

Conference Report on ‘Finding the Law: Micro States and Small Jurisdictions ... Freedoms and Challenges of Working in a Small Jurisdiction’, Faculty of Law of the University of the Netherlands Antilles, 5-7 February 2009, Curacao

BRITTA BEHRENDT

This conference, which was organized and hosted by the Faculty of Law of the University of Dutch Antilles, brought together a number of international speakers from the Netherlands and the small jurisdictions Austria, Aruba, Estonia, Suriname, and the Netherlands Antilles.

The Netherlands Antilles are about to change their status. At present, the state of the Netherlands Antilles comprises five islands. This state is about to split up, which will cause the status of the islands to change. Whereas Curacao and St. Maarten will seek greater autonomy within the Kingdom of the Netherlands, the so-called BES islands (Bonaire, Saba and St. Eustace's) will intensify their links with the Netherlands and the European Union.

Whereas other small countries prefer to become part of larger associations of states, the Netherlands Antilles have chosen to go in the opposite direction: They were already small, and the units that they are about to form will be even smaller.

For the island of Curacao, where the University of the Netherlands Antilles (UNA) is located, this state reform means that the university will no longer serve the five islands of the Netherlands Antilles but will belong exclusively to the island and future state of Curacao.

The Faculty of Law of the UNA is celebrating its thirtieth anniversary, which constituted an excellent opportunity to organize an international conference on a very important topic for these islands in transition.

The first part of the conference focused on the various aspects of the relationship between the European Union and certain overseas countries and territories. Dr Bastiaan van der Velden (UNA), one of the conference organizers, gave an introduction to the current status of the Netherlands Antilles. In his contribution entitled ‘The impact of the scope *Ratione Personae* of EC Law on the association of the overseas countries and territories with the European Community’, Dr Dimitry Kochenov (University of Groningen) elaborated on the effect produced by EU law on the overseas countries and territories of the European Union such as Curacao and other French and British islands of the Caribbean. He emphasized that the Dutch passport carried by all Dutch Antilleans does not only confer significant rights but also imposes certain obligations because it is not possible simply to by-pass all European legislation. In ‘The Influence of European law on Aruban property law’, Dr Carlos Bollen (University of Aruba) stated that, although European Law does not apply in Aruba, its indirect influence is considerable when it comes to property law. European

law is not directly discernible in the Aruba Civil Code, but the fact that the legislator transposes Netherlands private law into Arubian law produces many similarities.

The contribution by Dr Monique Veira (Anton de Kom University Paramaribo) was entitled 'The law of succession of the tribal peoples, specifically the Marrons, within the legal system of Suriname'. It dealt with the issue of integrating the tribal law of succession of the Marron tribes of Suriname into the Surinam legal system and gave rise to a very animated discussion between the speaker and the audience. The matriarchate, which governs the Marron tribes, makes it very difficult to integrate the tribal law into the Suriname law, which closely follows the law of the Netherlands. This paper also illustrated the manner in which small jurisdictions deal, or have to deal, with even smaller jurisdiction within their legal system.

Legal Education in small jurisdictions was another hotly debated topic of the conference. Britta Behrendt (UNA), in 'One state - one university', dealt with various issues of, and opportunities for, legal education in countries that have only one university. In 'Quality assurance in small-state universities', Dr Sharine Isabella (UNA) set out the issues of quality assurance on a small scale, pointing out that current quality assurance systems fail to take account of the specific characteristics of small scale institutions. In 'Legal education in the Dutch Antilles', Dr Bastiaan van der Velden (UNA) took the audience forty years back to the time when the Netherlands Antilles founded their first law school, which later was to become the UNA and recalled the most important developments until today.

The next part of the conference was dedicated to legal transpositions, with Dr Peter Klik (Erasmus University Rotterdam) answering the question 'Why the Netherlands Antilles should not adopt the Dutch rule on a cooling off period in the sale of residential property (Article 7:2 BW)' and pointing to a recent example of this kind of legislation in the Netherlands.

Prof. Irene Kull (University of Tartu) explained her work as one of the drafters of the new codified legislation of her country in 'Estonia and its new Civil Code'. Following its independence in 1991, Estonia took the opportunity of a lifetime to write a new Civil Code in order to reflect the changes taking place in society after the end of the socialist era and the growing influence of the European Union.

The first day of the conference closed with a contribution by Prof. Britta Jud (University of Vienna) on 'Consumer Protection: Problems of Codification - European Union versus Micro States' and a round table discussion. The speakers of the Netherlands, Suriname, Estonia, and Austria provided the audience with a clear explanation on the various ways in which consumer protection is handled in their specific countries, adding that the media have been known to play an important role in reinforcing the consumer's rights.

Dr Viola Heutger, one of the conference organizers and Dean of the Faculty of Law of the University of Netherlands Antilles, started the second conference day with a fresh perspective on the utopia portrayed in 'Città del Sole' (1602) by

Tommaso Campanella, which drafts ideas on microstates that are still worth considering today.

The rest of the day was devoted to specific aspects of microstates and small jurisdictions, with particular reference to the hosting island of Curacao. Dr Bastiaan van der Velden (UNA) spoke about the legal concept of Concordance within the Kingdom of the Netherlands. In 'Access to justice in Curacao - a practical perspective', Anna van Duin LL.M. (currently a paralegal with a Curacao Law firm) outlined the practical aspects of the Curacao legal system as compared with that of the Netherlands. The conference ended with a glimpse of the daily life of the islands' solicitor general Ton van der Schans, who highlighted that small jurisdictions do not necessarily mean small problems but quite often the opposite.

The lectures of the conference and the inspiring discussions to which they gave rise highlighted that not all problems, which are apparently characteristic of small jurisdictions, are related to the actual fact of being a small jurisdiction but that they instead result from the island status as such.

Another important aspect that was repeatedly aired was the fact that being small means that it is necessary to look around for model legislation, partners for ensuring quality assurance, and strong relations with other countries. The path that Curacao has chosen, that is, to be small and independent, will provide many challenges in the future. A deliberate choice of partners is advisable. In addition, the challenge of drafting all legislation for a small state cannot be underestimated. Legal ideas emanating from another country must be evaluated in terms of their context, the policy and lobby underlying them, and their legislative style before being implemented or modified into national law.

All representatives from small jurisdictions reported that they all had been inspired and supported by other, foreign, jurisdictions.

Furthermore, all participants agreed upon that working in small jurisdictions requires a high degree of commitment on the part of all legal players involved.

Publication of the various contributions is envisaged.