Rule of Law in Public Administration: Building Up an Administrative Legal System in the South Caucasus

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Executive Summary

After the demise of the Soviet Union, the governments of the newly independent states had to transform their societal frameworks in order to enable the development of a market-oriented economy and the rule of law. The transformation process included extensive legislative reforms with a clear orientation toward Western models. The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) supported these efforts by advising Armenia, Azerbaijan, and Georgia on legal reforms starting in the early 1990s.[1] Although in the beginning the priority was the reform of civil laws, the focus shifted quickly to administrative law, as the need for a public administration based on the rule of law as a requirement for positive societal development was becoming increasingly obvious. However, the legacy of the Soviet Union posed challenges to the project. During soviet times, the citizens were treated as mere objects of the administration without individual rights in the administrative process and without the possibility of appealing an administrative decision before an independent court. Consequently, the general relationship between the citizens and the state had to be readjusted. Furthermore, almost all essential parts of an administrative legal system were missing and had to be built up from scratch.

Although the implementation processes varied according to the different reform dynamics within the countries, the approaches of the project were similar in all three countries. The starting point was to provide support for the creation of the administrative law framework. Additionally, the project supported the establishment of legal institutions, with a primary focus on administrative courts and judges. Besides that, the project – in collaboration with civil society organizations – informed the citizens about the new laws and their rights. Complementary to the bilateral

1 GIZ implements the program on behalf of BMZ.

efforts, the project adopted a regional approach to enhance the professional exchanges among the three countries and to create synergy effects.

By examining three critical junctions (short timeframe in the legislative process, resistance from within the administration, and radical political change), this case study illustrates what strategies were applied by the project to overcome impediments during the implementation process. It demonstrates the importance of closely accompanying and supporting the countries constantly throughout the process of establishing the rule of law. The project invested in individual agents of change from within the partner countries and created personal alliances between them and the project staff, which prepared the ground for the cooperative implementation of the administrative law reforms. A politically backed, long-term engagement and a continuous presence in the partner countries were important prerequisites to overcome unforeseen opposition to the reforms and, therefore, were crucial for the success of the project.

Introduction

Georgia 1998: Giorgi is an ambitious and talented young man of 27. After studying social science in the Soviet Union, he is not able to find a job in his profession and does not see any chance of working in the public sector due to a lack of contacts. Eventually, he decides to start his own car repair business in Tbilisi. He drives to the nearest administration building to find out about the necessary requirements to obtain a business permit. In the administration office, nobody provides Giorgi with the necessary information about the exact requirements for opening up his business. On the contrary, the public official behind the counter keeps on asking for additional documents each time Giorgi returns to the administration office to present the requested documents. Even for the "service" of providing information, the officer requests a small informal fee. Alternatively, Giorgi is told, he could pay 500 GEL to "speed up the process," but Giorgi does not have the money and therefore leaves the office frustrated and without a permit. An independent judiciary where Giorgi could file a complaint does not exist. The next day, Giorgi meets his cousin, who is the owner of a gas station. He offers Giorgi to start his business in a garage next to the gas station "without all this official paperwork." Giorgi accepts the offer gratefully, but he is aware that an illegal business startup under the roof of his cousin's business makes both entrepreneurs more vulnerable to arbitrary harassment from government officials.

As this story exemplifies, administrative corruption is a big obstacle to development. Bureaucrats deliberately obfuscate and increase the number of rules, procedures, regulations, and fee-paying requirements to induce the public into offering more bribes, thereby hindering individual citizens like Giorgi from opening up businesses and enhancing the development of the country (Karklins, 2002, p. 25). In contrast, a citizen-responsive and effective administration is based on the principles of efficiency, transparency, and accountability.[2] The first and foremost purpose of the administration is to act in the interest of the general public and to secure the rights of the individual citizens. The objective of administrative law is to provide a legal structure that is based on the rule of law for the relationship between the state and the citizen. Ideally, the necessary information for administrative procedures is easily accessible to citizens, and it is possible for them to apply for a judicial review before independent courts if they do not agree with the decision.

This contribution shows how – and with which strategy – the GIZ program implemented an administrative law system based on the rule of law in the three countries of the South Caucasus: Armenia, Azerbaijan, and Georgia.

Contextual analysis

After the demise of the Soviet Union, it quickly became clear that the newly independent states inherited a historical legacy that posed a severe challenge to the state-building efforts of Georgia, Armenia, and Azerbaijan. A deteriorating economic situation with rapidly increasing poverty rates was exacerbated by political turmoil. In Georgia different regions demanded independence from Tbilisi. Local warlords and organized criminal groups were challenging the state's monopoly of power. Simultaneously, the country drifted into poverty as its GDP dropped by 73 percent between 1991 and 1994 (De Waal, 2010, p. 134). A similar economic breakdown happened in Armenia, where the struggle for statehood was aggravated by the ongoing Nagorno-Karabakh conflict and the aftermath of the devastating earthquake that hit the country in 1988. The Azerbaijani-Turkish blockade of the country led to a severe scarcity of

2 See http://ec.europa.eu/civil_service/admin/index_en.htm

goods, which fostered widespread corruption and a widening division between a small, wealthy, and politically connected elite and the larger, more impoverished general population (Bertelsmann Stiftung, 2016a, p. 3). In Azerbaijan, after democratically elected Abulfaz Elchibey was overthrown by a military coup in 1992, Heydar Aliyev seized the opportunity to take power. Aliyev managed to bring stability to Azerbaijan by negotiating a ceasefire with Armenia, appeasing Russia, and cracking down on local warlords (Bertelsmann Stiftung, 2016b, p. 7).

