. In August, Mr. Zerr will be replaced by another resident liaison.

In addition to commenting (formally and informally) on numerous legislative proposals, responding to various short-term requests for information and written materials on a wide array of legal topics, lecturing to and meeting with attorneys, law students, and government officials, and coordinating CEELI's assistance from the United States and within Lithuania, Mr. Zerr and the CEELI resident legal experts in Lithuania have provided direct assistance to various governmental and non-governmental entities. CEELI's activities have included the following:

- Speaking to the faculty of the Lithuanian Police Academy on American Constitutional Law and the Constitutionalization of Criminal Procedure (Mr. Bill Walters, judicial training specialist: 3/9/93);
- Supporting conferences and projects sponsored by the Lithuanian Lawyers Association and the Association of In-House Counsel (e.g. Constitutional Problems Conference: 2/93);
- Assisting the Lithuanian Lawyers Association in its efforts to obtain funding for an independent newspaper or newsletter by helping the group identify potential funding sources and drafting grant applications; and
- Encouraging the work of the Lithuanian Judges Association.

CEELI volunteers in Lithuania have also coordinated their efforts with those of other foreign assistance programs. CEELI and its liaisons in Lithuania have worked closely with, amongst other organizations, the U.S. Department of Commerce, the Open Society Fund for Lithuania, and the United Nations Development Program.

#### **B. Legal Specialists**

In addition to long-term attorney liaisons, CEELI sends legal specialists to host countries to provide assistance on specifically-identified legal reform projects. The specialists generally have substantial experience in the relevant area of the law. In response to requests from Lithuanian officials, CEELI has posted a number of legal specialists to Lithuania, as follows:

**Frank Nebeker, Richard Hoffman, Jesse Casaus**  
 November-December 1992 (two - four weeks)  
 Vilnius, Lithuania  
 Court Administration Specialists

In November and December of 1992 CEELI sent a team of three experts in court administration to Lithuania. Their comprehensive report on the subject, completed in February, 1993, was translated into Lithuanian and delivered to the Minister of Justice, the Chairman of the Constitutional and Supreme Courts, as well as the Chairman of each of Lithuania's district Courts.

**Bill Walters**  
 January-July 1993 (six months)  
 Vilnius, Lithuania  
 Assistance with judicial training

In response to a request from the Ministry of Justice, the Supreme Court of Lithuania, and the Dean of the Law Faculty of Vilnius University, CEELI placed a long-term legal specialist in Vilnius, Mr. Bill Walters, to work with these individuals and institutions to assist in the development of a Judicial Training Program. It is intended that this program provide training to new and existing Lithuanian judges.

The Judicial Training Program is intended to be a flexible operation capable of modest projects and which will have the potential for durability and institutional growth. It was organized under the Department of Courts of the Lithuanian Ministry of Justice, but has also worked directly with the Lithuanian judiciary. A working group to formulate an agenda for the Training Program is formally headed by the Deputy Minister of Justice and had its first official meeting on March 26, 1993.

### **C. Technical Legal Assistance Workshops**

CEELI has responded to a number of requests for technical legal assistance workshops. Workshops typically focus on a particular substantive area of law and involve the participation of four to six experienced lawyers or judges, usually including one from a civil law country.

The primary goal of CEELI workshops is to promote open dialogue among the participants so as to provide the host country with in-depth, immediate analysis of critical nuances in the law.

The following represents a listing of the technical legal assistance workshops CEELI has sponsored in Lithuania to date:

#### **Constitutional Drafting/Judicial Reform**

January 20-24, 1992

Vilnius, Lithuania

This workshop was conducted with the Parliament's Constitutional Drafting Committee on the basic principles of the draft Constitution.

The CEELI participants included: Michael Davidson, Esquire, Senate Counsel; Steven P. Frankino, Dean, Villanova University School of Law; Ruth McGregor, Judge, Arizona Court of Appeals; and Ernest C. Raskauskas, Jr., Chair, CEELI Lithuania Working Group.

**Follow-Up Constitutional Drafting**

March 2-7, 1992

Washington, D.C.

This workshop was conducted with the Parliamentary Constitutional Drafting Committee on the most recent draft of the Constitution.

The CEELI participation included: Grant Aldonis, Member, CEELI Lithuanian Working Group; Michael Davidson, Senate Legal Counsel; Neal Devins, Professor of Law, Marshall- Wythe School of Law, The College of William and Mary; John Finerty, Helsinki Commission; Louis Fisher, Senior Specialist, Separation of Powers, Congressional Research Service; Ruth Bade Ginsburg, Judge, United State Circuit Judge of the United States Court of Appeals for the district of Columbia; A.E. Dick Howard, Professor of Law, University of Virginia School of Law; Honorable Robert Kastenmeir, Chairman, National Commission on Judicial Discipline and Removal; Ruth can Roekel McGregor, Judge, Arizona Court of Appeals; Abner J. Mikva, Judge, United State Court of Appeals for the District of Columbia; Ernest C.Raskauskas, Jr., Chair, CEELI Lithuanian Working Group; Michael Remington, Director, National Commission on Judicial Discipline and Removal; John Roberts, Deputy U.S. Solicitor General; Judith Rogers, Judge, Superior Court of the District of Columbia; Anne Smith, Professional Staff Assistant, Senate Foreign Relations Committee, Jay Stephens, U.S. Attorney; Patricia M. Wald, Judge, Court of Appeal for the District of Columbia; William Wagner, Professor of Law, Catholic University; and John Zerr, Member, CEELI Lithuanian Working Group.

**Appellate Court Issues**

November 30 - December 12, 1992

Vilnius and Kaunas, Lithuania

This workshop focused on the function and structure of the appellate court.

**Judicial Ethics**

May 18-27, 1993

Vilnius, Panevezys, Kaunas, and Klaipeda, Lithuania

Training judges in judicial ethics issues.

This workshop was the first real instructional sortie of the Judicial Training Program being developed with the help of Mr. Bill Walters, CEELI resident expert in judicial training. The panel of experts included an American judge (Judge Ruth McGregor), a Danish expert (Mr. Niels Grubbe), and a German expert (Dr. Johann-Friedrich Staats).

#### **D. Draft Law Assessments**

The resources of the ABA allow CEELI to respond quickly to requests for assistance from in-country drafting committees. When a request is received, CEELI offers immediate assistance by circulating the draft legislation within the U.S. for comment. By relying primarily on ABA sections with appropriate expertise, CEELI can provide expert assessments of draft laws. CEELI provides bound volumes of comments to those involved in the drafting process. The assessments are translated into the local language and generally are circulated to a wide audience, including political parties, academics, and other experts.

At times, the response to such assessments from the Lithuanians is immediate and laws are redrafted or modified as a direct result of CEELI assistance. In other instances, changes are subtle and may take several months or years to fully develop. Additionally, the political climate in Lithuania, which tends to be somewhat mercurial, often impacts the ability and desire of Lithuanian officials and legal professionals to immediately implement facially prudent and acceptable suggestions.

From January, 1991 to date, CEELI has provided written assessments of numerous draft Lithuanian laws, including:

- Draft Constitutional Principles (January 1992)
- Draft Judicial Restructuring Law (June 1992)
- Draft Criminal Procedure Law (September 1992)
- Draft Execution of Penalties (Penal Code)(September 1992)
- Draft Chapter "Procedure of Appeal" of the Code on Civil Procedure (November 1992)
- Draft Law on Natural Resources (December 1992)
- Draft Law on Civil Servants (March 1993)

The comments to this draft law were enthusiastically received by the Head of the Legal Department of the Lithuanian Seimas (Parliament).

- Analysis of the Proposed Amendments to the Lithuanian Constitution (June 1993)
- Draft Charter for the Vilnius International Commercial Arbitral Tribunal
- Draft Law on Foreign Investments (June 1993)  
(Actually two different versions of the same law: one from the UNDP and the other from the Lithuanian Ministry of Economics.)

#### E. Law Schools

- **Sister Law School Project**

Under CEELI's Sister Law School Program the Law Faculties of the University of Vilnius and Vytautas the Great University are each paired with a consortium of three law schools in the United States. The Sister Law School Program includes exchanges of faculty and students, joint research projects, and assistance in library development, curriculum reform, and law school administration. The following Lithuanian and American law schools now participate in CEELI's Sister Law School program:

#### Lithuanian Law School

- Vytautas Magnus University  
Kaunas, Lithuania

#### American Consortium Schools

University of California - Los Angeles  
School of Law  
Los Angeles, California

University of Puget Sound  
School of Law  
Tacoma, Washington

Ohio Northern University  
Pettit College of Law  
Ada, Ohio

- Vilnius University  
Vilnius, Lithuania

University of Baltimore  
School of Law  
Baltimore, Maryland

John Marshall Law School  
Chicago, Illinois

Villanova University School of Law  
Villanova, Pennsylvania

- **Law Faculty Training Institute**  
8/30-9/13/92  
Lodz, Poland

Law professors from Central and Eastern Europe were provided with intensive training in legal teaching techniques and instruction on human rights and intellectual property. Faculty from Vilnius University in Lithuania participated.

**Lithuanian Participants**  
University of Vilnius:

Gintautas Bitkus

Rimvydas Kugis

- **Curricula and Accreditation**

CEELI is in the process of identifying appropriate academics to work closely with the law faculties of both Vilnius University and Vytautas the Great University. These individuals would assist with curriculum development and professor training and would be placed with the respective law faculties for an extended period of time. In addition to assisting in the development of new courses and modifying existing curricula, these individuals may also engage in certain teaching activities.

- **Soros Foundation LL.M. Program**  
5/92-5/93

Under the USIA-sponsored Benjamin Franklin Fellowship Program, the Soros Foundation asked CEELI to implement the placement component of the program for students seeking graduate legal training in American law schools. CEELI assisted the Soros Foundation by locating placements and securing full and partial tuition waivers for twenty-seven graduate students from all nations of the former Soviet Union. Lithuanian participants were provided full tuition waivers for one year of study in their Sister Law School-- John Marshall Law School in Chicago, Illinois.

Lithuanian Participants:

Raimundas Jurevicius

Ramune Dulevichiene

### **III. RULE OF LAW COUNTRY STRATEGY FOR LITHUANIA**

#### **A. Current Status of Legal Reform**

Lithuania has recently experienced a significant change in its political structure. The Lithuanian Democratic Workers Party was elected as the majority party in the Seimas in October of 1992 and won the Presidency in February of 1993. The Lithuanian Democratic Workers Party ("LDWP") is commonly identified as the successor to Lithuania's former communist party. The change in governments has had the predictable effect of disrupting the progress of legal reform because of the mass change in personnel attendant to the change in administrations. The LDWP has stated, however, that it intends to continue, in principle, the legal reform program started by its predecessor administration. The former communists promise a slower, easier path to capitalism without the shock treatments associated with the previous reformist government. Although the LDWP won an absolute parliamentary majority in the election, Prime Minister Slezevicius has chosen to name ministers to his cabinet from various parties, and some who have no party affiliation at all. The LDWP has dismantled the more radical elements of the previous government's reform package, but has yet to develop a coherent plan of its own. The LDWP is still the most powerful political force in the country, despite recent decreases in popularity. CEELI has established good working relationships with members of the new Government and is pleased with the level of assistance requests it has received during the past few months.

The change in government has had little discernable effect on the Lithuanian Judiciary. Non-government organizations, on the other hand, have begun to work more actively in the area of legal reform. Consistent with the principles of a democratic society, CEELI is actively supporting the efforts of these organizations to gain greater leverage over the policy decisions that affect legal reform.

It is within this milieu that CEELI has established priority areas and goals. Within each of these areas, CEELI has two separate but related goals. The first is the more concrete or specific goal, such as assistance in accomplishing or assisting in the accomplishment of a defined legal task or addressing a specific legal need. CEELI's second goal, is to raise the status of the legal profession and the respect for the rule of law in a country where those concepts are still quite novel. CEELI strives to reach these goals by providing legal assistance on specific problems identified by the Lithuanians in a cooperative team-like approach.

