



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 style="text-align: center;">1</p> | <p style="text-align: center;">2</p> | <p style="text-align: center;">3</p> | <p style="text-align: center;">4</p> | <p style="text-align: center;">5</p> |
| <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;">6</p> | <p style="text-align: center;">7</p> | <p style="text-align: center;">8</p> | <p style="text-align: center;">9</p> | <p style="text-align: center;">10</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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