Under these circumstances, the states' capacities to rule via administrative and judicial institutions were weak. The public perceived these institutions as being corrupt, incompetent, and interspersed with clientelism and arbitrary rulings. Administrative corruption and bribery for administrative services were not uncommon in the former Soviet Union (Waters, 2004, p. 43). However, following the demise of the Soviet Union, corruption began to affect virtually every aspect of daily life in the newly independent states of the South Caucasus (Sandholtz & Taagepera, 2005, pp. 109–131). Public officials understood that this regulatory vacuum allowed them a high degree of discretion in administrative decisions and actions that could lead to additional sources of income. In this situation, citizens had to rely on bribes to get any administrative issues addressed. In order to enhance democratic development and economic growth, the governments of Georgia, Armenia, and Azerbaijan wanted to transform their legal and institutional frameworks to establish market economies and the rule of law. The transformation process included extensive legislative reforms with a clear orientation toward Western models. This general orientation toward Europe was evidenced by the accession of the three countries to the Council of Europe. Georgia became a member of the organization in 1999, Armenia and Azerbaijan in 2001. The Council of Europe is an international organization that focuses on promoting democracy, human rights, and the rule of law. By becoming members of this organization, the three states committed themselves to uphold these principles.

GIZ supported these efforts by advising the three countries on legal reforms starting in the early 1990s. The former German Foreign Minister Hans Dietrich Genscher and the former President of Georgia Eduard Schewardnadse had a close and friendly relationship and agreed that Germany would support the transformation process of Georgia through technical assistance on legal and judicial reforms. GIZ sent Prof. Rolf Knieper as an expert – he had previously been active in legal reform projects in Africa. Prof. Knieper went to Georgia to meet with the Justice Minister,

and both agreed upon reforming the civil law system to create a framework for a market economy. In the mid-1990s, the idea to include more countries in the reform process was introduced, and a conference with all post-Soviet countries and different donor organizations was organized in Bremen. At this conference, all participants – the post-Soviet countries as well as the donor organizations – committed themselves to the reforms of the legal systems.[3] Subsequently, GIZ set up bilateral programs with different countries. The programs were coordinated from Bremen – under the supervision of Prof. Knieper – but additionally every country had its own national coordinator. These coordinators were hand-picked based on their individual legal qualifications and professional potential. Prof. Knieper wanted to ensure that qualified individuals who could become long-term partners for the projects were in these positions. Many of these coordinators later made successful careers in their respective countries. One example is Lado Chanturia, from Georgia, who was the first Minister of Justice before becoming President of the Supreme Court and who is now the Georgian ambassador to Germany in Berlin.

Although in the beginning the priority was the reform of the civil laws, in the late 1990s the focus shifted to the public law framework, as the need for a judicial overview of administrative actions and decisions as a requirement for a positive economic environment was becoming increasingly obvious. As a consequence, the idea of administrative law reform was introduced more frequently in the regular debates with GIZ's partner organizations in the three countries. Georgia was the first of the three countries that started to work on the reform of administrative law in 1998/1999 and adopted the code on administrative court procedure (CACP) and the code on administrative procedure (CAP) in 1999. Both laws entered into force in 2000. In Armenia, the drafting process for both laws started in 2001. Although the CAP was adopted in 2004 and entered into effect in 2005, the CACP was adopted in 2007 and came into effect in 2008. In Azerbaijan, the drafting process started in 2002, but the laws did not enter into force before 2011.

3 Rolf Knieper, Interview, June 22, 2016.

Development challenge

The legacy of the Soviet Union posed a difficult task to the project organizers. It was especially problematic that the general concept of a citizen-responsive, transparent, and accountable administration was totally unknown in these countries. Although a civil law tradition existed and debates in Europe about civil law were followed closely in these countries since the 19th century, the situation was very different in the area of administrative law. Not only was there no tradition of an administrative law, but in fact the administration during soviet times was governed by principles diametrically opposed to those that characterize administrative law today (Luchterhandt, Rubels, & Reimers, 2008, pp. 15ff.). The citizens were treated mostly as mere objects of the administration without individual rights in the administrative process. Administrative decisions therefore were made without taking the opinions or motives of individuals into account. Rather, only the needs and reasons of the state were taken into consideration. The individual citizen was powerless to protest in the face of an all-powerful bureaucracy. Only the code of civil procedure contained some possibilities for the citizens to appeal against administrative decisions. However, this played a very marginal role in practice. Hence, in the Soviet Union, administrative law was neither a separate field of law nor did courts exist that had jurisdiction over administrative decisions. The only law that addressed administrative regulation was the law for administrative offenses. This setup reflects the implied relationship between the state and its citizens: It was a repressive regime that enabled the state to take the necessary steps against its citizen. Administrative law in that sense emphasized the obligations of the citizens and treated them as objects of state power.

