

# **Linking economic aspects and legal standards: The analysis of justice systems in the international monitoring of economic and development policies**

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*“Effective justice systems are essential for the application and enforcement of EU law and upholding the rule of law and other values the EU is founded on and which are common to the Member States. (...) In addition, effective justice systems are also essential for mutual trust and for improving the investment climate and the sustainability of long-term growth.”* The 2023 EU Justice Scoreboard summarizes this way the interconnection between the functioning of justice systems and economic growth. This finding is in line with the fact that *“[t]he legal system and the judiciary that applies and enforces it have a wide-ranging impact on economic behaviour and thereby on the performance of the economy of nations”* (Costello et al., 2021:11).

The inefficiencies of the judicial system result that the system of contract enforcement is weakened, which a.) adversely affects the investment climate due to the increasing risk of unenforceability; the amount of credits lowers, while the rate of interests grows; b.) this in turn results - due to the rising transaction costs, the difficulties of access to credits, the fear from changing already existing and well-functioning commercial relations and the decreasing possibilities of economic expansion - in reduced market competition; c.) which has a significant detrimental effect on the overall functioning of the economy (summarized on the basis of Kapopoulos & Rizos, 2024; Costello et al., 2021:17-19; Dam, 2006).

This relation is the reason why the safeguards of the independence and efficient functioning of the judiciary, institutions promoting an efficient access to justice and other tools supporting the implementation of the right to a fair trial are crucial elements not only in the field of rule of law and human rights but also from the economic perspective and from the point of view of public trust in the legal system. Therefore, the assessment of national justice systems plays a central role at the level of several international monitoring, reporting and consultation mechanisms. This applies both to the mechanisms fostering human rights, rule of law and compliance with international legal obligations as well as to the ones with rather economic focus. The current paper focuses on the question, how a primarily legal question, the analysis of judicial systems appears in the international monitoring of economic and development policies.

## *Background and methodology*

The approach provided in this paper is a specific one. The relevant literature carries out primarily a structured comparison of national justice systems from the perspective of compliance with international standards (e.g. van Dijk, 2021; Steponenaite & Valcke, 2020; Crawford & Maldonado, 2020; Lee, 2011). These analyses also discuss why and how efficiency and organization problems of a particular national system can result in social or economic consequences (Mora-Sanguinetti, 2021; Jin & Amaral-Garcia, 2019; Lorizio & Gurrieri, 2014). Several documents deal with the question how the level of corruption can reduce the trust in the judicial system and thus affect the sound functioning of national economies (Aldieri et al., 2023; Wawrosz, 2022; Soto, 2003). Measuring the economic impact of the independent and efficient functioning of justice systems is also a key research topic (Ramos Maqueda & Chen, 2021; Tsintzos & Plakandaras, 2020; Marciano et al., 2019; Bove & Leandro, 2017; Feld & Voigt, 2003). At the same time, it is rather seldom analyzed, how monitoring and evaluation mechanisms with an economic focus integrate such a fundamental legal issue, like the assessment of justice systems.

The current research addresses this question based on studies and reports at global and regional level, with special regard to the implementation of the World Bank's programs, the findings of OECD economic surveys and the European Semester.<sup>1</sup> The comparative and synthesizing description intends to deepen the understanding about the role of legal (primarily judicial) safeguards from the perspective of international economic processes. Thus, the findings might support the development of synergies between harmonized European and international legal standards, economic policy and the dynamics of international cooperation.

## *Discussion*

Analyzing the question from the global perspective, the World Bank's approach shall be the reference point. The World Bank Group Strategy for Fragility, Conflict, and Violence<sup>2</sup> shows a crucial correlation between state

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<sup>1</sup> Due to space restrictions, the current analysis does not aim to provide a comprehensive description of all economic monitoring and reporting mechanisms; the main specificities of these mechanisms will be presented on the basis of publicly available general descriptions. The paper does not address the question either, whether these mechanisms reflect the reality or influence behaviour and change reality (Alston, 2024, 34). It is rather intended to give an overview on the factors considered by international and European organizations.

<sup>2</sup> The World Bank Group commits itself in this strategy to place special emphasis on six high-priority issues in FCV settings: "(i) investing in human capital; (ii) supporting macroeconomic stability and debt sustainability; (iii) creating jobs and economic opportunities; (iv) building community resilience and preparedness, especially regarding the impacts of climate change and environmental degradation; (v) engaging on justice and the rule of law; and (vi) developing approaches to dealing with the security sector within the WBG's mandate and comparative advantage" (WBG, 2020, x).

of the justice system and the rule of law on the one side and the foundations for peace, elimination of violence and societal conflicts as well as post-conflict reconstruction on the other side. The World Bank's Global Program on Justice and Rule of Law is based on the perception that when striving for social and economic development it is a key to ensure access to services for the poor, to constrain elite capture of public resources, to ensure accessibility of governments, to fight corruption and to prevent violence (and thus to reduce poverty, which is a primary aim of the World Bank Group). At the same time, independent and impartial institutions support the enforcement of contracts, protect property rights, promote fair competition and help SME's development (and thus promote the other primary aim of the World Bank Group, shared prosperity).

