Legal education and judicial reform in Central Asia – perspectives and reality

Investments require confidence, and legal certainty provides confidence. But how can legal certainty be achieved? The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) is tackling this task in Central Asia, together with national partners, by providing consultation on legislation and conducting specific training programmes in legal methods. There are many challenges: corruption; inadequate higher education; and laws in need of reform.
Programme background

To fight poverty\(^3\) and to create regional security and stability it is important to make Central Asia more attractive for economic development and investment. Legal certainty and the rule of law are important preconditions for this.

GIZ’s programme, “Supporting Legal and Judicial Reform in Central Asia”,\(^4\) being implemented on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ), has therefore been supporting the judicial and legal reforms in Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan and Uzbekistan by assisting partners in developing their institutional capacities since 2002. It is the only regional legal reform programme in Central Asia.

Within this framework GIZ is helping its partners to reform civil, commercial and administrative laws, to establish the rule of law and a market economy and in empowering the judiciary to apply laws to the benefit of citizens seeking legal protection. These aims can only be achieved successfully by means of a multi-level approach: assistance through ministries; intermediaries such as training centres for judges; and a civil society are needed.

To achieve these goals the Judicial Training Centre of the Kyrgyz Republic, supported by GIZ, has conducted more than 40 training sessions for over 1,800 participating judges, legal practitioners and lawyers in the Kyrgyz Republic since 2007. In Kazakhstan around 800 judges have been trained since 2004. Legal practitioners of other public institutions and lawyers also attend the seminars if they are interested in the topics offered. So far in 2010, 336 judges and 100 lawyers have gained further qualifications in Tajikistan. In
Although the basic circumstances of the countries in Central Asia are often incomparable, they all have one thing in common: a Soviet heritage which is still visible today throughout their legal systems and procedure laws.

The challenges

So what are the basic challenges in the daily work of judges and the courts? There are four factors, which are closely connected with each other:

- lack of knowledge
- corruption
- inefficient procedures
- procedural laws in need of revision.

There are numerous reasons for these problems, only some of which will be discussed in detail here.

Although the countries of Central Asia have been trying to build independent judiciaries and develop modern and consistent legal systems since gaining independence at the beginning of the 1990s, they have not yet succeeded in several tasks. To start with, higher education at universities is inadequate, and modern legal literature and commentaries on legal acts are missing. Judicial decisions are not made public satisfactorily, which leads to unknown jurisprudence and impedes transparency in the course of justice. Furthermore, corruption is all-pervasive in the legal system, making predictable and constitutional decision-making impossible. Civil Procedure Codes, with rules adopted from the socialist Soviet system with inflexible procedures and structures, prevent judges from working independently and efficiently.

What has GIZ learned through supporting their partners’ reforms? I will try to categorise the separate difficulties, although this is virtually impossible as the problems overlap in most cases.

Lack of knowledge

Higher education at universities has clear deficits and is rarely fit for purpose. It is often the case that diploma degrees are not awarded on the grounds of knowledge and performance. Qualified experts migrate to other countries, leaving the next generation without competent teachers and mentors. New literature is rare, especially literature written in the specific national languages.

In most Central Asian countries GIZ cooperates closely with the national judicial training centres. Through especially developed judicial training programmes the partners are trying to improve this situation and to qualify young judges and legal experts. Here specialised training is helpful, for example in property rights and family law, as legal systems have to be made adaptable for an environment that is currently under change. However, this training does not get to the root of the problems. It is evident that even the basic skills of legal methodology are poorly taught at universities, if at all. Discussions with judges are not structured in most cases, specific issues cannot be accomplished and opinions cannot be justified. Although most of the procedure codes contain the basic legal terms for a claim, many judges are unable to distinguish between special and general norms and their proper interpretation and application. These are, however, all necessary in order for a judge to study legal texts independently and to apply them to legal issues, to ask the involved persons the correct questions and to give reasons for a ruling.