As a consequence, the administrative law system had to be built up from scratch, as all the essential parts were missing. In essence, administrative laws did not exist and had to be drafted. A systematic review and reorganization of administrative agencies and proceedings was necessary for each body, section, and level of public administration. At the same time, the courts needed to be reorganized and budgeted for the new task. New judges had to be selected, appointed, and trained. Administrative law had to be introduced as a subject in the universities' curricula, and legal experts needed to be found who were able to teach the new legal concepts. Legal literature about administrative law was a prerequisite for that matter. Furthermore, lawyers, NGOs, and the media needed to obtain information

on the reform concepts as well. Finally – and most importantly – the general relationship between citizens and the state had to be readjusted. The citizens had to be convinced to overcome their distrust of the courts and the state institutions in general, and to make use of their rights against the administrative bodies confidently. On the other hand, state employees had to change their attitudes toward the citizens and help them to put their rights into practice and, at the same time, accept judicial oversight of their actions and decisions.

Approach of the project

The approach of the project was similar in all three countries. However, the implementation processes varied according to the different reform dynamics within the countries. The starting point for the project was to provide support for the creation of legal texts for administrative law that would capture a citizen-centered approach and provide clarity in administrative procedures. All the partners involved unanimously agreed without further discussion that the creation of legal texts was the prerequisite for any further development of the administrative law system because written administrative laws strengthen the position of the citizens against the administrative bodies. Legal texts give the citizens the possibility to inform themselves about their rights in the administrative process, the legal obligations of the administrative body, and the legal possibility to appeal against an administrative decision. The strategy of the program was to enable local jurists to take the reform process into their own hands. Therefore, the program invested in capacity-building for the local experts and trained them in the concepts of the new administrative laws. During the legal drafting process, the program coordinators provided expert advice to guarantee high-quality legal texts and the orientation on international standards.

Additionally, the program supported the establishment of legal institutions, with a primary focus on administrative courts and judges. New administrative courts and special chambers for administrative complaints were set up. At the same time, the program provided trainings for the administrative judges. This was an especially difficult task because the vast majority of the local jurists had previously not been educated in administrative law and had little background knowledge about guiding

administrative principles.[4] The program focused on the establishment of administrative courts and the training of administrative judges because of their relatively small number in comparison to the amount of administrative personnel. Therefore, the idea was to use the administrative courts as leverage to introduce a transparent, rule-based administrative system. The underlying assumption here was that judges in administrative courts would oversee administrative actions and decisions, and thus secure the law-abiding behavior of public officials. Additionally, well-educated and self-confident administrative judges would resist outside influences – for example, bribes or attempts of political influence – and would therefore gain the trust of the population in the new administrative system and encourage the citizens to make use of their new rights.

Besides that, the program supported the efforts to restore the trust of the population in the courts and other legal institutions. In collaboration with civil society organizations, it informed the citizens about the new laws and their new rights. This was done, for example, through the production of TV and radio shows, newspaper advertisements, and the distribution of flyers. Moreover, in recent years the program has supported collaboration with around 80 schools in Georgia, Armenia, and Azerbaijan, and introduced civic and legal education in the schools' curricula.

Although at first the support was provided by three bilateral projects, soon a regional perspective was promoted to enhance professional exchanges among the countries and create the potential for synergies. This broadening of the projects' perspectives and approaches was based on the observations and experiences of the project staff during its work on the ground. It became increasingly clear that all three countries faced similar conditions and problems in their transition process toward the establishment of the rule of law (Knieper, 2004, p. 22). This regional perspective was reinforced when the German Federal Ministry for Economic Cooperation and Development (BMZ) launched the Caucasus Initiative in 2001. The goal was to "foster cooperation between Armenia, Azerbaijan and Georgia, and to support economic, social and political development in the region, thus helping to defuse conflicts" (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung, n.d.).

4 Gerd Winter, Interview, June 5, 2016.

Implementation challenge

The regional approach was based on the assumption that all three countries faced similar conditions and challenges in the transformation process. However, the challenges for the program varied in the different countries because of changing political situations and different reform dynamics. Especially in Georgia, over the course of the program the political landscape shifted several times. In the 1990s, young progressive politicians – with the backing of President Schewardnadse – wanted to move the country closer to Europe. The program coordinators supported these efforts and worked closely together with these young reformers. Yet, the haste of the reform process – in combination with the will to make use of favorable political circumstances – put the legal drafting process under enormous time pressure.

These young reformers came to power after President Schewardnadse was toppled during the "Rose Revolution" in 2003. Under President Mikhail Saakashvili, they pushed radical constitutional amendments through parliament and changed Georgia from a parliamentary republic into a strongly presidential one (De Waal, 2010, p. 194). Their goal was to strengthen the Georgian state, to crack down on corruption, and to transform the economy. Even though the reforms were partly successful, especially the fight against petty corruption in the law enforcement agencies, these goals were reached through legally dubious methods. The new government saw the country in a post-revolutionary phase that legitimized these constitutionally problematic methods. A common phrase of the leading politicians at that time was: "We have to break the law to establish the rule of law."[5] The methods that were used to carry out the reforms gave reason for vocal criticism and posed problems for the program, as they affected the justice system as well. Many judges were removed with questionable justifications and replaced by politically favorable judges. For example, disciplinary law was used to replace unpleasant judges with ones affiliated with the ruling party. Additionally, government-friendly state prosecutors were appointed as administrative judges. These replacements of judges had an effect on the independence of the administrative courts. Court-monitoring reports show that before the change of government in 2012, the administrative courts heavily favored the state party. In 2011 and

