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*Andrei Yakovlev, Anton Kazun,  
Daniil Sitkevich*

# **THE ROLE OF LAWYERS IN SOCIAL CHANGES IN DEVELOPING COUNTRIES: EVIDENCE FROM RUSSIA**

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*Andrei Yakovlev<sup>1</sup>, Anton Kazun<sup>2</sup>, Daniil Sitkevich<sup>3</sup>*

## **THE ROLE OF LAWYERS IN SOCIAL CHANGES IN DEVELOPING COUNTRIES: EVIDENCE FROM RUSSIA<sup>4</sup>**

This paper reviews the activity of professional legal organizations as factors in the transfer from limited access order (LAO) to open access order (OAO) according to the theory of North, Wallis and Weingast. By analyzing the experience of lawyers' collective action in developing countries, this paper proposes a decision tree explaining the process of the mobilization of the legal community to counter violations of the law by the ruling elite. It shows that this collective action plays a significant role in implementing the rule of law. However, the efficiency of such collective action in a particular country depends on the institutional capacity of its legal association and on the position of the professional elite leading it. The history of the development of Russian legal advocacy shows that exogenous shocks actually stimulate the collective action of lawyers, which in turn compels the government to respond.

Key words: lawyer, professional elite, collective action, limited access orders, open access orders, professional mobilization.

JEL: K49, D71, L84.

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<sup>1</sup> Ph.D., Director, Institute of Industrial and Market Studies, Professor, Department of Theory and Practice of Public Administration, HSE, ayakovlev@hse.ru

<sup>2</sup> Research Fellow, International Centre for the Study of Institutions and Development, Lecturer, Department of Applied Economics, HSE, akazun@hse.ru

<sup>3</sup> Graduate Student, Faculty of Economics, Lomonosov Moscow State University, dasitkevich@gmail.com

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## **Introduction**

North, Wallis and Weingast (2009) (NWW) advance the idea that the elite in any society face the need to control the means of violence. Depending on the method of addressing this task, societies can be classified into two types. The first category includes “natural states” or “limited access orders” (LAOs), which are based on key elite groups who possess the potential for violence and share the distribution of the rent generated from access to economic and political activity for non-elite groups. LAOs are capable of maintaining certain “rules of the game” and thus ensure the stability necessary for economic development. However, LAOs have an inherent weak spot in that changes in the balance of forces between individual groups and changes in the flow of rent (caused by technological or external political shocks) regularly engender acute conflicts within the elite, frequently leading to a “war of everyone against everyone” and the destruction of the achievements of the previous period of relative stability.

NWW believe that the solution to these development-related problems is the attainment of agreements by these elites on basic depersonalized rights and the obligations of their representatives (which creates the conditions for the “rule of law”) and the formation of mechanisms of collective political control over the use of the machinery of violence. However, to ensure the sustainability of such agreements concerning the rights and mechanisms of such control, it is important to have permanently operating private and public organizations independent from the state and capable of exerting pressure on the authorities in the event of a violation of the agreements. Analyzing the historical development of Great Britain, France, and the United States, NWW name political parties and corporations among such permanent organizations. The importance of their role is due to the possibility of peaceful revision of rent distribution arrangements through interactions between such elite organizations.

NWW consider the three conditions mentioned above (the rule of law for the elites, the presence of permanently operating elite organizations, and consolidated control over the armed forces by the elites) as “doorstep conditions” to a higher stage of societal development, which they refer to as to as “open (or free) access order” (OAO). A key feature of OAOs is the radical lowering of access barriers to economic and political activity through the liberalization of economic activity and the democratization of political life. These processes become possible with the development of elite organizations and their ability to ensure abidance by the “rules of the game”. The achievement of peaceful conflict resolution reduces the risks to existing elites of the emergence of new strong economic and political players.