Consequently, the most important training supported by GIZ is for judges – concerning the conduct of proceedings, the subsumption of an issue under the relevant legal norm, and the writing and justification of legal decisions. Even just presenting the simple central question “Who wants what, from whom, and on which basis?” can cause surprise – however asking this question can make the judges’ work easier. If a judge knows these basic skills, he or she can use them in each special field and even explore new legal fields independently.
National lecturers receive further education from GIZ, since they are able to pass knowledge of specific legal methods to their colleagues more effectively than international experts can. Moreover, in the Kyrgyz Republic GIZ has started to increase the participation of young judges in the training of trainers. On the one hand this should encourage the development of young experts, and on the other it should help to focus the training of judges on the needs of younger professionals. Participants consider the seminars, which were prepared and conducted by international and Kyrgyz experts together through “team teaching”, to be interesting and helpful in their daily work.

GIZ supports this training by writing and publishing law books8 and legal commentaries,9 in partnership with national working groups.

Corruption
There is no global remedy for corruption, but it is possible to try to curtail or reduce it by applying certain measures.

The publication of judicial decisions is crucial, and is supported in particular in the Kyrgyz Republic, Tajikistan and Uzbekistan. Long-term cooperation with the partner nations is necessary, not just to help them understand the importance of these publications, but also to make this activity sustainable and conducted in the future by the partners themselves. Unfortunately financial aspects play an important role, because the judiciary is often afflicted by inadequate budgets.

A further way to reduce corruption is the introduction of plans for the distribution of cases. Using such a system ensures that an incoming lawsuit will be allocated to a judge according to objective and defined procedures, and will prevent the President of the Court or others from influencing this process. However, the promotion of these plans is in some cases strongly opposed by legal practitioners.

Another focus of GIZ’s work is to support partner countries in enabling judges to deliver judgments that meet all juristic demands. For this purpose special training10 in civil law is conducted. The more detailed a judgment’s justification, the more difficult it is to allow unfair motives to influence the decision. Imprecise decisions without mentioning any basis for a claim and without identifying and applying the correct law to the facts make it easier to influence the final decision of the lawsuit. Although the procedure codes demand justification of decisions, the preconditions for it are in most countries merely formal.11 Furthermore, where the judgment must be pronounced immediately at the end of the lawsuit,12 these strict time limits impede the process of delivering fair judgments. This problem cannot be solved by requiring that the operative part (tenor) simply be pronounced first and that justification can follow later either. A judgment requires intensive study of the facts and the weighing of pros and cons by the judge; all steps that belong to the justification. But it is often the case that the preparation of cases is insufficient, and the judge faces an amount of information that he or she cannot study carefully in the time available. The consequence is often a kind of artificial postponement of the proceeding, which further restricts the efficiency of the courts.

Inefficient procedures
The inefficiency of the courts is closely connected with the need to reform the procedural codes. Many judges complain of heavy workloads and insufficient time to study the individual cases carefully. Parties and judges seek a quick and effective, as well as fair, decision of the lawsuit, and this requires comprehensive preparation of the process. GIZ and its partners are therefore implementing various activities to facilitate judges’ daily work.

Here the advocates play an essential role. If a claim has been well prepared by the advocate, the judge will save time in the preparation of the lawsuit. However, in Central Asia advocates have not really recognised their importance in civil cases. Unfortunately, advocates often appear as so-called “pocket lawyers”, which means that they act on financial aspects in mediation and negotiation with the judge. Advocates’ training centres in Central Asian countries therefore conduct training for lawyers, with the support of GIZ, on issues of ethics and the methods of filing lawsuits, to enable advocates to contribute effectively to the process in accordance with the rule of law.

Once again the focus is on the training of judges in the preparation and conduct of proceedings. Judges should be as well prepared as possible
Judges should be as well prepared as possible when meeting the parties at the beginning of the proceeding. This requires a comprehensive study of the facts by the judge in advance, so that he/she can separate important facts from unimportant facts. This can be achieved by the so-called “relation method”, which enables the judge first to recognise which of the statements made by the plaintiff are conclusive and give basis to the claim, and then to check which pleas can successfully be raised by the defendant, which facts remain to be proved, and which party bears the burden of proof. The use of this helpful method, which restricts proceedings to the essential points and consequently saves time and personnel, is impeded by the procedure codes and by the post-Soviet understanding of justice. The core problems of the Civil Procedure Code (CPC) can be illustrated as follows.