5 Zeno Reichenbecher, Interview, June 17, 2016.

2012, the state party was entirely successful in 85 percent of the monitored cases in 2011, and in 79 percent of the monitored cases in 2012 (Transparency International, 2014, p. 3). Moreover, "in cases of significant public interest, judges appeared to not only render decisions favorable to the state party, but also to violate procedural regulations in favor of the state party" (Transparency International, 2014, p. 3). After the parliamentary elections in October 2012, a new government came into power. Since then, a positive trend has been observed, and the success rate of the state party has declined significantly. In 2013 the state party was entirely successful in 58 percent of the monitored cases, and in 2014 the percentage dropped to 53 percent (Transparency International, 2014, p. 3). Furthermore, the perception is also that "courts have become more independent and judges can act more freely."[6]

The political development was different in Armenia and in Azerbaijan, where the reform forces were weaker and less numerous than in Georgia. On the other hand, forces from within the public administration were more influential and put up resistance against the reforms. This was because the goal of the reforms was to make the administrative procedures more transparent, predictable, accountable, and less susceptible to corruption. In consequence, this meant a loss of power for the administrative bodies because their actions and decisions would be controlled by an independent judiciary. Additionally, many public servants lost a source of revenue because a transparent administrative procedure made it more difficult to ask for bribes.

Finally, the political tensions between Armenia and Azerbaijan because of the ongoing tensions in the Nagorny Karabakh region posed a serious challenge to the regional approach of the program. The main concerns and questions for the program were therefore:

- What is the best way to deal with time pressure during the drafting process?
- How can the program overcome resistance from parts of the administration?
- How should the program react to unlawful measures taken by the partners?

6 Olika Shermadini, Interview, June 22, 2016.

- How can the regional approach be applied when the relationship between Armenia and Azerbaijan is conflict-ridden and shaped by mutual mistrust?

Tracing the implementation process

As mentioned before, the strategy of the program was to start with the drafting of the new administrative laws, because this was seen as a prerequisite to any further implementation efforts.

From the beginning of the drafting process, the program coordinators worked together and established relationships with reform-oriented jurists (*agents of change*) from the respective partner country. The program focused on these individual agents of change because there was very little expertise on administrative law among the jurists in the partner countries. Therefore, the program invested in these agents of change to increase their legal capacities with regard to administrative law. This was seen as a precondition of a fruitful working relationship between the program and the partner countries, because this knowledge enabled the agents of change to hold discussions with international experts at eye level and to actively steer the reform process. Thus, considerable time and funds were spent introducing them to the concepts, principles, and standards of modern administrative law.[7] This was done during intensive trainings in Germany and in the respective partner country.

At the same time, working groups were set up that consisted partly of local jurists and partly of international experts. Whereas the international experts provided the legal expertise on international standards, the local jurists contributed knowledge about the societal conditions of the country and the respective legal system. However, the idea was that the process should be steered by the local jurists and that it should be their responsibility and task to draft the legal texts. The head of the working group acted as a link to the political level in each of the countries. The details of the laws were discussed and drafted within the working group without the involvement of other actors. A broader participation of different stakeholders was not pursued, either by the national stakeholders or the program, because a wide public debate was perceived as being politically too risky for the

7 Gerd Winter, Interview, June 9, 2016.

reform intention. Besides the individual agents of change, who had been intensively trained, there was hardly anyone capable of assessing the implications of the administrative reforms, not to mention the capacity of proposing alternative legislative solutions. When the drafts were finished, different stakeholders were involved to discuss and comment on the results. Through this process, the drafted laws gained legitimacy. However, participation was mostly limited to presenting and explaining the new laws to selected individuals representing the government, the judiciary, and the media.[8] It must be borne in mind that universal standards and concepts exist in the area of administrative law, and therefore a broader debate about the general concepts is not an indispensable part of the reform process. In fact, all three countries are members of the Council of Europe, which provides clear guidelines for aligning the administrative laws of the different member states.

Critical junction I: Short timeframe in Georgia

Georgia was the first country in the region to start with the reforms of the administrative law system. This can be explained by the political dynamics at that time. Georgia had active civil society organizations as well as young reformers who were pushing for reforms. Through the codification of the administrative laws, they hoped to gain stability in the country as well as recognition and solidarity from European countries. Because the program had been involved in the legal reform process since the beginning of the 1990s, it had already established a good working relationship with these agents of change. Lado Chanturia, who used to be the program coordinator for Georgia and in 1998 was Minister of Justice, acknowledged the need for the introduction of a transparent and citizen-responsive administrative law. Mikhail Saakashvili, who would later become president and was the chairman of the legal affairs committee in 1998, was also in favor of the reforms. The program – together with the Council of Europe and others – supported the reform efforts of the national agents of change. Saakashvili and Chanturia – next to other representatives of Georgia – participated in seminars organized by the Council of Europe in which advisors from France, the Netherlands, the United States, and Germany pro-

