

# Transforming Judicial Systems in Europe and Central Asia

James H. Anderson and Cheryl W. Gray\*  
Paper for ABCDE Conference,  
January 2006  
St. Petersburg, Russia

The judicial systems in the transition countries of central and eastern Europe and the Balkans and the former Soviet Union are under heightened scrutiny these days, 15 years after transition began. In central and eastern Europe, the European Union is exerting strong pressure on new members and candidate countries to root out corruption and improve the functioning of their judiciaries. Further east, judicial systems in Russia and other countries in the former Soviet Union have been increasingly in the spotlight due to high-profile roles in controversial cases, such as the Yukos case in Russia and the dispute surrounding the Presidential elections in Ukraine. As economic reforms mature and these countries become increasingly inter-connected with the outside world, the need for good governance and the constraints imposed by weak judicial systems are rising in visibility and importance.<sup>1</sup>

A recent World Bank report, *Judicial Systems in Transition Economies: Assessing the Past, Looking to the Future* (Anderson, Bernstein, and Gray 2005, hereinafter *Judicial Systems in Transition Economies*), reviewed the transition countries' experience with judicial reform since 1990 and drew on numerous data sources to compile a snapshot of the state of their judiciaries in the first few years of the 21<sup>st</sup> century. This paper updates that report by incorporating the findings of a large survey of enterprises throughout the region undertaken in

---

\* The authors would like to thank David Bernstein for detailed comments and country examples and Laura Lanteri for helpful assistance with data analysis.

<sup>1</sup> For a discussion of the role of legal and other institutions in economic development, see Douglas North (1990); Pranab Bardhan (1997); Oliver Williamson (1985); World Bank (1996, 2002, 2004). For a collection of empirical essays on the use of law, see Peter Murrell (2001).

spring 2005, the 3d *EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS – see Annex 1 for details)*), and going into further detail on the judicial reform programs currently underway in transition countries. This paper addresses three broad questions:

- What kinds of judicial reforms are needed for successful transition from socialism to market-based economies, and in what sequence are they likely to occur?
- How much progress has been made in this transition, both by individual countries and by sub-region, and what factors may explain the extent of progress to date?
- How do firms' evaluations of judicial systems in transition countries, and by implication the priorities and challenges that these systems face, compare with those in more advanced countries? To what extent do transition countries share common concerns and priorities with countries in Western Europe?

### **From Plan to Market: Judicial Systems and the Sequencing of Reforms**

When looking from the vantage point of 1990, the magnitude of the changes needed to adapt the judicial systems of transition countries to the needs of a market economy seems daunting. While on their face they had many of the elements of Western judicial systems – courts, judges, lawyers, prosecutors, bailiffs, etc., the roles, capacities, and expectations of each set of actors were fundamentally different. The entire purpose of the legal system under communism was to enforce the interests of the working class, as represented by the communist party. Courts and judges were part of the executive branch and fully subordinated to the political leadership of the communist party. There was no idea of limited government, checks and balances, or individual or corporate rights vis-à-vis the state. Laws in the commercial sphere

dealt primarily with relationships between administrative agencies and the regulation of production by state-owned entities to meet centrally-coordinated output targets. Most commercial disputes were handled through state-sponsored arbitration, while formal courts and judges handled criminal and civil matters (e.g. family law and minor personal property issues). The position of judge was not particularly prestigious and was often staffed on a part-time basis. Courthouses were drab and unwelcoming, designed for an inquisitorial system of criminal prosecution where the defendant was almost always found guilty.

Far-reaching changes would clearly be needed in the transition from socialism to capitalism. The existing legal framework – constitutions as well as civil, criminal, and commercial legislation -- would need to be re-written to recognize and respect individual rights and limitations on state power, and the public would need to be educated about their new rights and how to enforce them. Judiciaries would need to be made independent of the executive branch to enable them to safeguard these rights and limitations. Many new laws -- from property to evidence to banking to securities to bankruptcy laws -- would need to be drafted and put in force to meet the needs of a private market economy, and the number of qualified judges and their training and knowledge base would need to be significantly expanded in order to understand and enforce these laws. Existing courthouses, often in dilapidated condition, would need to be renovated to improve public access and serve new due process requirements, and many new ones would need to be built to meet the rapidly expanding demand for dispute resolution. Finally, in the absence of heretofore strong executive control, new mechanisms would be needed to ensure capacity, accountability and professionalism not only of judges but also of the many related professions – such as lawyers, bailiffs, notaries, trustees, and court clerks -- that make a judicial system work.

*Judicial Systems in Transition Economies* describes the path of legal and judicial reform and the progress made in the 1990s. It documents how changes in the legal framework (“legal extensiveness”) went much faster than institutional reforms (“legal effectiveness”), and how, among institutional reforms, establishing independence took precedence over building capacity or ensuring accountability.<sup>2</sup> Overall, judicial reform tended to take a back seat to fundamental political and economic reforms, which was arguably understandable given the pressures of declining output, rising inflation, and the scramble by some to appropriate state property – whether through state-sponsored programs of privatization or less legitimate means -- that arose immediately after the collapse of communism.

There is some logic to this sequencing. Institutions do not change in a vacuum, but rather they change in response to pressure from within or without. Privatization of state assets, the creation of property rights and a private business class, and the increase in foreign trade and foreign investment that resulted from economic liberalization has led to an increasing demand for more objective dispute resolution mechanisms and better-functioning regulatory and judicial systems in many transition economies. Many countries are seeing a flood of new cases entering their judicial systems as a result of liberalization. In Russia, for example, the total number of cases filed with the commercial courts nearly doubled between 1995 and 2000, with tax and bankruptcy cases rising particularly quickly. In Ukraine some 6 million new cases enter the courts each year, to be handled by about 6500 judges. Increasing demand has spurred training and investment in judicial systems that have slowly increased their capacity, as well as broader economic growth that helps to increase the resources available to the legal system as a whole.

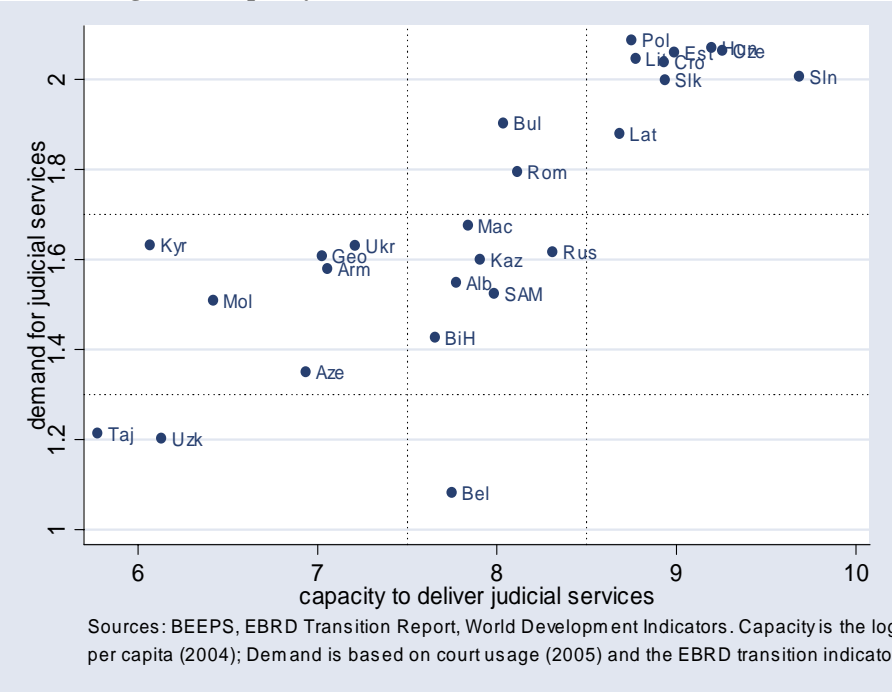
Figure 1 places countries on a continuum along two dimensions: the demand for judicial

---

<sup>2</sup> Measures of legal extensiveness and legal effectiveness were constructed based on responses to the EBRD Legal Indicator Survey, available at <http://www.ebrd.com/country/sector/law/about/assess/main.htm>.

services (dependent in part on the extent of economic reform) and the capacity of the country’s legal system to deliver judicial services (approximated by a country’s per capita GDP).<sup>3</sup> For those countries in the bottom left corner, the priorities should be to build basic demand for impartial dispute resolution through continued market reforms and to take initial steps to create or reinforce the independence and accountability of the judiciary. As countries move toward the upper right, the demand for more extensive and far-ranging judicial reform strengthens and there is a greater likelihood that efforts at reform will succeed. Three clear examples now are Romania, Bulgaria, and Macedonia, where the demands for reform – both internally from the business community and externally from the European Union – are very strong and the likelihood of improvement high.

