Implementing Administrative Justice Reforms in the South Caucasus: Georgia, Armenia, and Azerbaijan, 1999–2015

In Brief

- **Development Challenge:** After the breakup of the Soviet Union in 1991, the governments of three newly sovereign states in South Caucasus—Armenia, Azerbaijan, and Georgia—suffered from a lack of comprehensive and coherent administrative legislation, inconsistent jurisprudence, and weak compliance by administrative authorities with the law. These were obstacles to the full introduction of administrative justice in the region. The lack of systematic transfers of knowledge and experience among the three countries prevented their respective legal reform processes from being more effective and saving resources.

- **Program Solution:** Armenia, Azerbaijan, and Georgia pledged to transform their legal and institutional frameworks to establish a market economy and the rule of law to enhance democratic development and economic growth. Each country initiated and implemented administrative justice reforms that created guiding principles for transparent and impartial administrative actions and established effective ways to have those decisions reviewed.

- **Program Results:**
  - **Georgia:** At the end of 2015, there were 43 administrative judges, representing 17.7 percent of the overall number of judges and approximately one administrative judge for every 116,300 citizens (based on a total population
of nearly 5 million people). Court statistics suggest that the population understood its rights under the new administrative laws and, with the support of lawyers and NGOs, quickly took their cases to court. The number of administrative cases brought to the courts increased from 2,308 claims in 2000 to 15,108 claims in 2003.

Armenia: According to the 2012 Judicial Reform Index (JRI) country assessment for Armenia, the creation of the administrative court has led to a large increase in the number of cases filed against the state by citizens for alleged violations of their rights or interests.

Azerbaijan: As of 2012, there are 69 judges working as administrative judges, representing 13.2 percent of all acting judges and approximately one administrative judge for every 1,377,000 people (based on a total population of approximately 9.5 million people).

Executive Summary

This case study examines administrative justice reform in Armenia, Azerbaijan, and Georgia, addressing how and why reforms were initiated and supported and how the fundamental legal frameworks were developed and introduced. The case study compares the process of implementation of the new laws in the three countries, identifying similarities and differences and analyzing how and why obstacles were overcome.

After the breakup of the Soviet Union in 1991, the governments of Armenia, Azerbaijan, and Georgia pledged to establish market economies and the rule of law to enhance democracy and economic growth. During the Soviet era and continuing into the first years after independence, the administrative branches in Armenia, Azerbaijan, and Georgia became increasingly identified with arbitrariness, incompetence, clientelism, and corruption. Inconsistent regulatory frameworks and poor-quality legislation, the inadequate enforcement of laws resulting from a lack of political will or capacity in the executive branches, and a distinct distrust of the courts’ capacities and independence caused pervasive legal uncertainty, undermined much-needed investment, and prevented further economic growth and democratic development. This relationship between government and individual citizens needed to be newly defined and regulated. Against this background, in the late 1990s and early 2000s, the governments of Georgia, Armenia, and Azerbaijan initiated and implemented administrative justice reforms with a clear orientation toward Western European models.

Today, all three countries in the South Caucasus have fundamental administrative laws in place, providing guiding principles for transparent and impartial administrative actions and establishing effective ways to have those decisions reviewed or to seek judicial redress. Administrative courts have been established, presided over by specialized judges. The countries moved at different speeds and followed different strategies, however, in tackling difficulties. The implementation of the reform laws continues to pose challenges to the three states.

The case study analyzes the donor-driven but demand-oriented approach to addressing legal reform processes. Georgia’s experience in drafting, adopting, and implementing administrative laws enabled decision makers in Armenia and Azerbaijan to make adjustments in their reform processes, thus helping to avoid problems of implementation.

Key political stakeholders in the South Caucasus recognized the weaknesses in their systems of administrative law and the negative implications of those systems for the economic and social development of their countries. Moreover, to underpin relations with the European Union (EU), the Eastern European partner countries are expected to align with the European standards and principles: Legal certainty, transparency, accountability, and efficiency (ECEAP 2014, 12). The case study shows that development partners must provide these stakeholders with the assistance necessary to promote reform.

Implementation was a challenging part of administrative legal reform. Those involved in drafting the statutes knew that the process of building legal capacity in public administration and the courts needed to be coordinated and managed. A systematic review and reorganization of administrative agencies and proceedings was necessary at all levels. Courts needed to be reorganized and budgets established for the new tasks. Administrative law judges had to be selected, appointed, and trained. Universities had to develop a curriculum for legal education in administrative law and hire legal experts to teach it. Lawyers, civil society organizations, and the media needed education on the reform concepts as well.
Today, there is broad agreement among practitioners that the administrative law reforms in the South Caucasus were successful. Increasing caseloads in all three countries were interpreted by interviewees as showing an increasing acceptance of the expanded jurisdiction of the courts.

**Means of monitoring the effects of administrative law reform must be addressed** in the initial drafting process as part of a comprehensive legal impact assessment. Evidence is necessary to prove the underlying assumption that administrative law reform influences the social and economic development of a state positively. Meaningful indicators, alone or in combination, have yet to be identified.

**Introduction**

Administrative justice plays a crucial role in the civic development of states (see box 1). Administrative decisions affect the lives of individual citizens and the operation of private businesses. Examples include the issuance of birth certificates, passports, and drivers’ licenses, notifications of social security contributions, permitting or banning demonstrations, the granting of export licenses, food safety controls, the issuance of building permits and demolition orders, and commercial tax assessment notices. As a result, the system of administrative procedures has the potential to influence the economic development of a state.

After the breakup of the Soviet Union in 1991, the governments of three newly sovereign states in South Caucasus—Armenia, Azerbaijan, and Georgia—pledged to transform their legal and institutional frameworks to establish a market economy and the rule of law to enhance democratic development and economic growth.

The transformation process in all three countries included extensive legislative reforms, clearly oriented toward Western European models, as well as institutional reforms of the judiciary and law enforcement agencies. Inconsistent regulatory frameworks and poor-quality legislation, the inadequate enforcement of laws resulting from a lack of political will or capacity in executive branches, and a distinct distrust of the courts’ capacities and independence caused pervasive legal uncertainty, undermined much-needed investment, and prevented further economic growth and democratic development. (Stefes 2005, 3–5).

In the late 1990s and the early 2000s, the governments of Georgia, Armenia, and Azerbaijan set themselves to tame public administration, strengthen citizens’ rights, and enhance administrative justice consistent with the rule of law. Previously, core concepts of administrative justice such as transparency, the opportunity to be heard, and adequate avenues of redress against administrative action (Fenton 2012) had no coherent legal basis and hardly any relevance for the executive branches in those countries.

**The Development Challenge**

The overall challenge was to create a general legal framework for administrative proceedings in accordance with Western European standards, to organize effective judicial review of administrative disputes, and to build broad local capacity to insure the proper implementation of the new administrative law. Prior to the implementation of legal reform, the states in the South Caucasus shared a common legal base rooted in their shared Soviet legacies, with a concept of administrative law that was incompatible and irreconcilable with those in the West. In the former Soviet Union, administrative law dealt with administrative violations and offenses—a subsection of criminal law—and served primarily to discipline citizens and strengthen the state’s power. Under Western European legal frameworks, by contrast, administrative law strengthens the position of citizens by enforcing the obligations of the government (Knieper 2004, 77).

During the Soviet era and continuing into the first years after independence, the administrative branches in Armenia, Azerbaijan, and Georgia became increasingly
identified with arbitrariness, incompetence, clientelism, and corruption, most likely caused by a lack of efficient oversight and possibly a reaction to the deteriorating economic situation after the collapse of the Soviet Union. Administrative decisions and public offices were seen as commodities. As a result, “citizens had to rely on bribes to get anything achieved” (Stefes 2005, 12). It was this relationship between government and individual citizens that needed to be newly defined and regulated.

Inevitably, replacing the Soviet administrative regime would affect many interactions between the state and the individual, such as the implementation of benefit programs in the health or education sector, state pension systems, family support programs, the tax regime, and the system of licenses and permits for individuals and companies. It would also have an effect on the future work of all officials working in the administration, including those who had benefited from the previous system’s flaws.

Today, all three countries in the South Caucasus have fundamental administrative laws in place, providing guiding principles for transparent and impartial administrative actions and establishing effective ways to have those decisions reviewed or to seek judicial redress. Administrative courts have been established, presided over by specialized judges. The countries moved at different speeds and followed different strategies, however, in tackling difficulties. The implementation of the reformed laws continues to pose challenges to the three states.