8 Hryar Tovmasyan, Interview, April 16, 2015.

vided insights into their respective administrative law systems. As a result, a working group was set up in Georgia under the guidance of the legal affairs committee of the parliament with the mandate to elaborate the two basic administrative laws. The drafting process was a joint project between Germany, the United States, the Netherlands, and Georgia. The working group consisted of two Georgian jurists and one expert from each country, with Prof. Gerd Winter from the University of Bremen being the expert for the program. Prof. Winter was asked to join the project since a cooperation agreement exists between GIZ (then known as GTZ), the judiciary, the Bremen Chamber of Commerce, and the University of Bremen, and he was already active in the international cooperation on administrative law. The experts provided legal texts that were analyzed and evaluated by the Georgian jurists before they discussed the details with the experts and drafted the laws in Georgian. This draft was translated into English and was discussed again with the experts. During the drafting process, the two Georgian jurists spent several weeks in Groningen and in Bremen. During their time at the University of Bremen, they were able to study intensively the concept of German administrative law and were in close contact with Prof. Winter. This time in Bremen shaped the working relationship between Prof. Winter and the Georgian lawyers profoundly, and it was increasingly based on mutual trust and respect. Another factor was that Prof. Winter was the only expert who was attending all the seminars in which the legal drafts were being discussed (Winter, 2010, p. 412). This personal relationship helped to overcome some difficulties in the drafting process. The most problematic part about the drafting process proved to be the short timeframe available for the consultations.

The drafting process in Georgia was under time pressure from the very beginning, because the reformers wanted to use the political momentum to pass the laws through the parliament before the parliamentary elections in October 1999. They argued that the composition of the parliament at that time guaranteed a smooth adoption of the drafted laws, and they did not want to risk failure of the reforms due to any possible changes in the parliament's composition and power structure. After the General Administrative Code was written, there was not much time left for the Administrative Procedure Code because of the approaching parliamentary elections. A lot of time was lost because, on the advice of the Dutch expert, the Georgian jurists drafted a complete code that neither took the civil process code of Georgia into consideration nor the fact that Georgia had decided not to introduce separate administrative courts.

The problem was that there was not enough time left to draft a completely new version of the code. In this situation, the Georgian counterparts followed the advice of Prof. Winter to adopt a simpler and shorter version of the law with references to the civil procedure code. Because of the shortage of time, the general approach of preparing the texts with local experts had to be left aside, and Prof. Winter wrote parts of the draft himself with little coordination with the other participants (Winter, 2010, p. 412). The established trust between the counterparts in the working group made it possible for the Georgian jurists to accept Prof. Winter's relatively short draft, which had only 35 articles. This draft later passed through parliament without major discussions.

The drafting process and the outcome were not ideal. The rudimentary law caused problems in its application, therefore it was amended 22 times between 2000 and 2010 (Winter, 2010, p. 413). However, the drafting process as well as the outcome were the best *possible* solutions and the consequences of particular historical circumstances. The possibility to plan the legal drafting process ahead of time is generally very limited. Moreover, it is a process that is shaped by uncertainties and unexpected turning points. As Prof. Winter expressed it:

> Legal transfer is not only an exchange and a mutual learning process, it is as well a political process, where imbalances of power, disparities, cultural differences, strategic behavior and last but not least rational discourse interact. It is a process of "muddling through" and the search for second best solutions. (Winter, 2010, p. 431)

Because of the process-based character of the legal consultations, the experts and their working relationships with the counterparts are central to the success of the process. As the Georgian example clearly shows, this enabled the program coordinators to react quickly and flexibly to changing situations. This is only possible if the expert has been given enough discretion from the program and enough trust from the partner side. In Georgia this trust was on the one hand gained by the continuous efforts and dedication of Prof. Winter, and on the other hand by the long-term engagement of the whole program. Furthermore, the process of drafting the laws without broad participation but through a small group of lawyers was also due to the specific historical situation. Very few people in Georgia had experience with the concept of a transparent and citizen-responsive administrative law. Therefore, the program's strategy was to work with a handful of jurists and enable them, through trainings, to actively participate and steer the implementation process.

After the laws came into force, the program continued to support the reform process by training administrative judges as well as providing assistance to Georgian jurists to write two textbooks and a commentary on the administrative laws. Subsequently, trainings for administrative personnel were conducted as well. After 10 years, the program started a project to review and overhaul the administrative laws. Working next to two Georgian administrative judges and one professor from the State University of Tbilisi, Prof. Winter was again the program's expert. The working group proposed comprehensive draft amendments and presented them to the ministries and to the Georgian parliament, but due to the absence of political will, the reforms were not carried out. Prof. Winter – with the approval of the program – used his personal relationship with the Ministry of Justice to promote the reforms, which led to two expert panels, in which the reforms were discussed and Prof. Winter acted as moderator (Winter, 2010, p. 414).

However, because of other political priorities, the amendments have still not been adopted by the parliament. This shows the dependency of the program's success on the reform dynamics in the partner country. Currently, the program is preparing the ground for subsequent reforms by setting up another working group in consultation with the Ministry of Justice in order to be ready to act if a window of opportunity appears.