**Figure 1. Capacity and Demand for Judicial Services, 2005**



<sup>3</sup> The proxy used to measure demand is the average of (1) the percentage of firms that have used the courts and (2) the mean EBRD transition indicator for 2005. The proxy used for judicial capacity is the log of gross domestic product (GDP) per capita, based on the view that greater resource availability translates into stronger capacity. The dotted lines are clearly arbitrary and are used for illustrative purposes only.

## **Progress in Building Judicial Systems: 1990-2005**

The first five or so years of transition, until the mid-1990s, saw little real change in the judiciaries in transition countries. As noted above, other priorities – most notably economic liberalization, privatization, and stabilization -- took center-stage, and little attention and few resources were devoted to longer-term institution-building. The efforts that were made during this early period focused on constitutional change to lock-in political reforms and judicial independence (as described further below) as well as the rapid preparation and adoption of commercial legislation. By the late 1990s, it became increasingly clear that weak capacity in the legal and judicial system was impeding investment and growth and contributing to corruption and poor governance. Citizen feedback mechanisms highlighted a growing distrust of legal institutions (Rose and Haerpfer 1994, 1996, 1998), and inability to implement or enforce new legislation led donors to focus more on the need for resources and capacity-building (Anderson, Bernstein, and Gray 2005). In many countries in the region, strong and concerted efforts at change began in earnest only at the close of the decade. In some -- primarily the countries that are also less advanced in economic and political reforms – those efforts are only just beginning or, in a few, have not yet begun. Progress along various dimensions of judicial reform and capacity-building is outlined below.

### *Judicial Independence and Accountability*

Independence of the judiciary is fundamental to a democratic political system and a free market economy, and most former socialist countries began their judicial reform efforts by moving to make their judiciaries independent from the executive branch of government. They were often assisted by foreign donors and democracy-promoting NGOs, who also focused

primarily on judicial independence (rather than judicial capacity-building) in the early years. New constitutions enshrined the principle of judicial independence, and new institutions – typically some type of judge-controlled judicial council for overall governance and a related judicial department for day-to-day court administration – were set up to oversee the selection and oversight of judges (often in conjunction with Parliaments and Minister of Justice) and the day-to-day management of the courts. The process of establishing judicial independence was closely intertwined with the deepening of democratic processes in the overall political system; in general, the more democratic the political system, the more independent the judiciary has become. Judiciaries are now legally independent in virtually all European transition countries and are moving strongly in that direction in many CIS countries (with the exception of the few regimes where democracy has not yet taken hold). Indeed, judiciaries zealously promote and guard their independence, and there are often tense relationships between them and Ministries of Justice.

The principle issue at present in most transition countries is not ensuring greater judicial independence, which all parties – judiciaries, Ministries of Justice, and government leaders alike – typically support. The most pressing issue is ensuring judicial accountability given newfound independence. As judiciaries have gained independence, their ability to ensure accountability has not kept pace. Most observers think that judicial corruption has increased during the 1990s along with the increased role and discretion of judges in the market economy. The paradox is that judicial independence is necessary for true economic and political reform, but lack of judicial accountability is a major obstacle to economic development. Reform-minded Ministers of Justice want to push for greater accountability, but independence has taken away most of their

levers of influence. Some Chief Justices are also pushing for greater accountability but face an uphill struggle to change entrenched and dysfunctional norms and practices.

Evidence from the recent 2005 BEEPS survey throws light on this issue. Firms asked about honesty in the judiciary reported improvements in some countries from 2002 but deterioration in others (Figure 2).<sup>4</sup> It is particularly striking how poorly most countries fare. The only transition country where a majority of firms saw courts as honest in mid-2005 was Estonia. Perceptions of honesty improved in a number of countries – one of the most notable being Georgia<sup>5</sup>, where a strongly reformist government is trying hard to tackle corruption – but worsened in Hungary, Uzbekistan, Serbia and Montenegro, Macedonia, Bosnia-Herzegovina, and Moldova. On average about one-third of business managers viewed courts as honest, and even fewer in some of the new EU members such as the Czech Republic, Lithuania, Poland, and Slovakia. Overall the change from 2002 to 2005 in the region as a whole was not substantial, and as of now there is little evidence that judicial corruption has been tackled successfully in most transition economies.

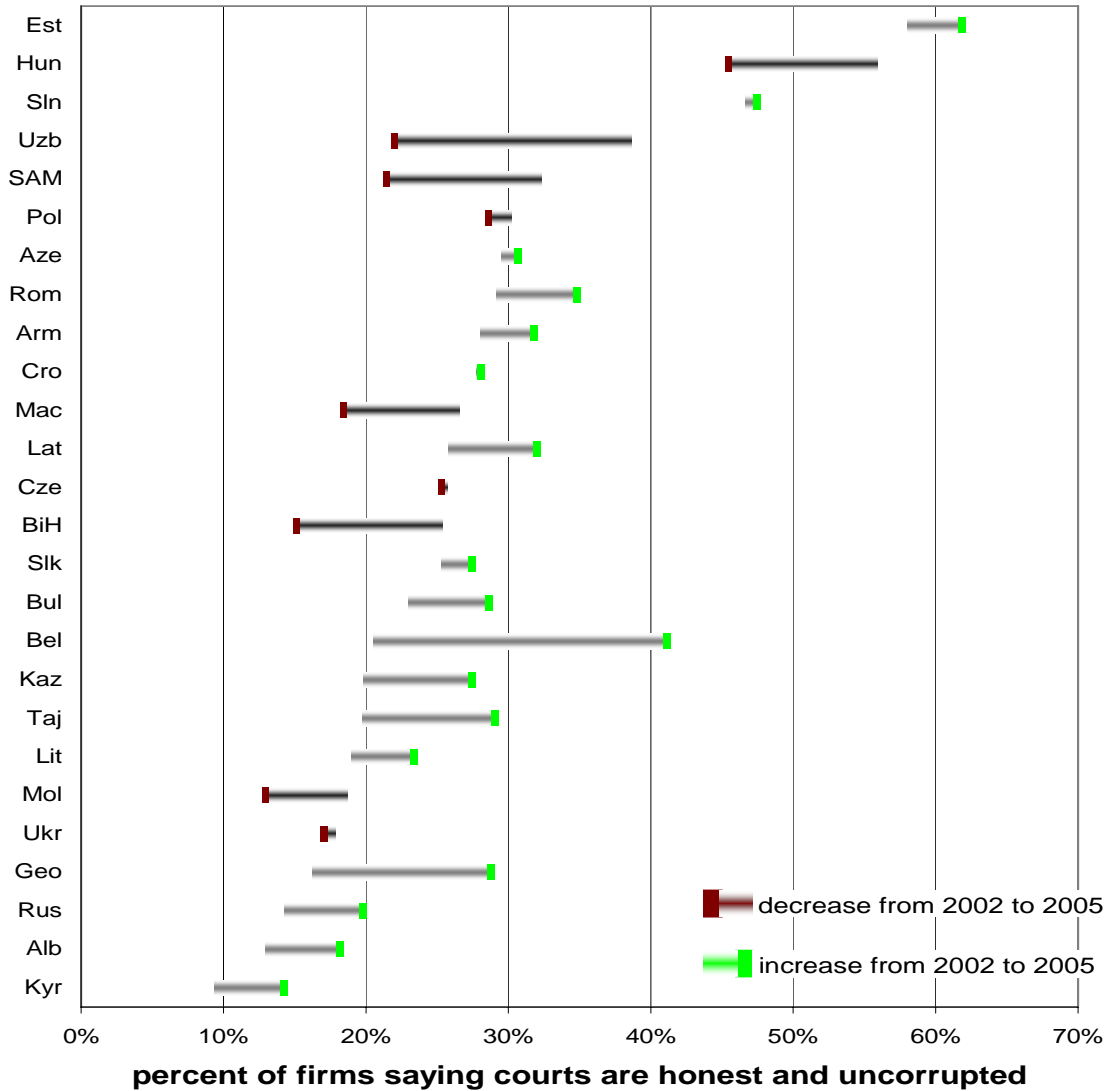
---

<sup>4</sup> Many of the figures in this paper refer to changes in indicators between the BEEPS rounds in 2002 and 2005. For country-specific analysis of the changes from 1999 to 2002, see Anderson, Bernstein, and Gray 2005. All charts in this paper depict simple averages of non-missing observations. As described in the annex, sampling, survey administration, and questions were identical in the 2002 and 2005 surveys, allowing inferences about changes over time. The BEEPS also includes a small longitudinal component for which the exact same firms were surveyed in both years. Most of the patterns evident in Figure 2 also hold for the longitudinal sample, although the latter allows additional insight into the variability of experiences. For example, half of the firms in the longitudinal sample in SAM gave worse assessments of the honesty of court in 2005 than they had three years earlier, while 35 percent gave better scores.

