



# Stronger when united: Kazakh lawyers facing new challenges

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**The Importance of Lawyer Regulation in International legal  
Services**

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# A legal framework for economic development (in an ideal form)



...[it] consists of *competent, ethical, and well-paid professional judges* who administer *rules* that are *well designed* for the *promotion of commercial activity*. The judges are *insulated from interference* by the legislative and executive branches of government. They are advised by *competent, ethical, and well-paid lawyers*.

# A legal framework for economic development (in an ideal form) contd.



...Their decrees are *dependably enforced* by sheriffs, bailiffs, police, or other functionaries (again, *competent, ethical and well-paid*). The judges are *numerous* enough to decide on cases without interminable delay.

Richard A. Posner, Creating a Legal Framework for Economic Development, The World Bank Observer, vol. 13 no 1 (February 1998) pp1-11

# Three questions



1. What is the relationship, if any, between the quality of a legal system and economic performance?

2. What is the relationship, if any, between the quality of lawyers and economic performance?

3. What attributes distinguish lawyers from other professionals?

# Legal systems and the economy



A substantial body of economic analysis and evidence suggests that well-functioning legal systems contribute to, and facilitate economic performance

- 'Institutions' (i.e. formal laws and informal behavioural norms) can explain differences in economic growth
- Well-functioning legal systems are important for the development of a *market economy* because of the nature of commercial transactions which tend to be underpinned by legally enforceable contract and property rights

# Some differences



Countries can differ and there can be variations from this rule-of-law ideal

- Economic success of some US states that have politicised judiciaries
- Economic success of some East Asian nations where the rule of law is relatively weak (e.g. China)
- England was one of the poorest economic performers in the industrial world for a time yet has a well-established legal system

# Significance for economic growth



What can explain differences in relative economic performance?

- A legal system may enforce bad laws that reduce economic efficiency (e.g. government bail-outs, prohibitive tariffs)
- There are informal substitutes for legal enforcement of property and contract rights (e.g. arbitration, merger, altruism, strong-arm tactics, retaliation...)
- **Implication:** Legal and economic reform should be pursued simultaneously

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# Informal substitutes for legally enforceable rights



Economic analysis has emphasised the importance of the 'rule of law' to economic performance and growth

- When law is weak or non-existent enforcement of property rights or contracts often depends on informal substitutes
- These substitutes for legally enforceable rights are costly and a bias against new firms entering the market

# 'Rules first' approach



A 'rules first' strategy can serve as a starting point for improving legal institutions

- A rule is *substantively efficient* if it promotes the efficient allocation of resources (e.g. a rule forbidding the use of another's property without consent)
- A rule is *procedurally efficient* if it is designed to reduce the cost or increase the accuracy of using the legal system (e.g. a rule that a winner in litigation is entitled to their reasonable costs)

# Role of lawyers



What role do lawyers play in the development of a legal system?

- Lawyers need to be *adequately trained and resourced* to perform the tasks required of them
- Given the nature of work that lawyers undertake the *integrity* of lawyers and the profession is important
- It should not be assumed that some regulation of lawyers represents an attempt to exercise monopoly power and restrain competition

# Role of judges



What role do judges play in the development of a legal system?

- Quality of judges depends on being able to attract honest and competent lawyers
- If salaries do not match positions of equivalent status this can limit the ability to attract high quality candidates
- It may be necessary to introduce methods to combat risk of corruption (e.g. judges sitting in panels, back-loading compensation with pensions that are forfeited if the judge is removed from office)

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# Lawyers and other professionals



Lawyers can be compared with other professionals but there are differences

- Lawyers share some similarities with other professionals (architects, dentists and doctors)
- Failures to meet quality standards or exercise due care can lead to substantial harm
- Yet legal services have a special complexion as part of the broader social-political-moral landscape that comprises a society's legal system

# Independence of lawyers



Independence is of particular importance for lawyers

- 1. Independence from concerns about the wider *policy* impacts of advocacy
- 1. Independence of their advocacy from their own *personal views*
- 3. Independence from *popular opinion*
- 4. Independence from the *state*



# Lawyer regulation and competition law



Case example: Questions referred to the European Court of Justice

Case C-427/16 - *Chez Elektro Bulgaria' AD v Yordan Kotsev* and Case C-428/16 - *Frontex International' EAD v Emil Yanakiev*

- Whether Article 101(1) of the TFEU precludes a provision of the Bulgarian Law on the Legal Profession under which the Supreme Council of the Legal Profession has discretion, by virtue of a power conferred on it by the State, to lay down in advance the minimum level of legal fees?
- Whether a provision that does not allow a reduction of the lawyer's fee to below a fixed minimum amount conflicts with Article 101 of the TFEU?

# International experience



Experience in other jurisdictions can be a starting point

- Countries seeking to reform their own regulation might look to experience in other jurisdictions for inspiration
- Effectiveness depends on the relevant cultural and institutional matrix

# Some important questions for lawyer regulation



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<p>What should be the academic and training requirements for qualifying as a lawyer?</p>	<p>Should there be written codes of conduct/ rules/ principles that lawyers must abide by?</p>	<p>What should be the scope of lawyer-client privilege and confidentiality obligations?</p>	<p>When must a lawyer decline to act due to a conflict of interest?</p>	<p>Who should have the right to represent clients in court?</p>
<p style="text-align: center;"><b>6</b></p>	<p style="text-align: center;"><b>7</b></p>	<p style="text-align: center;"><b>8</b></p>	<p style="text-align: center;"><b>9</b></p>	<p style="text-align: center;"><b>10</b></p>
<p>Should non-lawyers participate in the ownership or management of law firms?</p>	<p>Should lawyers' fees be regulated?</p>	<p>Should lawyers be required to have professional indemnity insurance?</p>	<p>What are the rights of consumers in the event of malpractice or poor performance by lawyers?</p>	<p>Who should regulate lawyers (government, an independent regulator, the profession itself or a combination of these)?</p>

# Summary and Conclusions



- A substantial body of evidence suggests that well-functioning laws and legal systems can have direct effects on economic performance
- Lawyers contribute through their actions and conduct to the shape of the legal system and how effectively it operates and functions
- It should not be assumed that the regulation of lawyers presents an attempt to exercise monopoly power and restrain competition

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