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Social and Economic Factors of Independent Activity of Criminal Defense Attorneys in Contemporary Russia

Abstract of Thesis

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Problem statement

Independent activity of criminal defense lawyers is among the key preconditions for allowing the citizens of any country to access public justice alongside other factors, such as the supremacy of law and judicial independence. In 2017, Russia was ranked 89th in the Rule of Law Index of World Justice Project[1], which, according to the calculation methodology, was due to high levels of corruption and low levels of independence of the judiciary. The community of attorneys (*advokaty*[2]) in contemporary Russia still manages to remain independent despite a plethora of factors which reduce the level of its autonomy from the state.

Russia's law enforcement system has inherited from the USSR several institutional characteristics which make it much harder for attorneys to perform their professional duties. Because of "accusatory bias" in public justice, less than 0.5% of criminal cases end with the verdict of "not guilty," thus hindering attorneys from seeking a more favorable outcome for their clients and forcing them to search for various trade-offs. The reason why this kind of situation persists is that employees across all levels of the law enforcement system must comply with the score-based system of reporting[3] ("*palochnaya sistema*") requirements where the performance of any law enforcement officer is measured by the growth or reduction in the current year's KPIs against the previous year. Year by year, these criteria have been increasingly difficult to meet, and an independent attorney finds himself to be an obstacle to the achievement of the necessary KPIs. Moreover, law enforcement officers have significant administrative resources to impose restrictions on activity of attorneys, sometimes breaking the law.

[1] See the official project website at [http://data.worldjusticeproject.org/]

[2] Advokaty (in this text attorneys) are a special group of lawyers with no analogues in foreign practice. There is no division into barristers and solicitors in Russia, but there is a clear distinction between advokaty and private lawyers. To become an advokat, a candidate must have higher legal education and at least two years of professional experience and must pass a qualification exam. Being an advokat authorizes an attorney to handle criminal cases, though advokaty are not restricted to working on such cases. An advokat must abide by the Legal Ethics Code and be a member of the regional Chamber of Lawyers.

[3] Sometimes it is called "heavy-handed system of reporting".

Certain institutional peculiarities of Russia's law enforcement system originated in the post-Soviet period, including a possible use of force by law enforcement officers to achieve their personal goals. For example, in the 1990s, some of unscrupulous law enforcement officers were actively involved in "violent entrepreneurship"[4] and in the 2000s they became an instrument of hostile corporate takeovers[5] and blackmail through the initiation of criminal cases against entrepreneurs[6]. Naturally, not all law enforcers are involved in "misappropriation" but even this part is capable of significantly hindering the work of attorneys in Russia.

If one pole is represented by a powerful, bureaucratically-thinking, and corrupt law enforcement system, then maintaining a balance necessitates building a strong and independent profession of criminal lawyers. Historic factors have affected not only the law enforcement system, but also the legal profession in Russia. In the 1990s, low barriers to entry to the profession, which used to be prestigious, were coupled with a surge of demand for lawyers in the commercial sector and the emergence of numerous faculties of law. It was not until after the 2002 reform that obtaining the attorney's status again required passing a state exam. As a result, contemporary attorney profession is characterized by high levels of heterogeneity which is a possible reason behind the weakness.

Recent years have seen the strengthening of government regulation in Russia, thus underlining how important it is for contemporary attorneys to remain independent as they are the last actor that is relatively independent from the state. All the foregoing explains why it is crucial to study the social and economic factors

[4] Volkov, V. Violent Entrepreneurs: The Use of Force in the Making of Russian Capitalism. Cornell University Press. 2002.

[5] Rochlitz, M. Corporate Raiding and the Role of the State in Russia. Post-Soviet Affairs 30, no. 2–3 (May 4, 2014): 89–114. https://doi.org/10.1080/1060586X.2013.856573.

[6] Volkov, V., Paneyakh, E., Titaev, K. *Voluntary Activity of Law Enforcement Agencies in the Context of Fight Against Economic Crime*. Research Notes on Administration of the Law Issues. Saint Petersburg: Institute for the Rule of Law (IRL) at the European University at Saint-Petersburg (EUSPb). 2010. (in Russian)

of independent activity of attorneys, which have never been looked at through the lens of economic sociology.

The scope of prior research

The socio-economic approach to the analysis of attorney's profession is represented in a limited number of studys which focus on certain aspects of activity of lawyers. L. Karpik puts an emphasis on the collective actions of French attorneys and the analysis of the economics of singular goods, including, but not limited to, legal services. H. Hwang and W. Powell analyze in their studys the streamlining of free professional services. N. Fligstein proposed a view on the market for legal services as the platform on which the disputes arising in other markets are arbitrated. B. Uzzi and R. Lancaster reviewed how social embeddedness affects the prices set by law firms.

Much of foreign literature focuses on professionalism. Key research was undertaken by A. Abbott, M. Larson, M. Saks, and J. Evetts. "The Third Logic" by E. Freidson, which analyzes the difference between the logic of professionalism and that of market and bureaucracy, is of paramount importance. The development and transformation of professions in Russia was a much-discussed issue in the studys of E. Yarskaya-Smirnova, P. Romanov, R. Abramov, V. Mansurov, O. Yurchenko and others.

Important fields of research include the study of attorneys' work using the theory of the juridical field suggested by Pierre Bourdieu. As part of this approach R. Dinovitzer and co-authors reviewed issues, such as the connection between a lawyer's social class and work satisfaction, gender inequality in the lawyers' salaries, the hierarchy of legal community, etc.

Much attention has been paid by researchers to a variety of aspects related to the functioning of Russia's law enforcement system: A. Ledeneva and K. Hendley analyzed the phenomenon of "telephone law," P. Solomon studied the nature of plea bargaining and "special procedure court hearings" in Russia. The problem of the score-based system of reporting was discussed by E. Paneyakh. The impact of the defendant's social status is analyzed in the works of V. Volkov and K. Titaev.

