

Network East-West 2015

Humboldt-University Berlin
Russian - Armenian University Yerevan



Sponsored by:

DAAD

Deutscher Akademischer Austausch Dienst
German Academic Exchange Service

Meyer-Struckmann-
Stiftung

Paul-Mintz Gesellschaft e.V.

HUMBOLDT-UNIVERSITÄT ZU BERLIN



Network East-West

Law Faculty of the Humboldt-University
Unter den Linden 9
10099 Berlin

Project Supervisor: Prof. Dr. Martin Heger

Editorial

*„Oh, East is East, and West is West, and never the two shall meet,
Till Earth and Sky stand presently at God's great Judgment Seat;
But there is neither East nor West, Border, nor Breed, nor Birth,
When two strong men stand face to face, tho' they come from the ends of the earth.“*
– Rudyard Kipling

Even today, 26 years after the fall of the Iron Curtain, the European continent still remains parted into two. Into the East and the West. When the independent Western countries used their opportunity after the 2nd World War to start over new, the Eastern Countries were incorporated into the Eastern bloc. This heteronomy continued until the early 1990s, when most of the Eastern European countries became independent and also renewed their legal systems.

This year, the Humboldt-University, Berlin, together with the Slavonic University, Yerevan, facilitated one of the programmes of the Network East-West. Dealing with the topic of Criminal Law, Criminology and Criminal Policy Aspects of Corruption, the students discussed different legal approaches and got to know the differences, but also similarities of the Armenian and German legal systems.

When heading to Armenia, we did not really know what to expect. We decided to travel to an unknown country that does not dominate German newspapers and although we informed ourselves of its history, people and climate, surprise took us more than once. In this journal, we would like to share our new knowledge on legal systems, legal training in other countries and – equally important – the extra-curricular, intercultural experiences we made. This journal is to you, our readers, and to us, the students that took part in this programme and had an extraordinary and interesting time in the East.

Jana Issel and Viktoria Piekarska

Armenia – The South-Eastern Gate to Europe

Over more than 20 years the aim of the “Netzwerk Ost-West“ has always been the same: to bring law students from Berlin together with students from the new states born on the territories of the former Soviet Union. The youngest partner of our project is the Slavonic University in Yerevan, Armenia.

Due to the fact that Armenia has only open borders with Georgia and Iran, the political situation is rather challenging. Armenian-Turkish relations have been strained by a number of historical and political issues, mainly the topic of the Armenian Genocide during World War I and Turkey's continuing position that it did not take place. Azerbaijan and Armenia are still technically at (cold) war fighting over the Nagorno-Karabakh region. Some fights took place at the border this summer.

The wide majority of the Armenian people left the country over the years. There are big Armenian Diaspora in Russia, France and the United States: less than one third of the world's Armenian population lives in Armenia. The country struggles with its economic situation and people are confronted with corruption.

Last year I was privileged to give a course in the Southern Caucasus and was able to get to know some Armenian law students: despite the country's difficult situation the students we met showed some outstanding professional qualifications. During our project the German students were not only able to get in contact with the oldest Christian culture in Europe and some of the best-qualified students of our continent. They were also confronted with some of the problems of the modern Eastern Europe: the struggles on the territories of the former Soviet Union, the political relations to Russia, the economic issues Armenia is facing, the wish of the Armenian students to leave the country and go abroad, etc.

Over all it was a great and enriching experience for all participants. I would like to thank everybody, at Humboldt University and at Slavonic University, who contributed to the big success of our exchange program. Thank you!

Prof. Dr. Martin Heger

Participants

Lecturer:

Anneke Petzsche
Sajanee Arzner

Students:

Sebastian Schulze
Lena Schwarz
Viktoria Piekarska
Nikos Yiannopoulos
Desislava Shtereva
Jérôme Richter
Jana Issel
Mira Bindra
Alexander Bijok
Sina Jakob

Organisers:

Veronika Widmann
Stefan Klauser

Lecturer:

Narek Abaryan
Levon Sargsyan

Students:

Sofia Zakharyan
Lilit Sargsyan
Nare Galstyan
Shushanna Aleksanyan
Ani Sargsyan
Nune Avetisyan
Veronika Petrosyan
David Harutyunyan
Lilit Martirosyan
Nvard Ghazaryan

Organisers:

Tatevik Zaqaryan
Sargis Terzikyan

Content

Editorial p. 2

Welcoming Words by Prof. Dr. Martin Heger p. 3

Participants p. 4

Content p. 5

Journal

August 2nd – Departure p. 6

Jérôme Richter

August 3rd – First Impressions of Jerevan p. 8

Jérôme Richter

August 4th – Day 2 in Armenia p. 10

Sina Jakob

August 5th – Armenian University p. 12

Lena Schwarz

August 6th – Beautiful Ruins, Traditional Music and Constitutional Law p. 14

Nikos Yiannopoulos

August 7th – More than a Fortress p. 16

Jana Issel

August 8th – The Countryside p. 17

Mira Bindra

August 9th – Viennese Airport Stories p. 18

Lena Schwarz

August 10th – First Impressions of Berlin p. 19

Mira Bindra

August 11th – The Justice Ministry p. 21

Viktoria Piekarska

August 12th – On the Path of German History p. 22

Desislava Shtereva

August 13th – From East to West p. 23

Alexander Bijok

August 14th-16th – Auf Wiedersehen – Barev p. 24

Sebastian Schulze

Abstracts

Structure and Systematics of Anticorruption Provisions p. 26

Sebastian Schulze

Sociological and Cultural Elements of Corruption p. 27

Lena Schwarz

Corruption in Commercial Practice and Corporate Criminal Liability p. 28

Viktoria Piekarska

Political Corruption – How does Criminal Law Protect the Integrity of Elections and Parliamentarians? p. 29

Nikos Yiannopoulos

Corruption or Lobbyism: When does Lobbyism become Corruption? p. 30

Desislava Shtereva

Criminal Prosecution of Corruption p. 31

Jérôme Richter

The Fight against Corruption in Conflict with the Rule of Law p. 32

Jana Issel

Compliance: The Role of Private Actors in the Process of Combating Corruption p. 33

Mira Bindra

International Cases of Corruption – the Applicability of National Anticorruption Laws p. 34

Alexander Bijok

The Fight against Corruption by International Law and the Role of International Organizations p. 35

