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Judicial Capacity: The Next Big Chapter in Legal Transition

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Moderator: William Loris
MR LORIS: Judicial capacity: the next big chapter in legal transition, is a big subject because of its importance and there has been a lot of ground covered since 1990 in the region. We hope to capture some of that in this discussion. We have an open time at the end of the programme for questions. I encourage all of you to think as you go along what you would like someone to follow up on or to get a new insight.

To put this discussion in context, the 2011 Annual Meeting gives an opportunity to everyone who attends the Bank to take a kind of inventory of what has been achieved so far and to set some benchmarks for the future and set new objectives.

It has been an incredibly productive period of time since the founding of the Bank, and each of the Annual Meetings is an opportunity to recalibrate and to look back at the mandate. Something that runs through all of these discussions is the state of the legal system in the countries of operations and in the region in general. On the periphery of this region there is a lot going on: the Arab spring, political movements that will have effects in this region. Some of that will undoubtedly spill over into the legal system.

Since 1990 there has been nothing short of a revolution with respect to the legal systems of the countries in the region. It is fair to say that now most of the institutions and the laws and regulations that are needed to support the market economy are in place, from constitutions to laws and regulations that touch on every aspect of society and business in the countries. There has been a huge flow of cooperation between the countries of the region and outside. It is fair to say that what we see on the books today is vastly different from what one saw in 1990.

However, the big question is: what gaps are still there? There is nothing wrong with a gap because all over the world we are searching for the perfect solution on rule of law, and that goes on undisturbed. Parliaments are for that, and every day a parliament takes on new projects of law because there are gaps.

For those areas where things are in place the question is one of implementation. In the region we are largely moving away from an era of legal transformation to an era of implementation, so the questions are a little bit different. We have the laws and the
tools; the question is whether they are working well. If they are not, what kind of adjustments need to be made so that they do work? No other institution in this panoply of institutions and laws comes under more scrutiny and focus than the judiciary, and quite rightly so because it is the courts to which investors refer their disputes and try to secure their rights, where citizens go to resolve their disputes. It is the courts that are the principal instrument to sanction those who break the rules. The role of the judiciary and the whole apparatus that surrounds it is very key to the outcome of this transition process.

There has definitely been commitment to this, and we have seen this from the general transformation. There is a formal commitment in the charter of the EBRD. We see that in the constitutions and in the way the courts are structured and restructured, and we see that in the serious way in which all the countries in the region are seeking to train their judiciaries and all of the actors - the clerks, court administrators, lawyers, notaries and everyone who plays a part. Are there still barriers to access the courts? Are courts able to play their expected role of enforcement? A big question in any jurisdiction - a question that we will tackle head-on today - is corruption, something that impedes arrival at the ideal. How can we deal with corruption and what is going on in that respect?

All of these discussions can help the Bank in its reflection on how it has performed through its legal transition programme. Part of the team is here today. In general how has the Bank performed with respect to conditionality and the other things in the agreements, and what are the indications coming out of these discussions with respect to the future?

We have a great panel here to discuss these issues. All the people here have been deeply involved throughout the region on these issues. They have about an hour to share some of their experiences. On my right is Pim Albers from the Netherlands, who has worked across the region. His particular focus is benchmarking and quality indicators, and how those can be used to focus efforts and resources towards greater efficiency in the judiciary.
Gabriel Lansky is an Austrian lawyer but is hardly ever in Austria as far as I can understand! He is legal adviser to some of the countries in the region, including Russia and Azerbaijan, and he has been working with all of the large institutional movements that are related to our topic through the Council of Europe, the OECD, the other European Union and other bodies. He can bring some of that perspective to these discussions.

Judge Aibek Davletov is the former first deputy chairman of the Kyrgyz Supreme Court. I have known him from a distance as an adviser to the EBRD on its current commercial law judicial capacity-building project, which is being implemented with the International Development Law Organisation – where I used to work before coming to my current post, which is associated with a university, doing a masters programme on rule of law. I was very glad to meet Judge Davletov. He will focus part of his observations on the corruption issue. We really appreciate him coming here to focus on this key area. Alan Colman is a counsel at the EBRD, a specialist on judicial capacity. He is responsible for most of the organisation – thank you for giving us some discipline in this panel, Alan.

The main topic of the seminar is judicial capacity, the next big issue in legal reform. We hope that we can get some indications on that question by highlighting some of the problems we are seeing, the successful performance-enhancing strategies that are being undertaken and evaluation of those efforts. I will ask Gabriel to begin. What do we mean by judicial capacity-building, and how do you see it in terms of your experience in the region since 1990?