## **B. Priority Issues for CEELI Assistance**

CEELI's primary method of providing assistance in the legal reform process in Lithuania will be through the activities of its resident liaison.

### **1. Priority Issue # 1: Judicial Reform**

The CEELI Liaison will assist in organizing the first Baltic Judicial Conference to be held in September, 1993, which will help to foster dialogue and communication between the judiciaries of the three Baltic countries. The CEELI liaison will also assist in the organization of the nascent Lithuanian Judges Association by helping to develop a plan of activities and searching for possible exchange and internship opportunities for Lithuanian judges.

#### **(a) Goal Statement**

CEELI's top priority in the rule of law area in Lithuania is to promote a strong, competent, independent judiciary. To promote democratic initiatives in Lithuania, it is very important to strengthen the judiciary's role in the legal process. To enhance the judiciary's role in the process, the stature of the judiciary must be enhanced, their independence assured and a minimum standard of professional competence attained.

#### **(b) Factual and Legal Background**

Lithuanian judges are of relatively low social status and are poorly paid. Under the Soviet system, the judiciary was neither structurally independent nor insulated from political pressures. The verdicts in many politically sensitive cases were predetermined by the Communist Party which then informed a judge how he or she would rule. This was jokingly referred to as "Telephone Justice" because the judge would receive a telephone call from Communist Party headquarters prior to the beginning of trial.

Accordingly, the current Lithuanian judiciary does not have a history of independence or assertiveness that can be drawn upon. Consequently, Lithuanians do not view judges or the court system with the respect and confidence that is typically found in Western Europe or the United States.

**(c) Priority Project Identified by CEELI**

CEELI has organized a working group in Washington, D.C. to formulate a plan for a judicial training program to be used throughout the region. CEELI is drawing upon the experience of its judicial training specialists that were sent to Albania, Latvia, Lithuania, and Bulgaria to prepare a comprehensive program.

CEELI has established important relationships with the Ministry of Justice, Constitutional Court and the Supreme Court. The CEELI Liaison will utilize the materials and techniques developed by the CEELI Judicial Education Working Group to bolster and augment nascent educational programs in the Ministry, the courts and the Lithuanian Judges Association.

**(d) Benchmarks - Targeted Areas of Improvement**

This project shall include the following benchmarks;

(i) The Supreme Court has become more proactive and assertive in matters of independence and judicial education. The CEELI liaison will work with the Supreme Court and Appellate Judges to develop a self-sustaining program for judicial education.

(ii) The CEELI liaison will also work with the Ministry of Justice to try to develop a comprehensive and institutionalized approach to judicial education.

(iii) The CEELI liaison will also work closely with the newly-formed (and CEELI supported) Lithuanian Judges Association to help them to acquire a greater understanding of judicial independence, professional competence, judicial ethics.

(iv) CEELI will participate in a Baltic Judicial Conference to be hosted by the Supreme Court of the Republic of Lithuania in Vilnius on September 23 and 24, 1993. Judges from Estonia, Latvia, and Lithuania will attend the two-day conference. Judges from all court levels in each country are being invited. CEELI will assist in the preparation of the invitations and draft agenda.

(v) CEELI will, as a final phase of this project, participate in and assist in coordinating the actual judicial education programs implemented by the Supreme Court and the Ministry of Justice.

(e) **Intended Results/Impact**

The Lithuanians recognize that a competent judiciary will be essential for the future success of their nascent democracy and free society. It is through a comprehensive and well thought-out plan of judicial education, that the independence and vitality of this critical branch of Lithuanian government will be better assured.

2. **Priority Issue # 2: Bar Reform**

(a) **Goal Statement**

CEELI's goal is to increase the professionalism and competence of the bar by strengthening the Lithuanian Lawyers Association. An independent, professional legal organization is a vital component to the mix of democratic institutions that is developing in Lithuania. It will serve as an impartial and independent watchdog during the process of legal reform.

(b) **Factual and Legal Background**

The Lithuanian Lawyers Association ("LLA") is the first independent bar association in Lithuania that includes in its membership all sub-specialties of the Lithuanian legal community. The LLA has been operating since 1990. Prior to the LLA, there existed no independent legal professional organization which was open to all members of Lithuania's legal community. The LLA seeks to play a greater role in the process of legal reform in Lithuania by hosting conferences on Vilnius' important legal topics and participating in the preparation and analysis of draft legislation.

(c) **Priority Project Identified by CEELI**

The CEELI Liaison, acting with the benefit of the American Bar Association's extensive experience and resources, will assist the LLA in becoming a viable and independent organization.

In addition, CEELI has been asked to identify an appropriate individual to work with the Executive Committee of the Lithuanian Bar Association on matters relating to bar reform and the creation of continuing legal education programs for bar members. This individual will have particular expertise in matters relating to professional ethics, bar association structure, and continuing legal education. Due to limited resources, CEELI will be unable to provide this advisor unless additional funding becomes available.

(d) **Benchmarks - Targeted Areas of Improvement**

This project shall include the following benchmarks:

(i) CEELI liaisons will assist the LLA with strategies for establishing and increasing their membership. This will help ensure the LLA long-term viability and effectiveness as a participant in the Lithuanian legal reform process.

(ii) CEELI liaisons will work with the Executive Board of the LLA to organize a committee which will be responsible for publishing a periodic scholarly legal journal. This journal shall be published in cooperation with Villanova University Law School.

(iii) CEELI will begin making initial contacts with various United States bar associations in an effort to match the LLA with a state bar organization. The LLA through its sister bar association will receive valuable information and training about institutional sustainability, administration, structure and activities.

(iv) Because the LLA is still in its infancy, its institutional financial strength is very poor. CEELI will work with the LLA in an effort to assist them in locating possible sources of donor funds in addition to counseling them on membership growth techniques. Without financial sustainability as an organization, the LLA will not be able to participate as an impartial, unbiased, professional commentator on the progress and direction of legal reform in Lithuania.

(v) The CEELI liaisons will work with the LLA in developing a Code of Ethical Conduct for the legal profession in Lithuania. This Ethical Code will allow the LLA and the legal profession to regulate the conduct of lawyers and help enhance their stature in the community.

(e) **Intended Result/Impact**

The actions described above are incremental steps on the path to establishing the viability of the LLA and ensuring its ability to act as an independent and impartial; participant and commentator on the process of legal reform in Lithuania. Outside of a free press, no other institution can act as vigorously or with as much authority as an independent professional legal association in the protection of individual rights and liberties against improper government encroachment.

### 3. Priority Issue # 3: Organized and Economic Crime

#### (a) Goals

CEELI's Goal is to assist the Lithuanian government in analyzing various legal options available to combat organized and economic crimes and then to assist in drafting or developing appropriate legislation and helping to implement the option selected by the Lithuanian government.

#### (b) Factual and Legal Background

Lithuania is developing a free market and has a rapidly expanding private sector. Unfortunately, Lithuania is also experiencing a dramatic rise in organized crime and sophisticated economic crimes. Existing criminal laws are deemed insufficient in combating these new forms of criminal activity in Lithuania. Consequently, the Lithuanian government has requested assistance in analyzing the various legal approaches which are available to them and finally, assistance in drafting and analyzing draft legislation designed to implement the selected option.

#### (c) Priority Project Identified by CEELI

The CEELI Liaison, in conjunction with the CEELI Criminal Law Working Group in Washington D.C., will assist the Ministry of Justice and the Procurator General's Office in the drafting of legislation and analysis of various approaches to combat organized and economic crime.

#### (d) Benchmarks - Targeted Areas of Improvement

This project shall include the following benchmarks:

- (i) CEELI will organize a prosecutor's training seminar utilizing U.S. and Western European experts in organized and economic crime.
- (ii) CEELI will provide expert assistance through its Liaison and Criminal Law Working Group, by concept paper and commentary, during the drafting of specialized legislation.
- (iii) CEELI will provide expert commentary on draft legislation dealing with organized and economic crime.

(e) **Intended Result/Impact**

The government of Lithuania has indicated that the growing organized crime problem is a significant deterrent to the formation and maintenance of an independent judiciary and both foreign investment and domestic capital formation. Accordingly, it is a priority of the Lithuanian government to respond quickly and effectively to this growing problem. CEELI's assistance with the drafting of new legislation and training in prosecutorial techniques will be part of the quick and effective response to the organized and economic crime problem.

**C. Conclusion**

In the legal assistance area, it is difficult to measure success through traditional methods. CEELI measures the success of its rule of law program by whether it is helping the Lithuanians approach basic legal principles from a new perspective, namely one based upon fundamental and inviolable principles of fairness, equality, and personal liberty. One quantifiable measure of success is the expansion rate of the program. CEELI's assistance has been increasingly requested in Lithuania on a variety of projects, and therefore, is indicative of our success.

CEELI's efforts in the area of judicial reform are based on the realization that a strong and independent judiciary plays a vital role in a body politic. CEELI hopes that by regularizing judicial education and supporting the Lithuanian Judges Association, we may assist Lithuania in achieving a system of fair and equitable adjudication which allows for the greater expression of individual rights and a climate more conducive to economic investment.

An independent and active Bar is no less essential to the legal process than is the judiciary. Without a body to ensure that standards are created and maintained, the profession and thereby the process, would fall prey to corruption making a mockery of even well drafted legislation. As with the Lithuanian Judges Association, the Lithuanian Lawyers Association will provide a cornerstone for the rule of law in Lithuania. CEELI's assistance will help to establish a viable organization which will tackle the task of raising the standards of professionalism and competence that are necessary to maintain the rule of law.

Finally, the dramatic rise in organized and sophisticated economic crime necessitates the drafting of specific legislation and the implementation of novel techniques in order that an independent judiciary and a climate conducive to investment be maintained. CEELI will assist with the drafting and assessment of legislation as well as the training of prosecutors.

## MACEDONIA

### I. INTRODUCTION

CEELI's program in the former Yugoslav Republic of Macedonia is relatively new. CEELI first held discussions with Macedonian Government officials in Fall 1992, and later in the year CEELI agreed to send a resident liaison to Skopje, Macedonia's capital city. In late January 1993, Lisa B. Dickieson was posted as CEELI's first liaison to Skopje. Ms. Dickieson resided there until late April 1993, and was succeeded by Barbara Cavanagh. Ms. Cavanagh worked in Skopje until early July, when she was replaced by George J. Farrell. Mr. Farrell will remain in Skopje until early 1994.

### II. SUMMARY OF CEELI ACTIVITIES IN MACEDONIA, JANUARY - AUGUST, 1993

#### A. Resident Liaison Activities to Date

During initial exploratory meetings with CEELI, Macedonian officials identified a number of rule of law issues on which CEELI assistance might be provided. Despite their initial request for assistance, however, little groundwork apparently was laid for the arrival of CEELI's first liaison. Upon their arrival, Ms. Dickieson and her successor devoted much of their time to developing local contacts, explaining the purposes and capabilities of CEELI, and working to identify specific rule of law projects in which CEELI can become involved (as well as becoming acquainted with individuals who can work with CEELI on a regular basis).

Specifically, while in Skopje Ms. Dickieson and/or Ms. Cavanagh met and discussed CEELI's program with:

- Various Government ministers, including the Minister of Justice and Administration; the Minister of Development; the Minister of Planning, Civil Engineering, Telecommunications, and Environment; the Minister of Internal Affairs; and several "Ministers without Portfolio"
- Various legislative branch officials, including the President of the Assembly; the Secretary of the Assembly; and members of the Assembly
- Representatives of the Public Prosecutor's office

- Judges at all levels of the Macedonian judiciary (including the president and justices of the Constitutional Court, who have expressed a strong interest in judicial independence issues)<sup>26</sup>
- Macedonian "solicitors," and the President of the Bar Association (or Solicitors' Guild) of Macedonia<sup>27</sup>

Additionally, both Ms. Dickieson and Ms. Cavanagh responded to numerous requests for information and written materials on a variety of legal topics, including the American judicial system, American legal education, U.S. regulation of the securities and banking industries, and the U.S. tax system.