Sina Jakob

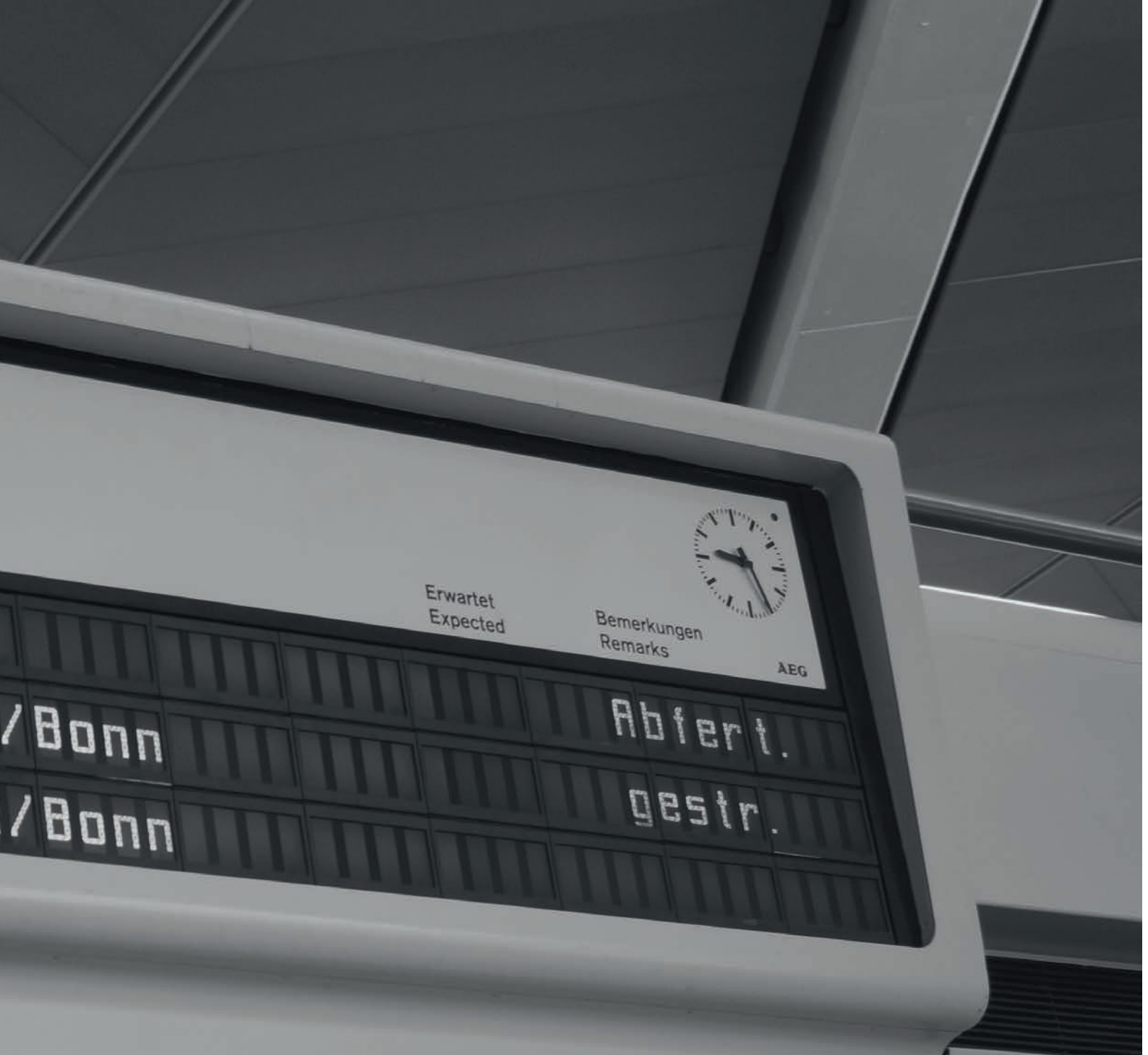
August 2nd – Departure

Jérôme Richter

Time	Flight-Number	Destination
10:25	OS 272	Wien
11:40	4U 015	Köln
14:45	4U 8054	Köln

Our journey started earlier than foreseen. We became aware of the fact that our flight at 5:30 p.m. had been cancelled only 24 hours before departure. This forced us to embark an airplane which already left at 10 a.m. Problems with flights would be a recurrent theme of our exchange. Furthermore, there were problems at the Check-In: the re-booking procedure did not seem to have had run smoothly and for a while it was not clear whether we could all fly to Yerevan together. It took us one and a half hours to reach the gate and finally we were able to leave the thronging airport of Berlin-Tegel for Vienna.

Since our connecting flight to Yerevan remained the same, a time frame of half a day was opened for us. We used it to begin our Armenian exchange with a short trip to the heart of the Austrian capital. Strengthened by a Schnitzel à la Vienna, we firstly visited Stephansplatz, which has the Stephansdom in its centre. Parts of this ancient cathedral date back until the 13th century. Still a little exhausted because of the restructuring of our travel plans, we sat down at Café Frauenhuber, Vienna's oldest coffee house, to have a taste of typical Austrian pastry such as Sachertorte or Apfelstrudel.



Afterwards, we continued our tour of marveling the main sights of Vienna. We crossed over Michaelerplatz, passed through the Hofburg and made it to Heldenplatz. Next, we strolled through Volkspark, reached the Austrian Parliament and finally arrived at the town hall.

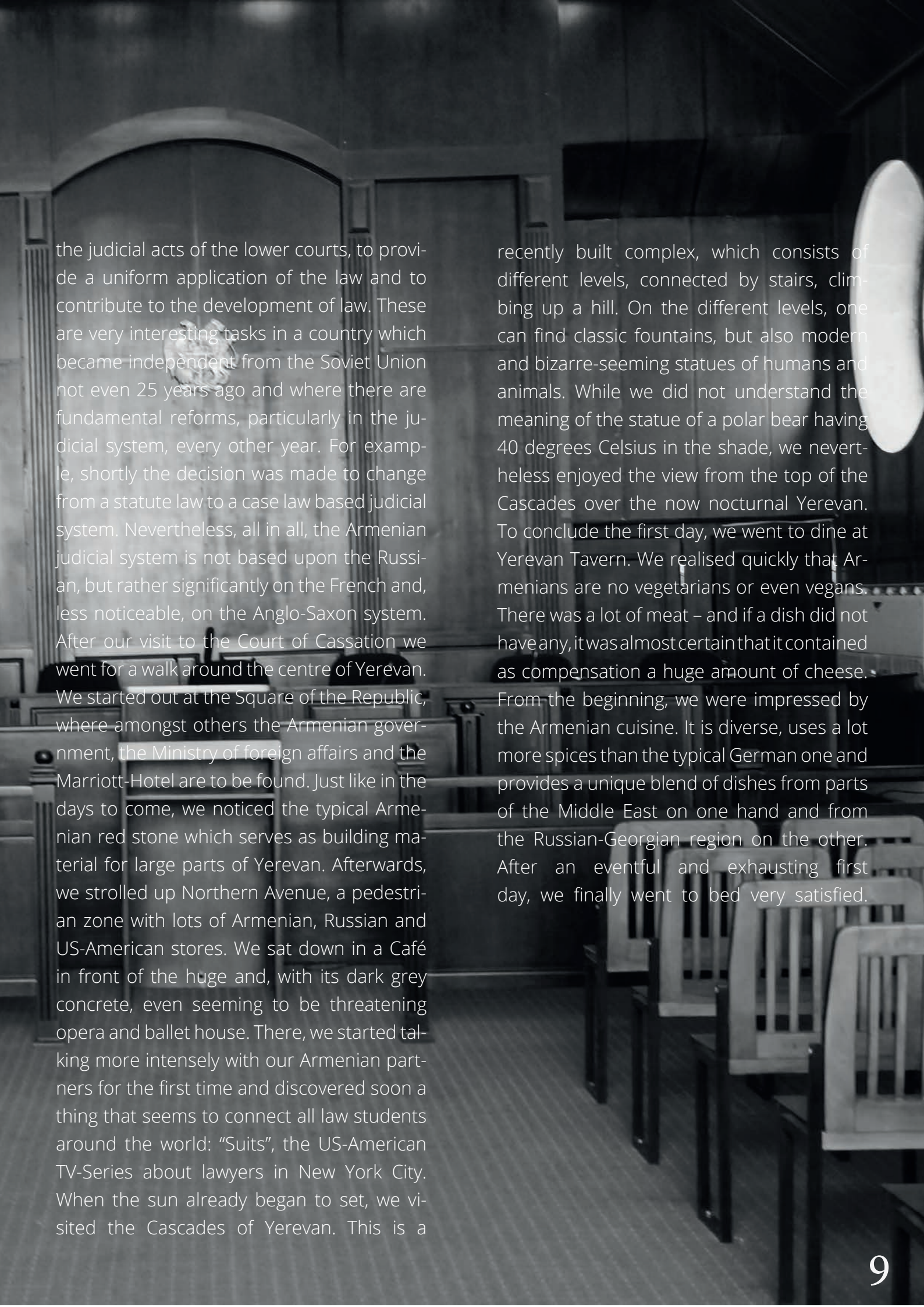
Back at the airport and at the gate, an announcement was made that our flight to Yerevan was overbooked. However, our fears of possible inconveniences arising from that were eased immediately when Austrian Airlines furthermore announced that they would not only pay for the hotel, but that they would also give 400 Euros cash to people flying the next day on a different flight – volunteers were found quickly.

August 3rd – First Impressions of Yerevan

Jérôme Richter

After about three and a half hours of flight, we arrived at 4:30 in the morning local time (time difference compared to Germany: plus two hours) at Yerevan Airport, which seemed to be quiet modern. Since we were really tired, it was a pleasure to be picked up right away by our drivers. “Our”, because they would be at our service for the week to come. Going by taxi is fairly cheap in Armenia. However, in comparison with their German colleagues, Armenian taxi drivers often tend to have more difficulties of directly reaching the desired destination. Unfortunately, we were able to observe this from our first drive on. Additionally, when transferring groups in multiple taxis, Armenian drivers seem to always want to pick a different route from their colleagues, as a matter of principle, therefore splitting up the group. This was why we were separated already before reaching the city. One taxi with only female participants took an early exit from the highway and the route towards the centre, which caused the passengers some concerns, which were only proven to be unfounded with the benefit of hindsight. Initially, the “Best Hostel”, which would be our shelter for the next days, seemed to be untraceable for our drivers. At first, for some reason we were brought to a place which looked rather rural than urban and had nothing in common with our destination except for the part of its name that said “Hostel”. Afterwards, we were driving up and down long and broad Leningradyan Street for half an hour, with our drivers dispersing and asking at every gas station and Hotel for our “Best Hostel”, which

was supposed to be found at number six. When it already began to dawn, and we had been sitting in the taxis for an hour, someone finally found the Hostel, which was located after a curve but still on the same street. In the end, all taxis reached their destination. The Hostel was nice (just like its name actually promised). Everything was clean, working and sufficient. So we slept until the heat did not allow us to do so any longer. We met with our Armenian partners directly in front of the Court of Cassation. An Alumnus of the Network-East-West arranged a meeting with his superior, Mrs. Elizaveta Danielyan, who is a judge at the criminal chamber of the Court of Cassation. She gave us a rough overview over the judicial system of Armenia and in particular the Court of Cassation. In Armenia, a country of only three million inhabitants, there are 16 courts of first instance and three Courts of Appeal. Additionally, there is an Administrative Court. The Court of Cassation is the highest instance of revision in criminal (six judges), civil and administrative (ten judges each) matters. As we would learn a few days later, the role of Constitutional Court resembles its German equivalent. In all of Armenia, there are about 250 judges. In order to become a judge at the Court of Cassation, one has had to be a judge for 10 years at a court of first instance or five years at a Court of Appeal. Moreover, Armenia aims at having at least 25 % female judges; at the Court of Cassation, today about 20 % of the judges are women. The goal of the Court of Cassation is to review