MR LANSKY: Thank you for the introduction. I will start by telling you of two experiences in the 1990s that were fundamental, small as they were. I had a quite important client – fortunately still a client of our firm – who called me in 1993/1994 and said: “Can you help me? My Dictaphone is not working.” I was quite astonished because this was not a core legal activity. He was a professor in the eighties in a country of the former Soviet Union. He was a brilliant businessman and intellectual, and he was calling a lawyer and asking him to help because his dictaphone was not working! I agreed and sent him up to one of our specialists in reparation of dictaphones. I started to ask how that would be possible, how an intellectual like him
would ask a lawyer to help him with something like that. I understood in the end that there is a different setting and understanding of professional consultancy and the understanding of the importance of law in the day-to-day life of people in this region.

I read a brilliant book from the former correspondent of the Zeit, Christian Schmidt-Heuer of the name “Russland – ein Reich ohne Recht”, Russian Empire without Law, describing how the difference in history of law produced different understandings of law in society. On each page of this book I read of people’s day-to-day experiences and understood that the lack of differentiation of the laws of church and state, of cities and towns and countries, in hundreds of years produced a completely different understanding of the difference between power and law and rule of law. For law to be a decisive process in business operations there needs to be a certain tradition and understanding.

If judicial capacity is the next big step in the process, the answer is “yes” but it is not that alone. The main thing is the barrier to justice, which starts with other factors. Access to judicial capacity is a small part of the topic. There is unwillingness to involve others in solving disputes; poor knowledge of the law; lack of resources; practical hurdles to using the courts; corruption and perceived corruption; and then there is the big topic of judicial capacity. It is a big part but just a part of this topic.

There are three different dimensions of judicial capacity: aspects of legal systems, aspects of judicial independence, and organisation of the judiciary. Let us start with legal systems.

Procedure codes allow for efficient conduct of trials and lawsuits, concentrating on the core issues in dispute, and enabling the introduction of procedural shortcuts, such as payment orders, default judgments and penal orders.

In the legal development of many of our countries under discussion you will find important legislative measures that create such a legal environment. I agree with Bill, that the legal framework is completely different now to what it was ten years ago, and it is now a question of implementation. A short time ago we had the experience in the Russian Federation of a contract with twenty instalments to be paid - the courts forced
us to go to court on each of those instalments. We had twenty court procedures. There is a need to concentrate on the process of rationalisation of decisions and understand how the system should work.

Judicial independence means modern education systems with university degrees, establishment of judicial academies for advanced training of judges and prosecutors; it means substantial salary increases compared with the rest of society; it means a requirement for annual declaration of property and assets. All of these criteria have been dramatically improved in recent years in Russia, Kazakhstan and Azerbaijan – countries I have studied in that regard – but there is a long way to go. Judicial independence is the only criterion that, under Article 6 of the European Convention of Human Rights, is governed by hard law. In all other aspects of our topic of judicial capacity, we do not have hard law criteria; we have soft law and intensive regulation but we do not have real concepts such as those that exist under Article 6 of the European Union Convention.

The criteria for independence include the manner of appointing judges, their term of office, the instruction and freedom of judges and guarantees against external influences.

In regard to corruption, there was recently an interesting case in Kazakhstan. Six supreme court judges were fired and put under criminal investigation. We have had dramatic experiences in the Russian Federation with corrupted judges and where it has been impossible to make the court accept that documents have been clearly falsified. The processes that we have to go through for our clients are really complicated. Theory is one thing and practice is another thing. I agree with Bill that it is the time for implementation, control and standard-setting.

The third topic is the big topic of organisation of the work of the judiciary. Judicial capacity is dependent not only on personal professional abilities, but on resources of the courts, modern working conditions with office premises, IT systems, auxiliary personnel, a balanced division of work between the courts, preventing over-burdening of some courts and case backlogs in others, and a transparent distribution of cases amongst judges in the same courts, using a random generator.
In Kazakhstan, Russian Federation and Azerbaijan there are recent new rules that partly ameliorate the situation in all the aspects I have described. I am happy to go into it more deeply, but I think my six to seven minutes are over!

MR LORIS: I think you did very well. I appreciate that you have outlined some of the core issues in regard to implementation of the ideals. Pim, could you follow up on that and give your view of the priorities and what the focus on future reform should be?