<sup>5</sup> While the findings for Georgia are positive, it should be noted that they come in the context of generalized improvements with regard to corruption in the country. Indeed, firm's assessments of corruption in other sectors improved even more. The recently released Transparency International (TI) Global Corruption Barometer 2005 suggests that citizens' assessments are similar. Although perceptions of corruption in the judiciary have not changed much in the TI survey compared to one year ago, perceptions of corruption in other areas (police, tax, and customs) have improved markedly, shifting the judiciary to the top of the list in terms of citizens' perceptions of corruption.



**Figure 2. Firms' Assessments of Courts as Honest and Uncorrupted**



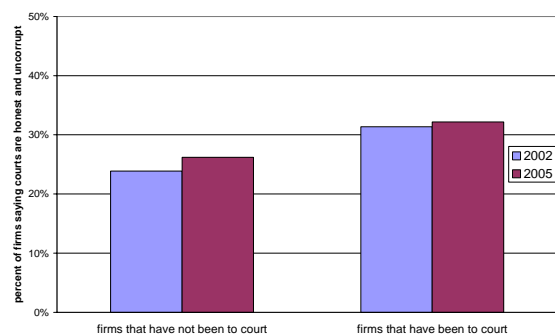
Note: The chart shows the percent of firms indicating the courts were frequently, usually, or always "honest and uncorrupted" (4, 5, or 6 on a six-point scale). The sample includes all firms with non-missing data. Source: BEEPS 2002, BEEPS 2005.

It is interesting to compare perceptions of firms in the BEEPS sample who have been to court and those who have not, as these two groups often have different perspectives. Studies in the U.S. state of Wisconsin, for example, found that the general public has a different and often more pessimistic view of the courts than recent court users (Kritzer and Voelker 1998).

Similarly, firms in the BEEPS sample that have actually used courts provided somewhat better

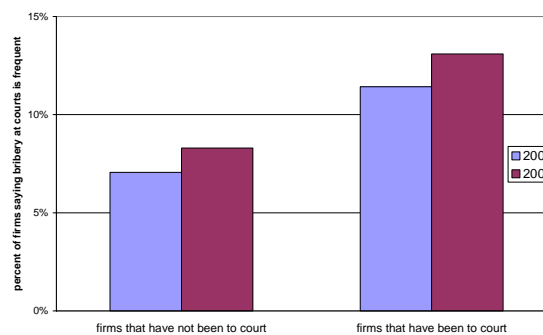
assessments of honesty than those that have not, although the assessments of the former group have not changed significantly over the past three years while assessment of the latter have improved (Figure 3). However, firms who had actually been to court reported that unofficial payments are more frequent at courts than did firms that have not used the courts (Figure 4).<sup>6</sup> These two findings appear contradictory, in that one would typically equate higher levels of bribery with lower perceptions of honesty. One possible explanation is that some of the bribes might be paid to court functionaries to speed up the judicial process and may not be perceived as undermining the honesty of the judges themselves. Moreover, the patterns evident in Figures 3 and 4 are regional patterns. For some individual countries, firms that use courts provide better assessments of the extent of bribery (Hungary and Poland), and for others firms that use courts provide worse assessments of honesty (SAM). Trends may also be somewhat contradictory. While the overall assessment of the honesty of courts in the Slovak Republic improved only slightly (Figure 2), the assessments of firms that had actually used the courts improved considerably.

**Figure 3. Assessments of Honesty in Courts**



Note: The chart shows the percent of firms indicating the courts were frequently, usually, or always "honest and uncorrupt" (4, 5, or 6 on a six-point scale). The sample includes all firms with non-missing data. Each country was given an equal weight. Source: BEEPS 2002, BEEPS 2005.

**Figure 4. Frequency of Bribery at Courts**



Note: The chart shows the percent of firms indicating that firms frequently, usually, or always use unofficial payments when dealing with courts (4, 5, or 6 on a six-point scale). The sample includes all firms with non-missing data. Each country was given an equal weight. Source: BEEPS 2002, BEEPS 2005.

<sup>6</sup> For both of these figures, the change between 2002 and 2005 is significant for firms that have not used courts, but not for those that have. All of the differences between court users and non-users in Figures 3 and 4 are significant at the 1% level.

What would it take to establish true accountability in the judiciary? A myriad of individual steps are needed, including (i) ensuring *merit-based systems* for judicial appointment, promotion, and disciplinary proceedings, as well as adequate judicial salaries, (ii) promoting *transparency* in all judicial proceedings through open access to court hearings by the public the media and through publication of judicial decisions, and (iii) *prosecution* of some high-profile corruption cases, whether in the judiciary or in government more broadly. Only through the “carrot” of professional stature and remuneration and the “stick” of potential punishment for wrongdoing -- together with the incentives and self-enforcement mechanisms that arise from transparency – can corruption be successfully tackled in the judiciary or any other branch of the public sector.

Judiciaries and governments are aware of the dismal stigma of corruption, and significant steps are being taken to address it in many countries. In Romania and Russia, for example, judicial salaries have been raised substantially to a level that compares reasonably to average private sector salaries.<sup>7</sup> This move has raised the status of the profession, its “value” to incumbents, and its attractiveness to potential candidates. The process of judicial selection is also being tightened. Georgia, for example, was one of the first countries to introduce examinations for judges, and other transition countries have followed suit. While the examination process itself is not without difficulties,<sup>8</sup> it is a step in the right direction compared to selection processes of old. As a complement to merit-based selection of judges, Slovakia has put major efforts into strengthening government’s capacity to prosecute cases of judicial corruption, including setting up a special court and prosecution office to deal with cases of corruption and organized crime.

---

<sup>7</sup> In Russia the level of salaries is not differentiated across localities, and thus it is still considered to be too low in Moscow and St. Petersburg, where the cost of living is much higher than in surrounding regions.

<sup>8</sup> In some countries the examinations are still oral and thus thought by some observers to be open to manipulation.

## *Public Information and Transparency*

Transition countries are taking important steps to teach citizens about their rights and to increase the transparency of the legal system. In Armenia, for example, a television show called “My Rights”, in which a government official plays the role of a judge hearing cases, has become the most popular show on television and is now in its second year of production. Much to his surprise, the government official, formerly a Deputy Minister of Justice, has become a national star and was recently appointed as a judge. In Russia, the government set up a network of “Legal Information Centers” in public libraries and other locations in the late 1990s, where the public can access information on laws and the justice system. In Croatia (and many other transition countries), the courts are adopting an automated case management system that will not only improve efficiency but also produce better statistical data to monitor performance. Countries’ judiciaries and Ministries of Justice throughout the region are establishing websites to publicize laws, judicial calendars, and decisions in individual cases.

As with other areas of reform, there is still a long way to go, and public information and transparency remains an area fraught with resistance. Judiciaries were not at all open and transparent in Soviet times, and there remains a concern for confidentiality that clouds many judges’ views of the issue (and may serve to protect more corrupt or less competent judges). In speaking with judicial leaders in the region, one often hears the view that case decisions should not or need not be made public, either because litigants’ privacy needs to be protected or because the public “would not be interested” in most routine decisions. It is also true that even in Western Europe, not all decisions of lower level courts are necessarily published.<sup>9</sup> While privacy rights are a concern, however, problems of accountability and corruption are serious

---

<sup>9</sup> This reflects in part the fact that cases are not “law” in civil law systems but are merely applications of law. All court decisions are published in common law systems in part because these decisions take the status of law and are binding as precedent.

enough in transition economies to justify strong measures to promote transparency. Most privacy concerns can be handled through special rules, such as the use of generic names, e.g. “John Doe”, in lieu of actual names.

### *Judicial Infrastructure and Management*

Enormous infrastructure needs faced the courts in the transition economies in the 1990s. Court-houses were typically run-down and dreary places (particularly in locations outside of capital cities), a legacy of the relatively low status and minor role of communist judiciaries. They often shared space in a building with other government agencies or even private businesses or apartments. Court rooms were small and limited in number. As the number of cases rose with the expansion of market economies in the 1990s, it became increasingly difficult to find premises to hold trials and to accommodate the increasing number of citizens who wanted to observe them. Without sufficient trial space, litigants and judges were sometimes forced to meet in closed offices, raising further suspicions of impropriety. Furthermore, the trial venues that did exist were not well-outfitted. They did not give the public a sense of confidence in the independence and impartiality of the system. They often did not have space to accommodate juries where needed<sup>10</sup> or to allow defendants to confront accusers or cross-examine witnesses. Indeed, criminal defendants often sat in cages in the middle of the court rooms, as in communist times – hardly a reflection of the concept of “innocent until proven guilty”.

The equipment needed to run courts efficiently was also lacking. Few judges had access to computers, and few of the computers that did exist had access to the internet. Paper-based case files were bulky, difficult to manage, and easy to “lose” or tamper with. Courts in far-off locations had difficulty keeping up-to-date on recent legislation or changes in judicial policy.