Ms. Dickieson also observed sessions of all levels of Macedonian courts, and gathered extensive information regarding the current structure of the Macedonian judicial system. In June, Ms. Cavanagh spoke at a conference of the Association of Business Lawyers of Macedonia, regarding the role of the lawyer in a private market economy.

Since his arrival in Skopje in July, Mr. Farrell has had introductory meetings with many of CEELI's governmental contacts, with the acting USAID representatives, Ronald Nicholson and James Grossman, and with the Director of the USIS Center, Susan Krause. Based upon these meetings, he has identified several projects for which CEELI assistance is desired, and has helped CEELI to develop its long-range strategy for Macedonia. During the coming months, he will work to refine further and implement that strategy.

#### **B. Draft Law Assessments**

In February 1993, CEELI provided comments on a draft law on privatization, in response to a request from Jane Miljovski, an economist who serves as a Minister without Portfolio with responsibility for various economic issues. The privatization legislation recently was enacted by the Macedonian Assembly.

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<sup>26</sup>CEELI has provided the Constitutional Court with (1) materials compiled for a February 1991 CEELI workshop on the independence of the Yugoslav judiciary, including criteria for selecting judges in the United States; (2) procedural rules used in the U.S. Supreme Court; (3) ethical rules for lawyers and judges; and (4) information about U.S. Supreme Court decisions on issues such as human rights, freedom of speech, and discrimination.

<sup>27</sup>This quasi-official group speaks on behalf of all lawyers who have passed the bar examination and who represent private clients.

### **C. Legal Education/Sister Law School Program**

While in Macedonia, Ms. Dickieson and Ms. Cavanagh met with the dean of the Law Faculty in Skopje, as well as with various law professors and with the librarians at the Law Faculty, to discuss ways in which CEELI can assist the Law Faculty as it works to restructure its programs and to build its library in response to changes in the governmental system. Ms. Dickieson and Ms. Cavanagh also discussed with the Law Faculty ways of strengthening the relationships established with American law schools under CEELI's Sister Law School Program.<sup>28</sup> Mr. Farrell plans to pursue these matters with the Law Faculty in the coming months.

## **III. RULE OF LAW COUNTRY STRATEGY FOR MACEDONIA**

### **A. Current Status of Legal Reform**

In November 1991, following its declaration of independence from Yugoslavia, Macedonia adopted a new Constitution. Since that time, it has functioned under the laws that were in place under the prior regime. To date, it has enacted only some 20 new statutes, many of which address such matters as the state name, flag, and national anthem (at least two pieces of more substantive legislation have been passed during the past several months: one on privatization, and another on the structure and functions of local government). Accordingly, little progress has been made on legal reforms of any type.

### **B. Priority Issues for CEELI Assistance**

CEELI's work in Skopje to date has revealed that the young Macedonian state requires assistance on a very broad range of rule of law reforms. While acknowledging this fact, however, CEELI's hosts from the outset have repeatedly focused on the young country's urgent need for assistance on a variety of economic issues (including, for example, reforms to the tax, banking, and insurance systems, and creation of a stock market/securities system). Moreover, at the time of CEELI's arrival in-country last January, its governmental hosts had not identified any specific rule of law projects on which CEELI assistance was desired, or any specific individuals with whom CEELI could work on a regular basis. Accordingly, one of CEELI's highest priorities in Macedonia continues to be the establishment of a working group comprised of representatives of the Government, the Law Faculty, and the Macedonian bar, that can identify and prioritize specific projects for which CEELI's assistance is desired and feasible.

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<sup>28</sup>The Law Faculty in Skopje has been paired with law schools at the University of Baltimore, New York University, and the University of Dayton.

In the meantime, as a result of its ongoing exploratory discussions with Government officials, judges, academics, and members of the bar, CEELI has identified the following rule of law issues on which it hopes to provide assistance over the next six months. CEELI's primary method of providing assistance during this period will continue to be via the work of its resident liaison in Skopje; as discussed below, CEELI also plans to send a legal Specialist to Skopje to work on ethnic minority issues.<sup>29</sup>

## **1. Priority Issue #1: Equal Rights/Ethnic Minority Issues**

### **(a) Goal Statement**

CEELI's goal is to assist the Macedonians as they seek to draft, enact, and implement laws and regulations that ensure equitable treatment of the various minority groups that comprise the Macedonian populace.

### **(b) Factual and Legal Background**

For the nearly six centuries that the geographic region comprising "Macedonia" was under Ottoman Turkish rule, ethnic Albanian Macedonians, a largely Muslim population, enjoyed a prominent and privileged position. In the modern-day Former Yugoslav Republic of Macedonia (which covers only one part of the Ottoman Macedonian administrative region), ethnic Albanians make up a minority of the population (they are estimated to comprise between 20 and 40 percent of the total population of over two million), while ethnic "Macedonians" (Macedonians of Slavic ethnicity, mainly Orthodox Christians) are in the majority (comprising approximately 60 to 70 percent of the population). Most ethnic Albanian leaders claim that Albanians are significantly under-represented in the current Government; at this time, there are 23 Albanian members of the 120-member Assembly, and five Albanian ministers among the 27 members of the Government (which is made up of a coalition of various parties).<sup>30</sup>

Because of its central Balkan location and mixed ethnic population, the territory comprising the Former Yugoslav Republic of Macedonia historically has been the source of much dispute and several wars involving Greece, Bulgaria, Serbia, and Albania. Nationalists

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<sup>29</sup>In addition to continuing its rule of law work in Skopje, CEELI would like to explore with USAID the possibility of expanding its work in Macedonia to encompass much-needed commercial law assistance.

<sup>30</sup>The most recent census in Macedonia apparently was in 1991. It may not have accurately reflected the number of ethnic Albanian Macedonians, because of low Albanian participation (many Albanians either refused to participate or were unable to do so because the census forms were not available in Albanian). Accordingly, the number of ethnic Albanians may actually be greater than the census results indicate.

in each of these countries envision the territory that now is part of the former Yugoslav Republic of Macedonia completing their respective national domain: Greek nationalists regard Macedonia as the legacy of Alexander the Great and part of its own northern province of "Macedonia;" Bulgarian and Serbian nationalists see Macedonia as a historic part of their respective Slavic domains; and Albanian nationalists see Macedonia as part of a "Greater Albania." Both ethnic Albanian and ethnic Macedonian leaders have said they wish to preserve the Republic's independence in the face of these outside pressures, but some ethnic Macedonians claim that ethnic Albanians are interested only in secession.

The new Macedonian Constitution provides that "Macedonia is constituted as the national state of the Macedonian people, in which the integral civil equality and enduring coexistence of the Macedonian people with Albanians, Turks, Wallachians, and Gypsies and other nationalities inhabiting the Republic of Macedonia are protected."<sup>31</sup> It also states that "[c]itizens of the Republic of Macedonia have equal rights and freedoms regardless of sex, race, color of skin, national and social origin, political or religious beliefs, or property ownership and social status. . . . All citizens are equal before the Constitution and the law."<sup>32</sup>

Notwithstanding the guarantees set out in the Constitution, however, the Albanian minority has asserted that existing laws and their implementation discriminate against them as a group. Thus, ethnic Albanians complain that there is no Albanian-language university and little Albanian-language instruction at the primary and secondary levels of education. They also claim the right to use their national symbol, the flag of Albania -- a move ethnic Macedonians see as paving the way for secession.

The Albanians also protest blatant, national manifestations of ethnic Macedonian culture, (*e.g.*, the depiction of Orthodox Christian churches on the country's new currency). The ethnic Macedonian and Albanian cultures (faith, traditions, language, even alphabet) are so radically different as to make misunderstandings frequent and serious. Neither group mixes readily with the other.

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<sup>31</sup>Id. at "Preamble."

<sup>32</sup>Id. at Article 9.

(c) Priority Project Identified by CEELI

The Center for Ethnic Relations, which is a branch of the Macedonian Institute for Sociological, Political and Juridical Research of the University of Skopje, conducts research on legal and educational issues affecting ethnic minority rights, organizes seminars, lectures, and conferences on such issues, and assists in the preparation of legislation on such issues. In July 1993, the head of the Center, Dr. Emilija Simoska, requested that CEELI provide a Legal Specialist to come to Skopje for a two to three month period to assist in analyzing existing laws regarding minority rights and in "constructing models for their improvement."

The role of CEELI's specialist presumably would be to review existing laws on ethnic minority rights, and make recommendations regarding (a) the need to implement such laws more effectively; (b) the need for additional laws; and (c) the need for programs (to be co-sponsored by government and private agencies) aimed at fostering greater inter-ethnic tolerance. Additionally, pursuant to Dr. Simoska's suggestion, the Specialist also would lecture on the subject of ethnic minority rights.

In addition to Dr. Simoska, CEELI's governmental hosts in Macedonia have repeatedly expressed an interest in having CEELI provide assistance with the "ethnic minority issue." The significance of the instant request from Dr. Simoska is that: (a) it has been requested by the academic community in apparent cooperation with the Government; (b) the University created the Center for Ethnic Relations specifically to undertake a program of this nature; (c) a significant part of the initiative is already underway, as factfinders are presently gathering data for the project;<sup>33</sup> (d) it compliments specific constitutional provisions aimed at securing human rights; (e) it is very timely, because it will precede or be contemporaneous with the drafting of legislation to implement the Constitution; and (f) hopefully, it will create a benchmark for the Balkans.

In view of CEELI's access to American practitioners and academics knowledgeable in the field of the law on equal rights, CEELI is well-suited to provide the requested specialist. The magnitude and urgent nature of the problem at issue -- the treatment of ethnic minority groups in Macedonia -- make the project a high priority.

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<sup>33</sup>Dr. Simoska and her staff already have begun to assemble demographic data regarding the ethnic composition of their country's population; the existence and effectiveness of existing statutes and programs; and the attitudes toward ethnic issues of Macedonian citizens.

(d) **Benchmarks - Targeted Areas of Improvement**

This project can be broken down into the following benchmarks:

(i) **Compilation and Translation of Existing Laws/Recruiting of Legal Specialist**

During the first phase of the project, CEELI's liaison in Skopje will work with Dr. Simoska in-country to identify and have translated all existing law related to the treatment of ethnic minority groups in Macedonia. CEELI contemplates that this phase of the project will require eight to ten weeks to complete.

During this same time period, CEELI's Washington office will recruit and interview candidates for the specialist position, and will select the specialist.

(ii) **Review of Laws in U.S./Gathering of Additional Facts In-Country**

During the second phase of the project, the specialist will (while still in the U.S.) review existing Macedonian law, and become knowledgeable about the historic bases for inter-ethnic tensions in Macedonia.

During the same time period, CEELI's liaison in Skopje will seek to establish contacts with individuals, groups, and government officials in Macedonia who are knowledgeable about the ethnic minority problem there, and to gather additional information about the issue from these contacts. Of particular importance during this phase of the project is the forging of ties in Skopje with government officials responsible for ethnic minority/equal rights issues.

(iii) **In-Country Work**

During the third phase of the project, the specialist will travel to Skopje, where he/she will work directly with officials at the Center for Ethnic Relations and with other knowledgeable contacts (established by the liaison, see above), to (a) gain additional insight into the nature of the problems confronting the Macedonians; (b) gain additional insight into existing law; (c) consult on a daily basis and provide the Macedonians with information about American (and other countries') "equal rights" law; and (d) prepare a written report containing a description of the problems confronting the Macedonians and recommendations for addressing such problems. Additionally, while in Macedonia the specialist may (if requested) lecture on the topic of ethnic relations.