MR ALBERS: Based on my experiences in the European region but also outside the region and also the agenda topics of the European Union, the Council of Europe, the World Bank and other organisations, I can indicate the main points when it comes to improving the different legal systems.

The first problem that should be tackled is length of proceedings. That was in the academic reports of Zuckerman, who stated that there is a crisis in civil proceedings because proceedings take too long in the courts and that we should take appropriate measures to reduce the length. One of the elements in standard-setting on the length of proceedings in the European Union has been mentioned by Mr Lansky, and that is Article 6 of the Convention of Human Rights. That article states that every court should respect a reasonable duration of proceedings in the courts; however, it is very difficult to determine what a “reasonable duration” should be. Are there clear standards? There was one report drafted by a French judge on behalf of the Council of Europe analysing the various cases of the European Court of Human Rights. She indicated that for certain cases, particularly the complex civil law cases, eight years from the first year until the supreme court is reasonable; and for short-term cases like employment dismissal cases, eight months is seen by the judges of the European Court of Human Rights as a reasonable duration.

One of the solutions to reduce the length of proceedings is to look at alternatives. On the agenda inside and outside Europe there is a strong emphasis on introduction of alternative dispute resolution mechanisms: mediation, conciliation and arbitration outside the court systems, which can reduce the burden of work on judges, but it also
offers companies and citizens a real alternative compared to the regular court systems. Sometimes mediation achieves better results in terms of resolution mechanisms and satisfying results between the parties, compared to judgments of the courts.

Another focus in improving performance of the administration of justice could be based on the introduction of small claims procedures. In many European countries there have already been good examples of using small claims procedures. In the United Kingdom there is the money claim online for uncontested disputes, small financial disputes. In Germany and Austria there are means to settle these, and at the level of the European Union there is a specific directive for a European small claims order that has been introduced, and that will be an element in the programme of the European e-justice area. When it comes to the use of electronic means to begin a procedure, that would be a direction from the point of view of the European Union.

When it comes to strengthening judicial capacity much investment needs to be made in courtroom technology, using video conferencing techniques where lawyers and judges can communicate with each other at a distance. I have seen some nice examples of that in the Singapore courts where they use mobile phones to carry out video conferencing meetings between lawyers and judges. Major investment is still needed in the internal organisation of the courts with respect to court management information systems. Many countries still have poor information resources in regard to monitoring case progress and court performance, so more investment in that area is necessary. There should be more investment in exchange of information between lawyers and the courts. In Portugal I have seen best practice examples where lawyers can submit their cases and exchange files through a secure system. That can help the efficiency of procedures for both lawyers and courts.

Information provision for businesses and society is important. Courts do not work in isolation and it is important to provide the necessary information from the judiciary to society, for example judgments, performance and application of the principles of independence of the judiciary. They are strong focus points for improving the system.

The other aspect is strengthening enforcement. You can have a very smooth court system but if judgments are not enforced you have a really big problem. Many
countries in Europe and outside Europe are struggling with that problem. Some solutions may be achieved by introducing private bailiffs, but other solutions are possible as well. Enforcement should be addressed, and also there should be a focus on users of the courts. In the past judges have been strongly orientated internally and mainly focused on the quality of judgments. That is important, but expectation of clients should also be addressed when setting the agenda for judicial reform strategies.

MR LORIS: I would like to ask you to expand on the last point as you do have another minute! Practically how do the judiciary and political authorities engage with the public? What are the means?

MR ALBERS: There are two aspects for engaging the public. One is a negative one: the relationship between the judiciary and the media, particularly when it comes to corruption or lack of public trust, so that it is published in the newspapers or shown on the television. It is an important aspect that should be addressed by citizens and the judiciary. A solution for raising public trust in the judiciary is to have better communication by the judiciary with society. Professional spokespersons can help, but when it comes to mistakes - large mistakes in certain cases - there should be openness of the judiciary in accepting that they are normal people making mistakes. This will generate public trust.

Another element of engagement of society is related to court quality systems and use of court satisfaction surveys. These help identify areas of improvements from the users’ point of view.

MR LORIS: The devil is in the detail. There seems to be a lot of groundwork still needed. Having worked in other countries and regions, the themes are the same. There is a common international view on these issues. They are easier to implement than the big reforms we have already done, but they do take a lot of resources. I suggest that the Bank could look at that.