---

<sup>10</sup> Juries are not a common element of civil law criminal systems but have been adopted in some countries, including Russia.

Months could sometimes go by after Parliamentary adoption of new legislation before all judges were aware of the changes. For example, until recently, when the Official Gazette was put on the internet, Albanian judges had limited or no access to new laws due to a lack of funds needed to provide each judge with a copy of the Gazette. Armenian judges continue to face this problem, though the expected release of the Armenian Legal Information System, which will contain all Armenian legislation in a database accessible and searchable from the internet, should improve the situation.

Economic downturns in the 1990s contributed to these problems by severely limiting the resources available to judiciaries or Ministries of Justice to update their facilities. Few international donors focused on judicial capacity-building, and in any case most donors were not allowed to fund building construction or renovation. Yet without access to resources, how could such ill-equipped judiciaries hope to meet the rising demand for their services?

Fortunately this situation is now changing. The economic upturns since 2000 have provided more resources to government budgets, and some of those resources are going to judicial systems (both for infrastructure and for increases in judicial salaries, as noted above). The World Bank and other donors are providing substantial funding to upgrade existing courthouses and IT infrastructure,<sup>11</sup> supplementing substantial renovation programs financed by government budgets. Courts are increasingly installing computer equipment, modern case management software, and procedures and support staff to enhance court management. They are connecting district and higher-level courts together through wide-area networks and developing websites for information sharing (as noted above). In Russia, for example, almost all courts now

---

<sup>11</sup> Recent World Bank loans in Albania, Armenia, Croatia, Georgia, and Romania, and loans under preparation in Azerbaijan, Macedonia, Russia and Ukraine devote a share of their resources to upgrading court houses and/or providing computers, case management software, and sound recording or other equipment (always accompanied by resources to enhance capacity, accountability, and transparency in other ways as well).

have computers, and a new federally-funded program will help to support full connectivity among all of the courts in each of the two court systems (the commercial, or “Arbitrazh”, courts and the courts of general jurisdiction). The needs in Europe and Central Asia are enormous, however, and there is still a long way to go to equip these judicial systems with adequate infrastructure and IT systems to serve the public efficiently and effectively.

### *Judicial Education and Training*

Judicial reforms would be incomplete without also addressing judicial education and training. Not only were communist-era judges ill-prepared for the kinds of cases that arise in a market economy, but the sheer volume of cases has expanded dramatically, meaning that both more well-trained judges and more efficient ways of handling the case load are needed.

With regard to basic legal education, the demand for places in law schools has expanded tremendously. Many new private law schools have opened to serve this demand, although quality varies widely. The best law graduates typically seek lucrative positions in private law firms or international companies, but recent increases in judicial salaries in many transition countries have made the judicial profession more attractive than it was in the 1990s.<sup>12</sup>

Unfortunately, endemic corruption can be a major problem in higher education, as in other areas in transition economies. Some countries – such as Albania and Georgia – have responded to this concern by instituting new written entrance examinations to allocate university positions. This does not always make the problem disappear. The 2005 round of testing for entrance to the Tirana law school was itself marred by corruption, as it was discovered by the authorities that the answers had been sold in advance. On the positive side, however, the corruption was detected and announced nation-wide, and the exams were re-administered in full.

---

<sup>12</sup> In civil law systems, a judicial career is typically chosen right out of law school and normally begins with a few years of internship. In common law systems, in contrast, lawyers typically enter judicial positions mid-career, after decades of law practice in the private sector or in government.

Most transition countries are expanding their judicial training programs for new and in-situ judges. Judicial academies are being equipped and expanded, often with donor support, and several international groups are also sponsoring independent multi-country judicial training. New opportunities are arising for e-training programs, taking advantage of the increasing computer networking described above. Given the enormous changes in laws and judicial norms, however, the need for effective and timely judicial training typically far outpaces its availability. While more advanced in some new EU members, judicial training systems are still in relative infancy in most transition countries, particularly in southeastern Europe and the CIS.

*Supporting Professions: Lawyers, Notaries, and Bailiffs*

Judges do not operate in a vacuum, and judicial systems cannot be effective unless the many supporting professions – including attorneys and bailiffs, among others – also function effectively. Yet all of these professions were in the same position as the judiciaries at the start of the 1990s – that is, either non-existent or totally ill-prepared for the needs of a market economy.

Of these supporting professions, private attorneys have arguably developed the furthest, thanks to strong market incentives and significant investments from abroad. Most transition economies have a large and growing number of law firms, both domestic and foreign, with significant competition among them. Quality is not always assured, however, and prices can be high (in part because bar associations have, as elsewhere, sometimes functioned more as cartels than quality-assurers), but overall the profession has grown rapidly in most transition countries.

The notary profession – also populated by private attorneys – has similarly flourished in some settings, albeit with mixed economic impact.<sup>13</sup> In some cases the mix of complex legislation and the heavy regulatory role of notaries have added to the duration of judicial

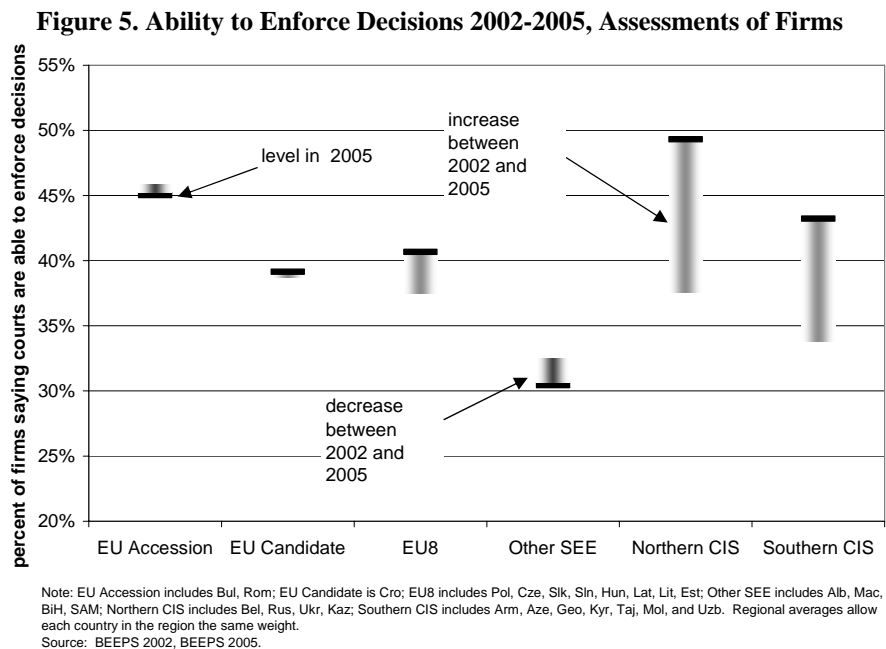
---

<sup>13</sup> Many economists question the highly-regulated and interventionist role of notaries in some European settings such as Germany, and some transition economies (such as Russia) are moving to reduce this role.



proceedings, although in other countries the notary process offers a way to circumvent court proceedings altogether. In Poland, for example, parties can proceed directly to execution of a judgment if certain documents are notarized (World Bank 2006).

The role of bailiffs is to enforce judicial decisions, and this is a particularly problematic area in transition economies. As can be seen in Figure 5, only about 40 percent of firms surveyed in the BEEPS believed that courts could enforce judicial decisions. Interestingly, the problem seems to be worse in the new EU members than in the former Soviet Union (and worst of all in southeastern Europe), a pattern that could be partially explained by the much larger demand for courts and number of judgments to be enforced in the higher-income transition countries.