The Delivery Challenge

The lack of comprehensive and coherent administrative legislation, weak compliance by administrative authorities with the law, and inconsistent, politically influenced jurisprudence created obstacles to fully introducing administrative justice in Armenia, Azerbaijan, and Georgia. Administrative law reforms in the South Caucasus aimed to make the procedures of administrative bodies more transparent, predictable, accountable, and less susceptible to corruption. The reforms were designed to improve access to justice for the citizens who were not used to suing the state in a state court. Reform shifted the relationship between law enforcement agencies and citizens by limiting the traditional system of arbitrariness, patronage, clientelism, and uncontrolled growth of administrative regulations and rules. In effect, it reduced the power and prerogatives of governmental agencies (USAID 2002, 29).

Insufficient reform of the legal education system and the lack of local capacity also posed a threat to the introduction of modern administrative law. University law faculty had difficulty keeping up with the speed of the legislatures. A science of administrative law and public administration, in the modern Western European sense, had not developed. Law professors themselves clung to their own Soviet-style legal education, both in substance and in teaching (World Bank 1998, 24). As a consequence, the law faculties neither drove nor supported the idea of administrative reform. The legal concepts of administrative law were not being taught. Young lawyers who were educated at national universities had to supplement their legal training with additional studies abroad to understand the concepts behind the comprehensive reforms, and the understanding and interpretation of law was superficial.

The lack of systematic transfer of knowledge and experience among the three countries of the South Caucasus prevented the respective legal reform processes from being effective and saving resources. Armenia, Azerbaijan, and Georgia faced comparable challenges in their process of economic and legal transition. Yet opportunities for cooperation and for an institutionalized exchange of experiences were not taken advantage of. Despite political leaders and senior management staff having Russian as a common language, cultural differences and long-standing prejudices seem to have prevented an open dialogue especially in the early years of the transition process.

Research Questions

This case study examines administrative justice reform in Armenia, Azerbaijan, and Georgia, addressing how and why reforms were initiated and supported and how the fundamental legal frameworks were developed and introduced. The case study compares the process of implementation of the new laws in the three countries, identifying similarities and differences and analyzing how and why obstacles were overcome.

In this case study administrative justice refers to the system of law that comprises the principles and procedures for administrative decisions that affect the rights of individuals or legal entities under public law. It also includes the procedures for administrative remedies and the scope of judicial review.

The research focused on the process of adopting and implementing two fundamental laws: (1) the law that
generally regulates administrative proceedings; and (2) the law that establishes the principles and rules for adjudicating administrative disputes. The introduction of specialized administrative courts in the South Caucasus appears to have greatly improved administrative justice. Therefore the case study pays special attention to the process of institutional and capacity development of administrative courts.

The case study analyzes the donor-driven but demand-oriented approach to addressing the legal reform process. Georgia’s experience in drafting, adopting, and implementing administrative laws through the courts enabled decision makers in Armenia and Azerbaijan to make adjustments in their reform processes, thus helping to avoid problems of implementation.

The following questions guided the analysis of the introduction of a rule of law–based regime of administrative justice in the South Caucasus:

Q.1 What led to the fundamental shift toward a modern legal framework of administrative justice in the South Caucasus and how was that shift accomplished?
Q.2 What was the role of political stakeholders in the process of administrative law reform?
Q.3 How did the governments of Armenia, Azerbaijan, and Georgia learn from each other during the implementation of administrative reform? How did the assistance of development partners, in particular the regional approach taken by GIZ, support this learning process?

Contextual Conditions
Rule of Law, Political Interference, and Corruption

It is a common assumption that the introduction of strong administrative decision-making systems, with effective mechanisms of judicial review, would promote the rule of law and the protection of individual rights in post-Communist states. Potential further benefits of administrative justice reforms are presumed to be a reduction in corruption, the strengthening of market reforms, and enhanced political accountability (Schultz 2009, 1).

The new constitution of each state in the South Caucasus codified the principles of the rule of law and the separation and balance of powers among the legislative, executive, and judicial branches. The legal systems are based on the civil law tradition. Fundamental freedoms and rights, including human rights, property rights, and the freedom of speech, are established in each constitution and provide the underlying principles for national reform legislation.

However, the governments of all three states were repeatedly criticized for disregarding those principles. Systemic corruption and clientelism continued to create obstacles to the establishment of the rule of law (Stefes 2005, 3, 12).

The judiciary in Azerbaijan is believed to be subject to political interference, to lack professionalism and independence, and to be “plagued by corruption.” Courts are seen as “instruments for executing political orders.” Society’s trust in the judiciary is low. Even though judicial reforms have been implemented, they have not reduced the number of due process violations and politically motivated arrests (Freedom House 2014b).

Similar reports are available on the situation of the Armenian judiciary (American Bar Association 2013, 2–3). According to Freedom House (2014a, 79), “Armenian society has low trust in the judiciary, which is permeated with corruption and remains closely connected to executive authorities.”

According a survey conducted by Transparency International Georgia in 2008, Georgia’s judiciary was one of its least trusted institutions. More recently, however, Georgia has received more positive ratings, a result that has been attributed to substantial judicial reforms implemented since 2004, including increased funding for the judiciary with corresponding improvements in infrastructure, salaries, and equipment. The administration of Mikheil Saakashvili was praised for having nearly eradicated petty corruption in state services, especially law enforcement (Freedom House 2014c, 258–59; American Bar Association 2009, 2) though the means used to achieve these results (disciplinary punishment and quasi legal dismissals of judges, etc.) were criticized. Some believe that, as a result, the freedom of judges to rule according to the law and their own discretion seemed to have been restricted just in another way. The OSCE-Trial Monitoring Report for the year 2014 states

1 A summary of the survey can be found at http://transparency.ge/en/node/198.
2 The public particularly discussed the case of the “rebel judges” of Georgia’s Supreme Court who were publicly protesting the government-driven “reorganization” of courts that replaced a number of judges as part of the anticorruption campaign (Transparency International Georgia 2007).
that “Georgia’s legal framework overall guarantees the
right to an independent tribunal established by law.”
However, some judicial practices cast doubt on whether
the requirement of an independent tribunal established
by law is fulfilled (OSCE/ODIHR 2014, 7).

Moving Closer to Europe

The European orientation of the three countries spurred
a number of reforms to administrative proceedings in the
South Caucasus.

Georgia became a member of the Council of Europe
(CoE) in 1999, with Armenia and Azerbaijan following
in 2001. Each ratified the Convention for the Protection
of Human Rights and Fundamental Freedoms. As CoE
member states, they agreed to honor the Convention’s
statutory obligations and specific commitments to
improve democracy, human rights, and the rule of
law, including administrative law and justice, core
values of the organization.³ The CoE has adopted a
set of resolutions and recommendations to guide its
members in their efforts to introduce and improve
administrative justice.

Assistance of German Society for
International Cooperation, Ltd.

To assist the three countries in transforming their
legal frameworks in a relatively short time, in 1992
the German Society for International Cooperation, Ltd.
(GIZ), the principal implementing agency of Germany’s
development policies, was commissioned to implement
technical cooperation projects on legal and judicial
reforms, focusing on civil and commercial law reforms.
In the late 1990s, however, after a number of important
laws had been adopted, the focus shifted toward the
public law framework. The need for a reform of the
fundamental administrative law system, and especially
the need to introduce comprehensive systems of judicial
redress of administrative decisions and actions, became
obvious and was increasingly introduced in the regular
debates with GIZ’s partner organizations in the three
countries.

Although technical support on legal and judicial
reforms in the South Caucasus was initially provided
through bilateral projects and programs, GIZ introduced
a regional approach in 1996. The new approach was based
on the observation that all three partner countries faced
similar conditions in the process of transition. Regional
cooperation on issues related to legal reforms would be
necessary to ensure a regular exchange of information
and create the potential for synergy (Knieper 2004,
22, 23). The regional approach was reinforced when the
German Federal Ministry of Economic Cooperation and
Development (BMZ) launched its Caucasus Initiative in
2001, aiming to “foster cooperation between Armenia,
Azerbaijan and Georgia, and to support economic,
social and political development in the region, thus
helping to defuse conflicts.”⁴ Under the Caucasus
Initiative, German development cooperation with
the Southern Caucasus has increasingly—and since
2010 exclusively—been conducted through regional
programs, despite the fact that Armenia and Azerbaijan
do not have diplomatic relations.

Tracing the Implementation
Process

The Decision to Introduce
Administrative Courts to Georgia,
Armenia, and Azerbaijan

The decision to introduce administrative justice reform
in the three states of the South Caucasus was spurred by
a combination of factors. Georgia took a leading role in
initiating the administrative justice reform, but similar
processes were promoted in Armenia and Azerbaijan
through regional dialogue among reformers. Political
leaders like Mikheil Saakashvili, Zurab Zhvania, and
Lado Chanturia believed that a new administrative
law system was necessary to improve the functioning
of administrative authorities and improve the basis for
economic development.⁵ Obligations and commitments
under international law and agreements, such as the CoE,
helped to provide the necessary arguments for political
decision makers. The implications of administrative law
reform were not widely understood, however, even by

³ For further details on conventions, see http://www.coe.int/en/web/conventions /home, and on standardsetting see http://www.coe.int/t/dghl/standardsetting /cdcj/default_en.asp.