the judicial acts of the lower courts, to provide a uniform application of the law and to contribute to the development of law. These are very interesting tasks in a country which became independent from the Soviet Union not even 25 years ago and where there are fundamental reforms, particularly in the judicial system, every other year. For example, shortly the decision was made to change from a statute law to a case law based judicial system. Nevertheless, all in all, the Armenian judicial system is not based upon the Russian, but rather significantly on the French and, less noticeable, on the Anglo-Saxon system. After our visit to the Court of Cassation we went for a walk around the centre of Yerevan. We started out at the Square of the Republic, where amongst others the Armenian government, the Ministry of foreign affairs and the Marriott-Hotel are to be found. Just like in the days to come, we noticed the typical Armenian red stone which serves as building material for large parts of Yerevan. Afterwards, we strolled up Northern Avenue, a pedestrian zone with lots of Armenian, Russian and US-American stores. We sat down in a Café in front of the huge and, with its dark grey concrete, even seeming to be threatening opera and ballet house. There, we started talking more intensely with our Armenian partners for the first time and discovered soon a thing that seems to connect all law students around the world: "Suits", the US-American TV-Series about lawyers in New York City. When the sun already began to set, we visited the Cascades of Yerevan. This is a


recently built complex, which consists of different levels, connected by stairs, climbing up a hill. On the different levels, one can find classic fountains, but also modern and bizarre-seeming statues of humans and animals. While we did not understand the meaning of the statue of a polar bear having 40 degrees Celsius in the shade, we nevertheless enjoyed the view from the top of the Cascades over the now nocturnal Yerevan. To conclude the first day, we went to dine at Yerevan Tavern. We realised quickly that Armenians are no vegetarians or even vegans. There was a lot of meat – and if a dish did not have any, it was almost certain that it contained as compensation a huge amount of cheese. From the beginning, we were impressed by the Armenian cuisine. It is diverse, uses a lot more spices than the typical German one and provides a unique blend of dishes from parts of the Middle East on one hand and from the Russian-Georgian region on the other. After an eventful and exhausting first day, we finally went to bed very satisfied.

August 4th – Day 2 in Armenia

Sina Jakob

Our schedule already indicated that Day 2 would be packed: Group work in the University, visit to the National Assembly, visit to the Armenian Genocide Museum and to the Memorial. And the Germans were not yet used to the heat of midsummer-Jerevan. Now, our first destination of the day was the Russian-Armenian University, where we would spend most of the upcoming week preparing and presenting what we had worked on in Germany, together with our Armenian partners. Naturally, the University was empty as our seminar took place during the semester break and we had the building for ourselves. A few introductory words from the Armenian side reminded us that the main idea of the program is to work together and encouraged us to focus on the comparative part. Although some of us would have preferred starting the day a little bit later, the editing time was measured tightly and thus we swiftly put our heads together. As most of us had not received their partners' paper on the joint topic beforehand, we were curious: Where did they focus on? How did they structure the paper? And how does the Armenian legal system handle the obstacle of corruption?

As the cafeteria was closed – some secret Armenian informants foretold that this was no deficit – we were taken care of by a delivery service before leaving for the National Assembly. The taxi, our faithful companions for the whole week, were already waiting to carry us to the National Assembly Building, which is located in respectable society close to the Constitutional Court and Lovers Park – both of which we got to know a couple of days later. Our guide for the tour has been working for the National Assembly since it started its work about 25 years ago. Formerly, the Soviet Government was based in that building which is surrounded by a beautiful, well-kept park. At the day of our visit, the building was as empty as the University – all Parliamentarians were off for holidays. On the one hand, this denied us getting in touch with Armenian politicians, on the other hand, this gave us the opportunity to not only walk through the halls, but to take a look at the plenary hall. We were guided to a balcony, where journalists sit during parliamentary sessions from above through windows. While our guide explained – us the significance of the Constitutional reforms concerning the electoral system and the distribution of the seats in



Parliament, the lack of oxygen in this “journalist box” was too high. Thus, we all fell into a half-sleep, until one of us took the courage and asked for a break and left the Parliament being mildly ashamed of our sudden fatigue.

Our last destination of the day was probably the most burdensome, but also the most affective one of the whole week. In the few time we had, to this point, spent in Yerevan, we had already seen numerous posters commemorating the Genocide 100 years ago. We would later learn that 1915 was only the peak of the Genocide that had already started with the Harmidian massacres in 1894 as an attempt of the Ottoman Empire to regain Muslim predominance over the Christian Armenians. After having laid down flowers next to a fire in the middle of the stonelike memorial, we were guided through the museum’s exhibition and shown nearly unbearable photographs as well as quotes by contemporary journalist like Armin T. Wegner who stated “They died all the deaths of the earth”. Given all the documents that are gathered only in the museum, one cannot understand, how this massacres are not yet globally recognized as a Genocide.

Although 17 of the main perpetrators had been condemned to death, the verdict had been executed in three cases only. The former Turkish secretary of the interior for example, Talât Pascha, had fled to Germany where he lived in Berlin. Soghomon Tehlirian, who had lost all his family to the Genocide, shot him in the Hardenbergstraße. The jury of the court in Berlin set Tehlirian free in 1921.

After a short recover in the Hostel from the memorable impressions of the day we were hungry and curious for what the Armenian kitchen provided for us and finished the day ended with a great dinner, again.



ՈՒՍԱՆԱԳՐԱԿԱՆ ԽԱՐԶԱԿԱՆ

Also tutors can sleep in ;) our early morning discovery, about which all students were gloating about. After having arrived at the University we started our group work right away. In the beginning it was a challenge to combine not only our different papers but also our personal and cultural style of working. However after overcoming our differences all of us were pretty productive and did a great job on preparing their joint presentations. Plus after all isn't it one of the main goals of this program to step out of our comfort zones and find common ground? Thereafter we visited the Transparency International office of Armenia. To my mind the most interesting and informing item of our Agenda in Armenia. They told us about the general work of Transparency International as well as their specific work and problems they face in Armenia. They pointed out that even though awareness rose about the problematic of corruption, corruptive behavior increased. That is why she is unhappy about the process they

made. They lead the existence of corruption back to a package of reasons. Firstly it was mentioned that politicians are often business man as well. Therefore interests get mixed up and corruption is not really fight against seriously. In addition to that administrative corruption and enrichment of public officials is not punished. And even if laws about corruption do exist they are not really or at least not in the rightfully way applied. Prosecutors close their eyes, pretend they cannot identify illegal behavior. Last but not least it was demonstrated to us, the circle of corruption is hard to break through as long as many people are of the opinion that corruption is a win-win situation for both sides. The example of an inspector looking over the

August 5th – Armenian University

Lena Schwarz

illegal doings of a company was mentioned. He receives bribe money from the company he is inspecting to create a positive expert report and in exchange to that the company will not get in trouble for their wrong opinion. So to their opinion everybody wins: Why should they change anything? As long as this believe does exist among the general public corruption will be really hard to combat. Our heads filled with all this new knowledge we went on a nice walking tour

throughout the city. While walking we discussed and processed about all the interesting things we experienced. To round of our instructive day we watched the impressive water games of the fountains of Yerevan.

August 6th – Beautiful Ruins, Traditional Music

Nikos Yiannopoulos

Only a 15 minutes-taxi-drive away from our hostel there are the old ruins of Zwartnots Cathedral. In the seventh century the Armenian Catholicos, some kind of Armenian pope, called Nerses the Builder built – as his name implies – this wonderful example for great Armenian architecture. According to the legend right at this place King Trdat III and Gregory the Illuminator met so Nerses the Builder dedicated this place to the before-mentioned St. Gregory. The building probably had three floors and was about 45 meters high. Some original columns with elaborate patterns and images of eagles showed us how impressive the former cathedral must have been. The exterior was a 32-sided polygon while the interior consisted of mosaic and great ornaments. Still, some historians doubt that the cathedral was build this way because in 650 they just had not enough skills to build a superb example of architecture like this. Well, Armenian architecture in that time was just unbelievable. Unfortunately, in the 10th century the building collapsed. The cause for this is not known, Armenian historians from the 10th century just mentioned these ruins. In the old cathedral people sang beautiful Armenian liturgical music, which should not be the last Armenian life music we enjoyed on that day.