Regulating bailiffs appropriately involves combining incentives for vigorous collection with supervision to be sure that even the smallest case receives attention. Some countries have moved toward private incentives for bailiffs, but not always with a governance framework to

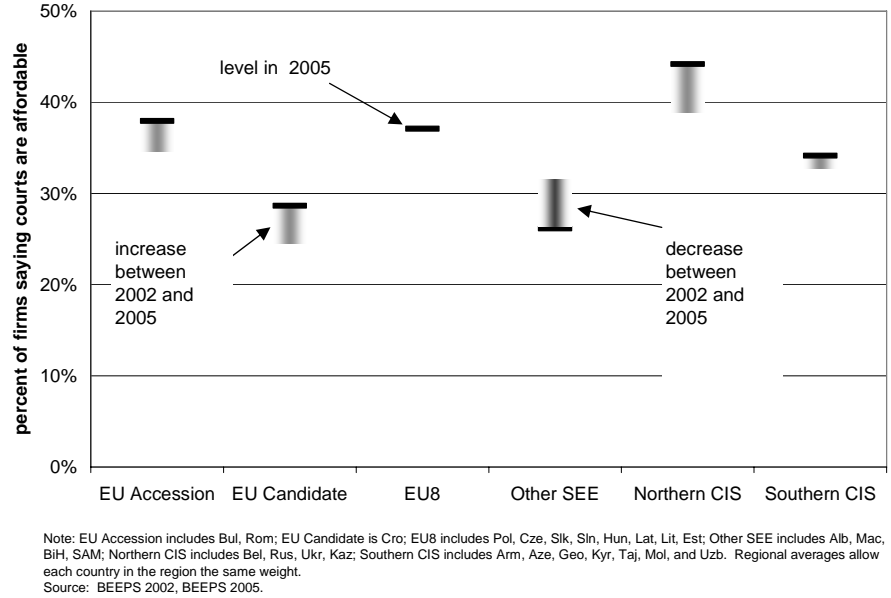
ensure accountability. Russia recently adopted new legislation for bailiffs in the late 1990s, giving notaries the right to a 5% incentive payment when enforcing judgments. The general view, however, is that this has not been well-implemented in practice and that judgments in Russia are still very difficult to enforce. Macedonia has decided to follow an emerging trend in Western Europe by creating a private profession of enforcement agents or bailiffs. The bailiffs will be licensed and regulated by the Ministry of Justice but will be a private profession working in the market to enforce judicial decisions. Poland continues to have a mixed system. Bailiffs are court officials, with rights and immunities commensurate with public office and with the number of bailiffs fixed by law. In all other respects, however, they operate no differently than private business, funded entirely by a fixed 15% percent of successful collections and hiring staff and outfitting their offices from these proceeds exactly as a private firm would (World Bank 2006).

#### *Access to Justice*

Finally, there has been insufficient progress in promoting access to justice in transition countries. The high cost of both lawyers and notaries are no doubt a significant reason why judicial proceedings are considered by many firms – most notably, again, firms in southeastern Europe – to be unaffordable (Figure 6). Providing legal aid services is beyond the reach of many public budgets and has not been given significant emphasis by most transition governments. The former socialist countries in Europe tend to be quite legalistic; indeed, in the 1980s Yugoslavia had more lawyers per capita than any other country in the world. Unlike Asia, Latin America, or Africa, for example, they do not have widely-accepted systems of indigenous “customary” legal processes that the poor can turn to for the resolution of disputes, nor are they particularly enthusiastic about alternative methods of dispute resolution such as formal mediation

and arbitration. Thus access to justice for the broad swath of the population is likely to grow only slowly, as the economies and the judicial systems continue to grow and develop.

**Figure 6. Affordability of Courts 2002-2005, Assessments of Firms**



### Is There a Standard? Comparisons with Selected Non-Transition Countries

Most transition countries in the Europe and Central Asia region – including new EU members, actual or potential EU candidate countries in southeastern Europe, EU “neighbors” such as Ukraine and the south Caucasus, and countries further east – look towards higher-income west European countries as models for the future. They envision societies based on respect for rule of law and well-functioning judicial systems yet believe there is still a long way to go for them to “catch up” with the West. Yet efficiency, honesty, and affordability are still challenges for judicial systems in western Europe, as well.

For the first time in 2004 and 2005, the BEEPS survey was also conducted in a number of non-transition European countries, including Ireland, Germany (East and West), Greece,

Portugal, and Spain.<sup>14</sup> While this sample of countries is not necessarily representative of all non-transition countries in Europe, comparisons between these two groups of countries is illuminating. Figures 7-10 show comparisons of the evaluations of courts by firms along 4 dimensions – honesty, quickness, ability to enforce decisions, and affordability -- in the 6 non-transition European countries covered by BEEPS and in the transition countries.<sup>15</sup>

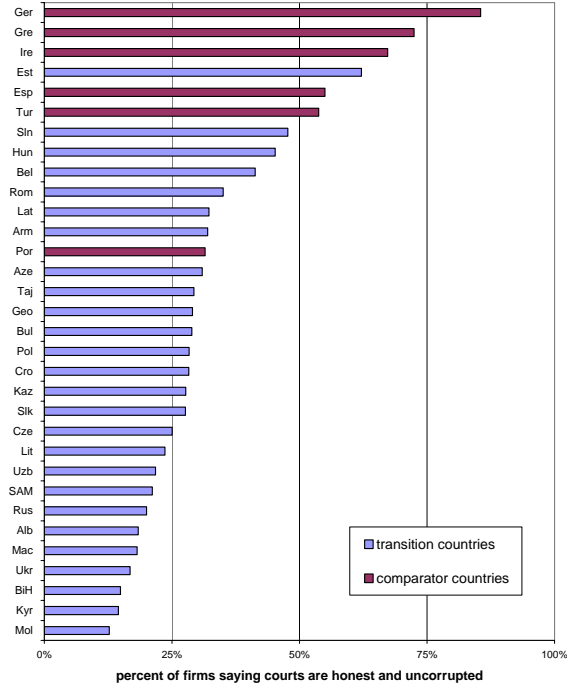
The most notable differences between transition countries and Western European countries are in perceptions of honesty and fairness. Germany scores much higher than any other country on honesty (Figure 7), followed in order by Greece, Ireland, Estonia (the highest scoring transition country), Spain, and Turkey. In all other countries fewer than 50 percent of firms viewed courts as honest, with Portugal scoring below a number of transition countries.

---

<sup>14</sup> Korea and Vietnam were also surveyed but are not discussed in this paper. Germany, Greece and Portugal were surveyed in late 2004. Turkey, Spain and Ireland were surveyed in 2005.

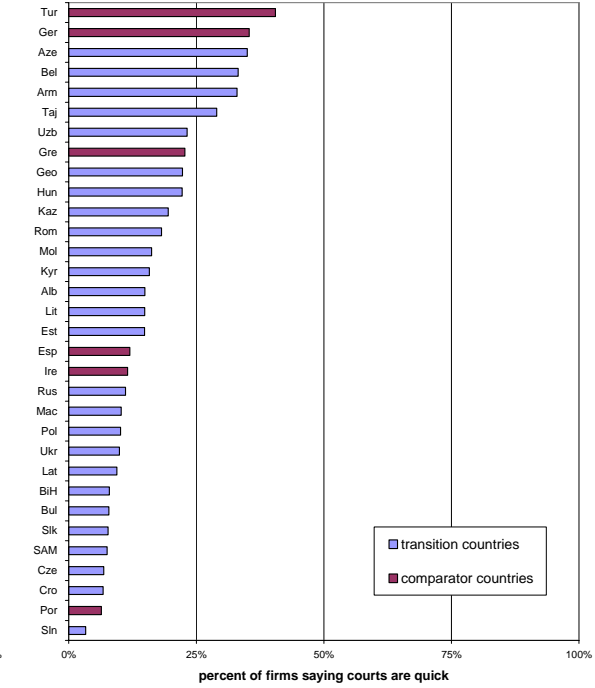
<sup>15</sup> Fairness was also measured by the BEEPS but is not show separately here because firms' assessments of fairness are highly correlated with their assessments of honesty.

**Figure 7. Assessments of Courts as Honest and Uncorrupt in 2005/2004 -- Transition Countries versus European Comparator Countries**



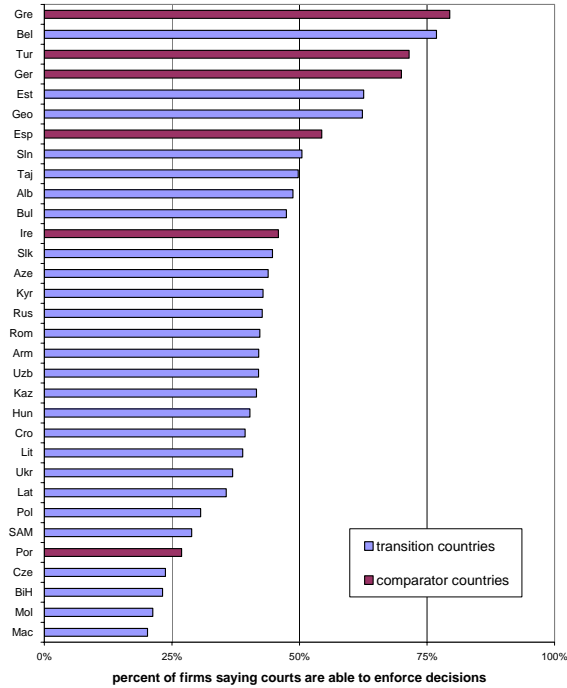
Note: Comparator countries include Portugal, Spain, Turkey, Ireland, Greece, and Germany. Transition countries and Spain, Turkey and Ireland were surveyed in 2005. Germany, Greece and Portugal were surveyed in late 2004.  
Source: BEEPS 2005/2004.