⁴ Federal Ministry of Economic Cooperation and Development (accessed February
14, 2015), http://www.bmz.de/en/what_we_do/countries_regions/Central

⁵ For more details see Pomerantsev, et al. 2014, 6., see https://lif.blob.core.windows
.net/lif/docs/default-source/publications/georgia_transitions_a4_2014web.
pdf?sfvrsn=0.
Figure 1 Depicts a Chronological Account of the Reform Process in the Three Countries of the South Caucasus

1997/98
- The Council of Europe (CoE) adopts the Caucasus Initiative, providing GIZ’s regional approach in legal cooperation.
- Armenia becomes a member of the CoE; Ministry of Justice (MOJ) sets up a working group to elaborate on General Administrative Law.

1999/2001
- GIZ adopts the Caucasus Initiative, reinforcing its regional approach in legal cooperation.
- The Council of Europe (CoE), GIZ, CILC, USAID push for administrative law reforms.
- Armenia becomes a member of the CoE; MOJ sets up a working group to elaborate on the Administrative Procedure Code.

2002/04
- Regional Conference on Administrative Law Reform in the South Caucasus.
- Working group starts elaborating on the Administrative Procedure Code.

2005/06
- Parliament sets up a working group to reform the administrative law system.

2008/09
- Adoption of Law on Administrative Procedure and Code on Court Proceedings.

2010/11
- Independent Administrative Court of 1st and 2nd instance take effect.

Azerbaijan
- Parliament sets up a working group to reform the administrative law system.
- High School of Justice established in 2006.

Georgia
- Parliament adopts General Administrative Code and Administrative Procedure Code; New laws take effect.

Armenia
- Parliament adopts General Administrative Code and Administrative Procedure Code; New laws take effect.
the majority of legal professionals, because the concepts of administrative law under the Soviet Union were quite different from those of Western Europe or the United States. International and bilateral development institutions with whom the countries had dealt in the past were invited to assist. Their commitment to provide the necessary financial and technical support was the prerequisite for the reform proposals. In particular, GIZ’s regional approach to legal cooperation projects enabled key reformers to initiate administrative justice reform (see figure 1 for an overview of the timeline of the reform processes).

Starting in 1997, a series of international conferences and seminars on administrative justice reform were conducted in Leiden, The Hague, and Strasbourg under the auspices of the CoE in cooperation with GIZ, the Netherlands-based Center for International Legal Cooperation (CILC), and AMEX International on behalf of the U.S. Agency for International Development (USAID). Those events were the starting point for the administrative reform project in Georgia. Georgia had been suffering under five years of civil war, when Mikheil Saakashvili, a U.S.-educated reformer, recognized that the weak, opaque, and corrupt public service system was interfering with the development of the young state. Saakashvili acknowledged the need for both a professional, transparent, and accountable administrative branch and effective judicial redress against administrative actions and decisions. As a member of the Georgian parliament from 1995 to 1999 and chairman of the legal affairs committee in 1998, Saakashvili found a close ally in Zurab Zhvania, the chairman of parliament. He also received the backing of then Georgian president Eduard Shevardnadze in his efforts to initiate administrative law reform in Georgia. Lado Chanturia, the Minister of Justice, also welcomed the idea of introducing a modern administrative law system to Georgia. Both Saakashvili and Chanturia, along with other representatives from Georgia, participated in the CoE seminars at which advisers from France, the Netherlands, Germany, and the United States provided insights into their legal systems, particularly administrative law procedures and court proceedings. A working group was convened in Georgia under the guidance of the legal affairs committee of the parliament in 1998. Its two fundamental laws, the General Administrative Code (GAC) and the Administrative Procedure Code (APC-G), were adopted in 1999 and entered into force on January 1, 2000.

In Armenia, work on the two fundamental laws started in 2001. A working group for drafting the (general) administrative law in the Republic of Armenia was established in May 2001 under the auspices of the Minister of Justice, Davit Harutunyan, and with the backing of President Robert Kotscharyan. The Law on the Fundamentals of Administration and Administrative Procedure (LFAAP) was adopted in 2004 and became effective in January 2005, and the Administrative Procedure Code (APC-ARM) was adopted in November 2007 and became effective on January 1, 2008.

In Azerbaijan, administrative law reform had been discussed in the National Assembly of Azerbaijan since 2000. By 2002, reform of civil and commercial law had already progressed considerably, and the law of civil service had been revised. According to Sayyad Karimov, now deputy head of the Department for Administrative and Military Legislation in parliament and a proponent of administrative law reform, the time seemed ripe for reform. Safa Mirzoyev, the head of administration of parliament and Karimov’s superior, presented the reform initiative to the parliament and it was approved. With the confirmation and support of President Alyev, a working group was established in 2002/2003, headed by Mirzoyev. The Law on Administrative Procedure (LAP) was adopted in 2005, but did not become effective immediately. LAP was amended in 2006, but its effectiveness was again deferred. In June 2009, the Administrative Procedure Code (APC-AZ) was adopted. Both laws went into effect on January 1, 2011.

Throughout the process, international and bilateral assistance to the South Caucasus in implementing legal and judicial reform was pervasive in Georgia and comprehensive in Armenia and Azerbaijan. The United Nations Development Program and the World Bank provided funds and assistance with programs. The European Union assisted through Partnership and Cooperation Agreements and the European Neighborhood Policy, and projects under Technical Aid to the Commonwealth of Independent States. The CoE, through the Venice Commission and the European Committee on Legal Co-operation, provided recommendations, evaluated progress, and implemented specific projects. The efforts of the CoE were supplemented with crucial assistance from bilateral technical cooperation initiatives.

During the mid- and late 1990s, Georgia’s efforts to institute legal and judicial reform were supported
by GIZ, CILC, and AMEX International on behalf of USAID. All of these organizations had been involved in the civil law reforms of Georgia and established good working relationships with the Ministry of Justice and with representatives of the parliament and the judiciary.

GIZ had supported Armenian civil and economic law reforms since 1996. In contrast, early advice to initiate administrative law reform in Armenia went unregarded. Participation in the 1997 seminar in The Hague did not lead to reform efforts. Another window of opportunity opened, however, with the 1998 appointment of Davit Harutunyan as Minister of Justice. His efforts to institute constitutional reform led, after one failed referendum in 2003, to amendments in 2005. At Harutunyan’s request, German jurists were invited to assist in the drafting of amendments to the constitution. At some point during the constitutional reforms, the issue of administrative law reforms arose, and GIZ experts were asked to assist.

In Azerbaijan, in addition to the support provided by the CoE, GIZ was acknowledged as a reliable partner. In the course of this relationship, the need for public law reform, including reform of the general administrative law system, was discussed regularly. The bilateral legal cooperation project with GIZ on administrative reform formally began in 2002.

GIZ’s regional perspective fostered administrative law reform. The regional seminars with the CoE were complemented by a regional conference on administrative law in 2002 in Bremen. This conference enabled delegations from Armenia and Azerbaijan to learn from their Georgian counterparts. GIZ had supplied the legal texts of Georgia’s administrative laws as examples. Some interviewees have even assumed that this approach engendered a delicate competition among the key reformers, and it may have been among the factors that convinced Armenia and Azerbaijan to follow the Georgian reform path. Based on the recognition that in all partner states of GIZ the conditions for the transformation process were similar, and that the context was much the same, a regional approach in legal cooperation seemed to make sense. The technical and professional exchanges among legal professionals of Armenia, Azerbaijan, and Georgia were strengthened to ensure up-to-date information on reform initiatives, the elaboration of new legislation, opportunities for joint discussions of common technical problems, and exchanges of lessons learned. Synergy was created by adapting model laws to national contexts, sharing legal literature and teaching materials for the training of legal professionals, and inviting legal experts from one country to another to exchange information. The overarching goals are to foster professional dialogue, to build and increase trust, and to create legal expertise and meaningful cooperation in the partner states.

**Drafting Laws to Support Administrative Justice Reform**

**Extending Legal Capacity**

In each country, working groups were set up to draft proposals for administrative law reform. The working groups were headed by a manager who acted as the link to the political level. The groups consisted partly of local jurists recruited from national agencies or, in the case of Armenia, from the local GIZ project team, and partly of international legal experts, mostly scholars or judges from higher courts, or as in the cases of Georgia and Azerbaijan, practitioners from Western European administrations. Local members were appointed by their principal authorities and international advisers by their contracting agencies.