The research team of the Institute for the Rule of Law (V. Volkov, M. Shklyaruk, E. Paneyakh, K. Titaev, E. Khodzhaeva, M. Pozdnyakov, E. Moiseeva, A. Dmitrieva, T. Bocharov, I. Chetverikova) prepared several books and numerous research notes with a focus on various issues related to the functioning of the law enforcement system: independence of the judiciary, the role of prosecutors, the professionalism of investigators, professional activity of attorneys, etc.

A large number of literature put an emphasis on diverse forms of activity of attorneys control related to the fiduciary nature of legal services: the issue of government control (R. Mrowczynski, T. Halliday), clients (H. Kritzer), colleagues (R. Abel). A standalone field of research focuses on the analysis of the socialization of law students (E. Mertz), the problem of lawyer's ethics (A. Abbott, R. Abel, A. Evans) and the motives for rendering free legal aid (C. Epstein, S. Cummings, D. Rhode, R. Granfield, R. Sandefur).

Research goals and objectives

The goal of the research is to identify, describe, and measure the effects of social and economic factors on the independent activity of attorneys.

"Independent activity of attorneys" means the attorney's ability to vindicate interests of clients (more specifically, oppose the prosecution as needed), as well as the ability to build freely client base, i.e. to work pro bono (in Latin "for the public good"), to work on appointment of the court or to work under the contract (for a fee), acting out of their own will under no economic or administrative compulsion. Independent activity of attorneys is an essential precondition for preforming legal services at a high professional level.

A number of objectives are planned to be accomplished in order to achieve the goal**:**

1. Developing methods for the socio-economic analysis of independent activity of attorneys based on the existing theoretical and empirical studies.
2. Identifying the key challenges facing Russian attorneys during their professional activity.

3. Analyzing the factors affecting the percentage of cases in which the attorney's clients consent to plea bargaining (the so-called "special order") and showing that the percentage of "special order" is the indirect evidence of the attorney's independence level.
4. Studying the factors affecting the level of the attorney's involvement in their work on the appointment of the court and the factors affecting the attorney's involvement in rendering pro bono free legal aid.
5. Assessing the attorneys' demand for the activity of professional associations in respect of tackling the key problems facing the attorney community, and studying the factors affecting such demand.

The author's personal contribution to exploring the problem and gathering data

The author of the Ph.D thesis was a co-author of a research methodology. He participated in gathering and verifying survey data, initiated database analysis and built a model on matters related to the topic of independent activity of attorneys in Russia.

The author's personal contribution to exploring the problem entails the first-ever analysis and demonstration of the following facts:

1. It is the first attempt in Russia to illustrate based on empirical data that independent activity of attorneys is achieved through a balance between control exercised by the market, professional community and the state. Shifting influence elsewhere causes a loss of independence and the resulting deterioration of legal aid quality.

2. This research is the first attempt in Russia to analyze the effects of various socio-economic factors on the independence of attorneys. Market demand, social capital, professional experience and attorneys' ethics are shown to be statistically related to the percentage of cases in which their clients consent to plea bargain, including the confession of guilty without the right to appeal. Our research substantiates why a high percentage of cases heard by court in accordance with a special order can evidence a weaker position of the attorney.

3. Free legal aid and court-appointed work in Russia have been proven to involve different attorney groups despite sharing similar goals. Pro bono work is done by reputation-oriented attorneys with a high social capital, whereas court-appointed work is performed by attorneys with virtually no contacts with their colleagues. This has a direct impact on the independence of professional activity and affects the quality of activity of legal services.

4. Urgent problems facing by attorney's profession have been identified based on quantitative data: decrease in the "resource base" (drop in demand of citizens with a fall in real terms payment for work on the appointment of the court) and the violation of defendants' rights by law enforcement officers. These problems pose a threat to independent activity of attorneys yet motivate an active part of the community to take collective action.

5. This study assesses the effects of various socio-economic factors on the attorneys' demand for the activity of professional associations, which has never been done before on a large sample. This analysis makes it possible to demonstrate a link between the identified problems facing by attorneys and their willingness to change the situation.

Various aspects of this research have been presented by the author at 15 Russian and international academic conferences between 2014 and 2017, including the ICCEES IX World Congress in Makuhari, Japan (2015), the Third ISA Forum of Sociology in Vienna (2016), and the Annual Conference of BASEES (British Association for Slavic and East European Studies) in Cambridge (2017).

Theoretical framework of research

"Activity of attorneys" is the key concept for this research. The theoretical chapter of this research touches on the following characteristics of activity of attorneys: inability to control quality, high levels of outcome uncertainty, a lack of complete standardization and a whole range of further restrictions. With due regard to the above peculiarities, activity of attorneys can be treated as a professional work, i.e. a special type of work which requires higher education, professional ethics, and well-developed professional organizations performing supervisory roles.

The concept of professionalism which derives from the works of E. Durkheim, F. Tönnies, G. Simmel, and M. Weber puts a strong focus on distinguishing between "professional" and "non-professional" activities. In the opinion of T. Parsons, the founder of this approach, professionals using their knowledge and skills perform socially important functions while remaining emotionally neutral and targeted towards public welfare. T. Parsons's followers elaborated on different criteria of professionalism, more specifically, proposed that various attributes of any given occupation be measured empirically to find out to what extent it is professional. The opponents of T. Parsons argued that professionals are not altruists. They use their knowledge to monopolize the accomplishment of certain objectives, thus earning respect in the society and a high social status. A successful "professional project" entails that any particular occupation, acting through professional associations and universities, wins a legitimate and often exclusive right to perform certain activities (e.g., to act on behalf of the client in court or to make a surgery). However, a monopolistic perspective on professions was later aligned with Parsons's value-based approach through synthesis. Accordingly, the existing theory recognizes a "tension" between striving for personal gain and performing socially significant roles, which is important for the analysis of the independent activity of attorneys.