The first problem is the strict time limit: the time limit in the Kyrgyz Republic of 14 days to schedule a lawsuit makes it impossible for the judge and defendant to carefully prepare themselves. The strict time limit of two months to decide the whole lawsuit also turns out to be unworkable. Furthermore the defendant is not forced to answer to a complaint (defence) until the hearing. Although the defendant is able to express an opinion on the plaintiff’s claim, it is not obligatory. Lastly, the judge and the plaintiff are confronted with the defendant’s statement and cannot respond and express their opinion accordingly. As a consequence the hearing is postponed or, even worse, the judge delivers a judgment based on insufficient knowledge.

Therefore GIZ’s training aims to help participants recognise the usability of a structured method, and at least use it for the plaintiff’s pleading in the preparation of the proceeding. Judges have also noticed that this method is helpful to encourage the defendant to respond as early as possible.

Although the principle of party presentation is stipulated in the CPC and the different standards stipulate that only relevant evidence should be analysed and assessed (for example, article 63 para. 1, CPC of Kyrgyz Republic), in reality what occurs is a type of official investigation. These problems also form topics of training. In Uzbekistan and Turkmenistan the principle of substantive truth prevails, which wastes time and resources and, in correlation to private autonomy, infringes on the freedom of the parties involved to decide on whether and when they file a lawsuit as well as the matter in dispute and the duration of the lawsuit. Another infringement of the principle is the fact that the judge is not bound by a plaintiff’s application for relief and can go beyond this claim.

Furthermore, the Kyrgyz Republic judge has to read out all written statements in the proceedings, which takes a lot of time. It would be more efficient if these statements were exchanged between the parties before the beginning of the proceedings so that they have enough time to prepare for it.

According to the Civil Procedure Codes a court settlement can be made at any time, but in practice this rarely happens. Parties need to be motivated, and be able to estimate their chances of winning the lawsuit. However, this is impeded by the fact that the judges are afraid of being considered prejudiced if they express a current opinion concerning a case. Consequently, the parties do not know whether the judge understood the parties’ statements correctly and they can do nothing but wait for the surprising ruling. During study trips to Germany judges have shown how a court settlement can be conducted, and their will to change their thinking was strengthened.

If judges are able to pronounce a concrete and explicit tenor (operative part) it will make the bailiffs’ work easier, and additional judgments and explanatory commentaries will not be necessary. Tenors therefore make up an important part of the training concerning methods of forming judgments.

Lastly, a few words should be mentioned about review procedures and the revision of effective judicial acts on the basis of newly established circumstances. Parallel appealing and cassation procedures with unclear and contradictory procedural rules, as well as long appeal periods in supervisory proceedings, delay lawsuits and cause insecurity instead of legal security. This is also true for the possibility of revision after the closure of a proceeding, as in most cases preclusion rules are missing in the CPC. Here seminars can function as centres for mutual discussion, which could lead to amendments.
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**Procedural laws in need of revision**

Other factors impede modern constitutional procedures, their usage and doctrine. The principle of party disposition is violated if withdrawal of an action, recognitions and court settlements have to be approved by the court; if the prosecutor in a civil procedure has the autonomous right to file a suit; if interested third parties have the right to appeal; or if the judge can call a different defendant or change the defendant on his or her own initiative.

Furthermore, the compulsory declaration of nullity by courts in some types of cases is outdated and needs to be reformed, as it significantly impedes private and economic transactions.

Lastly, the possibility of appeal and protest against final and absolute decisions is contradictory in itself. Legal force means that these decisions should become non-appealable.

Here, training will not be effective – only amendments in the laws can solve these problems. Nevertheless, emphasising dialogue among judges as well as with international experts on this topic can encourage judges to look a bit further and think about the future of law in their countries.