At the outset, most local working group members needed to increase their knowledge of administrative law in Western Europe and the United States. Considerable time and funds were spent educating them on the concepts, principles, and standards of good administration and on the administrative laws of Germany, the Netherlands, the United States, Poland, Ukraine, and the Baltic States. Because the working groups in Armenia and Azerbaijan started to work after Georgia’s reforms had been enacted, those laws were studied as well. As a result, the local working group members became highly qualified in the field of administrative law and were able to promote the reform process by explaining the content and implications of the new reforms to their compatriots, convincing opponents and training other legal professionals.

In all three countries, the working groups concentrated on drafting their respective general administrative codes first. The Administrative Procedure Code (APC) for each country followed. In Armenia and Azerbaijan, however, unlike in Georgia, the laws did not become effective immediately following their enactment. It might not
have been possible to duplicate the Georgian model because of the implications of the reform laws for other legislation, especially that related to the organization of the judiciary.

The drafting process in Georgia was under time pressure from the outset. Parliamentary elections were scheduled for autumn 1999, and the supporters of administrative law reform apparently did not want to risk the reform's failure if the composition or majority in parliament changed. Thus, the draft laws needed to be adopted in the summer of 1999 at the latest. The working group focused substantially on the drafting of the GAC. The first draft of the APC-G presented to the working group, however, did not seem consistent with the Civil Procedure Code. In order to still stay within the time limit, the draft law was designed to regulate the very few aspects of administrative court proceedings, as they needed to be distinct from the civil court procedures. Beyond those specificities the law referred largely to the Civil Procedure Code.

Armenia's working group first addressed the LFAAP. Several drafts of the law were developed following intensive working meetings in Germany and Armenia. The sixth version of the draft was submitted to the cabinet and approved in February 2003. It was adopted one year later by the parliament. By then, the working group was drafting the second reform law, the APC-ARM. It planned to submit the draft APC-ARM to parliament for adoption in early summer 2004 so that the LFAAP and APC-ARM would become effective on January 1, 2005. It took another three years, however, before the APC-ARM was adopted by the parliament, in November 2007. A combination of factors seems to have caused the delay. In the context of constitutional reform, discussions arose as to whether the administrative courts should be organized as specialized courts, institutionally independent from the common courts, or integrated into the common court system. Opposition from within the judiciary and the administration also contributed to the delay. As soon as the LFAAP was adopted in 2004, information events and training seminars were conducted. Representatives of administrative authorities started to recognize the implications of the administrative reforms and understood in greater detail how the new law restricted administrative procedures and decision making in general. Despite the opposing views on the reforms, the APC-ARM was eventually adopted.

In Azerbaijan, the LAP was adopted in October 2005 and amended in 2006, but did not become effective until 2011. In 2005, the working group had also started to draft the APC-AZ. It became clear that several topics would have to be negotiated first. The proponents of reform planned to start comprehensive information campaigns prior to enactment to inform the public and to train the staffs of administrative bodies and future administrative judges. The prior enactment of the LAP therefore was not deemed appropriate.

More importantly, the LAP provided that citizens could choose to file complaints against administrative acts either with the administrative body or with an administrative court. The administrative courts had not been established, however, because the APC-AZ had not yet been adopted. Thus it was decided to enact both laws at the same time. However, when the APC-AZ was adopted in June 2009, the effective date of both laws was postponed again. The administrative courts and respective chambers still had not been established. The judiciary was not yet provided with additional judges, budget, court staff, or equipment. Neither the venue of the administrative courts nor the organization of the administrative courts at the various levels had been determined. Amendments to the Law on Courts and Judges were therefore necessary. After the necessary amendments passed the parliament in June 2010 and the president issued a decree on the court organization, the number of judges, and the venue of the courts, the LAP and the APC-AZ went into effect. This process demonstrated the far-reaching effects of reform on national legislation.

**Meaningful Participation**

The administrative justice reforms in all three countries were initiated by key protagonists at a high political level—members of the parliament in cooperation with the Ministry of Justice in Georgia, the Minister of Justice in Armenia, and management staff of the parliamentary administration in Azerbaijan—all of whom acknowledged their country’s commitment to align with international legal standards. As part of the case study, participants from each country were asked about the role of other stakeholders in the administrative law reform process. Because the proposals for reform were completely different from traditional Soviet-era legal concepts of administrative law, interviewees believe that few people understood the administrative reform laws. Hardly anyone
outside the working groups was capable of assessing the implications of the reforms, let alone able to propose alternative legislative solutions. The legal standards set by the CoE, however, provided a detailed and somewhat strict framework. As a result, some of the key reformers seem to have been convinced that it was necessary not to invite debate to avoid compromising their idea of the “right” legal concept for administrative justice. Or, as one former member of the working group in Armenia put it: “Broad participation would have meant compromise. But it was important to observe the material logic in the law. It did not seem possible to assert this material logic in a participatory process. . . . Especially in regard to the [LFAAP] a populist influence would have been harmful.”

In Georgia and Armenia, participation took the form of presenting and explaining the new laws to selected individuals representing the government, the judiciary, and the media. Only in Georgia was civil society involved in the early drafting stage. The private sector and lawyers were not consulted. According to key members of the working groups in Georgia and Armenia, their parliaments did not play a significant role in the development of the laws but adopted the drafts straightaway.

In Azerbaijan, however, the draft laws were closely scrutinized. The effective date of the laws was postponed temporarily because of concerns and objections raised during the drafting process. The LAP was adopted in 2005 and amended in 2006, but did not go into effect until 2011. This implies careful review and consideration of implications, which may have resulted from discussions of the draft of the APC-AZ. Azerbaijan had undertaken a comprehensive information campaign on the LAP starting in 2006, which overlapped with the drafting of the APC-AZ, which increased local capacity to understand and critically assess the implications of the reform laws.

Legal Choices Trigger Changes in Legal Culture

The General Administrative Laws and the APCs of the three states resemble each other considerably, except the APC-G. Although the general principles of administrative justice were not issues for debate, definitions of terms, the organization of courts and judicial competence, and the details of administrative court procedures were subject to intense and sometimes time-consuming debates among stakeholders in all three countries. After participating in regional exchanges and studying the Georgian model, Armenia and Azerbaijan, after long discussion, chose individual legal solutions to common problems.

Questions of general court organization and judicial competence were hotly debated in Armenia and Azerbaijan. Some stakeholders in both countries supported the creation of specialized administrative courts, while others preferred to integrate jurisdiction for administrative disputes into the existing common court system. The decision also had to be made whether to permit one or two appeals in administrative cases. Connected with this discussion was the question on the extent of judicial review in administrative disputes, namely whether to install two or three instances in the generally three-staged court systems of all three countries.

Pursuant to Georgia’s constitution, administrative jurisdiction would be integrated into the common court system with specialized judges and chambers in the Courts of Appeal and the Supreme Court. The organization of courts was a central point of discussion, however, in both Armenia and Azerbaijan. The working group members discussed such questions as: Is it necessary to offer a broad access to first instance administrative courts throughout the country, or is it sufficient to start administrative disputes in the appellate courts, with fewer but specialized judges? Is there a risk that judges in courts of first instance might be influenced or even manipulated by local authorities? Is it consistent with the court system to establish specialized courts for administrative disputes, and are there sufficient funds to do so? Are specialized courts required to ensure the checks and balances inherent in the judicial review of the state’s administrative actions and decisions? Or can all requirements for reform of the administrative law system be met in an integrated system?

Armenia chose to establish an institutionally independent Administrative Court of First Instance in 2008 and, in 2010, an Administrative Court of Appeal. Azerbaijan integrated the administrative courts of first instance into the established economic courts, which became the administrative-economic courts. In the courts of appeal and the Supreme Court of Azerbaijan, administrative-economic collegia (panel of
specialized judges) were introduced. In summary, the three neighboring countries introduced three different organizational models to provide judicial review of administrative disputes.

Reflecting both the influence of legal culture and heritage and the capacity to adapt, the new General Administrative Laws in all three countries introduced procedures for lodging administrative complaints.8

It was clear that a citizen should have the right to lodge a complaint directly with an administrative authority. What was in dispute, however, was the requirement, suggested by international consultants, that the filing of an administrative complaint be made mandatory and that all administrative appeals within an agency be exhausted before a citizen could go to court. National jurists opposed this proposal, especially in Georgia, where the constitution protects a person’s right to apply to a court for protection of his or her rights and freedoms. Most national stakeholders suspected that decades of experience led to mistrust of the administrative process. The requirement of lodging an internal administrative complaint was perceived as a barrier to accessing the courts. As a result, in all three countries the choice of lodging an administrative complaint or going directly to court was left to the citizen.

The judges of the Supreme Court of Georgia believed that, as a consequence, nearly all cases were brought to the administrative courts, contributing to the case overload. Influenced by the experience of the judiciary and on the initiative of the legal committee of the parliament, the APC-G was amended in 2006. Article 2.5 of the APC-G now states that a court may not hear a claim brought against an administrative body unless the claimant has lodged an administrative complaint in accordance with the procedure laid down in the GAC.