One area we have not talked about, which was left out of these lists, is the quality of judicial decisions. I wonder if Alan could talk about that.
MR COLMAN: I am one of the counsel in the EBRD’s commercial law reform unit, the Legal Transition Team. The objective of our unit is to improve the investment climate in our countries of operations by working with governments to improve commercial laws, and the functioning of courts and legal institutions.

I thought I would begin by commenting on the overall question posed by this panel discussion: judicial capacity, the next big issue in legal transition. Together with related questions of implementation and enforcement of laws, these are the next big issues. Courts and legal institutions tend to mature one step behind the development of the legal systems in which they sit, and in response to the emergence of greater demand for court services.

With increasingly sound commercial laws on the books in many EBRD countries of operations and with markets developing and the demand for court services growing, we will see an increased focus on judicial capacity and implementation issues in the coming years.

Turning specifically to the quality of judicial decisions, I am happy to speak about this issue. It is a priority area. First, there is a legal underpinning to the question of ensuring good-quality decisions; it is an inherent component of the right to a fair trial under international law, which is applicable as much to civil and commercial matters as it is to criminal matters. There is also the commercial and economic imperative associated with this issue because the quality of judicial decisions has a bearing on the investment risk profile and the overall investment climate in the country.

Last year we conducted an assessment of commercial law judicial decisions in our countries of operations, starting with some of the CIS countries and Mongolia. There were two objectives: to gain insight into how courts deal with commercial laws in practice, and also to gather useful data that could be used in the context of possible technical cooperation projects. I will not delve too much into the methodology but I will explain generally how we approached matters. We asked local experts in each target country to select typical judicial decisions - not sensational decisions, or necessarily the worst or the best - in several broad areas of commercial law:
shareholder rights, property and creditor rights, and dealings with regulators. It was a purposive rather than random sampling selection approach.

These local experts in each country assessed the decisions against seven dimensions of judicial capacity: the quality of the written judgment, the predictability of the decision, speed, cost, whether the decision was actually implemented (which required case file follow-up - which was often very difficult); they also looked at inferences of impartiality on the face of the record; and they also took into account the quality of the legislation in the relevant area, but from a litigation perspective.

This was a qualitative evaluation exercise and therefore it was important to ensure consistency across the region. Once the local data had been finalised all of the decisions, all of the commentaries and all the results were forwarded to an independent panel of three experts. They reviewed all the material to calibrate the results and ensure consistency.

The assessment identified various themes and concerns in regard to judicial decisions in commercial law across the countries we looked at. Without going into too much detail, issues arose in relation to uneven quality of drafting of decisions, quite divergent jurisprudence in many areas, lack of clarity in court orders, evident pro-state bias in many areas, and unconvincing rationales in many of the more technical cases.

For present purposes I will not go through those in detail, but I would like to mention one thematic underpinning issue that emerges. Many of the specific problems appear to be caused by, or at least contributed to by judges’ lack of understanding of or experience in commercial law. The assessment concluded that there was an element of discomfort for judges in many cases when dealing with more technical areas of commercial law. I will give a couple of examples. In many instances the assessment found that judges had a tendency to rely on general sources of jurisdiction or provisions in civil codes rather than applying the specific commercial law that was relevant in the specific case. In one country a pledge law set out exclusively the grounds on which a court could overturn a decision to transfer pledged property to a creditor. In many of the cases reviewed in that area, such decisions were overturned.
without any reference to these specific criteria, and the courts relied on general principles to arrive at a conclusion.

Another example of this phenomenon is in privatisation cases, challenges, in instances where state property has been privatised. Often with such regimes there is a specific statute of limitation that is applicable only to challenges to privatisations; yet in many cases judges would apply the general statute of limitation applicable in civil litigation rather than the specific one. In many instances, judges had a greater level of comfort operating in the general civil law domain rather than dealing head-on with the commercial laws that should have been applied.

Pim mentioned that enforcement is a particular problem in relation to judicial capacity, and it is well known in our region that this presents a significant problem; it is one thing to get the decision, and then you have to have the decision implemented. This is a complex problem with a myriad of different issues affecting it. Many of them are related to the regulation and performance of bailiffs. As another example of lack of experience or specialisation in commercial law contributing to problems, we found that the orders of courts in the dispositive parts of their judgments were often unclear, and that creates problems for the bailiffs who have to implement the judgments because they can only implement what is specifically in the judgments.