Historical experience shows that in the long term, OAOs are capable of ensuring the conditions for stable socioeconomic development (however, the debate about the stability of OAOs remains; see Carugati et al. 2015; Reckendrees 2015; Webb 2015). However, until

recently, most states still fell into the category of LAO. In this context, NWW insist on a more profound understanding of LAO logic and an exploration of its development patterns rather than a focus on the transfer to a free market and democracy (or transfer from LAO to OAO, in the terms of NWW) typical of many researchers and international organizations.

Initially NWW formulated this concept on the basis of historical cases of the 17<sup>th</sup> to 19<sup>th</sup> centuries in Great Britain, France, and the United States. Only later, in 2012, was this methodological approach applied to the analysis of the socioeconomic development of a number of contemporary developing countries, including South Korea, Chile, Mexico, and Bangladesh (North et al. 2013). Nevertheless, both the initial 2009 study and the 2013 book, notwithstanding the coherence and logic of their concept, offer a rather sketchy description of the formation of organizations capable of controlling abundance to the “rule of law” and restricting the use of violence in LAOs.

Considering that such organizations are key in the sustainable functioning of mature LAOs and an important precondition for their transformation into OAOs, we analyze the emergence of such organizations in this article, using the example of evolution of the bar in Russia as a professional community.

Our interest in this community is connected with the fact that bar associations are a unique form of public organization as in Russia it is officially recognized by Russian legislation as a civil society institution participating in law enforcement. Lawyers oppose (generally alone) the state criminal prosecution machinery as a matter of daily practice in their handling of cases and have to ensure the rule of law and the restriction of the illegitimate use of violence by law enforcement agencies.

There is ample research showing that lawyers, due to the importance of their social status and their professional expertise in matters of law enforcement, are often key actors of social reform (e.g., government administration reform in Israel (Hajjar 1997), legal reform in China (Michelson 2007), regular political initiatives in the USA (Boukalas 2013)). However, the experience of many countries shows that lawyers can drive social change or hinder it. Below we will try to answer the question: what can lies behind one or the other position of the legal community?

Lawyers in authoritarian states may represent and defend the interests of the political elites and in this sense constitute an extension of the law enforcement system (this is the logic followed by the police; see (Gerber and Mendelson 2008)). However, we will see that in a number of cases, lawyers act on the side of the opposition. The position of the community of lawyers can also be deliberately apolitical. However, even in this case, they are capable of exerting a strong influence on society through their professional activity (e.g., by helping a

vulnerable population; see (Granfield 2009) or by creating useful legal precedents (Barclay and Chomsky 2014)). Apparently, the capabilities of the bar in some countries are directly related to the development of the professional community itself, the existence of a strong bar association, the level of independence of lawyers from law enforcement and other authorities, and the demand for lawyers' services from the population and businesses. The influence of the legal community is undoubtedly connected with the degree of its professionalism (in the terms presented by (Abbott 1988; Freidson 1988)) as manifested in its autonomy, competence, ethics, and the development of its professional communication.

Contrary to the pessimistic view of Olson (1971) we assume that associations in an imperfect institutional environment in developing countries can support and supplement markets (the same idea was suggested for business associations by (Doner and Schneider 2000)) and act as defensive organizations (Duvanova 2013). In our opinion, the choice of the community of lawyers to favor one or the other option of collective action depends above all on the position of the legal community's elite and the capability of grass-roots lawyers to influence this elite.

In this paper, we analyze the emergence of collective action within the legal community in different institutional settings and demonstrate the implications of such collective action. Having examined the experience of different patterns of bar community mobilization, we will turn to the situation in Russia and discuss the ways in which the bar could influence the implementation of the principles of the "rule of law".

In the next section, we construct a theoretical model of the collective action of lawyers based on cases of lawyer mobilization in different countries. We predominantly focus on the experiences in developing countries and also on the history of the evolution of bar associations in developed countries in the early stages of their formation, which also provide us with an opportunity to make a comparative analysis.

### **Collective Action of Lawyers in Countries with Weak Institutions**

The literature describing the collective action of legal associations leading to social changes is based mainly on cases from the historical experiences of different countries (most of which could be considered LAOs).