This process reveals a change in legal culture and the development of a new understanding of constitutional rights in Georgia, which could not have been accomplished solely by debate among stakeholders and international experts. Change had to result from legal experience and court practice. Armenia and Azerbaijan have not yet made this change to their administrative laws.

The Georgian legislation combines influences and characteristics from German, Dutch, and American administrative law in the area of access to information. Chapter III of the 1999 GAC contains the provisions of the Freedom of Information Law (FOI) of Georgia. It incorporates article 41.1 of the Georgian constitution, under which every citizen of Georgia has the right of access to information as determined by law, as well as to official documents about him or her stored in state institutions, unless they contain state, professional, or commercial secrets. A review of documents on the implementation of the new administrative laws indicates, however, that the FOI in Georgia is important to Georgia’s organized civil society. The latest reports of NGOs such as Transparency International Georgia, the Institute for Development of Freedom of Information (IDFI), and the Georgian Young Lawyers Association suggest that the right to access information under chapter III of the GAC is fully reflected in FOI requests, with the NGOs serving as watchdogs.9

In Armenia and Azerbaijan, in contrast, separate laws on access to information had been adopted before the administrative reform laws. During the case study interviews, the freedom of information issue was not raised, suggesting that it did not have the same relevance to administrative justice reform as it had in Georgia, perhaps due to the context of a less influential civil society that was less able to use FOI laws to advance their causes. However, this example may demonstrate how different international influences in the legal drafting processes of the neighboring countries in the region led to different legal results.

Implementation of the Law by Administrative Authorities and Courts

Documentation and interviews for this case study suggest that implementation was the more challenging part of administrative legal reform. Those involved in drafting the statutes knew that the process of building legal capacity in public administration and the courts needed to be coordinated and managed. A systematic review and reorganization of administrative agencies and proceedings was necessary for each body, section, and level of public administration, from the ministries at the national level to the provinces and cities to the

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8 The proceedings for lodging administrative complaints are found in chapter XIII of the GAC, in section IV of the LFAAP, and in article 71.1 of the LAP.

9 For example, according to the IDFI: “It is important to emphasize here that unlike practice of the previous years in 2014 the court accepted appeals of IDFI which were usually denied. This should unambiguously be assessed as a positive development and serves as a proof that the court practice of the previous years, when decisions were always made in favor of public entities, is changing towards the goals of objectivity and transparency” (IDFI 2014, 45).
municipal and local authorities, such as mayor’s offices, trade offices, and tax authorities. Courts needed to be reorganized and budgets established for the new tasks. Administrative law judges had to be selected, appointed, and trained. Universities had to develop a curriculum for legal education in administrative law and hire legal experts to teach it. Lawyers, civil society organizations, and the media needed education on the reform concepts as well.

**Focusing Implementation Efforts on the Court System**

All three states focused on developing the capacity of civil servants and administrative judges to implement the laws. Some interviewees of the case study believed that the administrative courts were the key implementers of the laws. The argument is that the development of a consistent, unified jurisprudence for administrative disputes would reflect on the quality of the standards and procedures in administrative bodies. The number of civil servants was larger than the number of judges, and staff turnover in ministries and subordinate public entities was higher. Legal training for judges would continuously be targeted toward a homogeneous group and would quickly increase competency in the courts. The governments, with some exceptions, did not focus on building public awareness through civil society or the media. Training lawyers in administrative law was also not considered to be primarily the state’s responsibility. Despite the need, a government’s responsibility and competency to engage in capacity development programs is limited, not by legal or constitutional provisions, but de facto by fiscal constraints and the availability of qualified personnel. To some extent, international and bilateral technical cooperation programs fill this gap by financing and conducting trainings and seminars for lawyers and the media and by providing funds to NGOs to carry out information campaigns.

The strategies used to implement the new administrative laws were similar in Georgia, Armenia, and Azerbaijan. The same focus groups were targeted, and similar challenges had to be addressed. Disparities in the implementation efforts appear to be the result of the individual drafting processes in the countries. In addition, the experiences in Georgia informed the strategies in Armenia and even more so in Azerbaijan, as the last to undertake administrative law reform.

In Georgia, the implementation work started after the laws were passed in 1999. Starting early in 2000, training seminars were conducted for judges and for staff of several administrative authorities. Seminars were conducted in Georgia and in the Netherlands for the local staff in the courts and administration, and the necessary legal literature, including textbooks and commentaries for both reform laws, was written. The High School of Justice was established with the support of the CoE in 2006, and the focus of training of judges changed. Judges from the Supreme Court who had participated in the development of the administrative legislation and the legal literature were selected by the School and the High Council of Justice to train young legal professionals who had been chosen to participate in the mandatory comprehensive preparation program for future judges. The judges regularly participated in seminars and consultation meetings with German administrative judges and these judges finally also defined the scope of necessary amendments to the laws. The implementation of reform of the courts was characterized by support from the top level of government—the chairman of the Supreme Court Lado Chanturia, who had already participated in the legal drafting in his capacity as Minister of Justice, stressed the special role and responsibility of the administrative courts for the success of this reform.

In Armenia, the training of legal professionals in administrative bodies and courts started prior to the enactment of the LFAAP in 2005 and the APC in 2008. Starting in 2004, information events and training seminars were conducted in administrative authorities. In 2006, a comprehensive training program for future administrative judges was conducted by GIZ in partnership with the Armenian government. Armenian members of the former working group conducted trainings for lawyers and administrative bodies, and German experts conducted trainings for judges both in Armenia and in Germany. Once the APC became effective, the administrative judges were appointed, among them one member of the working group. The motivation of the newly appointed judges naturally increased immediately after their appointments. The training seminars for the new judges continued, now in close collaboration with GIZ and the courts. Using the curriculum that was first developed to train the future administrative judges throughout 2006 and 2007, a manual on general administrative law was published in 2008.
As anticipated in the concept paper for Azerbaijan’s administrative law reform, preparation for the implementation of the new administrative laws began well before enactment. Measures were directed mostly to the staff in administrative bodies and the future administrative judges. In 2006, a national group of legal educators for the LAP was established, and a brochure entitled “Introduction to the New Administrative Law of Azerbaijan” and a commentary on the new Administrative Procedure Law were published. The educators were trained using the legal text and the explanations in the brochure and the commentary. Study tours provided insights into European administrative systems, especially in Germany. In 2008, educators started to train staff in administrative authorities throughout the country and at all levels, from school principals to heads of waste management departments. Information seminars for administrative staff are still conducted regionally in Azerbaijan every two months. A similar process for the judiciary was initiated as soon as the APC-AZ was adopted in 2009. In the beginning, training served as a basic introduction to the new law. German senior judges provided intensive training courses, at least twice a year for a period of one week, with a strong focus on the transfer of practical knowledge related to administrative court proceedings. Participants were judges who were expected to become administrative judges when the law went into effect in 2011.

Addressing the Need for Published Opinions

In each country, the implementation measures served primarily to transfer basic knowledge on the principles of administrative justice and the rationale behind specific national legal concepts for administrative proceedings and court procedures in administrative disputes. The trainings were designed to convey both the theoretical concepts and the practical aspects. However, all three countries faced another problem in the early years of implementing the new reform laws: despite ongoing training for legal professionals, the decisions of the courts, especially in Azerbaijan, were not consistently made available for reference in subsequent cases. When this problem was identified in consultation with the development partners, the Supreme Court in each country decided to regularly publish its decisions.

But even though the decisions of each country’s Supreme Court are published, the use of those decisions in later cases remains an issue. There is no practice of highlighting the main reasons for a verdict or of including up front an abstract of the guiding fundamental interpretation of specific provisions of the law. As a consequence, there is apparently no general awareness of principal administrative court decisions, even within administrative bodies. Judges repeatedly decide cases on the same legal issues but the administrative authorities keep making the same mistakes. Other factors also prevented the comprehensive implementation of laws. Most judges had been educated under the Soviet law regime, which made it difficult for them to adopt the new legal concepts. Many of them lacked any methodology to interpret the reform laws in the light of their country’s constitution. The academic discussion of court decisions lagged behind for the same reasons. Georgia, Armenia, and Azerbaijan had to develop solutions to these problems.

Georgia emphasized the production of legal literature (commentaries, textbooks, and teaching materials) and Georgia’s Supreme Court promulgated guidelines. All three countries changed their training formats to models of coaching for court personnel through partnerships with German administrative courts. Azerbaijan developed an online commentary. The legal education at the law faculties became more clearly focused. Azerbaijan is currently establishing a curriculum on administrative law with the support of a German expert. On the regional level, GIZ supported the debate on pressing legal issues by publishing a regional law journal. In addition, the following measures were highlighted by the case study interviewees as especially useful in the further development of high-quality jurisprudence.