(e) **Intended Result/Impact**

The Macedonians acknowledge the existence of an "ethnic minority" problem, and have expressed an interest in having CEELI provide technical legal assistance on this issue. In view of the deep-rooted, historic bases for the problem, an ethnically diverse, harmonious society cannot be created overnight. However, establishing solid legal bases for equitable treatment of all ethnic groups in Macedonia is a crucial first step towards better inter-ethnic relations. This project will help to focus the Macedonians on the concrete steps that need to be taken to create the legal bases needed to protect minority rights.

**2. Priority Issue # 2: Criminal Justice (In Developmental Stage)**

The Ministry of Internal Affairs, Ministry of Justice, and Public Prosecutor's Office share responsibility for law enforcement and criminal justice in Macedonia. The Minister of Internal Affairs, Ljubomir Frckoski, a young, energetic former law professor, recently approached CEELI's liaison and discussed with him the possibility of obtaining assistance on a number of issues currently confronting his Ministry. Specifically, he has expressed interest in advice on, inter alia, coordinating the work of the Ministry with the Public Prosecutor's Office; how to train members of the police force to deal equitably with suspects, without regard to ethnic background; and how to balance certain individual rights granted in the Constitution (such as the guarantee of the free "reception and transmission of information") with the Ministry's duty to enforce the law.

Mr. Farrell currently is working with the Ministry of Internal Affairs to identify specific projects related to the above issues on which CEELI assistance may be appropriate. In the meantime, however, the Ministry has asked Mr. Farrell to participate in the planning and presentation of a seminar/conference that it is being planned for this fall. While the issue(s) to be addressed at the seminar are still being developed, some of the issues listed above may be included. The Ministry of Internal Affairs is sponsoring the program, but the Ministry of Justice, Public Prosecutor's Office, and the Law Faculty also are expected to participate. Mr. Farrell's participation in the program will provide an excellent opportunity to establish closer working relationships with the Macedonians, and to more sharply define the criminal justice issues on which assistance is needed.

**3. Priority Issue #3: Reform Related to the Practice of Law (In Developmental Stage)**

As noted above, CEELI's liaisons have established contacts with various private practitioners in Skopje, and with the Bar Association there. CEELI's contacts have expressed a strong interest in assistance on various issues related to the reform of the practice of law in Macedonia (these issues include the role of the bar in providing continuing legal education to its members; the role of private practitioners in a democracy; legal ethics; how to increase the stature of lawyers in the society; and how to control the unauthorized practice of law). Accordingly, Mr. Farrell currently is working to identify specific projects in this area on which CEELI assistance may be provided.

**4. Priority Issue # 4: Judicial Reform (In Developmental Stage)**

As noted above, the President of Macedonia's Constitutional Court has expressed strong interest in CEELI assistance in connection with Macedonia's efforts to develop an independent judiciary. Mr. Farrell will continue to investigate the current status of reforms on this issue, and to explore ways in which CEELI can provide direct assistance.

**5. Priority Issue #5: Legal Education/Law Faculty Reform (In Developmental Stage)**

CEELI will continue to explore, with officials at the Law Faculty, concrete ways of providing assistance to the Law Faculty as it seeks to restructure its programs and establish communications with Western law schools.

Additionally, Minister Jane Miljovski recently proposed that a new course be created, in the nature of a "continuing education" course for practicing lawyers and government officials, addressing legal issues raised by the changes to the government and economic systems. Minister Miljovski has suggested that the course be held at the Law Faculty, and that CEELI participate in its planning and implementation. Mr. Farrell plans to explore this matter further.

**6. Priority Issue # 6: Legislative Assessments - Economic Reform**

As noted above, CEELI's Macedonian hosts repeatedly have requested assistance on a wide variety of economic issues. In the past, CEELI has provided written comments on Macedonia's draft privatization law, and in response to a recent request from the Minister of Finance it will in the near future provide comments on four key pieces of tax reform legislation.

In response to a request from the Ministry of Development, CEELI also will assess a draft law on public enterprises, and a draft law on the stimulation of underdeveloped areas of Macedonia.

## **7. Additional Potential Issues**

During the past several weeks, CEELI's Macedonian hosts have suggested to Mr. Farrell that assistance on various additional matters may be needed, including: (a) the drafting of a new "administrative code;" (b) regional planning and restructuring; and (c) legislation on "public enterprises" and on the "stimulation of underdeveloped areas of Macedonia." Additionally, CEELI has been asked to assist with the legal aspects of a proposed USIS project aimed at establishing regional centers that would teach short-term courses in small business management.

CEELI will provide written comments on the legislation identified above, and Mr. Farrell is exploring possible CEELI involvement in the remaining projects.<sup>34</sup>

### **C. Conclusion**

Although CEELI's assistance program in Macedonia is relatively new, CEELI believes it is well-positioned to strengthen the infrastructure needed to ensure a functioning legal system based upon the rule of law, by building an independent judiciary, an equitable criminal justice system, and a well-organized, professional bar.

CEELI's work also will help to establish the legal bases for the equitable treatment of ethnic minorities in Macedonia. In this regard, the present crisis in Bosnia stems from the very issues to be addressed by the project developed by the Macedonian Center for Ethnic Relations. It seems reasonable to assume that, if similar work had been done with regard to the problems in the North, a different result might have ensued. CEELI views it as critical that these pressing human rights issues be addressed in an academic environment with the type and nature of support as has been expressed by the leading political figures in the Macedonian Government.

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<sup>34</sup>Mr. Farrell also is exploring the possibility of assisting the Macedonians on various other matters, including the following: (1) developing conflict of interest guidelines for government officials (including Assembly members and judges); (2) developing a program aimed at encouraging operation of a free press; and (3) developing some type of governmental body aimed at ensuring coordination of legislative initiatives.

**POLAND****I. INTRODUCTION**

During the week of December 16-21, 1991, CEELI undertook an ambitious project to determine the current state of events within the Polish legal community as a barometer of existing motivation and need for technical assistance. Stanley Glod, Chair of the CEELI Working Group on Poland and fluent Polish-speaker, held discussions with leaders of the organized bar, law schools, the Supreme Court, the Parliament, and various government agencies to plan for and coordinate future CEELI assistance to Poland.

Mr. Glod first met with Dr. Aleksander Ratajczak, President of the Polish Lawyers Association. The Polish Lawyers Association is a national voluntary membership organization consisting of approximately 8,000 lawyers. It is dedicated to improving the overall standards and ethics of the profession, promoting respect for the law, and cooperating with national and international institutions that strengthen these goals. Although formerly a Communist Party organization, the Polish Lawyers' Association has been transformed into a reform-minded organization, due largely to efforts of a group of young Polish lawyers and judges in Warsaw. These discussions led to CEELI's participation in a conference in Poznan in May 1992 on money laundering and other economic crimes issues.

In Krakow, Mr. Glod held meetings with President (Mayor) Krzysztof Bachminski, Vice-Mayor Jacek Fitt, Stanislaw Szumlinska, Treasurer of the city of Krakow, and Professor Andrzej Pankowicz of the Jagiellonian University. The session resulted in a proposal for a CEELI workshop, co-hosted by Krakow officials and the Jagiellonian University, to focus on local self-government issues, and the posting of a CEELI legal specialist to Krakow.

Finally, Mr. Glod conferred with parliamentary (Sejm) officials, the President and Vice-President of the National Administrative Tribunal, and representatives from other Ministries and government agencies. These meetings led to the posting of the CEELI liaison at the Sejm's Bureau of Research.

**II. SUMMARY OF CEELI'S ACTIVITIES IN POLAND,  
APRIL 1991-AUGUST 1993****A. Resident Liaison Activities**

Bozena Sarnecka-Crouch served as CEELI's first on-site liaison in Poland from February 1992-January 1993. J. Larry Mabry succeeded Ms. Sarnecka-Crouch and intended to remain in Poland for a full year; however, he returned to the United States after two months because of a medical emergency. Currently, Vera Hartford is CEELI's resident liaison in Poland. She will be posted in Warsaw until May 1994. CEELI's liaisons have completed numerous projects in Poland, including the following:

- Distributed materials on the U.S. Administrative Conference and the protection of minority stockholders to the Legislative Council of the Council of Ministers (May-June 1992).
- Provided a summary of U.S. law on public service companies and utility ownership to a Member of Parliament (May 1993).
- Wrote an extensive report on Poland for a publication<sup>35</sup> on "Laws and Regulations on Public Participation in (Environmental) Decision-Making on Investment Projects in Central and Eastern Europe." Translated appropriate provisions of the Polish Constitution, the Environmental Act, the Planning Act, the Building Code, and other laws.
- Conducted a seminar in Warsaw in June 1992 for Polish parliamentary staffers on legal regulation of lobbying in various countries.
- Lectured to the Office of the Council of Ministers on lobbying regulations in the United States and other countries. The lecture was organized by the Section of Constitutional Law and Legislation of the Legislative Council of the Council of Ministers.
- Attended the 34th Annual Conference of University Professors of Constitutional Law in Jastrzebia Gora from May 30-31, 1992. Ms. Sarnecka-Crouch spoke about separation of powers in the Polish and American constitutional models.
- Attended numerous conferences, including the Senate Conference on Criminal Policy (June 1992); the Conference on the Private Sector in Poland (April 1992), organized by the Polish Chamber of Commerce; and the Conference on Transition to Advanced Market Economies (June 1992).
- Met with and provided information on CEELI programs and the state of reforms in Poland to various organizations and individuals who provide legal assistance to Poland.
- Prepared extensive reports on Poland's government structure and legislative process and on commercial dispute resolution (October 1992).
- Consulted with Adam Strzembosz, President of the Polish Supreme Court, regarding a possible CEELI workshop focusing on criminal law (January 1993).

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<sup>35</sup>Research for the publication was conducted by CEELI and the European Bank for Reconstruction and Development.

- Developed a proposal with Jan Zybler, a Member of Parliament, for long-term assistance on lobbying issues (May 1993). The proposal calls for a CEELI concept paper, designed to guide the Polish Sejm in drafting laws and regulations on lobbying, followed by the placement of a legal specialist to work with the drafting committee on a final version of the bill and a possible workshop with Members of Parliament.

### **B. Legal Specialists**

In response to requests from host countries, CEELI sponsors technical legal specialists to assist with specifically-designed legal reform projects. The specialists, who typically have substantial experience in the relevant area of law, spend several weeks observing particular aspects of the Polish legal system, meeting with government officials and attorneys, and making recommendations.

#### **Legal Specialist for Land Use Planning and Local Government Issues**

In response to the city government's request, CEELI sent William Valletta to Krakow for over two months in November 1992 to assist with land use planning, city administration and regulation, and other local government issues. For the past five years, Mr. Valletta has served as General Counsel for the New York City Department of City Planning and the City Planning Commission. Mr. Valletta consulted with all pertinent city agencies, regional planners, City Council representatives, and outside organizations working under contract with the city on planning and home-rule questions. Mr. Valletta completed several technical assistance projects, including the following:

- Assisted in developing a procedure for democratic approval of the city's master plan, consisting of a series of formal review stages by appropriate city agencies, followed by district council review, public hearings, and final review and adoption by the City Council.

- Conducted training sessions for the directors and staff of city agencies on "Planning and Decision-Making in a Democratic and Capitalistic Society." Completed final briefings and a written report on land use and regulatory decision-making for the Director of Strategic Planning and Deputy-Mayor Wladislaw Brzeski.

- Recommended an inter-agency team approach to the process of planning for individual strategic development sites.

- Reviewed a hotel proposal with the Office of International Investment. Helped prepare a World Bank application for public transport feasibility study funding.

Mr. Valletta has been asked to return for follow-up assistance by the City of Krakow, and CEELI is discussing this possibility with Mr. Valletta.

### **C. Technical Legal Assistance Workshops**

Through its technical legal assistance workshops, CEELI provides practical legal training to judges, government officials, legislators, lawyers, legal academics, and law students. Workshops are developed through consultation with the CEELI resident liaison, AID officers, and host country representatives. The goal of CEELI workshops is to provide substantive, practical, comparative training that advocates the development of the rule of law and enhances the participants' understanding of legal principles relevant to the Polish legal infrastructure.