Thus, taking the example of challenges to privatisation of state property, in some cases a decision would be reached that state property had been privatised otherwise than in accordance with the relevant law; but then the orders would not address all of the consequential contractual and financial unravelling that flowed from that conclusion. There is a perception that the judges in some of those cases were not able to address these technical issues for lack of training or experience in those areas.

I promised that I would observe the time limit with a fanatical zeal, and we are short of time, so I will conclude by saying that one of the main conclusions from our assessment work is that a lot more could be done in providing targeted commercial law judicial training. In our countries of operations there is a recognition that this is needed and we are having a useful dialogue with a number of counterparts on this issue.
MR LORIS: Were you able to go back to the people who gave you that information with the conclusions, and if you did that how did they receive it?

MR COLMAN: We are in the process of doing that. So far it is going well. In fact we are using the results to inform our approach to our technical cooperation work. There is not a lot of argument about what the problems are. If I had some of our counterparts here, I do not think there would be a debate, but these are the problems, and those touched on by Gabriel and Pim. The deficit in the area of commercial law judicial training is recognised. That is all quite positive.

MR LORIS: I would like to start looking at the question of corruption. Judge Davletov, this is widely seen as a problem. Can you give us a few comments from your perspective, as someone who is now working on judicial capacity-building and as a former judge. What can be done about that?

MR DAVLETOV ( Interpretation): Thank you for your question. Before I begin I would like to express my gratitude for the invitation to participate in this discussion panel. Since we were given only a few minutes to make our presentations, I would like to focus on a number of core issues that need to be resolved if we want to reach the objective of fighting corruption. I believe that to a large extent our failure to combat corruption is because we are not approaching it as a systemic phenomenon but otherwise identifying separate elements within it and trying to tackle it through traffic police operations, the judiciary or something else, without taking a holistic approach.

First, we should recognise that corruption is a very serious social affliction. It probably appeared at the same time as the first proto state emerged, the group of people who tried to abuse powers for their own interests. Since then the public has been fighting corruption. In other words, corruption has been with us as long as the state has been with us.

Corruption is a general phenomenon prevailing throughout the state. You cannot have corruption in one part of government and no corruption everywhere else, so it is
ubiquitous in a way. It is like trying to fight flu within a class of students in a large school.

Many nations suffer from this disease or affliction and that is because there is a mismatch between what we see and what we do. There are many ways to prove that; there is a large body of evidence in terms of support provided to various corrupt regimes, whether economically or otherwise. When countries support these corrupt regimes, other nations are putting pressure on the judiciary within that country in regard to property ownership, loans, investments and the like.

This raises the question whether it is possible to combat and overcome corruption. We understand that a lot of money is being spent, just as much as we spend on combating drug trafficking; however, corruption is still with us. Some people say that spending money to fight corruption is like selling vodka to fight alcoholism. Maybe you can use a wedge, and this is exactly how they are fighting forest fires in Russia nowadays, by setting certain parts of the forest on fire so that it can prevent fires from spreading. In this case, this may not be the appropriate approach.

There is a school of thought that the fight against corruption can be successful and victorious. I can give several examples. In Singapore and Sweden they have met with significant success. The other school of thought is that corruption cannot be eradicated, that you can only obtain a certain acceptable level of corruption and never get rid of it altogether. You can strike a balance between the cost of fighting corruption and the losses generated.

I believe that we should seek a path in between these two extremes, but if a government or a state believes that a certain level of corruption is acceptable, then from a longer term perspective this could have a negative impact bearing in mind the costs involved in fighting corruption.

How do we tackle the problem? I mentioned earlier that it is a social and international phenomenon, and ubiquitous in the sense that it spreads throughout the state at all levels. When it comes to the judiciary, the Kyrgyz Republic undertook some measures, although there are still measures that need to be taken. We have to make
the judiciary very transparent and effectively transparent. We have discussed this at length, and the donors working in the Kyrgyz Republic have pointed this out, but they have not focused on it properly. How do we define transparency in this case? What sort of measures can be taken? Firstly, we need to rely more heavily on computers in the judiciary for filing and processing court documents. It is not just a matter of using computers as replacing typewriters or as a medium for connecting to the internet; I am referring an attempt to automate document exchange and paperwork within the judiciary.

I was head of the board of administrative cases and we used a fully computerised system comprising several important elements apart from the day-to-day things that assist in the work of a judge. We used an automated docket system. I no longer needed to distribute the cases between judges; the docket was produced automatically by a computer. In addition, all the decisions of the supreme court were published on a website. It is from this perspective that computerisation is a major boon to the judiciary. The automatic docketing system involves a random sampling approach. You can customise the system to incorporate factors such as prior experience of the justices.