**Figure 8. Assessments of Courts as Quick in 2005/2004 -- Transition Countries versus European Comparator Countries**



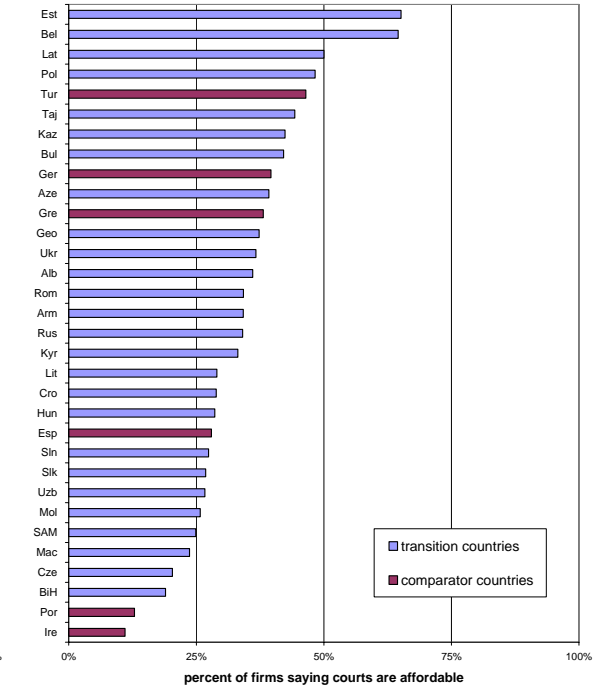
Note: Comparator countries include Portugal, Spain, Turkey, Ireland, Greece, and Germany. Transition countries and Spain, Turkey and Ireland were surveyed in 2005. Germany, Greece and Portugal were surveyed in late 2004.  
Source: BEEPS 2005/2004.

**Figure 9. Assessments of Courts as Able to Enforce Decisions in 2005/2004 -- Transition Countries versus European Comparator Countries**



Note: Comparator countries include Portugal, Spain, Turkey, Ireland, Greece, and Germany. Transition countries and Spain, Turkey and Ireland were surveyed in 2005. Germany, Greece and Portugal were surveyed in late 2004.  
Source: BEEPS 2005/2004.

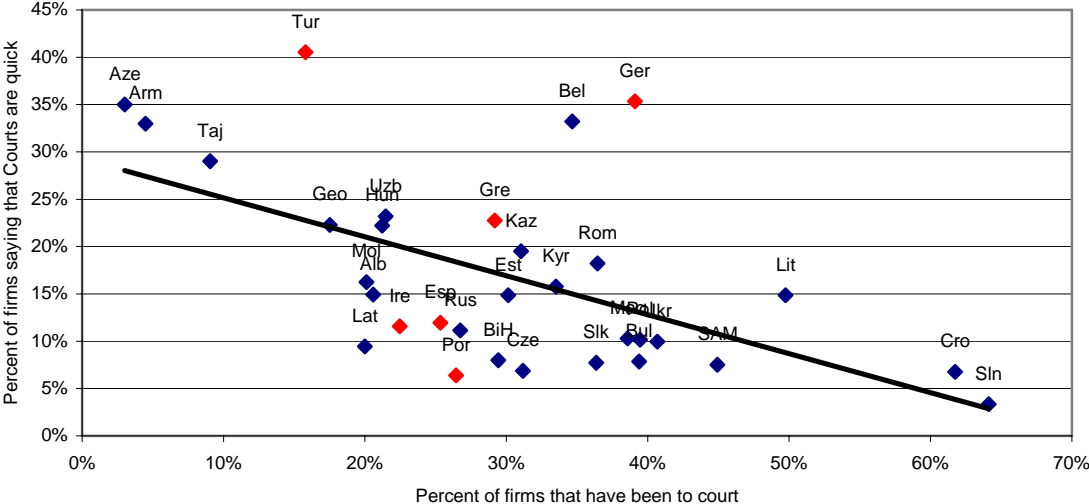
**Figure 10. Assessments of Courts as Affordable in 2005/2004 -- Transition Countries versus European Comparator Countries**



Note: Comparator countries include Portugal, Spain, Turkey, Ireland, Greece, and Germany. Transition countries and Spain, Turkey and Ireland were surveyed in 2005. Germany, Greece and Portugal were surveyed in late 2004.  
Source: BEEPS 2005/2004.

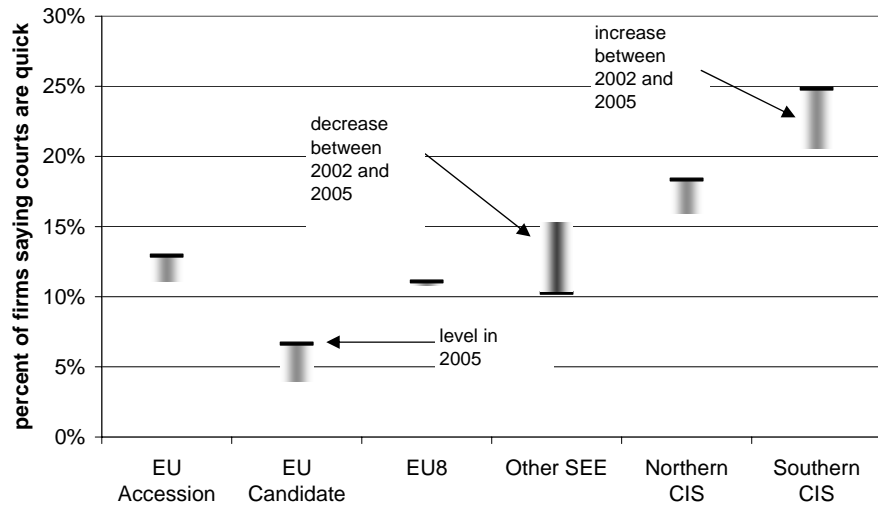
Firms in all countries have major concerns about speed (Figure 8). Fewer than half of the firms in any country evaluate courts as quick. In Turkey and several transition countries that score slightly better on quickness (Armenia, Azerbaijan, and Tajikistan), demand for judicial services by firms is still relatively small, which may help to explain this outcome (Figure 11). Whether from the perspective of firms responding to *BEEPS* or of lawyers providing assessments for the Bank's companion study on the business climate, *Doing Business* (World Bank 2005), courts appear to be the slowest in the new and prospective EU members in central, eastern, and southeastern Europe, and the situation may be getting worse rather than better (Figure 12). It is critical that these countries unclog and speed up court proceedings through legal reforms to eliminate unnecessary procedures, institutional reforms to create stronger incentives for efficiency, and additional resources to increase judicial capacity where clearly warranted. Transition countries can take some comfort, however, from the fact that Spain, Ireland, and Portugal fare no better overall.

**Figure 11. Pressure on Court Slows Them Down**



Note: Data for transition countries, Tur, Esp, and Ire refer to 2005; Data for Ger, Gre, Por refer to late 2004.  
Source: BEEPS 2005/2004.

**Figure 12. Assessments of the Courts as "Quick" 2002-2005**



Note: EU Accession includes Bul, Rom; EU Candidate is Cro; EU8 includes Pol, Cze, Slk, Slo, Hun, Lat, Lit, Est; Other SEE includes Alb, Mac, BiH, SAM; Northern CIS includes Bel, Rus, Ukr, Kaz; Southern CIS includes Arm, Aze, Geo, Kyr, Taj, Mol, and Uzb. Regional averages allow each country in the region the same weight.  
Source: BEEPS 2002, BEEPS 2005.

Transition countries also fare poorly relative to Greece, Turkey, and Germany in their ability to enforce decisions (Figure 9), although Belarus scores better than other transition countries, perhaps reflecting the fact that it is still a centrally-controlled economy.<sup>16</sup> Spain and Ireland fall behind a number of transition countries on this indicator, and Portugal's scores are among the lowest of all countries surveyed.

The one area where transition countries fare relatively well in comparison with Western Europe appears to be affordability, although on average only about one-third of all firms surveyed agreed that courts are affordable (Figure 10). There is significant variation among countries, with the highest marks (as well as a clear improving trend from 2002 to 2005) for Estonia, Belarus, and Latvia. Again, most central and southeastern European countries – including Bosnia-Herzegovina, the Czech Republic, Macedonia, and Serbia and Montenegro – trailed behind the others and appeared to have deteriorated even further from 2002 to 2005. The

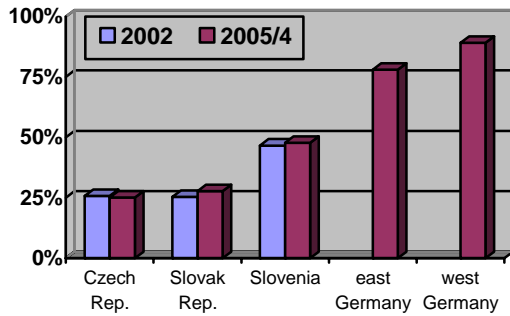
<sup>16</sup> One of the first major studies to employ the BEEPS data, the World Bank's 2000 report *Anticorruption in Transition—A Contribution to the Policy Debate*, describes the challenges in interpreting data from a survey oriented for private business in countries where the private sector is in its infancy, and those observations continue to hold six years later.

two countries where firms considered courts to be *least* affordable were Ireland and Portugal. It is likely that the reasons for this are rooted as much if not more in the structure and regulation of related professions (which affects, for example, lawyers' fees) as in the extent of demand or capacity in the judicial system as a whole.