Critical junction II: Resistance from the administration

The resistance from within the administration against the reforms was stronger in Armenia and in Azerbaijan. In Azerbaijan, the traditionally strong and centralized administration was opposed to the idea of judicial oversight of their administrative acts. As one program expert expressed it, "to impose a rigid legal framework on the administration and to limit the administrative decision-making scope must have appeared as an alien concept."[9] However, there was no open resistance from the administration because the reforms had the approval of the president. Here, the regional perspective of the program contributed toward fostering the initiation of the reforms and convincing national decision-makers to support the administrative law reforms. After the administrative laws had entered into

9 Thomas Melzer, Interview, May 12, 2015.

force in Georgia, in 2002 the program organized a regional conference in Bremen. It supplied the legal texts of the Georgian administrative laws, which provided the opportunity for the delegates from Armenia and Azerbaijan to learn about the Georgian experience with the administrative reforms as well as discuss different issues about administrative law. This was probably one of the key factors for convincing Armenia, and subsequently Azerbaijan, to follow the reform path. Considering the political tensions between Armenia and Azerbaijan, it is remarkable that high-ranking officials came together to discuss different aspects of the administrative reforms. This was just possible because the program focused exclusively on legal issues and left out all political aspects that could have caused tensions among the participants from the different countries.

In a speech during the conference, the Minister of Justice of Azerbaijan praised the courage of his Georgian colleagues for their reform efforts (Deutsche Gesellschaft für Internationale Zusammenarbeit, 2002). At the same time, he showed his commitment to an administrative system based on the rule of law and his willingness to reform the legal system. From that moment onward, the government supported the administrative law reforms, and there was no open resistance against the process from within the administration. Because the program had already been active in civil law reforms in Azerbaijan during the 1990s, it was asked that the administrative law reforms be supported as well.[10] Thus, the involvement of the program in the administrative law reforms was a direct consequence of its broad approach to legal reforms as well as its previously established alliances and good personal working relationships with the Azerbaijani government.

In Armenia, the program found a strong ally in the Minister of Justice, David Harutunjan. Under the auspices of the Ministry of Justice, a working group for the drafting process of the administrative laws was founded and included the program's country coordinator, Wartan Poghosyan, on the Armenian side. However, the situation in Armenia was different because forces from within the administration resisted the reforms more strongly. Opposition against the Administrative Procedure Code built up after the laws were drafted. The parliament had adopted the General Administrative Law in 2004. At that time, the working group was already working on the Administrative Procedure Code. It was planned to submit

10 Sayyad Karimov, Interview, April 7, 2014.

the draft to the parliament in early 2004 so that both laws could become effective simultaneously on January 1, 2005. However, it took another three years before the Administrative Procedure Code was finally adopted by the parliament. This delay was primarily due to growing resistance within the administration, to which the parliamentarians were reacting. This was partly a reaction to the information events and training seminars that were conducted by the program after the General Administrative Law was adopted in 2004. Administrative authorities started to realize the implications of the administrative reforms and understood in greater detail how the new law restricted administrative procedures and decision-making in general.[11] Because of this resistance, the reform process was stalled.

Even though there was a valid decision in principle from the parliament in favor of the new General Administrative Law, it did not take any legislative action to enact the new law. This situation was problematic for the program, as it had – on request of the Minister of Justice – already trained 20 Armenian judges at great financial and personal expense, which raised expectations on the side of BMZ.[12] Because of approaching general elections in Armenia and the possibility of a change in political majorities, there was a risk that all the program's efforts would have no effect and that the administrative reforms would not just be postponed but suspended completely.

The program coordinators believed that one possibility to overcome the stalled reform process was the direct intervention of President Robert Kotscharjan. The program coordinators had heard that the president was still in favor of the reforms. This was consistent with his past statements in favor of reforms in "the spirit of the Council of Europe."[13] Additionally, he had already supported a constitutional reform a year earlier.

An opportunity arose when the president was on a visit in Germany and had a meeting with Chancellor Angela Merkel. The program expert, Prof. Otto Luchterhandt, who was already a central figure throughout the drafting process, informed the German government about the stalled reform process and asked to include the issue of the administrative law reforms in the government consultations. In his letter to the government, Prof. Luchterhandt underlined the importance of the administrative reforms for

11 Wolfgang Reimers, Interview, April 27, 2015.
12 Letter from Otto Luchterhandt, November 10, 2006.
13 Letter from Otto Luchterhandt, November 10, 2006.

the further convergence toward European standards and the legal development of Armenia in general. He encouraged the government officials to stress the fact that the German government expected its investment in development aid to have an effect. Otherwise, this would have consequences for further development cooperation between the two countries. This letter led to the inclusion of the topic in the governmental consultations. Shortly after his return, the president intervened in the process and the law was passed through the parliament.

This intervention shows the importance of individual members of the program as well as of their long-term involvement in the reform process. It is not enough to give legal advice during the drafting process of the laws. Moreover, it is important to accompany and closely monitor the implementation of the reforms and to support the reformist side within the country. A requirement for this approach is a close working relationship between the program coordinators and the local agents of change.