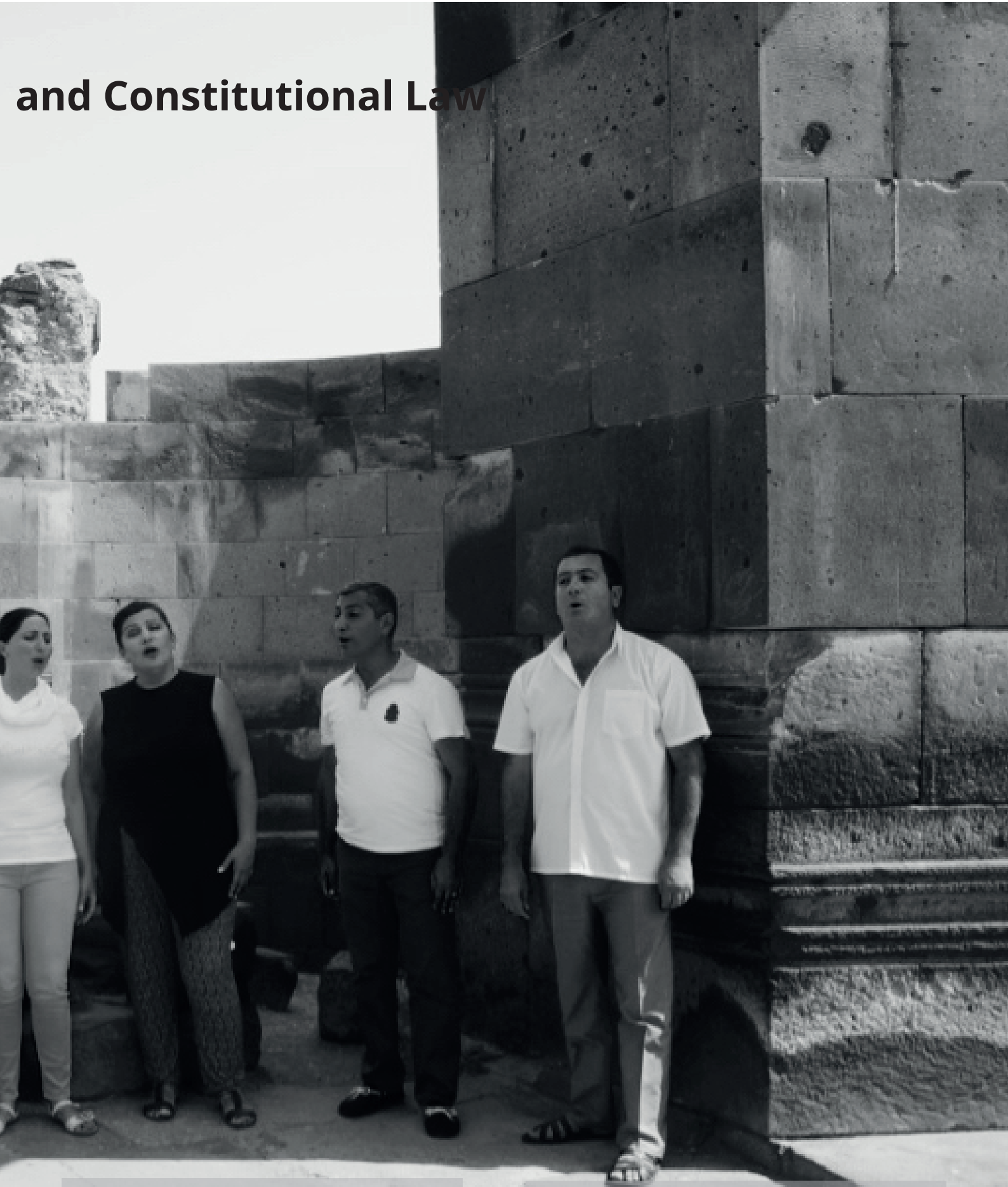
After two informative presentations ,and controversial discussions we approached another judicial highlight of our Armenia trip: The Armenian Constitutional Court which is located opposite of the parliament building we discovered earlier. The founding of the

Constitutional Court was laid down in the Armenian Constitution 20 years ago. One year later, in 1996 the judges moved in the building and started ruling on constitutional matters in their secret chamber behind the courtroom where they probably have as fruitful discussions as we enjoyed in this seminar. Unfortunately we don't know yet. Of course, verdicts are published, however, the decision finding or dissenting votes of judges not directly. They are put in envelopes and these can only be opened 50 years after the ruling. I can't wait for 2046 when the first envelope is going to be opened and we can comprehend the decision finding of the meanwhile most probably dead judges.

This is the good thing in 2046. The bad thing: Even then the new constitutional judges can't revoke decisions their colleagues made 50 years before. All decisions are binding the constitutional court forever. Another speciality of Armenian constitutional law: There is only one official commentary on the Armenian constitution. Written by the judges themselves this is the only commentary on the constitution available at the Armenian market for legal literature.

But these are already the main differences. The other stuff our guide explained and Narek translated for us sounded like my first lecture in German constitutional law. The codes of procedures are very similar, for Armenian law students "Verfassungsbeschwerde" and "Organstreitverfahren" aren't foreign words – well, at least if you translate them into the Armenian language.

and Constitutional Law



After the constitutional court we made a walk through the city of Yerevan and stopped by at the oldest tavern in the city! We enjoyed delicious food as always, but for the first time we also had the opportunity to listen to originally Armenian folk music.

A few of us (only Jérôme and the author of this article himself) danced with Davit a traditional Armenian dance and felt the Armenian spirit wandering through their bodies. All in all, a great ending for a greater day!

August 7th – More than a Fortress

Jana Issel

We started our day early with a visit in the Erebuni museum on Arin Berd hill. Erebuni is the ancient name of today's city of Yerevan. After learning about the kingdom of Uratu in the Iron Age, the gods the ancient Armenians worshipped and their way of living, we discovered the ruins of the fortress nearby and were astonished by the chilly chambers that still existed within the ruins and protected not only the Armenian ancestors but also us from the burning sun. The most impressive point here was though the wonderful 360° view we had over the city down from this hill. After this excursion, we went back to the university to hear a presentation on Corruption and Lobbying and had a critical debate on when to draw the line between corruption and lobbying. In the early afternoon, there was the official program closing and we were warmly seen off by the dean. Then we headed to the Ararat Brandy Factory, which is part of the French Pernod Group. We learned that brandy is one of the most important goods of export for Armenia and how to differentiate between the differently aged brandies. We were especially impressed by the so called "peace barrel" that has been closed in 2001 and only shall be opened, when the armed conflict about the region of Nagorno-Karabakh has come to a peaceful ending. We also asked our Armenian partners a lot about this conflict between their country and the Republic of Azerbaijan and were astonished that they spoke up the way they did. In the end of our visit we got the chance to taste two differently aged brandies. Although nobody of us was an expert on brandies, we all were able to differentiate between the good three year old and the excellent ten year old Ararat brandy. Clearly, everyone bought a little bottle to take home.

In the evening, after having had a short break in the hostel, we had a spectacular dinner with our Armenian friends at the Caucasus Tavern, ate and told about the things we have seen during our stay and about the days to come in Berlin. On this evening, there was so much food that even the always hungry German students did not manage to eat all of it through it was most tasty. We scraped the original plan to sing karaoke and went to a small basement bar called "Station". After listening to some rock songs we started to wish for the songs to come and all ended up singing and dancing to "Barbie Girl" and "Mein kleiner grüner Kaktus". The Armenian guests obviously had a lot of fun watching us hoping around and singing and in the end, the barkeeper even found a German flag somewhere. We went back to the hostel in the early morning and were sure that the evening was a perfect closing of our time in Yerevan.

August 8th – The Countryside

Mira Bindra

After a long night for some of us the taxis picked us up at the hostel around 10 o'clock. Some of our Armenian friends could not join us since they were already on the way to Berlin flying over Moscow or Georgia. The car ride to the Garni temple took us through Armenia's beautiful countryside. Yerevan itself is rather flat, whereas the road took us through golden hills, small villages and fruit plantations. Once we reached the temple site many small stands selling fruit, honey, a sweet typical Armenian bread and souvenirs. We learned that the Garni temple is the reproduction of an old pagan temple devoted to god of the sun. The original was destroyed, but rebuilt in the 1970s. It seemed to be a popular attraction among tourists, Armenians and visitors from Yerevan. After many pictures were successfully taken, we moved on to the Geghard Monastery, that was located around thirty minutes away from the temple. Again, many small stands awaited us selling local specialties. This time we strengthened us with the sweet delicious bread. Being so convinced by it we bought at least 4 pieces and we ended up eating the rest all the way in Berlin. The monastery was really old and beautiful. In the first hall the hundred candles lit up by the visitors touched the room in a golden light. In one of the following rooms a young boy got baptized. We enjoyed the ceremonious atmosphere in the monastery and surrounding compound wandering around in small groups. Around 16 o'clock we started heading back to the city where some of us headed back to the hostel to take some rest and prepare the journey. The others moved to a market in the city center, where last souvenirs and presents for friends and family were bought.