We selected these cases based on the literature about the collective actions of lawyers in developing countries and tried to cover as many relevant cases as possible. The problem of this approach is the limited information, because not all the actions of lawyers were subject to systematic scientific analysis. We understand that this analysis has an inductive and descriptive

character, but we make generalizations based on the existing theory of collective action and apply our new theoretical model for the analysis of the situation in Russia.

An analysis of these experiences shows that the actions of legal associations, which were initially aimed at maintaining their professional interests, often became the triggers of mass protests for the entire civil society. This is because the professional interests of lawyers in many contexts are connected with the interests of the entire society (Andersen and Oldham, 2003) e.g., striving toward the rule of law is beneficial for society while simultaneously maximizing lawyers' incomes in the long term. Moreover, legal (and other professional) associations not only are participants in the protests but also play an important role in mobilizing representatives of their profession to form a coalition of various social groups around a non-ideological agenda and to help preserve the gains of the protests. These conclusions can be made on the basis of several cases describing the involvement of legal associations in political transformations.

For example, (Gould 2006) analyzes the actions of the Law Association of Zambia (LAZ). In the 1990s, after the establishment of a more democratic regime, LAZ distanced itself from politics. The situation changed in 2001 when President Chiluba, who had been democratically elected in 1991, made an attempt to stay in power by amending the Constitution. Fearing for his freedom after stepping down from power, he tried to run for a third presidential term despite the constitutional limit. As a result, in February 2001, LAZ supported the constitutional law and came out against the leader. Together with religious leaders and public organizations (especially women's organizations), LAZ concluded an agreement on collective action against the dictatorship. In the end, the movement succeeded, and Chiluba gave up on pursuing a third presidential term.

A similar situation occurred in Pakistan and ended with the resignation of President Pervez Musharraf (Ahmed and Stephan 2010). The protests were triggered by the March 2007 dismissal by President Musharraf of Iftikhar Muhammad Chaudhry from his post as Supreme Judge of Pakistan while he was investigating corruption cases. In response to the protests, Musharraf declared martial law, arrested Chaudhry and dismissed an addition 60 higher judges. However, these actions could not stop the wave of protests. Many months of confrontation between the people of Pakistan and the President ended in the lifting of martial law in December 2007, the holding of general elections, and Musharraf's resignation in August 2008 under the threat of impeachment. In March 2009, Chaudhry and the other dismissed judges were reinstated.

Another example occurred in Tunisia and is described by (Gobe and Salaymeh 2015). The Tunisian Bar Association (TBA) did not take an active part in the 2010 revolution. However, due to the widespread involvement of the lawyers themselves in the revolution, the

TBA gained considerable political weight, as in the eyes of the population, the TBA was an institution that represented the interests of anti-dictatorship champions. The association started positioning itself as a “guardian [of civil rights and freedoms] not connected with the state” (Gobe and Salaymeh 2015:20) and an arbiter for the resolution of political conflicts. Therefore, the role of legal associations consists not only in the achievement of social transformations but also in the preservation of their gains.

Before the beginning of its democratic transition, lawyers were strictly regulated in Taiwan (Winn and Yeh 1995). It was extremely difficult to obtain a license without concessions (often granted for supporting the Kuomintang regime). For a long time, the legal community developed within the German tradition according to which lawyers associate themselves first with the state and state interests. However, economic liberalization and joining the system of international trade along with the development of close ties with the United States (objectively caused by military and political confrontations between Taiwan and China) formed within the business community a need for different forms and mechanisms of legal services oriented toward the defense of clients’ interests. The integration of these two approaches resulted in a reform of the legal profession, which made the bar more autonomous and let its new members share more liberal views, thereby leading to a change in the association’s position regarding the authorities. Although the bar association was not involved in direct opposition to the political regime, the share of lawyers in the opposition Democratic Progressive Party was higher than in the Kuomintang. Moreover, many lawyers were active defenders of prisoners of conscience and organized movements for the rights of workers, women, and consumers. This way, in the opinion of (Winn and Yeh 1995), the public actions of lawyers played a significant role in delegitimizing the existing institutions, resulting in the liberalization of the political regime.