Technical legal assistance workshops focus on a particular substantive area of law and involve the participation of experienced lawyers, judges, and professors, usually including one from a civil law country. CEELI workshops are designed to promote energetic and open dialogue among participants and provide host countries with an in-depth, immediate analysis of critical nuances in the law.

#### **1. Local Government Relations** **April 1-4, 1992** **Krakow, Poland**

Pursuant to Mr. Glod's meetings in Poland in December 1991, CEELI conducted a workshop in Krakow four months later on local self-government issues. Organized by the city of Krakow and its Mayor, Krzysztof Bachminski, the workshop focused on the specific needs and problems of the local governments that were created in Poland in March 1990. Among the sixty local participants were Jagiellonian University professors, city government officials, and local self-government representatives from over twenty cities in southern Poland.<sup>36</sup>

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<sup>36</sup>The CEELI participants were John Glynn, People's Counsel, State of Maryland; Richard Hill, Chair, ABA Land Use and Zoning Subcommittee; Francis Keating, General Counsel, U.S. Department of Housing and Urban Development; Professor James Nicholas, Holland Law Center, University of Florida; and Michael Diedring, CEELI Deputy Director.

**2. White Collar Crime**  
**May 18-25, 1992**  
**Poznan, Poland**

CEELI sent a delegation<sup>37</sup> to the Second Polish Law Days, a yearly conference organized by the Polish Lawyers Association, in May 1992. The event is designed to organize Polish lawyers to lobby in support of the rule of law in Poland. CEELI panelists discussed legal issues related to white collar crime and official corruption.

Following their participation in the Second Polish Law Days, CEELI envoys Scott Michel and Sarah Welling presented a White Collar Crime Seminar at the University of Warsaw Law School. The seminar was organized by Professor Dubrochna Wojcik, President of the Polish Society of Criminology and Head of the Department of Criminology at the Institute of Legal Studies of the Polish Academy of Science. Mr. Michel and Ms. Welling made presentations addressing criminological, sociological, and psychological issues connected with white collar crime.

**3. Polish Prosecutor's Training Workshop**  
**June 9-11 and 14-16, 1993**  
**Popowo, Poland**

One result of the political and economic transformation in Poland is that prosecutors are faced with increasing levels of white collar crime. After initial consultations with Ferdynand Rymarz, Deputy General Public Prosecutor, CEELI sponsored a workshop for public prosecutors on white collar criminal prosecution.<sup>38</sup>

The workshop featured an introduction to the criminal justice system and the organizational structure of prosecution in the United States. During two working sessions, participants discussed American and Polish experiences in the areas of money laundering, tax fraud, organized crime, drug trafficking, and terrorism with over 75 Polish prosecutors and judges. Finally, the prosecutors explored possibilities for broader international cooperation in combatting organized international criminal activity.

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<sup>37</sup>Including Michael Diedring, CEELI Deputy Director; John Byrne, Senior Legislative Counsel, American Bankers Association; Scott Michel, tax law specialist; and Professor Sarah Welling, University of Kentucky College of Law.

<sup>38</sup> CEELI participants included: Jonny Franks (Assistant U.S. Attorney, Eastern District of N.Y.); Nelson Cunningham (Assistant U.S. Attorney, Southern District of N.Y.); and Stephen Ryan (former Assistant U.S. Attorney, now an attorney in private practice).

**D. Assessments of Draft Laws**

Another key element of CEELI's activities in Poland is the provision of written assessments of draft legislation. Through the assistance of hundreds of judges, law professors, and practitioners, CEELI gathers comments on proposed laws and compiles reports for liaisons to distribute to the agencies and individuals who are drafting legislation. The following assessments were provided to Polish officials:

- Draft Constitution  
July 1991
  
- Proposed Housing Law  
December 1991
  
- Draft White Collar Crime Law  
June 1992

**E. Legal Education/Sister Law School Program**

CEELI's Sister Law School Program promotes cooperative programs between American and Central and East European law schools by pairing each European law school with three American sister schools. Under the auspices of the Sister Law School Program, participants explore possibilities for faculty and student exchange programs, opportunities for joint research, proposals for graduate study programs, and ways in which U.S. law schools can assist Central and East European law schools with respect to curriculum development, library resources, and continuing legal education programs for law professors and deans.

**1. Workshop**  
**April 15-19, 1991**  
**Warsaw, Poland**

CEELI conducted a preliminary workshop on the proposed Sister Law School Program in Warsaw in April 1991. The participants included the deans of twenty American and Polish law schools.<sup>39</sup> The educators discussed approaches to teaching law, continuing legal education, and graduate legal programs from the American and Polish perspectives. The workshop focused on the needs of Polish law schools, including faculty training, graduate retraining, and library resource needs, and proposals for future joint efforts with U.S. sister schools.

**2. Law Faculty Training Institute**  
**August 30-September 13, 1992**  
**Lodz, Poland**

The Law Faculty Training Institute in Lodz, organized in conjunction with the University of Lodz and the University of Warsaw, was the first in a long-term series. CEELI created the Institutes to assist Central and East European law faculty in developing and expanding law school curriculum in substantive areas of the law. The Institute in Lodz offered intensive faculty training in intellectual property law and human rights. The participating faculty also had an opportunity to experiment with practical law school teaching techniques.

**3. Participating Polish Law Schools and Their American Sister Law Schools**

University of Gdansk  
 University of Minnesota School of Law  
 Notre Dame Law School  
 St. John's University School of Law

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<sup>39</sup>The U.S. participants included Dean Jacqueline Allee, St. Thomas University School of Law; Dean Bernard Dobranski, University of Detroit School of Law; Dean Steven Frankino, Villanova University School of Law; Dean Rudolph Hasl, Saint Louis University School of Law; Dean H. Reese Hansen, Brigham Young University, J. Reuben Clark Law School; Dean Henry Ramsey, Howard University School of Law; Dean Frank Read, University of California, Hastings College of Law; and Dean Steven Smith, Cleveland State University, Cleveland-Marshall College of Law. Professors from the Universities of Gdansk, Katowice, Krakow, Lublin, Lodz, Poznan, Szczecin, Torun, Warsaw, Wroclaw, and Bialystok comprised the Polish delegation.

Silesian University

University of the Pacific, McGeorge School of Law  
University of Houston Law Center  
Widener University School of Law

Jagiellonian University

Cleveland State University, Cleveland-Marshall College of Law  
Indiana University School of Law, Indianapolis  
Fordham University School of Law

Lodz University

Villanova University School of Law  
University of Alabama School of Law  
Catholic University of America, Columbus School of Law

University of Warsaw

University of Florida College of Law  
Saint Louis University School of Law  
Capital University School of Law

Marie-Curie Klodowskiej University

Indiana University School of Law, Bloomington  
Southern Methodist University School of Law  
Stetson University College of Law

Szczecin University

Case Western Reserve University, Backus School of Law  
University of Wyoming College of Law  
University of Louisville School of Law

Catholic University of Lublin

St. John's University school of Law  
St. Mary's University School of Law  
Albany Law School, Union University

Nicolas Copernicus University

Southern Illinois University School of Law  
Cornell University School of Law  
Rutgers University School of Law

Adam Mickiewicz University

University of Toledo College of Law  
Whittier College School of Law  
University of Iowa College of Law

Warsaw University, Bialystok  
 Marquette University School of Law  
 University of South Dakota School of Law  
 University of Kansas School of Law

University of Wroclaw  
 Boston University School of Law  
 Drake University Law School  
 Wayne State University Law School

### **III. RULE OF LAW COUNTRY STRATEGY FOR POLAND**

#### **A. Current Status of Legal Reform**

The government of Prime Minister Hanna Suchocka fell in May 1993, after losing a no-confidence vote. President Walesa dissolved the Sejm. Ms. Suchocka will stay on as Prime Minister, heading a caretaker government, until the new parliamentary elections scheduled for September 12. Suchocka will continue to press the European Community for faster acceptance of Poland into its institutions.

After the September elections, CEELI anticipates receiving numerous requests from the Bureau of Research, the research arm of the Sejm, for assessments on draft legislation. The President is forming a non-party union of candidates for the Sejm. Under the new election law, representation in the Sejm is permitted only given to a party representing at least 5% of the population or 8% of the population if it is a coalition. As a result of this law, several parties are attempting to form coalitions.

In May of 1993 the lower house of the Polish Parliament approved a privatization plan that converts approximately 600 state companies into private enterprises. Although passage of the law gives economic reform a major lift and bolsters the position of Prime Minister Suchocka, foreign investment in Poland has proceeded in fits and starts. Foreign investment in Poland is still less than in Hungary or in the former Czechoslovakia. The Polish economy, however, has shown encouraging signs in the last year and has received praise from international financial institutions for its moves towards a market economy. Parliamentary passage of the privatization law was also critical for the release of new money to Poland by the World Bank and other multilateral financial institutions.

#### **B. Priority Issues for Providing CEELI Assistance**

CEELI's primary method of providing assistance in Poland is through the activities of its resident liaison, Vera Hartford. Ms. Hartford has established an excellent working relationship with various Polish government officials and she provides advice daily to their questions and is respond to their requests for further information by coordinating with the CEELI office in Washington.

**1. Priority Issue #1: Polish Prosecutor Training****(a) Goal Statement**

To improve the ability of Polish Prosecutors to recognize and prosecute complex economic crimes, such as organized crime, white collar crime, money laundering and similar offenses.

**(b) Factual and Legal Background**

As Poland's economy continues to develop, a rise in economic crime has also occurred. Reports of official corruption and organized crime are commonplace. Poland has become a haven for stolen vehicles, drug transshipment and other illegal activities. Furthermore, complex financial crimes, such as money laundering and financial swindles are increasing. Polish law enforcement officials are ill-equipped and not well-trained to deal with these issues. Moreover, under the Polish legal system, the prosecutors are expected to play a substantive role in criminal investigations.

At present, Polish Prosecutors do not receive sufficient training in sophisticated investigatory techniques, nor are they sufficiently knowledgeable in how these complex crimes are transacted.

**(c) Priority Issue Identified by CEELI**

As a follow-up to CEELI's workshop on white collar crime (Poznan 1992) and CEELI's Prosecutor Training Workshop (Popowo 1993), the Polish Ministry of Justice has requested additional technical legal assistance from CEELI. At this point, and after additional consultations with the industry, it appears that CEELI can best provide assistance through a resident, long-term, legal specialist. This legal specialist would be an individual with a background as a criminal prosecutor and, ideally would have some experience in adult legal education. This specialist would provide assistance and counsel to the Ministry and Parliament on the Drafting of Law to Combat Sophisticated Economic Crimes, will be able to provide practical training to Polish Prosecutors on investigative techniques, and will be able to work with prosecutors "On-The-Job" to provide prosecutor advice and consultation.

(d) **Benchmarks**

- (i) The legal specialist will work with officials of the Ministry of Justice to determine whether sophisticated economic crimes can be prosecuted under existing Polish laws. If not, the specialist will recommend amendments or modifications to the law.
- (ii) The legal specialist will organize and participate in practical prosecutor training workshops in which modern investigatory techniques and criminal theory and implementation of criminal schemes will be discussed.
- (iii) The specialist will visit Prosecutor's offices throughout the country to obtain practical information on Prosecutorial issues and provide on-the-job training.

(e) **Indended Results/Impact**

As a result of these efforts, the Ministry will gain a better understanding of whether existing laws can be used to effectively combat economic crime. Moreover, Polish Prosecutors will receive training in modern investigatory and prosecutorial techniques.

2. **Priority Issue #2: Lobbying/Conflicts of Interest**

(a) **Goal Statement**

To assist the Polish government in preparing a pragmatic law on lobbying/conflicts of interest and to assist in informing the public and Parliament about the need or desire for such legislation.