The theory of the "juridical field" suggested by Pierre Bourdieu plots an important trajectory for exploring the issue of independent activity of attorneys. In this study we show that the analysis of the legal profession in terms of the fields theory, in many respects, appears to be similar to the concept of professionalism although the author rejected even the concept of "profession." It important to highlight the differences between the attorney with the relevant social and cultural capital and the client who cannot do really much within the juridical field and has to use their economic capital to hire a defender (and social capital to find the same). The attorney is given the opportunity of "symbolic violence" in respect of their client but simultaneously has to come to grips with other professional participants in the

juridical field. Most recent theoretical research has made it possible to synthesize[7] the theory of P. Bourdieu and the concept of professionalism[8]. This circumstance allows both theories to be relied on when building a methodological framework of this research.

The theoretical framework of this study builds on a group of quality research aimed at capturing legal and other professional activity. This line of research has been developed by the Soviet and Russian researchers from among the followers of labor sociology (Shkaratan, Yadov, Rutkevich, Zdravomyslov, etc.) and the sociology of the professions (Romanov, Yarskaya-Smirnova, Abramov, Mansurov). It follows from this research that a strong focus should be placed on the confrontation among different logics of professional activity (including the existing tension between professionalism and managerialism), as well as on the socio-political context in which professions evolve. Finally, due regard should be given to the social significance of professional activity as it imposes on professionals additional liability to their clients and the society alike.

The second key concept in this study is control. Control is necessitated by the above-mentioned peculiarities of attorneys' services, which are associated with higher risks of opportunist behaviors and simultaneously aggravate the effects of unethical practices on the society. Control for activity of attorneys thus does affect the quality of activity of attorney's services. However, the reverse side of control is the issue of preservation of professional independence. Abbott distinguished between three levels of control for professional activity: individual, informal, and formal. The first level derives from professional ethics which is learnt at university and in the workplace. Informal control is exercised by colleagues, while formal control is undertaken by the state. Finally, direct control (supervision) should be

[7] Schinkel, Willem, and Mirko Noordegraaf. "Professionalism as Symbolic Capital: Materials for a Bourdieusian Theory of Professionalism." Comparative Sociology 10, no. 1 (January 2011): 67–96.

[8] A similar analysis has been conducted by the author of this study, see Kazun A. Juridical Field or Legal Profession? Comparison of Bourdieusian Theory and Theory of Professionalism for Studies of Legal Community // Comparative Sociology. 2016. Vol. 15. No. 5. P. 572–592.

exercised by the client who can submit breaches (if any) to the state and/or the bar association although the client can find it difficult to detect such unethical practices of the attorney.

The importance of legal ethics has been primarily explored as part of the above-mentioned concept of professionalism. A code of ethics is what differentiates a professional from non-professional. From Freidson's point of view, ethics serves as a mechanism of control of "entry" to and "exit" from the profession, making it possible to remove mala fide members. However, the functioning of ethics as a mechanism of control necessitates the existence of a strong professional community. In turn, it is by no means always the case that ethical behavior implies altruism; in fact, compliance with ethical standards can be viewed as a long-term investment which will necessarily pay off through reputation. Important characteristics of legal ethics include being multidimensional. Parker and Evans show that there are as many as four legitimate types of ethics: "adversarial advocate" "responsible lawyer" "moral activist", and an "ethics of care". In different situations attorneys can switch between different modes of ethics without breaching the Code of Professional Ethics. Ethics is thus an insufficient instrument for the control of activity of attorneys.

The attorney's ethics directly affects their client interactions and thus ultimately has a significant impact on the outcome of a specific case. What is important in the context of this research is that the attorney can recommend that the client consent or dissent to plea bargaining ("special order"). Although some studies show that the client can impose his/her position on the attorney in certain situations (and from a legal standpoint the attorney has to give due consideration to the client's position), in reality, the attorney-client relationships always remain unequal. The lawyer has many opportunities to affect the progress of the case and rarely asks the client which solicitation tactics to choose.

Defense resources available to the client are an important factor. A lack of funds available to the defendant coupled with the requirement to have a defender in court creates a new class of interactions related to work on the appointment of the

court (paid by the state) and a pro bono work, i.e. free of charge. The latter type of work is a "blackbox" as researchers often know little about the motives behind free rendering of activity of attorneys services. Attorneys both in developed and developing countries worldwide have been active in defending weaker population groups, although in Russia this type of service is still underdeveloped.

The main reason why the client is unable to control fully the quality of activity of attorneys' services is that the client does not have the same knowledge as the professional. However, other attorneys are potentially able to perform professional assessment. For instance, the interchange of information is an important function of any professional community, which, on the one hand, encourages attorneys to increase their social capital, but on the other hand makes it possible to control the quality of activity of attorneys' services through the reputation-based mechanism. A breach of professional ethics by the attorney does not always cause direct disciplinary implications, but even without them can imply a dramatic blow to the reputation. In contrast, best practices, such as pro bono work, can offer no direct financial benefits but will have a positive impact on the attorney's reputation.

Reputation is not the only mechanism which can be used by the professional community in exercising informal control. The associations of lawyers set up ethics commissions, hold advanced training courses, and give professional awards. The policy of attorneys qualifying examinations affects the likelihood of opportunism on the part of new members (a difficult exam, to a certain extent, eases the problem of "adverse selection"). Given that the client is unable to control the attorney's services, the professional community is given the chance to act as an intermediary. However, unless it is strong enough as an actor, this role can be taken by the state.