There is a major issue in gauging the gap between freedom of expression and the accountability of the media. I do not know whether this is seen as a means of putting pressure on the courts, but anything that the media publishes before a judicial decision is made would have an impact on the judges. In fact, when I was a supreme court justice I tried to avoid reading the press altogether, but still it was brought to me and I had to go through the news and read the newspapers at one point. The media offered their views on certain aspects of cases. You have to somehow decide how freedom of speech and accountability correlate.

With the EBRD and other IFIs we have made progress in areas of legal transition. We have changed the laws applicable to the judiciary and the judges themselves. We were able to ensure that nominees for judges were trained before being appointed. We need in addition to set up an independent council that would select judges - that is independent of the government. This selection committee would focus on this
process. For your information it comprises people from the judiciary, members of parliament and from the opposition.

You have to make judges accountable for improper decisions. It is not just a matter of raising salaries. You cannot fight corruption by only raising salaries; you have to make people accountable for any corrupt acts, particularly if it leads to harm or damage to individuals or businesses. This involves accountability of persons who may try to exert pressure on the courts and obtain decisions in their favour.

For several years we have been trying to amend the law to introduce a relevant clause requiring dismissal of officials who were proved to have put pressure on the courts. Some government officials then would stop putting pressure on the courts if they were aware that they were accountable.

We need to think about whether we can adopt a law on conflict of interest because we do not have such a law. The law that regulates the issue of law in public service only has one provision, the provision for that area. However, it does have some very important aspects, dealing primarily with measures that can be imposed to fight corruption. A law on conflict of interests has a very important feature: declaration of one’s assets by the would-be public servant when one is appointed. I am not only talking about declaring one’s assets but also one’s interests. In other words, when a judge is appointed they will have to completely declare their interests and his/her relations and friends, what they do together, what business they have together, and one’s affiliation to other public servants. All these have to be declared. This could play a very important, positive role, particularly when distributing cases amongst judges and when deciding what kind of issues a judge will deal with.

Finally, I would like to speak about the attitude of the population to the courts. Very often, we speak about lack of trust in the courts and corruption of the judiciary; but if we approach it only from that point of view corruption will never be overcome. On the contrary, it can only flourish more and more because of the lack of confidence. Sometimes perceptions take over, and information campaigns would have to change in that respect. We should not only speak about the negative things but about positive
achievements in certain judicial systems. In other words, we should not only criticise but praise because this is the carrot policy that should work.

MR LORIS: You talked about the attitudes of the public but the attitude of the judges is very important also in regard to their role and responsibilities. How has that matured over the last twenty years? How do they see their role and is that helping to be a self-policing mechanism?

MR DAVLETOV (Interpretation): Thank you for that question. I would like to tell you a short story. Once I was the head of the high arbitration court in the Republic of Kyrgyzstan. We were one of the first courts to publish our rulings. When the judges prepared those decisions saw them after they were published, they were very surprised at how badly they were prepared, even in terms of grammar, vocabulary, argumentation of the decisions or the fairness of the decisions. They were reading on paper what they had said when they made their rulings and they realised that they had to improve themselves because those publications were for the broader society and they realised that people would be assessing their work. Of course, that has affected them positively.

The judges are human of course, and they see how other people treat them. They see the lack of confidence and make certain efforts. The judges were once afraid to speak on television or to be interviewed and were afraid to write articles for newspapers because every judge believed that they only had to make decisions and that they were not public personalities; but the real reason was different. To a certain extent they were afraid to show the level of their development and competence.

Speaking openly, acts of corruption are most often provoked by the very poor competence of those public officials who enforce the law.

MR LORIS: Thank you. That is a very interesting story. We can see attitudes changing, but there are still some technical solutions and innovations. Pim, you have been working on some of these more advanced ways of organisation, efficiency and benchmarking. In a much shorter time than you had the first time, can you give us some highlights, and also answer this question: is there an ideal court somewhere?
MR ALBERS: It would be highly ambitious to answer the question in a short time period. When it comes to trends and developments more and more courts will be focused on the development and use of court performance indicators, using basic data to assess the progress of cases in the courts but also to assess the performance of individual judges. That kind of information, in addition to their quality of judgments, can help increase the quality of services delivered by the courts. That is at the level of the individual courts.