Through its long-term engagement in Armenia, the program was familiar with the peculiarities of the situation and knew the political decision-makers who were important for the success of the reform process. Having this insight about the current reform process, the program coordinators were able to influence the process positively by reminding the partners about the benefits of the reforms for their country. The commitments that the countries had made due to their accession to the Council of Europe were helpful for the program coordinators to substantiate the line of argumentation in favor of the reforms.

Critical junction III: Radical political change

The cooperation and the personal relationships between the program coordinators and the national agents of change went beyond the drafting process and also had an impact on the implementation and the further development of the laws. In Azerbaijan, Mr. Sayyad Karimov was the program's counterpart who had developed a good understanding of modern administrative law and who was one of the driving forces of the reforms from the Azerbaijani side. Because of his expertise and his convincing character, the program employed him as a short-term expert to perform trainings for the administrative personnel. He was sent to different towns together with a co-trainer to give one-day training seminars to a wide range of participants. The personality of Karimov proved to be essential

for the success of the trainings because of his dedication and persuasiveness.[14]

In 2010, the Armenian president appointed Hrayr Tovmasyan as the new Minister of Justice. Mr. Tovmasyan had interacted with the program and worked on the legal reform program for many years. Having a close collaborator who became a key government decision-maker, the program was in an ideal position to advise on new legal reforms and thus move the reform agenda forward. This was, for example, one of the reasons why the program was included in the working group for the constitutional reform process.

In the drafting process for Georgia, one of the two jurists was Zurab Adeishvili, who spent many months at the University of Bremen during the drafting process and worked closely with program expert Prof. Winter. After President Schewardnadse was toppled in the "Rose Revolution" in November 2003, Adeishvili became – among other posts – Minister of Justice and Prosecutor General under President Saakashvili. As described above, the government replaced critical judges with government-friendly ones, even though these methods were unconstitutional and an infringement of fundamental legal principles. Adeishvili was a clear supporter of these actions.

Ironically, by supporting this course of action, he ignored the laws he previously helped to create and that were partly written by him.

This political maneuvering caused severe problems for the program, as it affected core principles of engagement. The problem for the program was twofold. The first question was how to react to the obviously unlawful methods. Then there was the problem that a lot of the trained personnel were replaced. Nonetheless, the program coordinators decided to continue with the trainings. The idea was that even though the participants would not work as judges, the expertise on administrative law would still remain in the country. Many of the trained judges later worked as lawyers or in other legal professions in Georgia, thereby still raising the quality of the administrative law system in the country as a whole.

Besides that, the program coordinators decided to stay out of politics and to focus exclusively on legal issues. The strategy was to stay neutral in political affairs but at the same time to "carry a backpack of values."[15]

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14 Thomas Melzer, Interview, May 12, 2015.

15 Zeno Reichenbecher, Interview, June 17, 2016.

This policy put a limit on the support of governmental actions. Political decisions were not actively opposed, but any kind of collaboration was avoided. Because of the long-standing involvement of the program in the reform process of the different countries, this was a strong and clear statement. Consequently, the program withdrew its support for Adeishvili and terminated the cooperation. Taking a neutral standpoint on politics and focusing exclusively on legal issues proved to be beneficial in the long run. It helped in establishing mutual trust with the leading politicians and gave the program leverage to bring about change in the society. This can be seen in the current situation in Azerbaijan. Due to the current government policy, most NGOs have withdrawn from the country. However, the program is an exception and is still active in the country, promoting and strengthening the rule of law in public administration. This is because it takes a neutral standpoint toward politics and focuses exclusively on legal issues.

Baseline: Continuous investment in people to establish long-term working relationships between the program and the national agents of change

As the example of Georgia shows, not all the investments in individual agents of change proved to be beneficial. That is a risk the program had to take. On the other hand, when the program invested in the right people, the outcome was very fruitful and opened up new possibilities for the program to support the reform process in the country.

The general approach of the project was very broad and not limited to a specific area of law. The reform of the administrative law was embedded in a wider project covering different areas of the legal system. This approach gave the project flexibility and the possibility to continually be involved in new reform projects and work on the legal system as a whole. The long-term engagement in the region was made possible by the political support from different parties during different German administrations since the 1990s.[16] Across all party lines, the political decision-makers agreed that the establishment of a legal system based on the rule of law was a project that could take decades. This political backing gave the program the planning security it needed and was the prerequisite for taking

16 Rolf Knieper, Interview, June 22, 2016.

such a broad approach that went beyond the reform of a single area of the legal system.

Through the establishment of good working relationships with national agents of change, the program was – and continues to be – seen as a partner in the reform process of the country. These working relationships are built up through personal connections between the local jurists and the program's employees. That is why continuity in the program's personnel is so important. This counts for the program's experts, the country managers, as well for the program's local staff.

All the program's experts were involved in the reform processes for more than a decade. This long-term engagement enabled the experts to make personal connections with the local jurists and develop a sense for the reform dynamics in the different countries. This allowed the program to follow up on the reforms and help with the implementation process. However, the experts were just involved in the program from time to time. Therefore, it is crucial to ensure continuity between the program and the local agents of change through the project managers, as they worked in these countries continually for many years. Their role was to keep contact with the local jurists and the political decision-makers and to establish new relationships, especially after a change of government. Additionally, the local program employees form the basis of the program and ensure a consecutive working relationship with the local partners when the project managers are exchanged.