According to the institutional theory, the state is not a seamless actor but the "organization of organizations" many of which act for their own benefit. On the one hand, the state eliminates "market gaps" (e.g., provides attorney services to individuals who cannot afford a defender). On the other hand, the state can be used by the businesses or unfair bureaucrats for personal gain (e.g., this is manifested in the phenomenon of "telephone law"). It should be further argued that, from a

conceptual standpoint, the powers of the state can vary greatly depending on the existing institutes (called "extractive" or "inclusive" in the terms of Acemoglu and Robinson; "open-access orders" and "limited-access orders," in the terms of North, Wallis, and Weingast). Russia is among those countries where institutes give a fertile ground for power abuses by unfair public officials, including law enforcement officers.

The law enforcement system in itself is very diverse and consists of numerous actors: the Ministry of the Interior Affairs, the Investigative Committee of the Russian Federation, Prosecutor's office and courts. Although the above-listed agencies share the same role (maintain public order), they often pursue their own interests (including corruption, the fight for influence on the authorities, etc.). With the aim of achieving KPIs, these agencies act as a single coalition in respect of the attorney community. In this case, the attorney profession can use the law to fight against unscrupulous law enforcement officers, as well as cooperate with stakeholders (including business associations) in accomplishing this objective.

Therefore, the independence of any given attorney is a combination of his/her personal qualities (the level of community engagement, experience, a set of the relevant skills or capitals) and the position of the entire professional community, which can choose to protect or not to protect their representatives, to lobby their interests through legislative initiatives or to remain passive.

The third key concept in this study is the "market of activity of attorney's services." Activity of attorneys is part of professional logic, but it is controlled by the state. The market is the third important logic as it shapes the space of opportunities, offering the client a chance to find and choose an attorney; the attorney, a range of economic resources to be leveraged in a particular case; the juridical field in general, the space of competition.

At the beginning of section three of the theoretical chapter, we try to answer the question of whether legal services can be viewed as part of the market. The extent to which it forms part of the market depends on the area of legal activity: market orientation is more pronounced in civil cases and arbitration case and less

pronounced in criminal proceedings. However, this latter circumstance derives from the level of government intervention rather than the impossibility of building a market. Attorney services are merit goods (in the terms of Calabresi), i.e. the values which, if unevenly distributed in the society, can cause the growth of "moral costs." It is with the aim of reducing these moral costs that the state allows public justice to be accessed by anyone who has no money, and the professional community encourages pro bono work.

Although the market for legal services can hardly be called conventional, two possible alternatives proposed by economic sociologists can apply. Activity of attorneys can be treated as "embedded" in social relationships: networks, trust, culture, rules of the game, etc. Alternatively, within the framework of L. Karpik's theory, legal services can be viewed as the market for singular goods. The effects of these approaches are important to understand what independent activity of attorneys means.

The concept of embeddedness was put forward by Polanyi in his criticism of a romanticized model of market-based economy. He made the observation that the market in its neo-classical form was not natural to people before the Modern History although exchange relations have almost always been part of the society. All economic behaviors are embedded in social relations, which organize, stabilize, routinize the process of exchange and make it possible as such. Granovetter expanded the concept of embeddedness by adding the key role of networks in which people are grouped (strong and weak ties). Embeddedness is not a frequently used term in analysis of legal services although this concept makes it possible to explain how the market for professional services works. Uzzi and Lancaster showed that embeddedness affects the price of legal services as it adds value (helps differentiate between such services, reduces transactions costs, sometimes serves as conspicuous consumption). Li, using the example of China's agricultural regions, illustrated that embeddedness is a good explanation of the lawyer-client relationships in villages and towns where personal ties and mutual obligations are more important than market relations.

The overall conclusion is that the concept of embeddedness of activity of attorneys services allows the market-driven logic of interactions to be supplemented with social factors, such as acquaintances, credibility, reputation, etc. However, the concept of embeddedness does not treat professional activity as a separate category, neither does it dispute that the market-driven mechanism is involved in allocating the same alongside social factors, as did Lucien Karpik in his theory.

The key characteristic of the market for singular goods is that goods or services offered in such market are mutually incommensurable and associated with immeasurable uncertainty. In the ordinary market, the price of goods is the primary factor affecting our choice between alternatives, whereas in the markets for singular goods the price is a secondary consideration (e.g., we hardly rely on the lowest ticket price when choosing a movie to see). Attorneys cannot be compared using the price of their services as a criterion since a good attorney may work for free under certain circumstances and a bad attorney may want a very high price for their services. The outcome of activity of attorneys is uncertain due to a number of reasons. The client is unaware of the level of effort made by the attorney, their level of expertise, whether or not the attorney's strategy was correct. In the context of "accusatory bias", the outcome is almost never an excuse and all interim options (suspended sentence, shortened real term of sentence, etc.) can be equally explained by the attorney's achievement, an unbiased decision of the judge or an omission of law enforcement officers. In this regard, the quality of an attorney's work is hard to assess both during and after litigation. Karpik suggests that this type of uncertainty be treated as radical, i.e. immeasurable. If it was measurable (like risk), it could also be included in the price of services but in reality, the uncertainty of an outcome of criminal proceedings is non-assessable in monetary terms (e.g., it is anybody's guess whether the client's prison sentence will be a year shorter if extra money is allocated to defense or these costs make no sense).

A choice between services in the markets for singular goods is based on special "assessment tools": networks of acquaintances and relatives, knowledge of the system functioning, reviews, ranking system, brand, etc. Attorneys thus do not

directly compete. It is rather the professional community, the state, the civil society, the defendant's family and friends, each of which offers their own attorney selection system, that compete (the element of randomness not excluded). This gives ground to draw an important conclusion that the market for singular goods is supply-controlled rather than demand-controlled. The clients wishing to receive any singular goods are forced to use the assessment tools offered by external suppliers and their communities. In the case of attorney services this trend is even more pronounced as the client is not allowed to cope without an attorney and is obliged to have a defender.