In the early 2000s, Georgia did not have sufficient means to publish and distribute legal texts. Legislative and normative acts were not available online until 2011. Georgia’s partners administrative law reform, in particular GIZ and USAID, funded the printing of the new codes and their distribution to training sessions and seminars. Members of the legislative working group, administrative judges, and selected staff from

10 Matsne, the official legislative herald of Georgia, was established in 1998 as a legal entity under the Ministry of Justice. Until 2010, however, Matsne was available only in print and only to a limited degree. In 2011, Matsne went online, providing both current and historical versions of legal and normative acts. The online version can be found at https://matsne.gov.ge/en.
universities and the Ministry of Justice drafted the relevant legal literature. With support of development partners, in particular USAID and GIZ, textbooks and commentaries were published and distributed to legal professionals in the first years after the laws’ enactment. Those textbooks and commentaries are considered the most valuable tools to enable judges and other legal professionals to understand the legal concepts and apply the laws according to the legislators’ intentions. The Supreme Court of Georgia acted to promote consistent jurisprudence by promulgating court guidelines. Since 2006, judges at all levels have met regularly to consider and analyze questions of law. The guidelines promote a common approach for the interpretation of the law, including administrative law.11

Although Armenia and Azerbaijan followed the Georgian example in publishing legal literature,12 their approaches to supporting the development of consistent jurisprudence had a different focus. Armenia targeted its efforts toward training. Over the years, the training format for judges was redesigned to emphasize consultation and individual coaching. German judges conduct quarterly five-day seminars for groups of administrative judges, who attend one session each year. The judges discuss their questions and problems with the application of the administrative law with their German counterparts. One interviewee of the case study believes that regular consultations are still necessary to ensure proper implementation of law: “Until today the reform process is not completed. Until today the legal consequences have to be discussed in individual cases. It is a difficult process. . . . Without regular feedback old habits will sneak back in, a backslide into the status prior to the reform, into the old legal socialisation would be certain.”13

In Azerbaijan, training for judges and civil servants was supplemented with information events and training for lawyers and the media. A website, established in 2012, is regularly updated.14 A German administrative judge with knowledge of Azerbaijan administrative law and court organization reviews and comments on selected legal issues. His analysis is published on the website in the form of questions and answers related to the APC-AZ’s provisions. The website serves both as a tool for legal professionals to interpret the law and as a source of information for anyone interested in understanding the law.

What Have the Reform Laws Achieved and Have They Affected Economic Development?

The Problem with Monitoring Results

The case study interviewees believe that the implementation efforts targeting the judiciary were effective and increased the capacity of judges to deal with administrative disputes. Some interviewees, however, were skeptical whether administrative authorities would consistently implement the new provisions. This skepticism highlights the problem of monitoring the effects of administrative law reform. Other than lists of the numbers of staff trained or seminars conducted, no coherent evidence was found of an improvement in administrative procedures after the new laws entered into force. The creation of a general framework for administrative procedure, accompanied by a model of judicial redress through administrative courts, does not replace the need for the comprehensive reform of public administration and for monitoring the impact of this reform. Undertaking comprehensive reform, however, requires that all levels of legal capacity and management be addressed. The system of administrative agencies within the executive branch is heterogeneous, consisting of different levels of administration (national, subnational, and local level) and different sectors (health, justice, education, security and national defense, economy and finance, traffic, infrastructure, and culture). Agencies exhibit huge differences in capacity. The successful enactment of a fundamental law regulating the principles and procedures for administrative action would require a thorough, countrywide information campaign to staff in administrative bodies on all levels. As far as can be determined for this case study, such a comprehensive approach was taken in Azerbaijan from the beginning.

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12 In Armenia, a Guideline for Administrative Law was published in 2008, but no commentary has yet been published. In Azerbaijan, Introduction to the New Administrative Law of Azerbaijan (Hermann and Hye-Knudsen 2006) and a commentary on the APZ-AC (Karimov 2006) were published in 2006. In 2008, a book titled Administrative Law (Mehdiyev 2008) was published. In 2013, a textbook for legal professionals, titled The Administrative Court Proceeding in Azerbaijan, was published (Konigsmann 2013). A presentation of “Cases and decisions of the administration law in Azerbaijan” was published in 2015 (Jacob, Hüsener, and Mammadov 2015).
13 Author interview.
14 See http://www.inzibati.az/; “inzibati” stands for “administrative.”
In Georgia, especially during the Saakashvili era, political unrest led to changes in staff in parliament and the ministries. If a minister left office, many of the staff also left, and new staff were hired. The staff changes had a negative effect on the quality of administrative decisions, due to the loss of institutional memory and experience in administrative practices and lack of knowledge transfer, and made necessary the delivery of repeated introductory trainings. Against this background, the implementation of administrative law reform through the judiciary is understandable even though some commentators have criticized that approach.

In all three countries, the reform of the general administrative justice system was promoted and supported by GIZ under the assumption that reform would improve conditions for economic growth and social development. A review of documents and case study interviews reveals the difficulty in monitoring the effects of administrative law reform and, consequently, hampers the ability to find evidence that these reforms have positively influenced social and economic development in the South Caucasus.

The reforms in all three countries were implemented under international obligations. Each piece of legislation was designed to comply with the standards of the CoE. The legislation requires that administrative decision making be carried out in a lawful and transparent manner. A system of judicial review was established through specialized administrative courts or through specialized chambers in the common courts. The right of the individual citizen to defend against or appeal unlawful administrative decisions has been strengthened.

To that extent, the reform laws promoted the rule of law by providing the necessary procedural and institutional framework for an improved administrative justice system. That alone is a worthy result.

It was more difficult, however, to determine how the reformed system of administrative justice works in reality and how it affects the status of legal administration and of citizens. A review of documents and the analysis of case study interviews suggest that the monitoring of results was not an issue addressed by the governments when reform was proposed or even when the laws were being drafted. It became a more pressing issue, especially for bilateral and international development cooperation projects, after the laws were enacted. The training of judges and civil servants, the writing of textbooks and commentaries, and the arranging of study tours needed to be organized and funded. Technical support and funds for those activities were provided by international organizations or through bilateral cooperation projects such as USAID, CoE, the European Union, CILC, and GIZ. Those agencies monitor the projects they fund, regularly evaluate and assess their results, and, where necessary, adjust the strategies. The question was how to monitor the changes that were expected as a result of the comprehensive implementation of the administrative reform laws. What indicators would provide evidence of the success of a particular reform? How much time should pass before such evidence can be measured?

In the late 1990s and early 2000s, the annual project progress reports from GIZ and CILC focused on outputs: the numbers of legal professionals (judges, civil servants, attorneys, and notaries) trained or invited for study tours and the publishing of legal textbooks and commentaries. Court statistics and standard indexes such as the Transparency International Corruption Perceptions Index, the JRI, the Bertelsmann Transformation Index, and the annual Doing Business reports published by the World Bank have been consulted to assess progress.

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15 Carothers notes that “it is by no means clear that courts are the essence of a rule-of-law system in a country. . . . [I]t might well be argued that the making of laws is the most generative part of a rule-of-law system. . . . Yet for the last ten to fifteen years, rule-of-law programs have given dominant attention to judiciaries, without much examination of whether such a focus is really the right one” (Carothers 2003, 8).

16 GIZ internal programming documents explicitly link administrative law reforms with economic development. A 2003 GIZ progress report on the rule of law project in Georgia states that administrative law reform is an important part of the Interim Poverty Reduction Strategy and stresses the fact that the Georgian government hopes to achieve not only improved law enforcement but also an increase in Georgia’s attractiveness as a business location in the South Caucasus. The GIZ 2010 final report for the bilateral rule of law project in Armenia states: “With the expansion of the legislation the project has positively influenced the business environment. The improved functionality of the Constitutional and Administrative Justice has helped to consolidate the sense of justice to some extent.” The GIZ 2012 final report for the bilateral rule of law project in Azerbaijan shows more restraint in making this link. According to the report, “the law reforms in Azerbaijan as far as they were supported by the GIZ project are the basis for numerous other reforms such as economic reforms that allow for a broad, legally secured participation of the population in the broadly privatized economy.”

17 The problems of measuring the effects of law reform in general, and in transition countries in particular, have been discussed in academic circles since the beginning of the 21st century, especially with respect to the oft-cited argument that if a state wants to succeed economically it needs to adopt the rule of law. Carothers (2003, 10) bemoaned the “surprising amount of uncertainty about the basic rationale for rule-of-law promotion.”

18 The JRI was developed by the American Bar Association’s Central European and Eurasian Law Initiative to assess a cross-section of 30 factors important to judicial reform in emerging democracies. JRI country assessment reports have been published and updated for Armenia (ABA 2002; ABA 2005a; ABA 2008; ABA 2013) and Georgia (ABA 2005b; ABA 2009).