(b) **Factual and Legal Background**

The concept of conflict of interest, at least as it is understood in the United States, is a completely foreign concept in Poland. As a result, legislators often are involved in relationships which, at best, appear to promote self-dealing. This perception has eroded the confidence of Polish citizens in their elected officials. Many complain that the "New Nomenklatura" are simply taking up where the communists left off.

(c) **Priority Project Identified by CEELI**

CEELI has been asked to provide technical legal assistance in the drafting of a lobbying law for the parliament. CEELI has provided this type of information/assistance in several of the countries of Central and Eastern Europe and the NIS. Experts identified by CEELI, private lawyers, academics, and government lawyers, are well-positioned to provide the necessary background information and practical experience to insure that a draft consistent with Poland's needs can be developed.

(d) **Benchmarks**

(i) CEELI will work through its liaison to identify the exact information and assistance required, and will respond accordingly.

(ii) CEELI will create a working group to provide information and a formal assessment of the draft law.

(iii) CEELI will work with the Parliament and Counsel of Ministers to assist in a public education campaign with regard to the need for lobbying legislation.

(e) **Impact**

It is CEELI's intent to provide assistance and advice so that a workable, transparent lobbying statute is drafted and enacted. CEELI also hopes to disseminate information to the general public about the need for lobbying legislation.

**3. Priority Issue #3: Criminal Law (In Developmental Stage)**

Based upon its workshop on white collar crime, CEELI continues to identify criminal law and procedure as a high priority in Poland. Officials from the Ministry of Justice who attended the workshop have commented to our liaison that the prosecutors are interested in implementing some of the techniques discussed during the workshop, and are interested in additional CEELI training workshops.

**4. Priority Issue #4: Judicial Reform/Training (In Developmental Stage)**

The Ministry of Justice has expressed interest in training workshops for judges in civil courts. These judges are in need of additional training to understand the new laws and regulations that they are asked to apply.

#### **5. Priority Issue #5: Local Government (In Developmental Stage)**

CEELI is interested in assisting in the restructuring of local governments. Poland is currently trying to simplify its system of local governments in an attempt to increase the efficiency of local government. Issues concerning the devolving of power from the national government to local to local governments are very pressing in Poland. For example, our liaison has received requests for information regarding the manner in which utility companies are operated in the United States.

#### **6. Priority Issue #6: Bar Reform (In Developmental Stage)**

Legal advisor practice is one option in the two track Polish legal education system. The other track is formal "advocate" training. Approximately 4,500 advocates make up the mandatory membership of the Polish Bar Association, whose purpose is the continuing education and qualification of advocates. Realizing the growing importance and potential monetary rewards of business law practice, the Advocates Association is lobbying to end the segregation of advisors and advocates within the legal community, perhaps by opening its membership to legal advisors. CEELI hopes to work with the Polish Bar Association and Advocates Association on reform issues.

#### **C. Conclusion**

Providing assistance in Poland can be particularly difficult due to the official Polish bias against "outside" assistance. Particularly in the area of criminal law reform, however, Poland is looking to the United States and the European Community for substantive assistance. There is also a misconception in Poland that the Polish legal system is completely different than the American system. For example, during the Polish Prosecutor Training Workshop, Polish prosecutors realized that although the legal constraints and requirements were different, American prosecutorial theory could be modified and used under existing Polish law. This workshop challenged the Polish prosecutors and judges to think more creatively about legal solutions to their criminal law issues, and also allowed them to understand how Americans approached the same issues.

With CEELI's rule of law liaison located within the Sejm's Bureau of Research, CEELI has unique access to Polish members of parliament and legal issues that arise in the legislative process. The Polish government is particularly interested in government ethics and lobbying issues, and CEELI has provided information and assistance for well over a year. With this access, CEELI has the ability to work directly with members of the legislature. CEELI anticipates receiving several requests for assessments after the elections of the Sejm in September 1993.

**ROMANIA****I. INTRODUCTION**

CEELI has been involved in legal reform efforts in Romania since early 1991. CEELI's earliest efforts in Romania took the form of technical legal assistance workshops in the areas of constitutional drafting and judicial restructuring. Since February 1992, CEELI has placed resident liaisons in Bucharest who work with government officials, legislators, judges, law professors, legal practitioners, and nongovernmental organizations to identify legal reform priorities.

**II. SUMMARY OF CEELI ACTIVITIES IN ROMANIA,  
NOVEMBER 1990 -AUGUST 1993****A. Resident Liaison Activities**

CEELI places attorney liaisons in host countries to facilitate long-term legal assistance. The liaisons coordinate project activities, respond to requests for legal materials, and provide direct legal assistance to judges, parliamentarians, attorneys, and other members of the legal community. The first resident liaisons in Romania, Karen Connolly and Gregory Surman, arrived in February 1992 for a six-month stay. Thomas and Patricia Pahl continued their intensive activities from September 1992 to April 1993. Mark Dietrich is currently serving as CEELI's resident liaison in Romania until at least January 1994.

**1. Provision of Legal Materials and Other Information**

Among the most fundamental barriers to the rule of law in Romania is the legal community's lack of access to materials from other countries. In response to requests by Romanian officials and non-governmental actors, resident liaisons perform the critical function of obtaining and translating American and international legal materials on a wide range of topics. The following are examples, by no means an exhaustive list, of requests to which CEELI liaisons have responded with legal materials and information.

- CEELI's liaisons distributed copies of American and international standards for magisterial and ethical attorney conduct to the Romanian Superior Council of the Magistrature and to all forty Romanian bar associations.
- Information on the organization and operation of American courts and prosecutors' offices was given to the Romanian Ministry of Justice and the Superior Council of the Magistrature.

- The liaisons obtained written materials for the Romanian Ministry of Justice about white collar crime, money laundering, execution of criminal penalties, organization of prison systems, and other aspects of criminal law and procedure.
- In the area of property and local government law, the Romanian Department of Urban Planning received information from the CEELI liaisons about the process of regional planning in the United States, zoning, the transfer, sale, and lease of property, and mortgage financing.
- Commercial legal materials on American securities laws, export-import financing, and American and other commercial codes were made available by the CEELI liaisons to the Romanian Ministry of Trade and to members of the Romanian Parliament.
- Materials on the tax aspects of non-profit associations were forwarded to Professor Sorin David at the University of Bucharest Law School.

## **2. Direct Legal Assistance**

In addition to formal lectures and informal talks with members of the Romanian legal community, the liaisons have provided direct legal assistance to Romanian lawmakers, government staffers, judges, and attorneys. The following is a sample of the projects which CEELI's liaisons have undertaken:

- Coordinated CEELI's support of the Magistrates' School, which was created to provide specialized training for new magistrates and continuing education for current magistrates. Because judicial restructuring is essential to establishing the rule of law in Romania, CEELI consistently provides the School with legal materials and guidance. The resident liaisons completed a report for Dean Valeriu Stoica on the status and needs of the School, organized a technical assistance workshop on curriculum development, continuing education, and administration, helped prepare a grant application, and sponsored a reception to increase domestic support for the School. The liaisons have also advised the faculty and students on substantive legal issues, through lectures on commercial law topics for example.
- Conducted workshops to promote discussion of legal issues and to illustrate how those issues are resolved in the American and other legal systems. The liaisons held a two-day mock American criminal trial for students at the Magistrates' School, a one-day workshop concerning judicial and attorney ethics for Romanian magistrates and lawyers in Brazov, and a one-day workshop on the basics of contract law with Professor Sorin David of the University of Bucharest.

- Provided materials and guidance on substantive areas of law to the Deputies and staff of the Juridical Commission of the Chamber of Deputies. The liaisons received an unprecedented invitation to participate in the normally closed meetings of the Juridical Commission and offered testimony during Commission meetings regarding proposed legislation.
- Offered advice to the Ministry of Justice on constitutional issues. The liaisons prepared memoranda on a Romanian public meeting law, on free exercise and establishment of religion in the United States, and on American anti-discrimination laws.
- Assisted a member of the Romanian Parliament and members of the Romanian Helsinki Committee in drafting a freedom of information law.
- Worked with the Bucharest Young Lawyers Association and other lawyers on matters relating to the regulation of the practice of law, including the drafting of a code of professional ethics
- Assisted a group of Romanian judges in creating Romania's first association of judges, which will be devoted to promoting an independent, well-trained, and well-informed judiciary.
- Served as members of an international election observer delegation which monitored local elections in Tirgu Mures, national presidential and parliamentary elections in September 1992, and presidential run-off elections in October 1992.
- Wrote a contract form book for Romanian lawyers and small businesses with Professor Sorin David of the University of Bucharest Law School. The book, to be published by Editura Tehinca, contains basic information about contract formation and is designed for use by entrepreneurs and commercial law students.
- Helped locate a forensic anthropologist to assist a Romanian prosecutor in his investigation of a mass grave at the site of a former security police post in Caciulati.
- Spoke at conferences organized by IFES in Oradea and Salonta on civic education regarding the role of judges and lawyers in a democratic society, as well as the importance of citizen participation in a democracy.
- Provided information on Congressional investigative committees to Victor Babuic, the former Minister of Justice and current Democratic Party politician.

## **B. Technical Legal Assistance Workshops**

Through its technical legal assistance workshops, CEELI provides practical legal training to judges, government officials, legislators, lawyers, legal academics, and law students. Workshops are developed through consultation with the CEELI resident liaison, AID officers, and host country representatives. The purpose of the technical assistance workshops is to provide substantive, practical, comparative training that advocates the development of the rule of law and enhances the participants' understanding of legal principles relevant to the Romanian legal infrastructure. To date, CEELI has conducted the following technical legal assistance workshops in Romania:

CEELI technical legal assistance workshops focus on a particular substantive area of law and involve the participation of experienced lawyers or judges, usually including one from a civil law country. CEELI workshops are designed to promote energetic and open dialogue among participants and provide host countries with in-depth, immediate analysis of critical nuances in the law.

### **1. Constitutional Drafting Symposium November 19-23, 1990**

One of CEELI's first projects in Romania was to provide technical assistance in the drafting of the country's new constitution. As part of this project, CEELI sponsored a symposium on constitutional reform in November 1990. The CEELI delegation worked closely with the Constitutional Drafting Committee of the Romanian Parliament. Among the CEELI participants were Jerome Barron, Professor of Law, National Law Center, George Washington University, and Justice Ben Overton, Florida Supreme Court.

### **2. Judicial Restructuring April 15-19, 1991**

CEELI conducted a workshop on Judicial Restructuring in Bucharest in April 1991. The discussions centered on the functions and structures of a judicial system and on the existing judicial structures in Romania, the United States, and various West European countries. The CEELI participants made presentations on the role of judges and lawyers, the criminal component, and human rights in a judicial system.

Romanian officials from the President's Cabinet, the Parliament, the Ministry of Justice, the Attorney General's Office, and the Supreme Court attended the workshop. The CEELI delegation was comprised of Justice Martha Daughtrey, Tennessee Supreme Court, Professor Joachim Herrman, University of Augsburg, Germany, Douglas Amdahl, retired Chief Justice of the Minnesota Supreme Court, and Judge Earl Johnson, Court of Appeal, State of California, among others.

### **3. Constitutional Drafting**

**May 15-19, 1991 (Bucharest, Romania)**

**August 19-23, 1991 (Follow-up Workshop, Washington, D.C.)**

CEELI sponsored a technical assistance workshop in Bucharest in May 1991 with the full Constitutional Drafting Committee and other Members of the Romanian Parliament. The CEELI delegation included Professor Paul Bender, Arizona State University College of Law, Professor A.E. Dick Howard, University of Virginia, Professor Mark Tushnet, Georgetown University Law Center, and Professor Ken Vinson, Florida State University. A follow-up workshop, attended by five Drafting Committee members, took place in Washington, D.C. in August 1991.

In both sessions, Committee members participated in discussions and received technical guidance in the area of constitutional drafting. Specifically, the workshops focused on constitutional provisions relating to the protection of human rights and basic freedoms, emergency powers and national security exceptions, the powers and appointment of the Constitutional Court, and separation of powers.