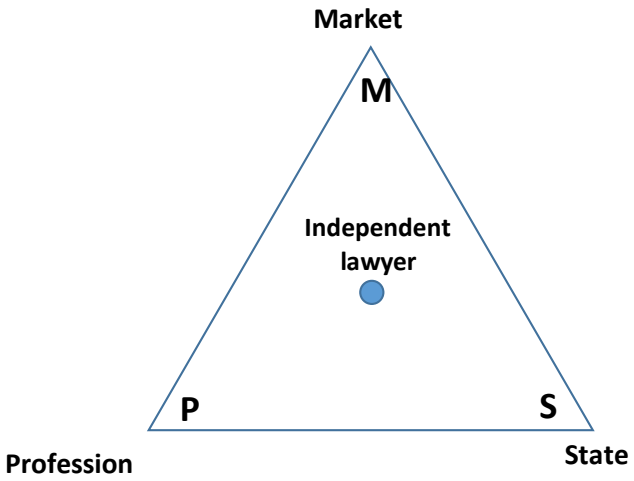
It is due to the singular nature of their services that most attorneys find clients through their former clients who give recommendations, via colleagues redirecting a client (due to overload or different specialism), via an activity of attorneys organization or directly through the system of court appointments and not in the free market (by way of advertising). In this context, the attorney's social capital and the level of their engagement with the professional community have a crucial role to play since they allow them to find clients. Therefore, the independence of the attorney can be affected by the assessment tool on which their clients rely and the extent of an attorney's engagement with the professional community.

In general, the consequences of the theory of singular goods market are very close to the concept of embeddedness of the professional services market. Assessment tools include networks and any sources of trust in the market that fully coincide with the concept of embeddedness. What makes a drastic difference is who controls the selection process. Embeddedness entails a natural process of attorney selection in reliance upon social ties and cultural norms, whereas in the singular goods market there is competition between different sources of knowledge about which commodity is the best. Embeddedness does not bring into question the comparability of services and the measurability of uncertainty, which are denied by the theory of singular goods. Although choosing between two theories necessitates further analysis (which is not the aim of this study), in the subsequent analysis preference was given to the theory of singularity based on the empirical studies about

the attorney-client relationships discussed earlier. However, both concepts suggest that independent activity of attorneys is directly related to social factors.

A combination of the theories of professional control and the professional services market makes it possible to clarify the concept of independent activity of attorneys (see Fig. 1 below).

Fig. 1. Forms of control for activity of attorneys



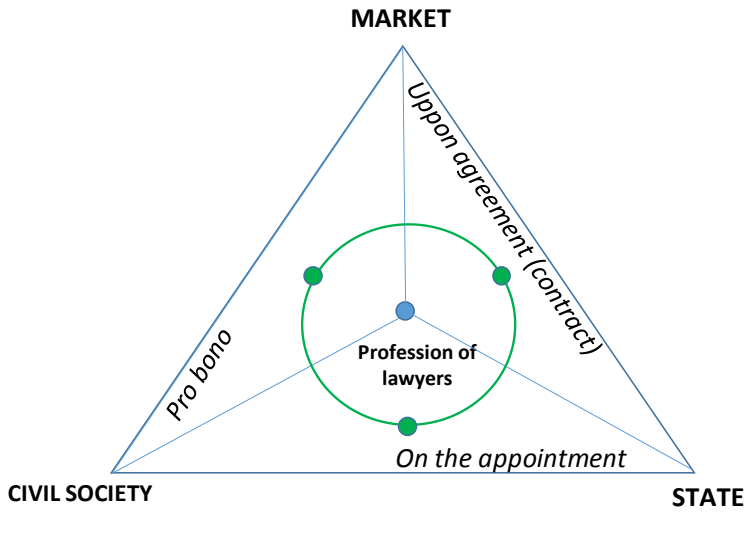
Being an independent attorney implies keeping a distance from all of the three key points: the state, the market, and a professional corporation. Simultaneously, they constitute the sources of activity of attorneys control and create assessment tools on which the consumers of legal services rely. A switch towards any point of the triangle causes an attorney to lose their autonomy. It is crucial for us in this study to assess the attorney's ability to stay independent from the state as the strongest actor affecting professional defenders in Russia. Russia's legal community is not strong enough to have a decisive impact on the attorney, and market influence is limited by the singularity of public goods and modest solvency of individuals. However, this model makes it possible to formulate the following hypothesis: in order to maintain independence from the state the attorney has to maintain ties with the other two points (the professional community and the market).

The last key concept discussed in the theoretical chapter is the issue of collective action. The legal services market and various forms of control which

govern this market create a stable order which, however, is hardly remunerative for all community members. In the case of Russia, a strong law enforcement system creates a threat to independence of the attorney community. International experience shows that possible solutions to this issue include mobilization of professionals. Lawyers are not only able to change their own status in the society, but also often find themselves to be the agents of larger-scale social changes, like it happened, for example, in Pakistan and Tunisia. Law firms which often form broader coalitions with the representatives of the civil society have a key role to play in this process.

Going beyond a particular criminal case to discuss the issue of the attorney's independence in a broader sense, the model needs to be amended by adding the civil society (these three parties were first offered by L. Karpik). This leaves us with the model (see Fig. 2) which gives due regard to the independence level of the law corporation in general (blue spot) and individual attorneys in particular (green spots).

Fig. 2. Interactions of attorneys and the attorney profession with the state, market, and civil society.