19 See http://www.doingbusiness.org/reports.
Implementing Administrative Justice Reforms in the South Caucasus: Georgia, Armenia, and Azerbaijan, 1999–2015

In later bilateral projects of GIZ in the South Caucasus, the indicators for monitoring results were more strongly oriented toward effects. However, issues arose with respect to the data collection in connection with those programs. For example, the regional GIZ program on Legal and Judicial Reforms in the South Caucasus included indicators for evidence of constitutional implementation of the laws. One indicator envisaged a survey of judges, court staff, and staff of the Ministry of Justice assessing their perception of the efficiency, legality, and accessibility to citizens of their agency. Another indicator provided for a legal assessment of available court decisions to determine whether the rationale for the verdict on the merits of a case conformed to the law and to the constitution. Both indicators were subject to change in 2012–13, however, because the project faced problems in acquiring the necessary data and because of possible issues with the accuracy of data obtained.

In 2013, as this case study was being completed, the Office for Democratic Institutions and Human Rights in cooperation with the Folke Bernadotte Academy published a Handbook for Monitoring Administrative Justice, providing model questionnaires for court-monitoring exercises that were apparently based on projects in the South Caucasus. In Georgia, Transparency International Georgia began a trial monitoring project in 2011. Protection of Rights Without Borders ran a similar project in Armenia in 2009–10, and in Azerbaijan the Organisation for Security and Co-operation in Europe (OSCE) ran a pilot project on monitoring administrative justice starting in 2011. The reports of the monitoring projects in Azerbaijan and Georgia, published in 2012 and 2014, respectively, suggest that the monitoring focused on the compliance of courts with the procedural standards provided by the APC-G and APC-AZ.

In the case study interviews, respondents referred mainly to a combination of court statistics, perception indexes and surveys, and latest developments regarding the further development and even reforms of public administrations as indicators for the success of the (administrative law) reform.

Administrative Courts Experience

Increased Use

Each of the three countries has experienced increased use of its administrative court system.

The Supreme Court of Georgia and the High Council of Justice provided comprehensive and detailed sets of statistics upon a request that was submitted through the local GIZ law program office in Tbilisi. Most of the data on the processing of administrative cases in the courts are also available in English on the Supreme Court’s website, which demonstrates transparency and honoring the right to information. The Ministry of Justice of Azerbaijan through the local GIZ office provided the case numbers for Azerbaijan’s administrative courts. The number of judges is published on the website for the judicial branch by the Judicial-Legal Council in English. The statistics show that the administrative courts in Armenia are sufficiently staffed with judges compared to Azerbaijan and Georgia. Still, case overload was reported to be a problem in all three states.

As of 2015, there were 243 judges in the courts of Georgia; among them were 43 administrative judges, representing 17.7 percent of the overall number of judges and approximately one administrative judge for every 116,300 citizens (based on a total population of nearly 5 million people). Court statistics suggest that the population understood its rights under the new administrative laws and, with the support of lawyers and NGOs, quickly took their cases to court. The number of administrative cases brought to the courts increased from 2,308 claims in 2000 to 15,108 claims in 2003, causing an overload of cases.

Figure 2 shows the changes in case numbers over time, some of which resulted from the change in the law that required a claimant to lodge an administrative complaint before going to court. Since 2010, court statistics became

![Figure 2 Administrative Cases in Courts of First Instance in Georgia, 2000–13](source: Supreme Court of Georgia.)
The more recent data suggest that the number of cases for certain disputes varies over time, depending, presumably, on legal, economic, and social developments that lead to an increase or decrease in administrative decisions in a specific sector. These data may provide a source for the study of social or economic change or for regional comparison.

The administrative court system in Armenia began its operation in 2008 with the effectiveness of LFAAP and the APC-ARM. With the 2009 amendments to the LFAAP, the Administrative Court became a specialized court of first instance. The LFAAP specifies the number of judges. As of 2014, the Administrative Court has 27 judges, including the chair, and convenes in Yerevan and in the various regions (marzes). The Administrative Court of Appeal began functioning on December 1, 2010. Previously, Administrative Court decisions could only be appealed to the Cassation (Appellate) Court. The Administrative Court of Appeal has its seat in Yerevan and consists of 7 judges, including the chair. It has jurisdiction to review the judicial acts of the Administrative Court. Administrative Court of Appeal decisions may be appealed to the Civil and Administrative Chamber of the Cassation Court. The Civil and Administrative Chamber has 10 judges, including the chair. With a total of 44 judges assigned to administrative cases and a population of roughly 3 million people, there is approximately one judge for every 68,200 citizens.

According to the 2012 JRI country assessment for Armenia, the creation of the Administrative Court has led to a large increase in the number of cases filed against the state by citizens for alleged violations of their rights or interests.20 Opinions differed on whether the increasing number of applications reflected increased citizen confidence in the courts or, as others thought, an increasing number of violations by the state (ABA 2013, 33).

There are 550 judicial posts provided for in the budget in Azerbaijan, of which 519 are filled. Thirty-nine judges review administrative disputes in seven administrative and economic courts of first instance. Twenty judges review administrative disputes in the administrative-economic collegium21 of the six courts of appeal. In the Supreme Court, 10 judges review cases of administrative law. In total, there are 69 administrative judges, representing 13.2 percent of all acting judges and approximately one administrative judge for every 1,377,000 people (based on a total population of approximately 9.5 million people).

Court statistics from the Ministry of Justice of Azerbaijan suggest that administrative law reform has increased the caseload of the administrative courts, shown in table 1, a phenomenon that was also observed in Georgia.

Interviewees of the case study interpreted the increasing caseload in all three countries as proof of the acceptance by the population of the newly created courts. That judicial review of administrative decisions has become a legitimate proceeding is seen as a valuable achievement, extending access to justice where traditionally the state had the final say.

### Administrative Courts Appear to Help Citizens Claim Their Rights

Perception index scores and survey results relating to the performance of the judiciary in general and the administrative courts (including specialized judges,

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20 Statistics for both the Administrative Court and the Administrative Appellate Court were provided for the case study, but it was not clear whether the data applied to the Administrative Court in Yerevan only or included the marzes. It was also not clear whether the data covered all cases in the court of first instance or only cases in selected categories.

21 The Courts of Appeal consist of four collegia: Collegium on criminal cases and cases on administrative infringements, Collegium on civil cases, Collegium on cases on economic disputes, Collegium on cases of military courts, which are acting on territorial jurisdiction (see http://www.bakuappealcourt.gov.az/en/content/category/393.)
collegiums, and chambers) are available for the three state under examination. JRI reports for Georgia and Armenia were available for various time periods, and an up-to-date perception survey was provided for Azerbaijan. The methodologies for the JRI reports and the perception surveys differ substantially. In each case, however, the introduction of judicial oversight of administrative practice was assessed positively in principle. Despite problems with the enforcement of verdicts against administrative authorities in all three countries, the public perception is that administrative courts help citizens claim their rights.

Before the enactment of the APC-ARM, courts in Armenia were empowered, pursuant to the Civil Procedure Code, to review and invalidate the administrative acts of state and local governments and officials and to compel them to act where a legal duty existed. Courts had, however, been reluctant to use this power (ABA 2008, 22). The establishment of the Administrative Court and the enactment of the APC-ARM were expected to improve judicial oversight of administrative practice. Interviewees from the American Bar Association expected that the Administrative Court would help relieve the heavy caseloads of the courts of first instance and improve the quality of judicial review of administrative acts, through both specialization and the application of a common standard of review (ABA 2008, 23). Improper influence on judicial decisions was reported to be a persistent problem as late as 2012, despite laws protecting the independence of the judiciary. According to the 2012 JRI report, judges’ decisions were affected by external influences and pressure from within the judiciary, as well as subject to a lack of impartiality (ABA 2013, 58). The administrative courts were considered to operate transparently, however, and interviewees indicated that the administrative courts have increased access to justice for citizens. Interviewees believed that the enforcement of judicial decisions in administrative cases could be a problem. The Compulsory Enforcement Service under the Ministry of Justice was suspected of favoring the enforcement of cases that had been won by the state. However, interviewees also believed that the decisions of the Administrative Courts are in most cases favorable to private parties (ABA 2013, 29). Or, as one interviewee of the case study has stated: “The popular discontent has received an instrument: the administrative courts.”

In 2014, GIZ commissioned a survey by the Allensbach Institute in Georgia, Armenia, and Azerbaijan. The survey’s objective was to determine the level of satisfaction of legal professionals and representatives of civil society with the performance of the administrative courts. The Institute’s preliminary report for Azerbaijan in 2014 provides some very positive results. According to the survey, 72 percent of all respondents evaluated the efficiency of administrative courts as positive or very positive. Some interviewees of the case study believed, however, that some administrative bodies do not respect court decisions and that law enforcement is unsatisfactory. The OSCE trial monitoring project reported the perception that judges were reluctant to exercise their inquisitorial powers (OSCE 2012, 16–19, 22).