On top of that there is a need to publish that information at a national level and at the European level to show how well the judicial and legal systems are performing compared to other countries and similar regions. It is a challenging exercise and I have tried to do it as a result of the work of the Council of Europe’s reports on legal systems. That kind of information can help when countries compare their systems with those of other countries and can see the areas that need improvement. There is a strong incentive to change their legal systems.

However, there is a need to further develop court performance indicators and indicators at the level of countries and at the international level. That takes resources and on international platforms I have seen that many countries support the idea of having comparative data on legal systems, but they do not want to contribute to the funding of the whole exercise. If you want to have a solid system of comparison you need to pay for that, and there may be a role for the EBRD in that respect, but I put it on the table because it is a very complicated area and much investment is needed.

When it comes to innovations at the court level, we should focus more and more on solutions for introducing quality systems. The examples in the Netherlands, Finland, the United States and Singapore specifically aim at internal organisation of the courts, for example in the areas of leadership and strategy of court managers and presidents, a stronger focus on court policies, management of resources, personnel resources, financial resources and material resources, promoting more access to justice and accessible courts, raising public confidence and trust and also a focus on user satisfaction. All of that may help to improve the internal operation of the courts.
Is there an idea judicial system to be found in the world? I am not sure because some countries have a nearly perfect system but nevertheless there are weaknesses, but in my opinion in the area of civil law proceedings and civil law courts the Singapore courts must be the leading courts in the world. You can see there the strong relationship between a good legal infrastructure and an attractive investment climate. When you look at the World Bank figures Singapore is the number one country for starting a business. Other countries in the world have tried to copy that approach, for example the United Arab countries. The model of the Singapore courts will be transplanted with the general idea that if you have perfectly operating civil courts, then new companies are attracted.

MR LORIS: There is some work being done on standards at the European Union level and through the international financial institutions. Gabriel, can you highlight anything on that? Then I will ask Judge Davletov what he thinks about all of this, because there have been many suggestions. We will then go to questions.

MR LANSKY: The main answer, in my opinion, is that judicial capacity is currently a national matter: it is national legislation executed by the state. Due to the complexity and different cultural aspects there is still very, very little international standardisation, in spite of all the international work that has been done and the excellent work done by the national banks. It is a national case.

In the framework of the European states there is one hard law, the European Convention on Human Rights - as we said before, Article 6 and the jurisdiction of the court. This jurisdiction enables a quite intensive examination concerning the independence of the judiciary and its different aspects, what it mean in practice. This is real European international law.

In the framework of the Council of Europe tremendous work has been done on standards-setting, particularly in the institutions of the Venice Commission. Increasing numbers of twinning arrangements and long-term programmes are progressing.
The European Union is increasingly interested in Central Asia. We have the Central Asian Indicative Programme of the European Commission and the Rule of Law Initiative, which sets standards, between the Council of Europe and the Commission. That was signed in December 2009, and the programme will go until December 2011, covering the five Central Asian countries.

We have the decision of the European Union that the European Investment Bank’s Asian mandate should be enlarged with €1 billion, and €100 million has been allocated to Central Asia. In the framework of the European Investment Bank there is a certain amount devoted to these topics.

Important standard-setting work is done by this Bank. As you can see in the very interesting recent publication that is outside the door, *Law in Transition*, there are some very important résumés out of the perspective of this Bank. This is necessary work done by the industry sector. This is what needs to be done, through sector work and regional work in standard-setting. The more local the standard-setting is, the more effective it will be. The more global it is, the less effective it will be. We have to look at all of these countries that have the opportunity to access the Council of Europe so that there is a minimum of standard-setting with an opportunity to have hard law and for sectors to standardise their fields of interest.

MR LORIS: Judge Davletov, we have come to the point of recognising the obvious, in a way - but sometimes the not so obvious - that this is a national affair, a sovereign function, running and managing the judiciary. From what you have heard today, how much do you think can be absorbed, and what timeline do you see in terms of taking on some of these innovations and standards?

MR DAVLETOV: There is nothing new that we can invent: as Solomon once said, “everything has been there before”. In this situation we have to consider seriously the methods and issues that we are trying to solve, using a comprehensive approach.

