Reforming the Judiciary: Learning from the Experience of Central, Eastern, and Southeastern Europe

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Why focus on judicial reform?

“Institutions are the underlying determinants of economic performance”

(Douglass North, Nobel Prize lecture 1993)

New wave of reforms needed for convergence

Judicial reform and control of corruption are viewed as key structural reform priorities in many European countries
Which countries are covered and why?

20 Central, Eastern and Southeastern European countries that are EU members or aspire to join the EU.*

Institutional overhaul and considerable improvements in the judiciary, during transition and EU accession.

Similar initial settings, common goal of EU accession, differences in institutional quality → “natural experiment” of institution building.

*Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Kosovo, Latvia, Lithuania, Macedonia, Moldova, Montenegro, Poland, Romania, Serbia, Slovakia, Slovenia, Turkey, and Ukraine.
What do we do?
Explore what might encourage judicial reforms

- Reforms of the justice system and the context in which they took place
- How did the judiciary’s effectiveness evolve over time and how it compares across countries
- Factors that facilitated reforms: domestic factors and the role of the EU
How did we analyze judicial reforms?

Case studies
Empirical analysis
Panel regressions

World Economic Forum (Global Competitiveness Index)
Council of Europe
European Commission for the Efficiency of Justice (CEPEJ)
Group of States against Corruption (GRECO)
European Commission
World Bank World Governance Indicators
University of Gothenburg and Varieties of Democracy Institute (V-Dem)
World Bank Doing Business Project
International Country Risk Guide (ICRG)
Rule of law challenges for many European countries. A lot of progress in CESEE countries but remaining gaps

Rule of Law, 2016

- Below 25 percentile
- Between 25 and 75 percentile
- Above 75 percentile

Source: World Bank Worldwide Governance Indicators.
Note: Worldwide distribution excluding LICs.
Room for improvement especially in judicial independence and impartiality

Judicial Independence 2015

Darker green = worse
Lighter green = better

Impartial Courts 2015

Below 25 percentile
Between 25 and 75 percentile
Above 75 percentile

Source: World Economic Forum. Note: Worldwide distribution excluding LICs
Judiciary efficiency generally good

Group means similar, but cross-country dispersion large

Resolution Rate: Insolvency Cases, 2014 1/

Source: European Commission for the Efficiency of Justice.
1/ Values higher that 100 indicate that more cases are resolved than received, and suggest higher efficiency. The coefficient of variation is multiplied by 100.
Historical progress, but more to do

“...Judiciaries are the cornerstone of any system of checks and balances. Yet our findings show that over a third of our member states are not guaranteeing sufficient standards of impartiality and independence.”

Council of Europe
Factors facilitating effective justice systems

- Policies boosting equality
- Merit-based selection of judges
- More transparency & civil society

Institutions

Distribution of resources

Balance of power

EU

CoE

CoE
More equal distribution of resources facilitated judicial reforms

- Whether privatization led to concentrated or dispersed ownership mattered

- More openness and reduced market power helped

- Broader concept than GINI, also equal access to opportunities
Merit-based procedures to recruit/promote judges instrumental for independence and impartiality
Transparency and Freedom of Information Helped Civil Society

- Freedom of information laws strengthened civil society
- Transparency took many forms (e.g. asset disclosures, surveys, indicators, e-government)
- It helped especially when other factors not conducive
The role of the EU and the Council of Europe as external factors

Key in catalyzing reforms but durability of reforms depended more on domestic factors
OTHER FACTORS

- Strength of civil society
- Societal fragmentation
- Favoritism in politics
- Old age dependency ratio
- Per-capita income
What have we learnt? What can we do?

1. Substantial progress, but not linear. We ought to continue striving for judicial effectiveness.

2. Examine distributional implications of policies and drivers of inequality.
   - Competition policy
   - Reducing barriers to entry/opening-up
   - Redistributive fiscal policies

3. Select and promote public officials on merit.

4. Transparency can jump-start reforms. Examples: transparent public procurement; financial disclosures; e-government.

5. The EU and the CoE key in catalyzing reforms, but for reforms to be durable they need to affect domestic factors.
Thank you