In the evening we all met again to enjoy the last dinner in Yerevan together. Like all the other nights before a feast awaited us and no one can claim to have gone home hungry. Some of the Armenian students, who participated last year in the program joined us for dinner. Most of this year's students on the Armenian side were busy to prepare their journey and excited for the next week to come. After the dinner it was time to say goodbye to Yerevan. We went back to the hostel, prepared our luggage, ate watermelon and some of us got some hours of sleep before we left for the nerve-racking flight.

August 9th – Viennese Airport Stories

Lena Schwarz

Our day started early, 2 am. If you can even call that a “day” or more likely still “night”, whatever...it was an adventure. The Shock hit us once we arrived at the airport: Flight to Vienna delayed by two hours. Meaning we would have missed our connecting flight to Berlin and would have had to wait in Vienna for hours. Many of us were stressed out since they feared that our free Sunday afternoon in Berlin would be cancelled. Even though all of us loved the time in Armenia we were all looking forward to have some rest and sleep in our own bed again. Lucky as we are, our connecting flight from Vienna waited for us. We had to run through the Airport of Vienna like Sprinters, which was kind of funny and exhausting at the same time ;) Finally having arrived in Germany, interesting program was waiting for us. Unfortunately I was sick and had to stay at home the rest of the day, that’s why I can only tell the happenings second hand. The evening began with a tasteful dinner at the restaurant Aufsturz. After having filled our tummies we went for a river cruise on the Spree. It was a beautiful atmosphere: evening sun, water, wind, historical buildings, government buildings...And of course taking pictures did not come off badly. After a long travelling day all of us fell into bad tired but satisfied.



August 10th – First Impressions of Berlin

Mira Bindra

The day started with us meeting at the Juristische Fakultät of the Humboldt-university to listen and to discuss the awaiting presentations. Dessi moderated the presentation of Jérôme and Nune concerning 'The Criminal Prosecution of Corruption'. Like after all the presentations before we had one of our 'fruitful discussions'. Especially of interest seemed to be to find reasons for the differences in the two systems. After a short break Lena and Lilit gave us an introduction to 'Corruption as a Cultural Phenomenon'. The presentation guided us through the topic on the basis of questions. Sebastian moderated and managed the subsequent discussion. The third presentation of the day by Jana and Veronika dealt with the interesting topic 'How Methods in the Fight of Corruption are in Conflict with the Rule of Law'. Davit and Mira opened and closed to presentation and discussion as the moderators. After the hard work of the morning we enjoyed our lunch in the university cafeteria. Each of the local student guided his or her partner through the challenges of the Humboldt cafeteria. In the end we all ended up with some food. After the lunch, a guided tour through the government district awaited us. In the few minutes at the Brandenburg gate before we met our guide we got

to take pictures and roam around the area. She led us from the Pariser Platz, explaining the history and context of the buildings and embassies, to the government district. We had the chance, to give the things we had seen a day before from the boat a closer look and obtained a better understanding of their role and functions. When we finally reached the Bundestag we had not only learned a lot about Germany's political center and institutions and history, but also almost melted away in the sun and 40 degrees we had in those hot days of August. The breathtaking view from the globe of the Reichstag on Berlin was worth the way up for most of us. And now we had seen the city from the water, by foot and from above.

In the evening when we reached the beer garden Golgatha in the Viktoriapark in Kreuzberg, we were more than delighted to enjoy a cold drink and some typical German sausages with a variety of salads. The beer garden was busy, a football game was happening at the same time. But the atmosphere was relaxed and everybody was enjoying the end of the fading summer day.





August 11th – Clothing Size

Viktoria Piekarska

9: 45 h, Nazareth Street, Berlin Mitte, Federal Justice Ministry. With beads of sweat from the hot summer outside, a cold breeze inside the Federal Justice Ministry Building awaited the students. Mr. Busch, leader of the criminal law division of the ministry, introduced the work of the ministry, his division, and especially presented their work on anti-corruption law. He further elaborated on the topics of bribery of mandate holders, the UNLAC ratification, and corruption in the private sector, corruption in the health sector as well as manipulation of sports competitions and corruption of legal persons. Excited by the fresh input, the students participated in a guided tour through the historical building. Back in the day's parts of the present ministry served as the patent office of the GDR. Another part was the centre of the press. In this particular building the freedom of movement for the citizens of the GDR was proclaimed. Other parts were a base of the fashion and textile industry, the base where the clothing size was invented. Before returning to the university to listen to the presentation on compliance and NGO's activity combatting corruption the international group had the chance to dine together among the employees of the ministry. The Armenian-German duo presented the different approaches on combatting corruption outside of penalty law. In Armenia compliance is not yet as widespread as in Germany or Anglo-Saxon Countries. However, NGO's actively participate in raising awareness among the society and support the adoption as well as the implementation of laws. Germany in contrast has a rather elaborated system of

preventive compliance. This however is closely linked to collection of data hence surveillance. The students discussed controversially the benefits and disadvantages of both approaches. After the academic part of the day, many students finally wanted to discover the malls of Berlin. Correct, not only the Mall of Berlin but also the Alexa Shopping Centre as well as Primark were part of the To-Do-List of the group. With bulging shopping bags the youngsters finally arrived at the 'Spätzle Express' in Berlin, Kreuzberg. In the cosy restaurant they finally had the chance to stuff their stomachs with Swabian delicacies before returning to their hostel to spend the night dreaming about lots of fabric.

August 12th – Path of German History

Desislava Shtereva

On 12th of August, our Armenian guests were already halfway through with their visit in Berlin. Looking backward upon everything that happened during the day, I would say that both the Armenians and we were feeling more or less tired. However being right in the middle of the events prevented our weariness to take prevalence. Therefore instead of exhaustion there was excitement about the new day and what it had in store for us. In the morning we visited the Topography of Terror Documentary Centre. We separated in two groups and some of us took a walk along the exhibition trench, right behind the fragment of the Berlin Wall, which depicted how the National Socialists managed to turn Berlin in the political centre of the regime's leadership. The second group took a guided tour inside the museum. There was hardly any state in the world which was not directly or indirectly involved in the Second World War. Therefore the Armenian group as well as our group was very attentive during the tour and we had also an interesting discussion about the behind motives of the perpetrators, bearing in mind that on some extent they were also victims of the atrocity propaganda of the government, promising them a better a higher living standard after the war. This visit gave all of us food for thought as we were on our way to the university. At lunch the excitement about the forthcoming day repressed the pensiveness and we were ready for new adventures. Afterwards we had a couple hours free time and we separated in small groups. Some of us went visiting Berlin's tourist sights while others took a walk in the park ne-

arby. My group decided to go to the Charlottenburg palace and the Armenians were very impressed by the garden, as well as by the interior and the architecture of the building. As the weather was on our favor, we spent some wonderful time in the garden. Rested and energized in the afternoon we were on our way to the S-Bahn Station Gesundbrunnen where a visit to Berliner Unterwelten was planned. We took a tour in the civil defence shelters which were built in West Berlin during the Cold War in order to protect the population in case of nuclear attack. We saw a large number of rooms and also tried out how the ventilation system back then would have worked in case of polluted air on the ground surface. Although the air filtration system would have not been very effective due to the lack of sufficient knowledge in this field, everything was built and installed as precise as it could be which speaks loudly that a nuclear scenario was more than probable. The various tunnels and rooms suited for different amount of people were connected through the underground and even the stations were suitable to be shelters. Bathrooms, kitchen, beds and many other utilities were installed in order to ensure that people's basic needs are met. The group was pretty amazed by this tour and various questions were asked from both Germans and Armenians. All in all this tour was impressive and informative for all of us. Afterwards everyone was pretty tired but pleased with what we have accomplished this day and I sincerely believe the Armenian students also enjoyed the day to the fullest.

August 13th – From East to West

Alexander Bijok

The day started at 9:20, when we officially met in front of the hotel where the Armenians were staying. Despite being a stereotype for Germans, punctuality was not our biggest strength that morning. Originally, we planned with the JVA Moabit to visit a prison in service. But our original plan had to be changed due to illness of the guide. Instead our organisers arranged to visit the former prison of the state-security of the GDR in Hohenschönhausen. Being a short-dated plan, we did not really like to come late to this meeting. We split the group up. One part got into the tram while the second waited for the rest of us and some Armenians. Finally, we met again at the Hackescher Markt, where we exchanged trams. Together our group travelled the long distance from the very city centre to the far east of Berlin. Riding in one of those very old and outdated trams that creak with every movement, it took us almost an eternity to get to our destination. Thrown out between meadows and socialist tower blocks, our journey continued through a smaller housing area we crossed per foot. Feeling like being in the middle of nowhere, suddenly we stood in front of this former prison complex, now a memorial site and a museum. Before the reunification, the state-security of East-Germany arrested political prisoners here. Split up once again into two groups we got a guided tour through this place, where thousands of prisoners suffered torture throughout the existence of the GDR. As we were told, it did not take much to be considered as a 'political prisoner' in East-Germany. It lasted to just have the wish to leave the country to rather end up in Ho-

henschönhausen than actually the west. After this tour we made our way back to the tram station. For lunch we had just a small snack there, because it did not take a long time to the next point on our schedule. So we rode back and got to the Criminal Court Tiergarten in Moabit. There, again we had a guided tour through the neo-baroque building with its very impressive entrance hall and court rooms. Through this tour we also learned some interesting things about the court. Especially notable is the fact that this court and others in Germany alike just got to work with Internet recently and even computers seem to be an accomplishment of the last decade for them. A fact that maybe gives an interesting insight into the method and functioning of judiciary and jurisprudence. In the afternoon we had free time, but we met again in the evening. In the backyard of our faculty we had a huge barbeque with all the participants from the other NOW exchange programs from this year and even some German participants from the former years. We had plenty of food and besides German drinks also Georgian wine, Latvian beer, Ukrainian vodka and of course Armenian brandies. With those and a more or less successful, but anyway entertaining introduction into Armenian dances this Thursday came slowly to an end.