The case study reviewed the 2005 and 2009 JRI reports for Georgia (ABA 2005a; ABA 2009), and Transparency International Georgia’s 2014 report on court monitoring (Transparency International Georgia 2014). The report on court monitoring noted a reduction in the ratio of verdicts favoring the state to verdicts favoring private parties. Although some respondents found the reduced success rate of the state to be an indication that the courts have become more independent in deciding administrative cases, others noted that verdicts continued to disproportionately favor the state in high-profile cases. Some of the case study interviewees believed that the success rate ratio alone might not provide an unambiguous perspective: One might expect that, after a decade of experience, the administrative authorities would act in compliance with the new laws and that their decisions would not have to be revised or declared null and void as often. As in Azerbaijan, court monitoring over several years revealed that judges did not sufficiently exercise their inquisitorial powers (Transparency International Georgia 2014). As in the other states, there seem to be deficits in the law enforcement system in Georgia. The 2009 JRI report states that enforcement may be problematic.

22 During the interviews the demolition of Leyla Yunus’s house in August 2011 was cited to show the disrespect of administrative authorities for court decisions. According to Human Rights House Oslo, the Institute for Peace and Democracy (IPD), which belonged to human rights defender Leyla Yunus, was completely destroyed on August 11, 2011, by the authorities in Azerbaijan. Bulldozers demolished the house, which served as a premises for human rights activity in Azerbaijan, including a crisis center for women and a center for the fight against the extensive violation of property rights, in less than an hour. All documents, equipment, and office inventory were either destroyed or taken by the officials; no IPD staff were allowed to take anything from the building. Officials from both the state property committee and the Baku mayor’s office oversaw the demolition. The demolition was executed despite a ruling by the Baku Administrative-Economic Court in July 2011 that destruction of the building was prohibited without a court decision. The ruling was allegedly made known to all the relevant authorities.
Global Delivery initiative (ABA 2009, 23), which had been noted in the 2005 survey (ABA 2005b, 19, 20). Many reasons were proposed. Some interviewees cited a lack of political power or capacity to enforce decisions. The law enforcement agency is under the oversight of the Ministry of Justice. Judicial orders for payment are often directed to other, politically stronger ministries. Enforcing payment orders neutrally and evenly may seem politically inappropriate, despite the law and despite clear guidance from the European Court of Human Rights (ABA 2005b, 20).

In general, interviewees from the case study thought that the administrative reforms have helped to strengthen the position of citizens toward administrative authorities considerably. There was broad agreement, however, that further reforms are necessary to sustain the progress made in administrative justice, particularly reforms that focus on substantive administrative law, such as environmental legislation or planning and building laws.

Lessons Learned

Create Strong Links between International Politics and Technical Assistance

The shift toward a modern system of administrative law in the countries of the South Caucasus was induced by the new governments’ orientation toward Western Europe and their accession to the CoE, which carried obligations and commitments. The response of the political elite to those obligations and the commitment of their development partners to provide the necessary assistance throughout the reform process enabled this shift to take place within a relatively short time. The combination of changes in international politics and the support of national and international advisers in the three countries enabled key stakeholders within the governments to successfully implement legal reform. Development assistance should combine a flexible, responsive project framework with a perspective that reflects the commitments and obligations of the partner country.

Political Stakeholders in Favor of Reform Must Be Supported

Key political stakeholders in the South Caucasus recognized the weaknesses in their systems of administrative law and the negative implications of those systems for the economic and social development of their countries. Also the thematic platforms organized as part of the EU Eastern Partnership Programs have been criticized for being too EU-driven; panels are an opportunity to exchange reform experiences on public administration reform (Delcour 2015).

The case study shows that development partners must provide these stakeholders with the assistance necessary to promote reform. Political stakeholders must have knowledge and expertise in administrative reform to ensure the backing of the political elite on the one hand and to serve as a link to the technical ministries in their states on the other. Increasing their professional legal capacity is an important field for development assistance.

The study also shows that cross-border dialogue can enable reform leaders to jointly develop specific legal solutions and develop approaches to address obstacles to the reform process. Cross-border dialogue cannot be taken for granted, however, in the South Caucasus. In response, GIZ supports a new program for legal professionals that goes beyond stand-alone or serial conferences, workshops, and study tours. Transformation Lawyers—Legal Dialogue for Legal Transformation is a regional academy that uses scientific and practice-oriented programs to facilitate a professional dialogue and intensive exchange of information among the participants. Up to a total of 25 participants from Georgia, Armenia, and Azerbaijan are selected from those who apply and invited each year to study and improve their legal knowledge and practice skills. Upon completion of the program, the participants can join an alumni network facilitated by GIZ that provides potential future leaders the opportunity to address legal reform in a regional context.23

Revisiting Assumptions on the Effect of Legal Reform

The case study did not produce reliable evidence for the underlying assumption that administrative justice reform promotes social development and economic growth in the South Caucasus. Although some technical assistance programs, such as those of GIZ in the South Caucasus, gather valuable information about program results, identifying and monitoring indicators of success continue

to be a challenge. The combination of court statistics and perception indicators, however, appears to support the reform’s positive effects.

**How the Case Study Informs the Science of Delivery**

**Relentless Focus on Citizen Outcomes**

The purpose of administrative law reform is to provide effective judicial review of administrative disputes between citizens and government. Regulatory reform begins ideally with a comprehensive assessment of the status quo to identify citizens’ demands and the deficits in the regulatory framework and to understand possible obstacles to a full enforcement of the proposed legislation. The implications of law reform should be considered carefully during the drafting period with broad participation of local implementing agencies and civic institutions, if time, budgets, and the political situation allow. The key elements of legal reform should be discussed broadly, to increase awareness for the need for reform, to allow for substantial participation, and to receive feedback on possible obstacles to the law’s implementation. In some situations, however, the political setting may not permit time-consuming evaluations in advance or broad participation might create serious obstacles to reform. In those cases, it may be necessary to push the reform process ahead, even without significant participation by those stakeholders potentially opposed to reforms.

**Multidimensional Response**

Legal reforms should encompass (1) the regulatory process; (2) modifications of institutions and processes, including management structures and programs to train those with the responsibility to apply the law; and (3) a mechanism for informing the public of the new legal concepts, rights, and commitments. In a region with comparable reform agendas and contexts, legal reforms can be implemented more effectively when stakeholders can systematically access information on the legal solutions being implemented in neighboring countries.

**Evidence to Achieve Results**

Means of monitoring the effects of administrative law reform must be addressed in the initial drafting process as part of a comprehensive legal impact assessment. Evidence is necessary to prove the underlying assumption that administrative law reform influences the social and economic development of a state positively. Meaningful indicators, alone or in combination, have yet to be identified.

**Leadership for Change**

The decision of a government to pursue law reform requires the motivation of prominent political stakeholders, or legal reforms will not be initiated or will be pursued only half-heartedly. These individuals must be identified and their personal and political capacity developed and increased. They may be motivated by models of similar legislation in other countries or by dialogue with advisers. Obligations and commitments under international law and agreements may also provide the necessary incentive for action by political decision makers.

The strength of reform leaders depends on both internal institutional support and the support of external institutions such as development partners. Individuals from countries that have promulgated legal reform can contribute their experience in negotiating varying or even opposing concepts and interests from a neutral position. Opportunities to discuss reform concepts with counterparts in states with similar legal traditions and comparable challenges also provide valuable support. Regional legal cooperation encourages professional dialogue.

It is essential that reform leaders fully understand the concepts embodied in the legal reforms in order to enable them to educate other stakeholders and effectively resist opposition. Research stays, study tours, and participation in conferences help to increase stakeholder capacity to promote reform.

**Adaptive Implementation**

Legal reform is a long-term process that requires personal, technical, and financial backing. Those who are responsible for enforcement must be trained to understand, interpret, and apply the law properly in accordance with the intention of the legislative body. Agencies with responsibility to enforce the reform laws need to ensure that their staffs undergo sufficient legal training. The greater the level of understanding of the law, the greater the ability of those carrying it out to identify problem areas and develop appropriate solutions.
A regular professional exchange of experience in legal reform across borders in a region—whether regulatory process or implementation—can provide a forum for analysis of current systems and the opportunity to discuss possible adaptations. If neighboring countries implement parallel reforms at different speeds, the experience of the country that implements its system first can provide valuable lessons to those that follow.

Successful cross-border dialogue requires a forum and the willingness to share lessons learned openly. If dialogue is not established or is prevented by political problems, third parties, such as development partners, may be able to provide suitable forums that are sensitive to political difficulties. By establishing regular meetings on a regional level, for example, in the context of conferences or round tables, development partners can help to create trust and openness for sharing information.

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