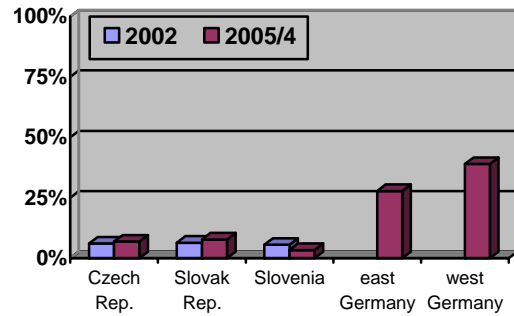
Finally, variations in assessments by firms in east and west Germany provide a glimpse into what happens when institutions are adopted wholesale with plenty of financial and technical support, while also illustrating the tenacious grip of history. Prior to the transition, the country that most resembled the former German Democratic Republic (GDR) in economic structure was Czechoslovakia, while Slovenia was the closest in per capita income. Figures 13-16 show how the Czech Republic, the Slovak Republic, and Slovenia compare to both east and west Germany today. Although firms in east Germany continue to provide worse assessments than those in west German along every dimension of court performance except ability to enforce decisions, their assessments are nevertheless better than those provided by firms in the other transition countries. German unification clearly had a strong positive effect on institutions in east Germany, but the influence of history lingers even after 15 years.



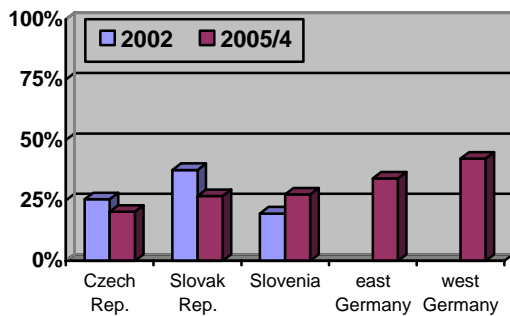
**Figure 13. Assessments of Court Honesty -- East and West Germany and Transition Comparators**



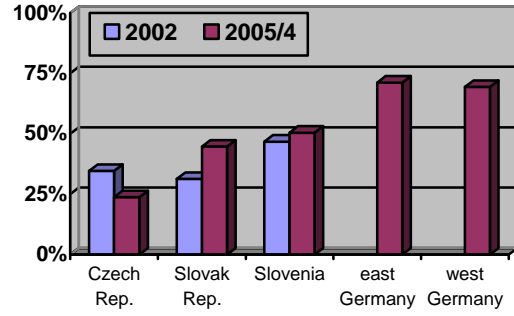
**Figure 14. Assessments of Court Speed -- East and West Germany and Transition Comparators**



**Figure 15. Assessments of Court Affordability -- East and West Germany and Transition Comparators**



**Figure 16. Assessments of Courts' Ability to Enforce Decisions -- East and West Germany and Transition Comparators**



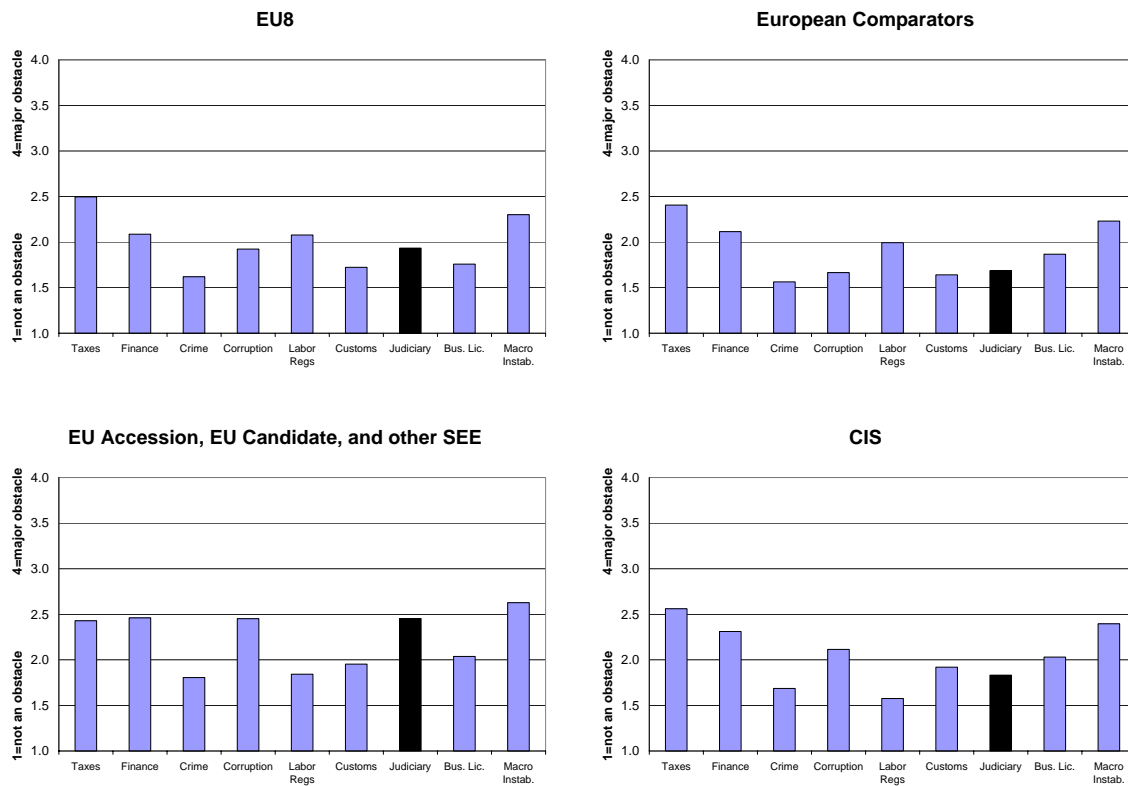
Notes: Germany was surveyed in late 2004, Czech Republic, Slovak Republic, and Slovenia were surveyed in spring 2005.  
Source: BEEPS 2002, 2004, 2005.

## Conclusion

What does this all tell us? First, judicial reform is a critical challenge for most transition countries. Most notably, they need to strengthen accountability, fairness, and honesty – which requires broad actions along many fronts to select the right judges and support staff, train, remunerate, and evaluate them adequately, and provide infrastructure and IT systems to promote efficiency and transparency. More generally, transition countries share many of the same priorities and concerns as other countries, whether developed or developing. Strengthening judicial accountability is also a critical challenge for some OECD countries, not to mention most

non-ECA countries in the developing world. And even those more advanced countries in which citizens trust the honesty and competence of their judges must grapple with problems of judicial delay, affordability, and ability to enforce decisions. Justice systems that are so slow or expensive as to be out-of-reach or impractical for most citizens to use, or that cannot enforce judges' decisions, are unlikely to ensure rule of law. Judicial strengthening may not be perceived by businesses as the highest priority in all societies (Figure 17), but it will be a continuing challenge almost everywhere for years to come.

**Figure 17. Problems Doing Business 2005**



Notes: European Comparators include Portugal, Spain, Turkey, Ireland, Greece, and Germany. CIS includes, Arm, Aze, Geo, Kyr, Mol, Taj, Uzb, Bel, Kaz, Rus, Ukr. EU8 includes Cze, Est, Hun, Lat, Lit, Pol, Slk, Sln. EU Accession, EU Candidate, and other SEE includes Bul, Rom, Cro, Alb, BiH, Mac, SAM. These groupings are for convenience. Turkey and Croatia are both EU Candidate countries, but Turkey is included with the “European Comparators” to highlight differences between former socialist and other countries. All transition countries and Spain, Turkey and Ireland were surveyed in 2005. Germany, Greece and Portugal were surveyed in late 2004.

Source: BEEPS 2005/2004.

## **Annex 1. The Business Environment and Enterprise Performance Survey**

The EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS), developed jointly by the World Bank and the European Bank for Reconstruction and Development, is a survey of managers and owners of more than 20,000 firms across the countries of central and eastern Europe, the former Soviet Union, and Turkey. (It has not been possible to implement this survey in Turkmenistan.) The survey has been carried out in three rounds: 1999, 2002 and 2005.

The BEEPS is designed to examine the quality of the business environment as determined by a wide range of interactions between firms and the state, including in the following areas: problems doing business, unofficial payments and corruption, crime, regulations and red tape, customs and taxes, labor issues, firm financing, legal and judicial issues, and infrastructure. All questionnaires in every country in every round of the BEEPS were implemented the same way, through face-to-face interviews.