August 14th-16th – Auf Wiedersehen – Barev

Sebastian Schulze

August 14th

On our Friday in Berlin, we got to hear the last lectures of the program, dealing with the applicability of anti-corruption provisions as well as the fight against corruption on an international level. As with the previous days, the number one enemy was the air in the room, or rather the lack thereof. Afterwards we were presented our certificates, acknowledging our participation in the project, along with closing words by Anneke and Narek.

This was followed by lunch at the Italian-style restaurant “Via Nova” in close proximity of the university. Even though the distance was at the most five minutes on foot, we nearly lost a group of participants. Strengthened by the meal we went back to the university, where Dr. Claas De Boer from AGS Legal gave a presentation.

The following free time was used by most Armenians for another shopping tour. Sofia and Sebastian however were apparently not culturally satiated, visiting the German Historic Museum near the university. At 8 p.m. we met again at “Aufsturz”, the restaurant of the first day. There the Germans surprised Anneke, Sina, Veronika and Stefan with some presents as a thank-you for the wonderful organization of the project. Original plans of going out for a party afterwards were soon replaced by a comfortable chat and drink in a park nearby.

August 15th

The goal on our last day was simple: having a great time at Wannsee! The meeting time was set at 10 am but due to everyone being supremely tired, the departure from the hostel was only possible at around 11 o'clock. Thankfully, the train ride of over 30 minutes allowed us

to catch up on some well needed sleep. Having arrived at the lakeside, getting over 20 people through the entrance (including counting and paying) proved to be no easy task, but was overcome nonetheless through Stefan's and Sarkos' willpower and patience. Once inside, we luckily found a nice spot near some trees, that would later provide some shade to escape the sun's lingering affections. Having just settled in, Veronika and Stefan surprised us with a wonderful buffet of bread, cheese, humus and other foodstuff, the taste enhanced by the beautiful weather and scenery. Of course we all went swimming or sunbathing, respectively. And finally, on the last day of the project, Armenians and Germans had immense fun together in a game of disc and ball (simultaneously) in the shallows of Wannsee. However, around 16 o'clock the winds were rising and storm clouds rolling in from the west. So we packed up and left for the station, but were nonetheless hit by rain on our way back to the station. Completely exhausted by the beach, sun and the flight through the rain as well as the sheer amount of activities during the project, the plans for further activities in the afternoon were laid to rest and we returned to the hostel or our homes respectively. To close the day, we had our last meal together at “Baraka”, enjoying the oriental atmosphere inside the restaurant. The six silver plates filled with meat and vegetables appeared quite tiny, compared to the amount of food consumed in Yerevan. Afterwards, we had a quick and painless goodbye and exchanged final words of parting. Most Armenians went directly back to the hostel in order to prepare for the departure the next day.

However, Sofia and Nvard chose to stay just a bit longer, accompanying us to celebrate Anneke's birthday at a nearby bar.

Around midnight we brought both of them back to the hotel, taking in the sight of the buzzing Berlin, and said our final goodbyes.



August 16th

Fortunately, the bad luck in regards to our flights had not spread to the Armenians. All participants that didn't choose to stay in Germany and visit some relatives returned safely and more or less timely to Yerevan.

Structure and Systematics of Anticorruption Provisions

Sebastian Schulze

In recent history, the German Legislator has increasingly used the means of Criminal Law in his effort to combat corruption, in no small part thanks to external stimuli by the UN and EU.

The German Criminal Code (GCC) contains the most heavily penalized anti-corruption provisions, the punishment ranging from imprisonment not exceeding three years or the paying of a fine up to imprisonment from two to ten years. Within the GCC, provisions are separated according to the different places or situations in which corruption may occur.

Those are in order:

- during elections (sections 108b and 108e GCC)
- in private practice and in competitive situations (sections 298 ff. GCC)
- in public office (sections 331 ff. GCC)

The majority of these anti-corruption provisions deal with the exact same form of corruption, namely bribery. Therefore the basic structure as well as the terms used are in large parts identical. Bribery can be defined as the illegal exchange of benefits. The viewpoint of the GCC is much the same: The active briber grants the passive bribee a benefit in exchange for a certain compensation.

According to constant jurisdiction a benefit is defined as any merit, which the recipient is not entitled to and that directly or indirectly improves his economical, legal or even personal situation in an objectively discernible fashion.

However, it is not only punishable to grant or receive a benefit. According to every anti-bribery provision in the GCC it is illegal:

- for the briber to offer, promise or furnish a benefit (active bribery)
- for the bribee to request, be promised or accept a benefit (passive bribery)

In this context “being promised” is to be understood in the way, that the bribee has to explicitly or conclusively accept the offer of a future benefit. This wide coverage leads to the important conclusion, that neither the benefit nor the compensation itself have to be successfully granted or even been undertaken at all, as simply offering or requesting said benefit is just as punishable. Also, the missing culpability of an attempted bribery in most provisions is therefore of little practical relevance.

It could finally, the core element of all bribery offences is the necessary connection between the benefit and the expected compensation. In jurisdiction and literature the term which is generally used to describe this connection is “Unrechtsvereinbarung” – which literally translates to “unlawful agreement”. This term encompasses two different but equally important aspects.

Firstly, the benefit has to be offered, promised or furnished in order to achieve the desired compensation. Likewise, the bribee has to request, be promised or accept the benefit as an equivalent for a desired compensation. This is also generally expressed in the wording of the provisions. Neither the benefit nor the compensation are unlawful – regarding the offence of bribery – on their own.

Secondly, as the definition of a benefit is highly inclusive, some restrictions have to be applied in order not to encompass any legally or socially acceptable behaviour. Whether the content of an agreement is lawful – and therefore not to be sanctioned – is ultimately determined by the general situation in which it occurs as well as the details of the specific case, with the value of the merit being a decisive factor.

In conclusion, the relation of the unlawful agreement to the punishable actions can be summed up as follows:

If the benefit is offered or requested, then the unlawful agreement is being aspired, in case of promising or being promised a benefit the agreement is concluded and if the benefit is furnished or accepted, then the agreement is realised.

This basic structure holds true for all but one anti-corruption provision in the GCC, namely Section 298 GCC, forming the necessary foundation to further understand the underlying structure and system.

Sociological and Cultural Elements of Corruption

Lena Schwarz

“Corruption is as old and as diverse as human kind.”

With the creation of community structures based on cultural, political and juridical institutions corruption emerged. It existed within each era as well as in almost every society. Therefore the question arises, if there are any common circumstances leading to corruption. On the basis of statistics, scientific state of knowledge, and the analysis of legal systems I tried to get to the bottom of this question. However no simple answer exist to that question. More likely corruption is to be traced back to a package of causes.

The root causes of corruption can be split into personal deficiencies and structural failings. Looking at structural failings the general the credo exists: “the more possibilities one gets the higher the corruption rate will be”. This means, that corruption will increase, either when the contact between citizen and public bodies intensifies or when the public body has more power or influence. In addition to that, one can state, that the less transparency there is and the more indefinable organization structures exist, the more possibilities for corruption can arise. This assumption is based on the hypothesis that employees are more likely to be corrupt if they feel unwatched and uncontrolled. Looking at personal reasons for being corrupt, one can distinguish between business-driven motives and individual advantages. Business driven motives can mostly be traced back to a negative attitude towards to one’s organization. In this case, employees are typically lacking trust into management, values are not apparent and self-realization is hard to accomplish. Besides that pressure originating from the management to close a deal and occasion add up to the likelihood of being corrupt. Financial benefits – especially if being in debt - are the most common cause for corruption in the sense of personal advantages. Additional influential factors are the desire of the individual to move up the career ladder, as well as personal gains in power.

Having outlined the general reason of corruption, it was my goal to prove that a correlation between a functioning democratic system and the corruption rate within a country does exist. To do so, I compared the Corruption Perception Index published by Transparency International with the Fragile State Index.