At the same time, I would like to speak about two things that have been mentioned today and which have an important policy effect, and that is the point about increasing court procedures and the quality of legal training. I will start with the second issue.
At the moment I am one of the heads of the state examination commission. We take final exams from law graduates in the Kyrgyz Republic, and many of them are not ready to work as judges, not even as lawyers. You might know that in Soviet times universities had very few seats. The capacity of the Kyrgyz national university where I studied in the early eighties only had 75 positions; but now every year between 2000 and 3000 lawyers graduate. Do we have so many good professors to teach so many students - high-quality professors and doctors of law, people with a good reputation? It is a big problem. From that point of view we should organise additional legal training and education, increasing the qualifications of people who would like to become not just experts with a university diploma but real experts. Masters courses would give them the proper education on the basis of a very harsh selection and could play a positive role.

In regard to automation of court proceedings and case distribution, we should not try to save money here. The people in government and organisations would like to help us implement the tasks that we are all facing.

The quality of proceedings depends not only on the country but the people who live there as well as neighbouring countries - globalisation, the economy and so on. I will not go into the details because you know all about this, and there is a huge link between all of these fields. I was head of an economic meeting and we looked at different aspects of automation of proceedings, which will play a positive role. As a judge of the supreme court I was faced with cases when a judge of the local court had passed one sentence, but there were people giving another sentence and judgment, so the automated system will be positive so that we can control every judge in this way through computer-based systems. Investments directed at increasing judicial capacity will build an automated judicial system.

MR LORIS: We have time for one or two questions. Then Gerald Sanders, Deputy General Counsel, would like to make an announcement about the launch of a new EBRD legal journal. There will be an event here, and there will be a reception to encapsulate that.
QUESTION (Interpretation): Thank you very much for the opportunity to ask a question. I am a judge of the Supreme Court of the Republic of Kazakhstan. In the future when we have a similar event we can think about the format of this event and the issues on reforming the judicial system and increasing capacity. If we study these problems deeply and professionally the practitioners will be able to speak out at the event. I think that this should be more targeted.

It is ambitious to raise the capacity of the judiciary. I think that without a fair, independent judiciary in any country it is impossible to reform or transform the system. This outcome should be on top of the agenda of the next session. It is clear that if the judiciary of any country does not have the features mentioned above, then economic reforms will be slowed down because foreign investors will know that in that particular country they cannot rely on the impartiality or fairness of judges and the judicial system and be afraid to invest. Economic and political development in the transition period will slow down. That would be the main outcome that should be put on the agenda. When speaking about the potential of the system we have to outline the legislative items and prospects, secondly organisation and structural arrangements, thirdly precedents, and fourthly the human factors, which are human resources, competence levels of judges, their understanding of their role in society and their responsibilities.

Additional to that are the technical improvements we have mentioned. Issues that are raised here should be structurally identified and future discussions should be targeted and purposeful in order to achieve results.

MR LORIS: That provides a fairly good wrap-up. It was not in the form of a question, but we might have a reaction from one of our panel.

MR ALBERS: Lessons learned from our panel discussion and also the comments from the delegation from Kazakhstan show that there is a need to have a justice sector reform programme. Several issues have been discussed during the meeting: corruption of the judiciary, quality of judgments, internal organisation of the courts - court rationalisation and the use of information and communication technology - public trust and performance indicators. There is a great deal to do so it is important
to have an agenda as part of developing the strategy for justice sector reform in the region so that as far as possible the judiciary are involved in the debate. Sometimes solutions implemented in a number of countries are not well received by those countries that do not have a tradition in that area, for example in the application of court performance indicators or use of a mechanism to evaluate the quality of judgments or work of the judiciary. It is important to involve the judiciary in agenda-setting and in development of concrete solutions and recommendations.

MR LORIS: One more question?

QUESTION (Interpretation): It is clear that the EBRD is one of the financial institutions that includes democracy in its mission. Democracy means an independent judiciary. During the last twenty years you have operated in our region have there been changes?

MR COLMAN: There have been changes. We have nearly thirty countries of operations, and obviously the pace of change has varied from country to country. In almost all countries there has been significant progress in this area. A lot remains to be done. Speaking for myself, some of the work we are doing in the area of judicial training is relevant to the question of judicial independence because well-trained, confident judges are much better able to resist any efforts from the outside to influence their decision-making. Our efforts in this area are relevant to the question of judicial independence. That is a brief answer to your question. The situation in all countries is not perfect, but there has been significant progress in many instances.

We have come to the end of our allotted time. I would like to thank the panellists for their preparation and the Bank for putting on this event and giving us the opportunity to air some of these issues. I hope that it has been valuable for the Bank in terms of some of the indications as to where the Bank might look in the future. I would also like to thank our two questioners and the journalists.

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