### **4. Curriculum and Administration Reform for the Magistrates' School**

**November 2-6, 1992**

CEELI sponsored a week-long workshop for the faculty of the Romanian National Institute for Professional Training of Magistrates. The Magistrates' School was created in Spring 1991 to provide practical and theoretical training to new magistrates (i.e. prosecutors and judges), continuing education for practicing magistrates, and information to magistrates regarding changes in Romanian laws, foreign laws, and judicial doctrine. The ultimate goal of the School is to promote an independent, well-trained, and respected judiciary.

At the CEELI workshop, American and French magistrates with experience in judicial training offered practical suggestions about teaching methods, curriculum, and other issues related to the training of judges and prosecutors. The CEELI participants also discussed how to promote public confidence in the judiciary, increase the status of judges, and establish a judiciary that is truly independent from the executive branch of government and the prosecutors' office.

James DeAtley, Assistant U.S. Attorney, Judge Joseph Hatchett, U.S. Court of Appeals for the Eleventh Circuit, Monsieur Marcel LeMonde, Sous-Directeur des Stages, Ecole Nationale de la Magistrature, V. Robert Payant, Dean, National Judicial College, and Judge William Schwarzer, U.S. District Court Judge and Director, Federal Judicial Center, were among the CEELI participants.

## **5. Ethical Codes of Conduct for Lawyers and Judges January 25-26, 1993**

CEELI conducted a two-day workshop for magistrates from more than twenty different countries in January 1993. The CEELI participants included Bernice Donald, President, National Association of Women Judges, Paul Godfrey, Chuck Labella, Office of the U.S. Attorney, Southern District of New York, Lawrence Latta, and Dr. Hans Luhn.

The American and German magistrates and lawyers made presentations on the sources and types of ethical restrictions on magistrates, prosecutorial ethics, and the investigation and discipline of ethical violations. The workshop participants discussed the ethical restrictions in the Romanian Judicial Organization Law and the enforcement of similar European and American restrictions.

### **C. Legal Specialists**

In response to requests from host countries, CEELI sponsors Technical Legal Specialists to assist with specifically-identified legal reform projects. The Specialists, who typically have substantial experience in the relevant area of law, spend several weeks observing particular aspects of the Romanian legal system, meeting with government officials and attorneys, and making recommendations.

#### **1. Legal Specialist to the Judicial Training School**

Judge Nely Johnson travelled to Romania in July 1991 to assist the Magistrates' School with curriculum development and reform.

#### **2. Legal Specialist to the Federation of Mayors**

Mr. Gary Binger, Planning Director of the Association of Bay Area Governments, worked in Romania from July 19-August 13, 1992. He spent most of his time working with the newly-created Federation of Mayors in Brazov. Mr. Binger also spent two days working with the Department of Urban Planning and commenting on its draft urban and regional planning law. In addition, Mr. Binger visited the Office of the Mayor in Pitesti and consulted with the Department of Local Public Administration on taxation and other issues.

### **3. Legal Specialist for Court Administration**

At the request of the Ministry of Justice, CEELI placed Karen Kramer in Romania from March 1-12, 1993 as a technical legal specialist for court administration. Ms. Kramer is a Senior Administrative Clerk for the Chief Judges of the U.S. Federal District Court, San Francisco, California. While in Romania, she toured courts in Bucharest, Constanta, and Fagaras, interviewed court personnel, and assessed court administration procedures. Ms. Kramer's itinerary was selected by the Ministry of Justice to present a cross-section of large, small, urban, rural, trial, and appellate courts. Ms. Kramer then prepared a report for Mr. Radu Giroveanu of the Ministry of Justice as to how current court administration procedures can be improved at the new Romanian Courts of Appeal.

#### **D. Assessments of Draft Laws**

Another key element of CEELI's activities in Romania is the provision of written assessments of draft legislation. Through the assistance of hundreds of judges, law professors, and practitioners, CEELI gathers comments on proposed laws and compiles reports for liaisons to deliver to the individuals and committees who are drafting legislation. The following assessments were provided to Romanian officials:

- Proposed Legislation on Organization of the Judiciary  
June 1991
- Law on Election of Local and Country Councils  
September 1991
- Foreign Investment Laws  
October 1991
- General Cadastre and Public Register of Fixed Properties  
June 1992
- Law on the Ownership of Certain Expropriated Land and Buildings  
June 1992
- Urban and Regional Planning Law  
August 1992
- Law on Sponsorship  
September 1992
- Law on Expropriation of Property for Public Utility  
October 1992

- Magistrates' School's Administrative Rules  
November 1992

- Draft Lawyer's Code of Conduct  
December 1992

- Informal Comments Provided on Romania's Proposed National Television and Radio Law  
March 1993

### E. Concept Papers

Concept papers offer concise overviews of particular areas of law. The papers outline the primary issues that draft laws should cover, including various approaches to those issues as reflected in international treaties, U.S. and West European law, and developments in other East European and NIS countries. CEELI then delivers the concept papers to individuals and drafting committees. CEELI has provided the Romanians with conceptual reports on local government finance and export-import financing.

### F. Legal Education/Sister Law School Program

Under the auspices of CEELI's Sister Law School Program, each participating Romanian law school has been paired with three American law schools.

#### University of Bucharest

Ohio State College of Law  
New England School of Law  
National Law Center, George Washington University

#### University of Craiova

University of Miami School  
Fuchsberg Law Center, Tauro College  
West Virginia University College of Law

#### University of Sibiu

University of Puerto Rico School of Law  
University of Denver College of Law  
University of Mississippi School of Law

#### Al. I Cuza University, Iasi

State University of New York at Buffalo School of Law  
University of California, Davis, School of Law  
Inter-American University School of Law

The University of Bucharest Law School and the New England School of Law have established a joint program, in which American professors teach commercial law and contract drafting and negotiation courses at the University of Bucharest Law School. In May 1993, Professor Susan Sinneran of the New England School of Law taught a course in contracts at the University of Bucharest. The New England School of Law also plans to donate books, computer equipment and technical training, and other supplies to the University of Bucharest Law School.

The on-site liaisons identified candidates from the Universities of Sibiu and Iasi for the Sister Law School Exchange Program and from Iasi, Sibiu, and Craiova for the Summer Faculty Training Program in Lodz, Poland.

### **III. RULE OF LAW COUNTRY STRATEGY FOR ROMANIA**

#### **A. Current Status of Legal Reform**

Legal reform is moving slowly in Romania. Romania suffers from several problems. First, Romania, has no tradition of democracy. Throughout its history, Romania has been ruled by despots, kings, and dictators. As a result, it has little experience with the concept of an independent judiciary. The judicial branch, even prior to the Fascist and Communist eras, was based upon the Napoleonic Code, which gave judges the status of little more than civil servants. Under the Communists, the role of judges was subservient to that of prosecutors and this perception of subservience continues even today. For example, in courtrooms, prosecutors sit on a higher level than do the judges.

Second, President Iliescu and his party (which has a plurality in Parliament) do not seem fully committed to reform. Their interest in a truly independent judiciary is minimal. For example, the justice minister recently removed the Chief Judge of Bucharest for obvious political reasons.

Third, Parliament itself is also a problem. No party currently holds a majority (although President Iliescu's government stays in power with the support of the nationalistic parties) and sessions typically involve charges and countercharges of corruption. Recently, a fist fight broke out between two members of Parliament.

Due to this in-fighting, very little of substance was accomplished. Nevertheless, the Parliament did manage to enact a law on judicial reform, a revised penal procedure code, and a revised civil procedure code. The civil procedure code apparently retains the prosecutor's right to take an extraordinary appeal in civil matters, even when the state is not a party. This is a vestige from the Communist era which the liberal forces in Parliament tried, but failed, to have removed from the law.

Romania adopted its Constitution on December 8, 1991. This Constitution provides for a parliamentary system comprised of a Chamber of Deputies and a Senate, with a strong President elected by direct universal suffrage. This Constitution provides that the provisions concerning the rights and liberties of citizens are to be interpreted and enforced in conformity with the Universal Declaration of Human Rights. The Constitution as written promotes democratic principles; however, its implementation is yet to be truly tested. The Constitution establishes the Constitutional Court, which is comprised of nine judges who are appointed for one term of nine years. This court is empowered to decide, among other matters, the constitutionality of laws, before promulgation, by the President of Romania, by the President of either Chamber of Parliament, by the Government, the Supreme Court of Justice, by at least 50 Deputies or at least 25 Senators, as well as, ex officio, on initiative to revise the Constitution.

Rumors are circulating that a new government will be installed this fall, and there is a possibility that the government will be more liberal. Fundamental change, however, may require the election of a new president and a new parliament.

## **B. Priority Issues for CEELI Assistance**

CEELI's primary method of providing assistance is through the activities of its resident liaison, Mark Dietrich. CEELI consults daily with key government officials regarding legal reform. Mr. Dietrich is able to provide prompt answers to questions raised concerning potential solutions to problems concerning legal reform in Romania.

### **1. Priority Issue # 1: Judicial Reform**

#### **(a) Goal Statement.**

To promote the creation of a strong, independent and professional judiciary. CEELI has identified several projects in Romania that address reforming the judiciary. These projects include supporting the Romanian Magistrates' School and the Judges Association. CEELI hopes that its work with the Magistrates' School and the Association of Judges will promote judicial independence and training by establishing a self-sustaining, indigenous institution devoted to the training of judges. In addition, CEELI has undertaken projects to address court administration problems and judicial ethics.

#### **(b) Factual and Legal Background**

In Romania, there is no tradition of a strong and independent judiciary. Instead, the tradition is one of an all-powerful prosecutor and a timid judge acting as a "rubber stamp." Judges receive a relatively low salary and they bear heavy workloads. Although Parliament recently raised judges' salaries, they set some prosecutors' salaries higher than those of judges. Also, many of the judges are very young and inexperienced. Also, judges lack control over counsel and parties in managing cases and disciplining the parties.

On July 1, 1993, the new Law on the Organization of the Judiciary went into effect in Romania. This is the most important piece of legislation in Romania affecting the judiciary. This law essentially sets up three levels of courts (jucatorii, tribunals, and courts of appeal), together with prosecutor's offices for each court. The law also provides for the appointment, advancement, and supervision of judges, including some ethical and disciplinary provisions. The law, however, does not do much to support the independence of the judiciary.

The new Law on the Organization of the Judiciary provides some control over the prosecutors, making the Chief Prosecutor responsible to the Justice Minister for the first time (previously, the prosecutor reported directly to the President). The law also provides some protection to the judiciary, making "irremovable" those judges appointed by the President. But the Ministry of Justice can review the work of judges through Inspectors General, and the law seems to indicate that this review can affect the results of individual cases. Also, the Superior Council of Magistrates, responsible for advancing and censoring judges, includes nine prosecutors in its membership (out of a total of nineteen members), even though the Council has no jurisdiction over prosecutors.

On the issue of irremovability, recently the Minister of Justice fired the Chief Judge of Bucharest, ostensibly for illegally appointing the presidents of other courts in Bucharest. The newspapers report, however, that the true reason for the firing was that the Chief Judge had come down with some decisions against President Ilescu in 1992 when he tried to run for president and senator at the same time. Apparently, the Chief Judge was not "irremovable" under the new law because he had not been appointed by the President. Examples such as this demonstrate that the judiciary is still beholden to political pressures.

**c. Judicial Reform Priority Projects Identified by CEELI:**

**(i) Romanian Magistrates' School**

**(a) Goal Statement**

To support the establishment of the Romanian Magistrates' School as a self-sustaining institution for the training of magistrates.

**(b) Factual and Legal Background**

The Romanian Magistrates' School was established pursuant to Governmental Decision No. 183, dated March 20, 1991. The stated goals of the Magistrates' School were:

- (1) To provide post-graduate training for Romanian law school graduates interested in becoming magistrates; and
- (2) To provide a continuing education program for current and existing magistrates.