In the end – to show how current as well as pressing the problematic phenomenon of corruption is – I emphasized its impacts on society. Considering those extensive impacts of corruption it becomes apparent, that corruption needs to be fought against out of every possible angle.

Corruption in Commercial Practice and Corporate Criminal Liability

Viktoria Piekarska

In Armenia corruption in the private sector is a pressing issue.

The number of crimes committed ,in Germany, in the field of the private sector amounts one-third of all corruption crimes committed.

Corruption in commercial practice is penalised in both penal codes. Hitherto, the comparison of both legal systems revealed the gap between the quantities of provisions in both codes. Whilst Armenia has more than 20 sections dealing with this field, the German code only includes two key-sections. The difference has its roots in the different understanding of corruption. The German Penal Code regards 'Restricting Competition through Agreements in the Context of Public Bids' in sec. 298 as well as 'Taking and Giving Bribes in Commercial Practice' in sec. 299, as corruption. The Armenian penal code further punishes e.g. 'Illegal Activity in a Monopoly' and 'Bankruptcy' as matters of corruption.

The Armenian legislator is currently not striving for any adjustments of the existing provisions. Yet, the German sections are in the process of change. Nonetheless, the comprehension of corruption still remains narrow. One adjustment shall be the widening of the circle of perpetrators of sec. 299. Another change shall be the new penalisation of medics in cases of corruption.

Also the two legal systems contain different legal procedures. The German procedural system only allows for criminal proceedings. By contrast, in Armenia there is further a possibility to take a legal action in the civil and the administrative procedure.

In the two penal codes corporate criminal liability is not in place. The Armenian legislator earnestly considers implementing corporate liability soon. In Germany the process is still in the ministry only. It is very controversially regarded within the legal literature.

Political Corruption – How does Criminal Law protect the Integrity of Elections and Parliamentarians?

Nikos Yiannopoulos

Only in 2014 the section 108e German Criminal Code about the bribing of delegates was introduced. Prior to that only the buying or selling of votes was punished, whereas now also other behaviour like influencing or acting in a certain way in return for a benefit is punishable. Not only the Federal High Court of Justice, but also two international conventions of the European Council and the United Nations demanded a change.

After several bills, the Government finally introduced the new section. It is forbidden to act by order or instruction in return for an undue benefit. Many experts criticised the terms: “by order or instruction” and “in return”. So there must be a concrete wrongful agreement between the briber and the bribee. These two requirements exclude all kinds of sweetening and grooming. Additionally, the benefit the parliamentarian receives must be undue. The section states that “a benefit shall not be regarded as undue, if the acceptance of the benefit complies with the rules relevant for the legal position of the member”. It also gives two examples: donations according to the Act on Political Parties or political positions. It is clear that the Criminal Code cannot forbid a behaviour which is explicitly allowed according to another law. Also, political positions are seen as a socially-accepted benefit by most people. In contrary Thomas Fischer, a German federal judge, does not think so. In his opinion the trade of political positions should also be an undue benefit as-well.

Another difficulty is that section 108e is not only concerning members of the Bundestag but also delegates on a municipal level. While it is easy to find relevant rules for the legal position on a federal level it can be hard to determine the common political practice in city councils and other regional democratically elected chambers. Sometimes this even differs from city to city so it is hard to understand that only higher regional courts and their prosecutors are responsible for section 108e in cases on a municipal level. Unfortunately, the members of the Bundestag who introduced this section mostly thought about fighting corruption in the Bundestag and not on lower levels where it is actually more necessary.

Apart from this, the new section 108e is an effective way to fight corruption while it also makes sure that no socially-accepted behaviour is criminalized. It definitely took too long to change this, but today Germany meets the requirements of the United Nations and the European Council concerning political corruption.

Corruption or Lobbyism: When does Lobbyism become Corruption?

Desislava Shtereva

The perception of lobbying fluctuates between the image of shadow policy and of essential democratic opinion-forming tool. On a large scale, lobbying can be seen as a product of the cooperation between the state and a third party such as firms or interest groups. This collaboration may sometimes have positive effect on both actors involved and on society but at the same time carries the danger of using illegal methods in order to impose interests.

This seminar paper aims at giving the term “lobbying” a neutral definition and recognizing its advantages and disadvantages. Furthermore, it examines the illegal bond between corruption and lobbying in general as well as at communal level under the scope of §§ 331-334 of the German Criminal Code. Could the fight against corruption in the municipalities be achieved through soft-law measures, how can be assured that state actions are bound by law and not by private interest .

The paper gives extensive definition of the term lobbying not only by explaining the activities of such figures but by establishing the various actors and target groups especially by positioning the phenomenon of lobbying in the legislative and executive institutions in Germany. In addition, it also reviews section §§ 331-334 GCC and defines the elements of crime establishing which particular actions of the illegal lobbying can suffice for these offences. It refers also to § 11 GCC and answers the question whether elected representatives and representatives of city and municipal councils should be charged as public officials and how to link them to lobbying. Recognizing that on a communal level the distinction between the legislative and executive is relatively blur, a clarification, for which actions the city council’s members are making themselves liable and should they be charged as public officials, is vital for the fight against corruption in the municipalities. Firms and enterprises does not exclusively target soon-to-be laws or want to change regulations. Often they aim at benefitting from already existing rules by easing a certain procedure in the public administration. Therefore the field of public procurements is extremely vulnerable to corruptive activity.

Furthermore, the paper gives an overview of the soft law measures for combatting corruption among the communal delegates weighting their advantages and disadvantages in comparison to the instruments of the German Criminal Code. What is more, in 2013 the Organization of Economic Cooperation (OECD) published 10 Principles for Transparency and Integrity in Lobbying which urges the countries to allow level playing field by granting all stakeholders fair and equitable access. These principles and the recently ratified United Nations Convention against Corruption have an undeniably positive impact over the fight against corruption among communal representatives but there is always room for improvement

All in all, the position of the communal representative is marked by his mandate. Even when formally they belong to the public administration, they still could not be charged as public officials under §§ 331, 332. For this case they fall under the scope of § 108e. In spite of the blurred line between lobbyism and corruption, differentiation between both is possible only under firm and clear regulations, which prevent the crime at international, national and local level.

Criminal Prosecution of Corruption

Jérôme Richter

How the prosecution practice of corruption poses problems to the adherence to these principles

- a) The fact pattern is complex. Corruption is not an obvious crime, usually there is no individualised victim. It is difficult to determine whether the fact pattern fulfils the requirements of the relevant section.
- b) There are difficulties in obtaining sufficient proof. Corruption often takes place in twisted economic structures which are difficult to oversee. There are few reliable witnesses.
- c) Also, resources are short. Due to the complex nature, prosecution might reach the time limit to prosecute an offense. The twisted structures and ambiguous fact pattern often require experts.

How the state tries to deal with these problems and how this causes new problems

- a) Some states set up an anti-corruption prosecutor's office which wants to raise public awareness and also encourage anonymous tip-offs. These only sometimes lead to convictions or even the initiation of proceedings, since they tend to be imprecise and false.
- b) aa) Plea bargaining: the defendant confesses partially to the accusations and obtains a milder sentence; the aim is to overcome difficulties in obtaining sufficient proof, to accelerate proceedings and to save resources; has been in practise for over three decades, but was not regulated until s. 257 c StPO was introduced in 2009, which has relatively strict requirements concerning documentation and transparency. However, a survey showed that in over half the cases the courts do not fulfil these requirements. Plea bargaining is used in about 20 % of the cases in lower courts.
- bb) Problems with s. 257 c StPO: (1) material truth remains unexposed because courts are allowed to limit their investigation to the plausibility of the plea; the survey also showed that courts sometimes do not even do that sufficiently; (2) In contrast to the US, the judge is involved in the negotiation process and loses his neutrality; moreover, he might be biased after negotiations fail; (3) "Sanction scissors": Often, there is a clear divergence of sentences in the case of the defendant making or not making a guilty plea. This might exert undue pressure on him to take a deal. (4) The Constitutional Court however did not declare the section itself, but the practise of the courts to be unconstitutional.
- c) aa) Discontinuation under obligations: There is no plea of guilty and no conviction; however, there is an agreement that the defendant is obliged to pay money or participate in seminars etc. This is laid down in s. 153 a StPO, which was introduced in 1974 to deal with petty offences; nowadays about 165.000 proceedings are discontinued per year under s. 153 a StPO (famously: the Ecclestone case).
- bb) Problems with s. 153 a StPO: material truth also remains unexposed; also, s. 153 a does not have strict formal requirements such as s. 257 c StPO and might serve as a by-pass of these requirements.

Conclusion

Corruption poses challenges to conventional ways of prosecution (proof and resources). Current attempts to resolve those seem to partially contradict fundamental and constitutional principles (the duty of the court to investigate the material truth, the neutrality of the judge and the fair trial principle). The legislator needs to act; another provision will not change the de facto situation. It seems the best way to tackle the problem at its root and increase spending for the judicial system. Then there would be less temptation to apply plea bargaining in an informal, unconstitutional way.