**Conclusion**

There is a saying in Central Asia: you have the clock, we have the time. Legal and judicial reforms demand patience, endurance and a large degree of confidence. It is also important to strengthen the basic legal and methodological skills of lawyers, through the training of professionals and those studying at university. Moreover, it is necessary to create transparent and efficient decision-making processes in the judiciary to prepare the ground for investments in the region.
Notes

1 The views and opinions expressed therein are those of the author and do not necessarily represent the views and opinions of Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) or German Federal Ministry for Economic Cooperation and Development (BMZ).

2 GIS was formed on 1 January 2011. It brings together the Deutscher Entwicklungsdienst (DED) GmbH (German Development Service), the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH (German Technical Cooperation) and Inwent – Capacity Building International, Germany. See: www.giz.de/en/home.html for more information (last accessed 26 January 2011).

3 To fulfil the Millennium Development Goals.

4 See the programme information at: www.gtz.de/en/weltweit/europa-kaukasus-zentralasien/26942.htm (last accessed on 23 December 2010).

5 Kazakhstan is most progressive on this issue: law books, commentaries, legal journals and many judicial decisions have already been published.

6 Article 132 para. 2 no. 4, 152 CPC Kyrgyz Republic (KG); 150 para. 1 no. 5 CPC Kazakhstan (KZ); 134 no. 5 CPC Tajikistan (TJ); 234 CPC Uzbekistan (UZ).

7 As well as subordination, Lat. sub = under and sumere = to take.

8 Law books on administrative law in Uzbekistan and Kazakhstan, a training book on legal methodology is planned in the Kyrgyz Republic.

9 Civil procedure commentaries in Kazakhstan, the Kyrgyz Republic and Turkmenistan.

10 In Kazakhstan, the Kyrgyz Republic and Tajikistan and partially in Turkmenistan as well.

11 Article 210 no. 4 CPC KG; 220, 221 para. 5 CPC KZ; 202 para. 4 CPC TJ; 18, 206 CPC UZ.

12 Article 196 CPC KG; 201-203 CPC UZ; 216, 357 para. 2, 383-22 para. 4 CPC KZ; 199 para. 1 CPC TJ.

13 Article 148 no. 1 CPC KG; 131 CPC UZ; in Kazakhstan one month.

14 Article 157 CPC TJ three months; art. 174 para. 1 CPC KZ two months.

15 Article 149 CPC KG; 159 CPC UZ; but it is obligatory in Kazakhstan, art. 169-1 CPC KZ; in Tajikistan the articles are contradictory in Article 152 para. 2, 153 para. 2 CPC TJ.

16 Article 10 CPC KG; 49 para. 1, 193 CPC KZ; 4, 5, 225, 325, 365 CPC TJ.

17 Article 15, 57 and 164 CPC UZ; 57, 58, 70-72, 76 CPC TJ.

18 Article 207 CPC UZ; 199 para. 2 CPC KG.

19 Article 175 para. 2 CPC KG, not in Kazakhstan.

20 Article 41 no. 3 CPC KG, 49 para. 1, 193 no. 4, 247, 342 and 383-11 CPC KZ, 177, 335 CPC TJ, 179 CPC UZ.

21 Article 47 CPC KZ; 199, 206 CPC TJ; 207, 208 CPC KG; 214-215 CPC UZ.

22 Article 337-2 no. 2, 344 CPC KG, 348-1, 350 CPC UZ.

23 Article 381 CPC TJ, 362 CPC KG.

24 Article 41 para. 4 CPC KG; 176, 177 CPC TJ; 49, 193 CPC KZ, article 40 CPC UZ.

25 Article 45, 343 no. 2 CPC KG; 55 CPC KZ; 47 CPC TJ; 5 no. 2, 33, 46 CPC UZ.

26 Article 315 no. 3, 337-1 no.3 CPC KG; 44 CPC TJ; 332 para. 4, 383-1 CPC KZ.

27 Article 39 no. 2, 40 CPC KG; 42 CPC TJ; 39, 42 CPC UZ.

28 Article 337-1 no. 1, 342 CPC KG; 384 CPC KZ; 365-380 CPC TJ; 311 no. 3, 5 CPC UZ.
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