The World Bank's activities demonstrate well this dichotomy between the social and economic aspects. The operational work of the World Bank (World Bank Group, 2024) focuses primarily on efficient access to justice for the poor (legal aid, provision of legal information and alternative dispute resolution). Meanwhile, the comparative indicators, primarily the B-Ready project established for benchmarking the business environment and investment climate in most economies worldwide (World Bank Group, 2023), concentrate on the efficiency of judicial systems (including time and cost aspects, reliability, integrity, transparency and digitalization). Although the first B-READY report will be launched only in September 2024, the cornerstones can be derived from the methodology (for further details see: Novitz, 2024). This shows that besides the regulatory framework of business activities in strict sense (business entry requirements, tax administration, insolvency issues etc.), the proper resolution of disputes (either in form of alternative dispute resolution or through a well-accessible, efficient, independent and impartial judiciary) are central elements of the economic analysis.

Thus, the concept of access to justice seems to be the common denominator, the connecting element between the different interests (social, economic and legal). In this context, access to justice goes beyond the individuals' claim to enforce their rights efficiently and independently from their financial-material resources, legal knowledge or other circumstances; it also encompasses a certain quality of justice systems: the access to independent and impartial courts shall be ensured (for further comments, see: Váradi, 2024) to balance the interests of economic actors in the most different situations.

Examining the OECD's approach, the Economic Surveys shall be in the focus. *"The Surveys have evolved since the EDRC's creation in 1961, when they were mostly focused on macroeconomic developments and policies. Now there is a heavy emphasis on structural policies and their interaction with macroeconomic policies. The workings of labour, product and financial markets are regularly examined, together with the role of the public sector. So are policies to address inequalities, including gender inequality, as well as environmental challenges, and particularly climate change"* (OECD, 2024a). This summary confirms that besides the specific regulatory framework of economic activities and policies, up-to-date social concerns

are getting growing attention from economic point of view. Legal issues related to upholding rule of law are also of such nature. *“Strengthening the rule of law is an essential prerequisite for ensuring the effective provision of public goods and services, for promoting economic development, maintaining peace and order, and ensuring accountability in the case of integrity breaches and corruption”* (OECD, 2023a:92).

The recent economic surveys about Hungary and Poland, two countries, where several debates have evolved around the situation of rule of law in general,<sup>3</sup> are striking examples, how the general requirements of rule of law are transformed to the level of specific economic outlooks. In case of Hungary, the Survey deals extensively with the blocking of EU funds due to concerns about the rule of law in Hungary. This topic is mentioned together with the respective OECD recommendation to strengthen public integrity in conflict of interest, lobbying, rules of conduct, parliamentarians’ asset declarations, and independence and transparency of the judicial system. This is the point, where the judicial reforms get connected - through the concepts of public integrity and rule of law - with the efforts made to tackle often-mentioned deficiencies of the anti-corruption framework (OECD, 2024b), thus broadening the scope of issues related to the judicial system that are covered by economic analyses. The concerns around the structure and organization of the judiciary in Poland (which have lead to the procedure under Article 7 (1) TEU against the country) appear in the Economic Survey also as a relevant factor (OECD, 2023b). Due to existing concerns about “double standards” (for more details about this phenomenon, see: Grabowska-Moroz, 2022) between “new” and “well-established/old” democracies,<sup>4</sup> it is also relevant whether topical issues related to the functioning of the justice system appear in a rather systematic, consistent way in the review of different countries. Such questions (together with questions of public integrity and public trust in institutions in connection with the anti-corruption framework) have been addressed - to various degrees of detail - e.g. in the economic surveys of Spain (OECD, 2021a; OECD, 2023c); Germany (OECD, 2023d); Belgium (OECD, 2022) and France (2021b). However, while anti-corruption measures are evaluated in all these surveys, concerns around the efficiency of the judiciary are less characteristic and issues related to the

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<sup>3</sup> For a general summary about these concerns: European Parliament, 2024; European Commission, 2023a; European Commission, 2023b; European Parliament, 2022; European Commission, 2017; in more theoretical context, see e.g.: von Bogdandy, A. et al., 2021; Kawczyńska, 2021; Gárdos-Orosz, 2021.