This model makes it possible to give due consideration to three types of attorney work discussed in this research, namely: work under an agreement (for a fee), work on the appointment of the court and pro bono legal services. Furthermore, this model illustrates clearly that an individual attorney's independence level (optimal spots are highlighted in green) is associated not only with their personal

disposition in the juridical field, but also with the independence level of the entire attorney corporation (blue spot). If a law corporation shifts from the market and civil society to the state, an individual attorney finds it harder to stay independent. Accordingly, individual attorneys' demand for the functioning of a strong professional organization will evidence the willingness to strengthen their professional independence.

The theoretical model (Fig. 1 and Fig. 2) allows the hypotheses of this research to be formulated.

First, the attorney's social, human, and economic capital allows the attorney to maintain independence, which may manifest itself in their clients' frequent waivers of plea bargain ("special order"). In other words, the attorney's ties with the professional corporation and the market, in a way, counterbalance the influence of the law enforcement system.

Second, work on the appointment of the court in Russia are presumably done by attorneys with lower levels of social capital and low demand in the market. This directly follows from the theoretical model where work on the appointment of the court is distant from the market (which does not regulate it to any extent) and close to the state.

Third, pro bono work attracts attorneys with high levels of social capital and a community focus. Since this kind of work is not encouraged in Russia by the state, it will primarily involve those who have close contacts with the professional community, which is the key distributor of this public good due to its singularity.

Fourth, following the theory of mobilization of lawyers, we assume that demand for a strong professional association will be boosted by "exogenous shocks," namely: encountered breaches of the defendants' rights by unscrupulous law enforcement officers. Finally, due to contentious relationships between the legal profession and the law enforcement system, we suggest that it is the managers of activity of organizations of attorneys that will most commonly face violations of the defendants' rights and, consequently, demonstrate higher demand for collective action.

Data gathering and analysis methodology

Materials for this research are represented by findings from Russia's nationwide survey among attorneys arranged by the Institute for Industrial and Market Studies of HSE and the Institute for the Rule of Law at the European University at Saint-Petersburg with support from the Russian Federal Chamber of Lawyers (RFCL). Given the heterogeneous attorney community and the limited organizational capabilities of regional bar associations, the survey was conducted using three sampling approaches: a random sample of organization of attorneys in Moscow and the Leningrad Region; whole sample in 8 regions with strong bar associations (with 20% to 25% of questionnaires returned); at least 40 attorneys were surveyed in 25 more regions reflecting the country's regional peculiarities.

A total of 3,317 attorneys from 35 regions of Russia were surveyed, accounting for 4.5% of all lawyers with a valid status as attorney. Survey was conducted using an anonymous questionnaire, which was distributed among attorneys for self-completion and collected through regional bar associations. This is a representative sample in respect of the attorneys who stay in contact with the regional association. Judging from socio-demographic determinants and personal data, the difference between whole and random sample is not more than 2%.

The survey was preceded by a pilot study (survey among 372 attorneys in 9 regions), which solved various methodological issues and tried and tested the research design. 6 semi-structured interviews with attorneys were further conducted before this research. Moreover, findings were supplemented with information from public consultations with members of the legal community in respect of the project during a variety of workshops, as well as media publications about high-profile criminal cases in contemporary Russia.

The economic factors of activity of attorneys in research are assessed through two key questions: work mostly with regular clients (yes/no) and estimated workload. Whether or not an attorney conducts any civil cases (apart from criminal ones) is also indicative of demand for their services. Attorneys with specialization

on civil cases (more than 60% of cases) can be less dependent on the state as their client base does not really depend on criminal cases and earns stable income.

An attorney's social capital is measured through four key questions. First, as was shown in the theoretical chapter, what matters is whether an attorney is a member of any professional associations (in addition to mandatory membership in the regional bar association). In Russia, there are only a few associations of lawyers on a federal level involving not so many attorneys (relative to the total number of professional), however membership in these associations can give certain preferences (D. Duvanova illustrated using the example of business associations that organizations with mandatory membership are unable to replace voluntary associations). Findings from the survey evidence the limited member base of voluntary associations – only 16.5% of the sample are members of any given activity of attorney's association. The second important aspect is an attorney's participation in professional events, such as seminars, conferences, networking, etc. These questions served as the basis for building a variable for regression analysis purposes, namely: the attendance of events more than once a year (50.8% of the sample). Third, the attorney's contacts with their former fellow students may also prove important as many of them can work in other parts of the legal profession, including in court and law enforcement agencies (such contacts are maintained by 80% of respondents). Finally, respondents were asked whether or not they had experience in working as heads of regional bar associations and/or of organizations of attorneys (21.1% had such experience). This kind of experience can be interpreted as both social and human capital, but one way or another it strengthens the attorney's ties with the community.

The third important group of variables which are included in all regression models encompasses factors describing the attorney's focus on various ethical values: "reputation focus," "personal gain focus," as well as a "negative image of the profession." These factors were based on 10 attitude questions inviting attorneys to assess the level of their consent to different sayings, such as willingness to work with a colleague who violated ethical values or consent to defend a mafia for a large

amount of money. These sayings were based on similar studies conducted in other countries and were piloted within the survey among law students and a pilot survey among attorneys. The consistency of findings from factor analysis and the ties between factors and key variables in the pilot and main survey evidence that the methodology is reliable.

Other variables which may affect activity of attorneys are work experience and the type of legal education. Work experience is of paramount importance since many attorneys came to the profession from law enforcement agencies and are in a position to use their experience to build effective interaction with the prosecution (not only and not so much corrupt). The size of the city in which an attorney works is important for understanding the social embeddedness of their work. Smaller settlements do not have so many attorneys and law enforcement officers, which enables them to establish closer informal ties. Moreover, the size of a settlement affects the market size, too: it is easier to find solvent clients in the capital of a region.