Furthermore, the program not only worked with the current agents of change but also invested in future generations. Therefore, for example, the program started the regional network "Transformation Lawyers" to create a professional dialogue among young lawyers of the three countries, and thus to establish the basis for future working relationships with the next generation of agents of change.

Lessons from the case study

To be able to draw some lessons from the case study, we come back to the implementation questions from the beginning: *What is the best way to deal with time pressure during the drafting process? How should the program react to unlawful measures taken by the partners? How can the program overcome resistance from parts of the administration? How can the*

regional approach be applied when the relationship between Armenia and Azerbaijan is conflict-ridden and shaped by mutual mistrust?

- **Alliances and good personal working relationships are crucial to overcome difficulties in the drafting process:** The legal drafting is shaped by specific circumstances of the country, and it is not always possible to have an ideal process. Rather, it is beneficial to use windows of opportunities – for example, favorable political power balances in the parliament – and push the reforms forward. Under time pressure, it might even be useful for the program to take a stronger and more proactive role in the drafting process. A good working relationship with the partner based on mutual trust is a prerequisite for this approach.
- **Taking a neutral standpoint on local politics and focusing on legal issues helps to maintain a good relationship with the partner and to increase the influence of the program:** It proved to be positive for the program to take a neutral standpoint on local politics and to focus exclusively on legal issues. However, the program still had a values-based approach. In consequence, the program did not actively interfere with any unconstitutional methods of the government nor actively supported any governmental decisions that were incompatible with the values of the program, especially the rule of law. Therefore, the program ended the cooperation with former partners who supported unlawful actions.
- **It can be useful to use government consultations to apply political pressure to overcome a stalled reform process:** Introducing administrative laws in a country implies a difficult reform process with different stakeholders and varying interests involved. Political support should be given to the reformers' side, and political pressure should be applied to different levels of political decision-makers, including the president.
- **A clear focus on legal issues creates common ground for professional discussions between the countries:** An exclusive focus on legal issues also helps to overcome political tensions and mistrust between countries. The program made it clear from the very beginning that political issues would be left out of the discussion. For this reason, it was possible to gather high representatives from the three branches

of government of the different countries and to have productive discussions.[17]

Principles of managing and steering implementation

Under the particular circumstances of the reform process, a *multi-stakeholder approach* had to be adjusted. When the process for developing the reforms of the administrative laws in the three countries began, there was no tradition of a transparent administrative law system and the vast majority of the population – including the jurists – had little understanding of the underlying principles. That made the broad participation of different stakeholders problematic, because very few were able to contribute to the drafting process. As the case of Armenia shows, the involvement of too many stakeholders can even be harmful to the reform process. Therefore, a small group of local jurists drafted the laws with the help of international experts, and only afterwards were different stakeholders involved to discuss and comment on the drafts. Through this involvement, the drafts gained legitimacy from broader segments of the society. Hence, the involvement of different stakeholders – and thus the multi-stakeholder approach – was not abolished by the program. Rather, it was postponed to a later moment in the reform process.

An *interdisciplinary and multi-sectoral approach* is beneficial but requires a process that is ridden with prerequisites. Because no expertise existed in modern administrative law, the program had to start educating local jurists and building up legal capacity so these jurists could support the newly introduced laws. Because of the sheer amount of people affected by the administrative law reforms – especially within the administration – it proved to be beneficial for the program to focus initially on just one sector. The courts were chosen for two reasons. First of all, it was because of the relatively small number of administrative judges in comparison to administrative workers. Second, because the courts oversee administrative actions and decisions, they could be used as leverage to implement the laws by encouraging the administration to follow the laws. After the administrative courts were established and the administrative judges were trained, the program could expand its agenda and include

17 Zeno Reichenbecher, Interview, June 17, 2016.

other disciplines and sectors. To sum up, the program did not turn its back on the *interdisciplinary and multi-sectoral approach* but rather chose a gradual approach. First it invested in one sector – the administrative courts – and later expanded its reach to different disciplines and sectors: the administrative personnel, lawyers, universities, journalists, and the general population.

A *long-term engagement* of the project is indispensable when administrative laws in a post-soviet state are introduced. It is a long-term process because it is not enough to just write new laws and reform the legal institutions of the state – the relationship between the citizens and the state also has to be readjusted. The project can guide and facilitate this process by sensitively monitoring it and offering advice to the jurists and political decision-makers. Therefore, the long-term engagement should not just be understood in temporal terms but also apply to the personal level. This includes investment in individual agents of change as well as potential future leaders from the partner countries. Personal relationships between these individuals and the program have to be nurtured. That is why a long-term engagement of the program experts and the program managers is important. Lastly and just as important, consistency has to be ensured through local experts who are working in the program.

Every country is different, and a *context-specific and incremental implementation of interventions* is important. However, in the area of legal development, universal legal standards exist and will only be moderately modified to the specific context. The Council of Europe provides clear guidelines in the area of administrative law. Context-specific legal development means adjusting the universal legal concept to the specific reform process of the country while at the same time taking into account the existing legal system and its legal traditions. Again, the program did not abandon the approach of context-specific and incremental implementation of interventions. Rather, it modified it to the implementation of legal reform projects.

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