The BEEPS sample was drawn from the universe of firms in a broad range of economic activities. In each country, the sectoral composition of the sample in terms of manufacturing (including agro-processing) versus services (including commerce) was determined by their relative contribution to GDP. The BEEPS sampling approach was the same in all three rounds of the BEEPS, and was implemented nationwide in all countries.

The BEEPS sample in all three years included quotas related to size, ownership, export-orientation, and geographical location to ensure sufficient numbers of firms to conduct analysis of firms with certain characteristics. From a practical perspective, the quotas that had an actual impact on the sample, compared to what would have arisen from a wholly random sample, were

the ones for state ownership, for foreign ownership and for large size. As ownership and size are highly correlated, the quotas ultimately affected a relatively small proportion of the sample.

- The 2005 round of the BEEPS consisted of 9,655 interviews.. Sample sizes ranged from 200 in smaller countries to about 600 in Russia. The survey was carried out in every ECA country except Turkmenistan.
- The 2002 round of the BEEPS consisted of 6,667 interviews, covering a range of 170 to 514 firms per country. The survey was carried out in every ECA country except Turkmenistan.
- The 1999 round of the BEEPS consisted of 4,104 interviews, covering a range of 112 to 552 firms per country. The survey was carried out in every ECA country except Serbia and Montenegro, Tajikistan, and Turkmenistan.

The BEEPS is unique as a tool that allows monitoring of how firms experience and perceive their environments over a large number of countries and across time. Aggregate governance indicators that are popular in academic research, such as Transparency International's Corruption Perceptions Index (TI-CPI) and the World Bank Institute's Governance Indicators (WBI-GI), attempt to take various forms of existing indicators (expert opinions and surveys) and merge them together into a single index (or, in the case of WBI-GI, six indexes). Neither the TI-CPI<sup>17</sup> nor WBI's indicators is an original source of data. They are both essentially compilations and manipulations of other indicators. These indexes are popular among researchers because they cover almost all countries and they have been useful for raising the profile of corruption and governance issues. The BEEPS, in contrast, is an original source of data that offers several useful features not found in aggregate indicators, including (i) a common

---

<sup>17</sup> The TI-CPI should not be confused with Transparency International's Global Corruption Barometer, which is a survey of citizens and is an original source of data.

yardstick for country comparisons; (ii) the possibility to examine changes over time; (iii) the possibility to examine changes in more narrowly defined areas, such as the speed, affordability, credibility, and honesty of courts, as opposed to a generic “rule of law.”

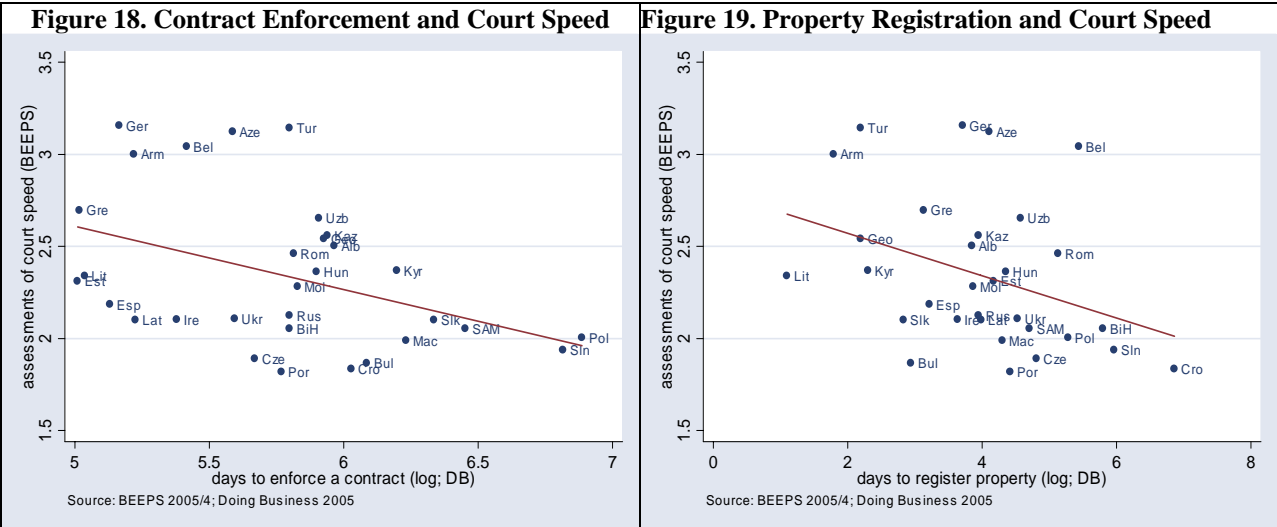
The BEEPS also provides a strong complement to the World Bank Group's Doing Business (DB) indicators. The two use different methodologies and answer related, but different, questions. Most of the DB indicators are generated by asking lawyers, accountants, and other professionals in each country about the details of the laws, rules, and procedures that govern various aspects of doing business. In order to compare apples to apples, the DB methodology presents hypothetical cases or situations that are the same for each country. The BEEPS, in contrast, asks 200-600 firms in each country questions about their business environment and their interactions with the state. The samples are chosen in a uniform way in each country, with sector composition divided according to contribution to GDP. Whereas DB can be thought of as a compilation of indicators *about the content of various government policies, rules, and procedures*, the BEEPS can be thought of as a compilation of indicators about *what firms are saying about the ways that these government policies, rules, and procedures affect their everyday business*.

The DB indicators and BEEPS usually point in the same direction. *Doing Business in 2006—Creating Jobs* highlighted Europe and Central Asia as the leading reformer this year, and the BEEPS 2005 results also suggest improvement over the past three years in many areas. In cases where the two diverge, there are often valid explanations. Firms may have found ways to work around problematic regulations so that they are less burdensome; conversely, the formal rules and procedures may appear benign, while non-transparent implementation may cause firms considerable difficulty. In addition, improvements captured in the Doing Business indicators

may take time to be recognized by the business community. For example, reductions in minimum capital requirements to start a company will not help firms that already exist.

The DB indicators and assessments by firms in BEEPS tell the same broad story about judicial systems in transition countries. The two DB indicators that are most closely related to the performance of the courts are those for enforcing contracts through the courts and for registering property, a function handled by the courts in many transition countries. The DB indicators include assessments by a small number of lawyers, and in some cases judges, on how long each of these processes may take for a given hypothetical situation. Both are significantly correlated with BEEPS measures of court speed (see Figures 18 and 19).

For further information on the BEEPS, see [www.worldbank.org/eca/governance](http://www.worldbank.org/eca/governance).



## References

- Anderson, James H., David S. Bernstein, and Cheryl W. Gray. 2005. *Judicial Systems in Transition Economies*. World Bank.
- Bardhan, Pranab. 1997. *The Role of Governance in Economic Development: A Political Economy*. OECD.
- European Bank for Reconstruction and Development. Various years. *Legal Indicator Survey*. <http://www.ebrd.com/country/sector/law/about/assess/main.htm>
- European Bank for Reconstruction and Development and the World Bank. 2005. *EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS)*. <http://www.worldbank.org/eca/governance/>.
- Kritzer, Herbert M. and John Voelker. 1998. "Familiarity Breeds Respect: How Wisconsin Citizens View their Courts." *Judicature* 82: 58-64.
- Murrell, Peter, ed. 2001. *Assessing the Value of Law in Transition Countries*. University of Michigan Press.
- North, Douglas. 1990. *Institutions, Institutional Change and Economic Performance*. Cambridge University Press.
- Rose, Richard and Christian Haerpfer. 1994. "New Democracies Barometer III: Learning from What is Happening." *Studies in Public Policy Number 230*. Centre for the Study of Public Policy, University of Strathclyde.
- Rose, Richard and Christian Haerpfer. 1996. "New Democracies Barometer IV: A 10-Nation Survey." *Studies in Public Policy Number 262*. Centre for the Study of Public Policy, University of Strathclyde.
- Rose, Richard and Christian Haerpfer. 1998. "New Democracies Barometer V: A 12-Nation Survey." *Studies in Public Policy Number 306*. Centre for the Study of Public Policy, University of Strathclyde.
- Transparency International. 2005. *Report on the Transparency International Global Corruption Barometer 2005*. Berlin.
- Williamson, Oliver. 1985. *The Economic Institutions of Capitalism*. Macmillan.
- World Bank. 1996. *From Plan to Market*. World Development Report.
- World Bank. 2000. *Anticorruption in Transition—A Contribution to the Policy Debate*.
- World Bank. 2002. *Building Institutions for Markets*. World Development Report.

World Bank. 2004. *Economic Growth in the 1990s: Learning from a Decade of Reform*.

World Bank. 2005. *Doing Business in 2006—Creating Jobs*. <http://www.doingbusiness.org>

World Bank. 2006 (forthcoming). *Poland: Legal Barriers to Contract Enforcement*.