The type of activity of legal organization may be of importance as it characterizes the organizational setting. Collegiums of attorneys employ many lawyers and represent the easiest way to start a career. A bureau can bring together several attorneys, who are typically experienced lawyers with good reputation (and their office, which is often named using the last names of major partners, has its own brand). Legal office consists of one attorney, who is thus less connected to the professional community but is expected to have a stable client base. Finally, legal advice center implies community outreach in areas with shortages of other activity of attorneys educations. This is the least prestigious form of activity, relatively marginal though (employing 4.4% of attorneys from our sample).

All regression models further include control variables describing the socio-demographic characteristics of attorneys (gender, work seniority, education) and the type of sample.

Main findings

An important theoretical and methodological issue solved in this research was to find a reliable indicator to measure the independence level of an attorney. The

percentage of cases in which the attorney's clients consent to "special order" has been selected as the most suitable indicator. Plea bargaining per se is not a sign of dependence as it can be explained by different circumstances of a specific case. However, a high percentage of such cases (more than 50%) can evidence that the attorney works hand in hand with the prosecution. In "special order" cases the defendant makes a full confession in exchange for commutation (not more than 2/3 of the maximum term of sentence). Yet research by the Institute for the Rule of Law shows that in normal order courts rarely impose the maximum sentence since the defendant's benefit from the bargaining is psychological in nature. On the contrary, the law enforcement officers' benefit from "special order" is obvious as they do not have to investigate the case, thus saving their time, and may forget about fear of appeal against or cancellation of the verdict delivered by a higher instance. The attorney's role in the process after plea bargaining by their client gets minimized. Further evidence of an attorney's dependence in the event of high percentage of "special order" cases is that they more rarely achieve a favorable outcome for the defendant (e.g., suspended sentence or termination of the case on exonerative grounds).

Although it is commonly believed in foreign literature that the likelihood of plea bargaining is associated with the defendant's characteristics and not with the attorney's characteristics, analysis shows that at least the second part of the theory is wrong. An alternative suggestion implies that an attorney's social, economic, and human capital (measured as specified above) affects the level of his/her independence from law enforcement officers, thus, in turn, allowing the attorney to oppose them more often, including by not recommending that clients consent to plea bargaining. The above conclusion is confirmed by the regression model where the percentage of clients consenting to "special procedure" is a dependent variable.

The second question of interest to us in this research is about the factors which increase an attorney's specialization in work on the appointment of the court. This type of works leads to an attorney's strong institutional dependence on law enforcement officers, which, first, are in a position to allocate such cases and,

second, have to record an attorney's working hours based on which they are remunerated. In theory, participation in work on the appointment of the court should be evenly distributed among all attorneys, yet in reality cases like these are appointed in a very uneven manner: 41.2% of attorneys from our sample do not conduct them at all, whereas some attorneys do almost nothing but work on the appointment of the court (though representing minority, they make up the largest share of all such cases in Russia). Regression analysis shows that work on the appointment of the court in Russia are done by attorneys with lower levels of social capital and low demand in the market. Attorneys with few civil cases, no loyal clients, and low workload (i.e. with no market demand for their services) are far more dependent on court-appointed cases. Analysis shows that such attorneys are isolated from the rest of the community – they are neither members of any associations, nor attend professional events, nor keep in contact with their former fellow students. Personal contact networks are essential to get clients in the singular goods market, whereas a lack of these networks makes an attorney dependent on the state, which de facto becomes their primary employer.

The situation with pro bono work is completely different. Although, on the face of it, this kind of services might appear to be similar to work on the appointment of the court, in reality it is the opposite in terms of participants and the factors by which they are affected. Free legal aid is rendered by attorneys who are members of professional associations, network with their colleagues, and have ethical values related to reputation focus and not personal gain focus.

In order to draw a more accurate picture, analysis has been conducted as to which attorneys work under an agreement only (in the theoretical model on Fig. 2 they are located in the spot which is close to the market). In full conformity with the model these are professionals whose services are in greatest demand in the market, who have neither strong ties with the professional community nor reputation focus. This circumstance is further evidence of earlier conclusions.

Accordingly, we have found that social and economic factors affect the independence levels of attorneys in a criminal case. The next step is to analyze the

key problems facing contemporary attorney profession. There are three key problems: reduction of demand for activity of attorney’s services among the population, decrease in the level of payment for attorneys' work on the appointment of the court, and numerous violations of the defendant's rights by law enforcement officers. These factors are capable of encouraging Russia's attorney community to mobilize as they pose a direct threat to common practice. Lower demand for services caused by the economic crisis undermines the economic independence of attorneys and can possibly lead to even stronger dependence on court-appointed cases. In turn, things go sideways in the court-appointed segment, too, since inflation in recent years has significantly reduced the attorneys' payment, which is modest enough as it is.

However, the most substantial challenge is posed by the score-based system of reporting, which pushes law enforcement officers to violate the defendants' rights. Furthermore, unscrupulous law enforcement officers in Russia have ample capabilities to abuse their position of authority to extract rent from businesses. An attorney, no matter how weak their position is, has to oppose these violations.

The aforesaid problems can encourage attorneys to conduct collection action. For instance, the only mass protests of attorneys in contemporary Russia have been triggered by low level of payment for work on the appointment of the court. However, fee for work on the appointment of the court is the issue which can be solved by simply redistributing funding, whereas the violations of defendants' rights are a hard-to-tackle systemic issue. Our research shows that the greatest demand for the functioning of a strong professional association is demonstrated by attorneys who more often than others oppose the law enforcement system, namely: record the breaches of defendants' rights and file complaints against executives. Especially attorneys with experience in working as heads of attorneys organizations. This finding is in line with the proposed theoretical model where the independence of individual attorneys has to do with the independence of the whole activity of attorney’s organization. The willingness of leaders of the community and individual

attorneys to make the professional associations more active can be treated as an important step in the fight for the strengthening of professional independence.