<sup>4</sup> Basis of the distinction between “new” and “old” democracies is a terminology used among others by the Venice Commission: “[i]n some older democracies, systems exist in which the executive power has a strong influence on judicial appointments. Such systems may work well in practice and allow for an independent judiciary because the executive is restrained by legal culture and traditions, which have grown over a long time. 6. New democracies, however, did not yet have a chance to develop these traditions, which can prevent abuse. Therefore, at least in new democracies explicit constitutional provisions are needed as a safeguard to prevent political abuse by other state powers in the appointment of judges.” Venice Commission, 2007, paras 5-6. Similarly: Venice Commission, 2010, para 31.

independence of the judiciary seem to appear only in those cases, where other fora (typically the European Commission or the Council of Europe's Group of States against Corruption, GRECO) expressly deal with them in their activities as well.

Thus, in case of OECD economic surveys, the evaluation of legal aspects relevant from the economic point of view, covers a broader scope of issues than just the laws governing business activities. From the wide concept of rule of law, those elements appear in these analyses where a direct link to the state of the economy can be detected: mainly the efficiency of the justice system (primarily the length and costs of court proceedings as well as the resources of the judiciary) and systemic concerns around the independence of the judiciary. In this framework, the concept of democratic resilience is the key concept for the assessment of the judicial system, based on the perception that democratic strengths, public trust arising from public integrity as well as efficient, reliable and transparent institutions are crucial to promote economic resilience and wellbeing.

The European Semester<sup>5</sup> demonstrates a similar approach, where the data of the EU Justice Scoreboard and the findings of the Rule of Law Report of the European Commission form the basis of the assessment on the judicial system. While the country reports of France (European Commission, 2023d:58), Germany (European Commission, 2023c:61) and Belgium (European Commission, 2023e:52) address the issues related to the efficiency of the justice system (primarily resources of the judiciary, level of digitalization and length of proceedings), they state - referring to the Rule of Law Report - that no systemic deficiencies have been reported on judicial independence. The same approach applies to Spain, with the difference that the concerns arising from the prolonged non-renewal of the Council of the Judiciary (European Commission, 2023f:14, 60) are mentioned in the context of reasons for certain backlogs in the judiciary (but not as issues related to judicial independence or systemic deficiencies). On the other hand, however, the country report on Hungary deals extensively with the concerns of judicial independence based on the outcome of several rule of law related EU level mechanisms. As compared to the country reports on the other EU Member States mentioned, the assessment on Hungary contains a detailed description of anti-corruption measures as well (European Commission, 2023g). Similar findings can be derived from the country report on Poland (European Commission, 2023h). The focus on the efficiency of the justice system together with the strong interconnection between the different assessments at EU level, shows that

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<sup>5</sup> "The European Semester ensures that Member States discuss their economic, social and budgetary plans with their EU partners at specific times in the first half of the year – hence the term Semester – so that national action can be accordingly taken in the second part of the year, notably with the adoption of the budgets for the subsequent year. This early interaction allows them to comment on each other's plans and monitor progress collectively. It also allows them to take better account of common challenges." [https://commission.europa.eu/business-economy-euro/economic-and-fiscal-policy-coordination/european-semester/framework/european-semester-explained\\_en](https://commission.europa.eu/business-economy-euro/economic-and-fiscal-policy-coordination/european-semester/framework/european-semester-explained_en)

in case of this economic assessment the judicial system is evaluated from the context of European values, primarily the rule of law.

## *Conclusions*

This first cautious analysis has demonstrated that the evaluation of judicial systems is a core element of international reporting and monitoring mechanisms about economic and development policies. There seems to be a strong connection with the basic principles, aims of the evaluator when deciding the focus and context of this assessment. In case of the programs carried out by the World Bank this is social equality, the balance between shared prosperity and reduction of poverty. At the level of OECD evaluations, the striving for economic resilience and wellbeing defines the approach towards the assessment of judicial systems. At EU level, there is a strong interconnection between the evaluation of judicial systems in economic monitoring processes and the basic European values, primarily rule of law.

Even though in economic assessments general rule of law related findings and concerns play a more and more intensive role, mainly their evaluation is limited to those cases, where they seem to have a direct influence on economic policies, decisions of business actors and public trust in economic processes. From the point of view of economic policies, the key aspect of a well-functioning justice system is that business actors have meaningful access to efficient, independent and reliable dispute resolution mechanisms. The consistent identification and evaluation of all these cornerstones can support a more systematic approach towards the synergies between economic interests, social tendencies and legal standards in the analysis of justice systems from the aspect of economic and development policies.

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