The Fight against Corruption in Conflict with the Rule of Law

Jana Issel

The fight against corruption – as important as it is – can easily be in conflict with the principles of the state under the rule of law. This becomes especially clear when considering the latest bill by the Green party, proposing a nationwide anti-corruption database in which enterprises and business persons can be listed and being checked on in the awarding process of public contracts.

In the Federal states, we already have anti-corruption databases, but the initiation of a nationwide tool has been discussed since the year 2002 and was refused several times by different entities in the legislative process because of constitutional concerns. The regulations in question are those proposing to also list entities when the action against them was abandoned according to § 153a StPO or when a suspicion has been adjudged. Even when proceedings are only initiated because of the admission of the accused, the listing shall be permitted. So a legal person might be listed without a judge having assessed the culpability.

Therefore, it is stated that the bill in its latest form from 2012 does not only violate fundamental freedoms due to the German constitution such as the freedom of profession and the principle of equal treatment, but also principles linked to the state under the rule of law. Here, a possible violation of the presumption of innocence, the principle of fair trial and legal remedies is examined.

Whether the principle of the presumption of innocence would be violated, depends very much on how the administrative process will be developed and whether an entry has to be considered a penal-like measure. Since this only becomes clear after the introduction of the database, it is not possible to make a closing statement in this work. It is another with the principle of fair trial. It can only be applied, when somebody is charged with a crime. Since the listing is only an administrative act, one cannot apply this principle here. The principle of fair trial becomes important when it comes to penal proceedings because of the corruption-related crime that might have led to the entry. Regarding legal remedies it is necessary to clarify the legal character of an entry. If it had to be considered as regulatory action or forbearance, lodging an appeal would be legitimate.

Evaluating the outcome of the already existing databases in North-Rhine Westphalia and Berlin, it shows that an anti-corruption database takes only little part in the actual fight against corruption. It is rather hotlines and confidential lawyers that bring proceedings to the police. In conclusion this means that politics and society have to become clear about whether they really want a nationwide database and if so, clarify the procedure and face the existing constitutional concerns.

Compliance: The Role of Private Actors in the Process of Combating Corruption

Mira Bindra

The term Compliance describes provisions companies make to assure that their employees are acting in accordance with valid law in the country the companies is based in. An effective compliance management should detect a breach of rule and sanction the relevant people. Originated in banking in the anglo-american hemisphere the principle of compliance has begun its spread in recent years all over the globe. Being a present and increasingly relevant concept in Germany for the last 10 years, a legal definition of the term has yet to be found. We have seen that the concept of compliance is not as prominent in Armenia yet.

With the objective to encounter corruption in Germany, the civil law approach of compliance found entry into company's cooperate culture. Compliance goes further than a mere accordance with the valid law. The idea is to avoid risks and damages companies face in the field of corruption.

A compliance system is a preventive measure that companies can take to face corruption. Especially in the field of corruption this is really important, since due to the secrecy of the delict it is at times hard to detect a breach of rule. The resources of a state and the insight in a company are only limited. Accordingly the collaboration and the taking of responsibility on the side of companies can contribute to avoid corruption.

The principal challenge can be to detect the areas of potential risk within the structure of a company. Subsequent a program has to be developed to meet the specific demands of a company. Two different crime-political concepts can underly a compliance system.

Firstly, a compliance program can be seen as the fortification of a company's own legal culture. This includes highlighting the importance of moral values and ethical guidelines, offering professional training, a system of counseling and communication within the company. Furthermore the standards should also be communicated to clients, partners and the public. Managers should be an example for the other employees. Control is also part of a value based compliance system, but not beyond the typically required methods of a company. Further investigations are only being carried out in case of well-founded suspicion.

Unfortunately, sometimes a compliance system is primarily based on control and surveillance of the employees. This leads to an enhancement of pressure on the employer. Furthermore, it may lead to a negative impact on the working climate and even a negative public image. Most of all comprehensive monitoring always bears the risk of abuse.

Therefore compliance always has to find its limits in the rights of the employees. The accordance with the principle of law has to be guaranteed.

Experience has shown, that the involvement of employees in the process of development and implementation contributes to the acceptance and success of a compliance program.

International Cases of Corruption – the Applicability of National Anticorruption Laws

Alexander Bijok

Corruption is a very old phenomenon, but in times of globalisation, it gains new aspects. Many cases that affect the economy will no longer be only on a national but rather on an international level. Therefore in the last years the German legal system has been reacting with reforms considering those international aspects. Nevertheless these were not only based on its own initiative but rather a response to international conventions such as the UNCAC or the Anti-Bribery Convention of the OECD.

However, the implementation of these conventions took a long time in some cases. The ratification of the UNCAC for instance just took place in 2014. It planned to close some regulatory gaps regarding bribery by public officials. In Germany, such a gap emerged due to a strict definition of this term. So, before the ratification was in place, it was not possible to prosecute German delegates in foreign parliaments such as the European Parliament.

Basically, for prosecution the territorial principle applies. It states that every offense committed on German ground shall be chargeable after German law. This concept gets broadened by the protective principle focusing on the domestic legal interests and the personality principle focusing on the citizenship of the offender or the victim. However, in order to avoid international ambiguities, it is not mandatory for the department of prosecution to charge those cases. Here, the discretionary prosecution principle applies.

Another problem was the view on the legally protected interests. The laws against bribery committed in public office were seen as a protection of the objectivity of the state's actions. Therefore, only German officials were considered chargeable. Only due to international conventions it was changed that also foreign officials got prosecutable if the offense is committed on German territory. The same issue existed with the sections considering bribery in commercial practise. Previously only the competition in the German market was seen as the protected legal interest. In times of globalisation, a view on national markets as isolated systems is of course outdated. Nearly every action that affects a foreign market can also easily develop effects on the domestic market. Therefore this section was broadened in order to now protect the commercial competition as a 'universal legal interest'.

All in all, the most important concept to prosecute international cases of corruption remains the territorial principle. It is more essential to broaden the definitions of the legally protected interests to fit to an international level. But with this broadening a new problem rises with the applicability to international cases.

A broader applicability in cases of corruption requests a careful view on the individual circumstances. Even if the legal system protects the worldwide commercial competition, the understanding of this term can diverge massively. What counts as an unrighteous advantage here, might be social adequate somewhere else. The law has to avoid wrongful punishments for foreigners and disadvantages for citizens abroad. Therefore, it is important to consider the interaction between the international chargeability and the regionally different perception of corruption while prosecuting international cases with national law.

The Fight against Corruption by International Law and the Role of International Organizations

Sina Jakob

While corrupt behaviour is still a current method in business and politics, international standards are changing. In a large part, this is thanks to governmental organizations that endeavour to end corruption and draft numerous multinational legal instruments

Almost every international organization has addressed the topic. But as diverse the aims of organizations are, as diverse are their anti-corruption conventions. Thus, the organization's general commitment is crucial for the evaluation of its anti-corruption efforts as well as the geographical scope and, most importantly, the monitoring systems. While the U.S. was the first government to address the topic of corruption on an international level prohibiting clandestine payments to foreign public officials, their ambitions remained an unilateral push. It took the international society nearly twenty years to catch up on that. It was not until the the fall of the Berlin Wall, the fading of borders and the opening of markets in the outgoing 20th century that the need to work on that topic became more.

The OECD Convention on Bribery of Foreign Public Officials does not alter the ambit of the FCPA, but derives its strength from its members: The 30 member states represent 70 percent of the world exports. Likewise, one could blame the EU for acting in the interest of an upright European market only. Other than that, the COE'S Preamble of the first COE anti-corruption legislation determines that 'corruption threatens (...) human rights'. It criminalizes both active and passive bribery in both public and private sector and prohibits further conducts than bribery. However, its geographical impact is rather limited. This is the great strength and chance of any UN effort. Having recognised that corruption is a major threat to human rights, the UN tackles it since 2003 with the UN Convention against Corruption (UNCAC). Especially the chapter that addresses asset recovery is a great accomplishment and deserves special mentioning, as it requires that property which was illegally withdrawn through grand corruption is refunded.

Monitoring the implementation of the provisions is just as important as the content. While the UNCAC still elaborates on a coherent monitoring system, both OECD and COE can be applauded for their extensive programs. Whereas the COE Convention is reviewed by the GRECO, the OECD and its Working Group on Bribery worked out a monitoring process which is divided into three phases including an follow-up mechanism. The country under investigation has to provide information via a self-questionnaire for the examination which is performed country-by-country.

The (geographically) broader the instrument, the harder it is to allow for a comprehensive review mechanism on the one hand. On the other hand, it is of utmost importance to include the whole community of states in anti-corruption efforts. Corruption itself goes beyond borders and therefore anti-corruption instruments must follow this trend.

Thank you