The Romanian judicial system is modeled on the French system. The French recognized that its judges, who sit on the bench directly after finishing school, have very little practical experience. To provide their judges with more experience, the French created the Ecole Nationale de la Magistrature. The Romanian Magistrates School is modeled upon the French school.

Although the Magistrates' School was originally under the Ministry of Education, it is currently a part of the Ministry of Justice. The Dean of the Magistrates' School reports to a fourteen member Administrative Council (the governing body of the school), which is a semi-independent body comprised of professors, judges, prosecutors, and representatives from the Ministry of Justice. The Administrative Council handles the day to day administration of the Magistrates' School; however, the Ministry of Justice provides funding for the school and has been involved in the selection of students and the salaries of the professors. Normally, each class consists of approximately 45 students, who attend classes for one year prior to assuming positions on the bench or in the prosecutor's office.

The faculty consists of approximately 17 part-time professors, who are either practicing judges or prosecutors, or professors at the Bucharest Law School. The curriculum is both theoretical and practical. The practical component entails placing students directly into the courtrooms and the theoretical component involves additional lectures.

The Romanian Magistrates' School has experienced some difficulties since its creation. Romania is suffering from a lack of judges and the Ministry of Justice has been hesitant to require students to attend the school due to vacancies. Also, the Ministry of Justice does not have the resources to support the school completely.

CEELI will continue to support the Romanian Magistrates' School. In June, 1993, Dean Valeriu Stoica resigned as dean of the school and CEELI understands that the current vice dean, Dana Vartires, will become dean. CEELI has worked closely with both Mr. Stoica and Ms. Vartires, and will continue to do so in the future. The Magistrates' School is still in need of additional funding to establish its presence as a viable means of training new judges, as well as a vehicle for providing continuing education for more senior judges.

**(c) Benchmarks**

- (i) Work with the Romanian Magistrates' School to help it obtain a physical presence, including office space, a library, and standard office equipment.
- (ii) Advise the Romanian Magistrates' School regarding curriculum reform and administrative efficiency.
- (iii) Attempt to secure funding for the school from other sources, such as the European Bank for Reconstruction and Development.
- (iv) Consult with the Romanian Magistrates' School regarding methods of providing both initial training and continuing education.

**(d) Impact**

CEELI hopes that by systematically reforming the manner in which law is taught to judges and prosecutors, the judiciary will become increasingly strong and independent. Judges and prosecutors need to understand their role in a democratic society. The Magistrates' School is a newly created institution dedicated to legal training. The Magistrates' School also fosters judicial independence by acting as a conduit for interaction with judges and prosecutors from the West.

**(ii) Romanian Association of Magistrates.****(a) Goal Statement**

CEELI promotes the continued development of the Romanian Association of Judges ("Association") as a means of strengthening the judiciary and eventually providing continuing education for the judges. This Association needs assistance in preparing a newsletter and a grant proposal to obtain basic funding for office equipment.

**(b) Factual and Legal Background**

The Association of is a professional association originally established in 1933. During the Second World War and the Communist era, the Association fell into a period of neglect. Late last year, several judges in Bucharest decided to resuscitate the Association. They have prepared and drafted by-laws, and contacted judges in other municipalities, some of whom have formed local chapters of the Association. To our knowledge, the Association consists solely of judges--not prosecutors--and has approximately 100 members.

One of the stated goals of the Association is to assist judges in preventing interferences with the judiciary and to improve judicial independence. These goals are similar to what the French Association of Judges, established in the 1950's achieved for French judges. But the Romanian Association has little expertise and no funding to reach its goals.

(c) **Benchmarks**

- (i) Develop an agenda with the Association to increase the credibility and respect for judges among prosecutors, lawyers, and the public.
- (ii) Assist the Association in developing a newsletter that will publish articles of scholarly and practical interest among judges. For example, these articles may address how to interpret the new (and controversial) land law, the effect of the high rate of inflation on money judgements, and judicial ethics.
- (iii) Assist the Association in organizing round table discussions or lectures in Bucharest.
- (iv) Attempt to use videotapes to demonstrate the relatively more active role American judges play in U.S. courts.
- (v) Assist the Association in expanding its membership from other districts.
- (vi) Assist the Association in securing funding from other sources, such as the Soros Foundation, the German Marshall Fund, and the European Bank for Reconstruction and Development.

(d) **Impact**

By creating a strong Association of Magistrates, CEELI hopes to increase the stature and professionalism of the judiciary.

(iii) **Judicial Ethics**

(a) **Goal Statement**

CEELI has been actively involved in focusing attention on judicial ethics in Romania. By developing an awareness of the importance of judicial ethics, CEELI hopes to promote further the development of a strong, independent and well-respected judiciary.

(b) **Factual and Legal Background**

In January 1993, CEELI held a workshop on judicial ethics in Bucharest. The workshop discussed the sources and types of ethical restrictions, conflicts of interest (especially due to commercial activities), political and professional activities of magistrates, prosecutorial ethics, role of magistrate, investigation, disciplinary proceedings and enforcement.

(c) **Benchmarks**

- (i) The CEELI liaison will work with the newly established Superior Council of the Magistratura, which is responsible for selecting, promoting, and disciplining magistrates, to develop ethical guidelines for magistrates.
- (ii) CEELI has already translated the ABA Code of Judicial Conduct and the United Nations ethical standards for Judges into Romanian, which were distributed at the CEELI workshop held in January, 1993.
- (iii) Continue to have CEELI liaison speak at training sessions for judges concerning ethical issues. The Justice Ministry has invited Mr. Dietrich to attend training sessions for judges that it has organized around the country. Mr. Dietrich has already attended two such conferences, one in Hunedoara in May and the other in Iasi in June. At each session, Mr. Dietrich addressed approximately 35 judges on the topic of judicial independence and ethics. These sessions were well received, and the Justice Ministry has signalled its intent to invite Mr. Dietrich to additional training sessions this fall.

(d) **Impact**

CEELI hopes to provide information that will enable the Romanians to develop judicial ethics guidelines and regulations so as to improve the stature of the judiciary.

(iv) **Court Administration (Monitoring Stage)**

Our liaison will follow up with any requests for further assistance based upon the report prepared by the court administration specialist, Karen Kramer, who assessed the court system in the early spring and provided recommendations for changes. This report was requested by Mr. Giroveanu, the assistant secretary in charge of courts, who has since been named to the new Courts of Appeal. Due to the increased workload of the judges, the current court system is under severe pressure. In her report, Ms. Kramer made several suggestions for improving the efficiency of the courts, as well as suggestions to strengthen the courts as an institution by improving the stature of judges. These recommendations would, in turn, increase public confidence in the court system. Our liaison, Mark Dietrich, continues to monitor court administration issues and is following up to determine whether there are any requests for further assistance, especially in the implementation of the recommendations contained in Ms. Kramer's report.

(v) **Constitutional Court (In Developmental Stage)**

Through its early workshops, CEELI was integrally involved in providing assistance during the drafting of the Romanian Constitution. CEELI has continued to monitor the implementation of the Constitution in Romania and recently met with several members of the Romanian Constitutional Court. These judges described the important issues they are facing as they carry their the difficult task of applying the new Constitution. For example, novel issues concerning human rights and jurisdiction are confronting the court. CEELI is assessing various methods of assisting the court. For example, CEELI is considering hosting a workshop in which various members of other Central and East European Constitutional Courts, as well as Western European Constitutional Courts, may participate to discuss commonly faces issues.

**2. Priority Issue # 2: Bar Reform**

(a) **Goal Statement**

CEELI will assist the Romanians in enhancing the competence and professionalism for the bar.

**(b) Factual and Legal Background**

During the communist era, lawyers were not well respected in Romania due to a perceived lack of independence. The only lawyers with any power were prosecutors. A defense lawyer was not expected to provide a strong defense. Apparently, during the communist era, bribery of lawyers was commonplace. The current reputation of lawyers is somewhat improved. Lawyers are finding it more lucrative to go into a commercial practice than to become a judge, prosecutor or defense attorney. Bar associations in Romania under communism were essentially clearing houses which assigned cases to lawyers and arranged for the payment of fees (keeping a substantial share for the association itself). There are now many private practitioners, and the new law apparently does away with the rigid control over fees. The Parliament will consider the Law on the Organization and Practice of the Legal Profession ("Law on Lawyers") in the fall. The proposed Law on Lawyers is drafted by the current practitioners, who do not wish to open their practice to others. For example, Romanian lawyers do not want to permit foreign lawyers to practice in Romania, except on the basis of reciprocity. The law on lawyers, however, includes too many controls over where an attorney may practice and whom he may represent.

**(c) Benchmarks**

- Prepare an assessment of the Law on Lawyers.
- Consult through the CEELI liaison with the drafters of the Law on Lawyers regarding suggestions contained in the assessment.
- Provide information regarding the establishment and management of private law firms.
- Consult through the CEELI liaison with Romanian members of the bar and leaders of bar associations regarding areas in which they would like assistance.

**(d) Impact**

CEELI hopes to assist the Romanian in improving the professionalism of the bar, which will strengthen legal reform efforts in Romania.

### **3. Priority Issue # 3: Criminal Law Reform (In Developmental Stage)**

CEELI will continue to work on criminal law reform in Romania. Mark Dietrich has provided Nicolae Zaharia, the Director of Legislation at the Ministry of Justice, with information relating to prisons, money laundering, and organized crime. CEELI understands that the Justice Ministry will draft and Parliament will consider next year, a law on prisoners and revisions to the substantive penal code. CEELI will assess these laws if it receives requests from the Justice Ministry to do so.

### **4. Priority Issue # 4: General Legislative Reform (In Developmental Stage)**

The Parliament is required to establish an Office of Legislative Council, which is responsible for drafting and reviewing legislation. CEELI has been coordinating its efforts with the U.S. Embassy to determine whether the placement of a legal specialist to the Romanian Parliament to focus on issues of legislative drafting would be useful. Last month, Mr. Dietrich met with Lloyd Ator, a legislative expert who had been sent by USIA to assess the type of assistance needed by the Romanian Parliament. CEELI will continue to monitor this request and will assess the need to send a parliamentary expert when the Parliament reconvenes this fall.

A legal specialist could assist this new office in legislative drafting, as well as provide general background information regarding staffing issues.

CEELI has developed several contacts with key members of the Juridical Commission of the Romanian Chamber of Deputies and anticipates obtaining requests for assessments of draft legislation in a variety of areas. CEELI's assessments have been very effective in Romania. For example, CEELI's assessment of the draft law concerning the expropriation of property was used extensively during the Juridical Commission's deliberations concerning modifications of this law. Also, due to coordination with the Commercial Law Development Program, CEELI anticipates possibly providing an assessment of the proposed Romanian trademark and copyright law. Also, CEELI has received a request from the Romanian Commerce Ministry to assess the Romanian unfair competition law.

CEELI is actively involved in providing assessments of draft legislation in Romania. Currently, CEELI is assessing the draft Law on Lawyers, Law on Political Parties, and Bankruptcy Law. CEELI is also in the process of assessing various laws and decrees relating to the establishment of standardization agencies and the promulgation of standards relating to consumer protection and measurement pursuant to a request from Mihail Ciocodeica, Director General, Romanian Institute for Standardization. In addition, CEELI is also assessing various international trade laws. CEELI understands that the Ministry of Justice may also be working on a civil code, and CEELI will monitor this legislative development.

### C. Conclusion

Due to the scars left by Ceausescu's repressive regime, the rule of law program must endeavor to change the mentality of an entire generation of Romanians to encourage them to take responsibility themselves for initiating democratic reforms in their society. The goal of the Magistrates' School is to enable the Romanians to provide training for their own judges. Similarly, the creation of the Judges Association will enhance the stature of the judiciary and encourage the judges to communicate among themselves. CEELI also views the Judges Association as a vehicle to supplement the judicial training that is to be provided at the Magistrates' School.