General conclusions from research

Despite the existing competition and controversies among different law enforcement agencies in Russia, all of them are interconnected through the institute of the score-based system of reporting. While working to achieve a common goal, they make up the accusatory coalition ("legal complex" in the terms of Halliday and Karpik), which is in a position not only to effectively support "accusatory bias", but also to hinder changes and reforms. When discharging their professional duties, attorneys often have to conflict with this coalition but virtually have no allies.

Currently, perspective initiative includes the movement for attorneys to be given the so-called "monopoly" for work in court. If this reform is implemented, any lawyer will have to obtain an attorney status to conduct civil, criminal or arbitration cases in court. This initiative is able to solve the problem of insufficient activity of attorneys funding (through control of more profitable civil and arbitration cases). Moreover, the “monopoly” will certainly strengthen the positions of the attorney community, too. Private practice lawyers and human rights activists doing work in courts one way or another will have to become part of one corporation. Accordingly, there is an option for creating the human rights defense coalition as opposed to the accusatory legal complex.

This strengthening of positions will add urgency to the protection of attorneys and their clients against unscrupulous law enforcement practices. As was the case in several foreign countries (Pakistan, Tunisia, Taiwan, France, etc.), the bar association will have to choose which side to support: the state or ordinary community members (who may be joined by the civil society representatives). Preference could be given to the first as well as the second scenario.

Other alternatives include further weakening of profession of attorneys. The institute of the score-based system of reporting directly aims to deprive attorneys of independence since it is them who hamper the achievement of targets which may affect the career trajectory of a law enforcement officer. Drop in demand among the

population urges attorneys to become more dependent on cases appointed by the court. A growing share of criminal cases involving plea bargaining illustrates that law enforcement officers effectively “standardize” the litigation process and attorneys help them increasingly often.

But what if attorneys become part of the same coalition as law enforcement officers and judges? Although possible answers to this question might sound speculative, to the best of our understanding, this would speed up self-destruction of the accusatory legal complex as a result of losing the last opponent. Unless attorneys record any violations committed by law enforcement officers, the number of power abuses will go up. If attorneys no longer appeal against unfair sentences, this will put an end to the last fear of all investigators, prosecutors, and judges – possible cancellation of guilty verdict by a higher instance. If high performance indicators are achieved without much effort, more and more law enforcement officers will abandon any professional activity and tilt towards rent-seeking behaviors. As a result, the existing institute will destroy itself. The only remaining solution will be sweeping reforms of the entire law enforcement system, resulting in the restoration of independent activity of attorneys and judiciary.

This research shows that the independence of the attorney community is not a narrow question concerning the interests of one professional group. Under certain circumstances, the tension existing in contemporary law enforcement system in Russia could trigger substantial reforms and social transformations. In contrast, possible short-term effects of the attorney community's defeat and loss of independence include further "mothballing" of the existing system, which has adverse implications for the general public, such as the ability to infringe the fundamental rights and freedoms of citizens and ensure (almost seamlessly) that any criminal lawsuit ends with the guilty verdict. In the long term, the loss of independence by attorneys can imply sweeping transformations of the whole law enforcement system.

This research highlights the factors which enable attorneys to maintain an acceptable level of independence. Economic factors as such can only be indirectly

influenced by attorneys, whereas social factors prove to be more pronouncedly related to the processes that are underway within the attorney community. The profession of attorney in Russia has not yet exhausted its integration potential. This entails more active involvement of attorneys in the bar associations' activities rather than integrating private practice lawyers into the community by introducing "monopoly." An attorney's integration into the professional community strengthens such attorney's position, makes them less vulnerable to pressures from law enforcement officers. Community needs to interact more actively with the attorneys who specialize in work on the appointment of the court and virtually remain isolated from the rest of their profession (one aloners). It is necessary to work systematically to defend professional ethics, clear unscrupulous members out of the profession. Finally, activity of attorneys still has enormous potential to develop pro bono community outreach. This kind of work should be encouraged by the community in every possible way, this work experience should become an inherent attribute of any professional and be an additional positive signal to clients.

The vast potential of attorneys in Russia has to do not only with active opposition to the infringement of human rights, but also with the expert review of new reforms. What makes an attorney's position unique is that they interact with law enforcement officers on an ongoing basis and is thus in a better position to assess the quality of their services more objectively than the general public. Findings from the research show that the breaches of defendants' rights are more typical of individual regions and individual agencies, which makes it possible to correct "worst practices" and replicate positive experience. Accordingly, assessing the quality of the law enforcement system functioning through surveys among attorneys allow us to gather information which is important to political decision-making.

A broader perspective on the situation reveals that the attorney community (including the Russian Federal Chamber of Lawyers) can be viewed as an essential precondition for Russia's transition from limited-access order to open-access order (in the terms of North and co-authors). This transition requires three preconditions:

the supremacy of law for elite groups, consolidated control under violence and permanent-living organizations.

The attorney community is able to contribute to ensuring all of the three conditions. Today, the Russian Federal Chamber of Lawyers is Russia's largest non-profit organization, which, despite its young age (established in 2002), has already demonstrated the ability to reshape its management team. This research illustrates that activity of attorneys can and should act as a restraining mechanism for part of the "violence machine" represented by law enforcement agencies. Finally, the independent legal profession is a precondition for the supremacy of law for elite groups since a qualified lawyer is the key element for non-violent and law-governed conflict resolution within the political elite. Naturally, for the activity of attorneys to maintain its positions and start performing the aforesaid roles, a broader coalition of attorneys, other professional groups, and civil society representatives will be required. However, the experience of foreign countries shows that coalitions like these are possible.

The list of publications of the author reflecting the key scientific findings from the dissertation

13 papers on the topic of this dissertation have been published in the leading peer-reviewed academic periodicals and the periodicals recommended by the Higher Attestation Commission of Russia's Ministry of Education and Science.

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