Despite examples of successful collective action on the part of the legal community, the literature does not offer any theoretical models describing the factors of successful action. Nevertheless, an analysis of the models of professional organizations reveal some consistent patterns of successful collective action. For example, (Naylor 1989) uses an individual’s utility estimate of joining a strike to show that a professional association’s decision to join civil collective action depends on its expected gain in the event of the victory of the protesters, on the level of reputational boost of an individual or the profession and the individual’s/association’s preferences concerning collective action. Similar factors are described by (Doner and Schneider 2000) using the case of business associations. In their opinion, an association’s ability to organize collective action depends on its membership (the more market players are members of an association, the stronger it gets), on the benefits provided by membership of the association (the more benefits there are, the more active the association members become), and on the level

of efficiency of its internal interaction (the higher the trust and openness within the association, the stronger it becomes).

A vitally important factor for the success of the collective action of professional communities is their ability to draw the attention of the media to the problem and raise public awareness. This creates the opportunity to inform society at large of the actions taken and extend the sphere of support among civic activists. However, not every event attracts media attention.

The legal community is not always capable of advancing its agenda, through mass media or its own association. A lack of support from the association often poses a barrier to social transformation. For example, (McEvoy and Rebouche 2007) describe the case of the Bar of Northern Ireland in the high-profile assassinations of Catholic lawyers. In the case of the first victim, a human rights lawyer, Pat Funicane, the Bar of Northern Ireland refused to participate in the investigation for 10 years to keep an apolitical position, yet the position of the lawyers' community changed after the murder of another Catholic lawyer, Rosemary Nelson. Although its leadership still considered it necessary to maintain the policy of neutrality, most lawyers agreed at their meeting to request an independent inquiry into the assassinations of Nelson and Funicane. The lawyers who attended that meeting noted that they were strongly influenced by the activity of human rights organizations, as the members of the legal community felt uncomfortable in front of their foreign colleagues as they continued to remain silent about those cases. Moreover, although the Funicane case remained unsolved for ten years, the campaign launched by the Bar to solve these crimes after Nelson's murder ultimately resulted in a conviction.

(Kelly 1998) recognized two categories of administration in a professional organization – democratic and bureaucratic. Under a democratic administration the organization's leaders take decisions on the basis of the recommendations of their members. Under a bureaucratic administration, the leaders form the organization's agenda on their own without direct input from its members.

Bureaucratic associations are mainly encountered in countries with authoritarian rule and imperfect civil society institutions. One example of this is the case of Li Zhuang in 2009-2011, described by (Liu, Liang, and Halliday 2014), and the reaction of China's legal association. Li was defending Gong Gangmo, who claimed to have been beaten by investigating officers. After Gong told the press about the beatings, Li was accused of inciting a witness to fake testimony and of fabricating evidence. The court initially sentenced Li to two and a half years in prison, and after that, a second similar case was initiated against him. Although there were doubts concerning the first case, many lawyers sided against Li, but Liu writes that the second case became a turning point for collective action on the part of organized professionals (Liu, Liang,



and Halliday 2014:90). As a matter of fact, not only did Li's defense attorney colleagues participate in the protests but they were also joined by prominent Chinese professors of law, students from legal departments, and even some prosecutors and police officers.

Li Zhuang was not a human rights champion but a defense lawyer in an ordinary criminal case. Many lawyers noted during Li's second trial that if he was convicted, it would be impossible for other lawyers to defend their clients (<http://www.nytimes.com/2011/04/20/world/asia/20china.html>). The only representatives of the legal community who did not support Li were the leaders of the Chinese legal association. Many regional lawyers even received letters from the association advising them not to participate in the campaign supporting Li and not to discuss the case. This behavior on the part of the association was due to it being less an organization of lawyers and more a part of the bureaucratic machine that depended on the authorities and pursued their policies.

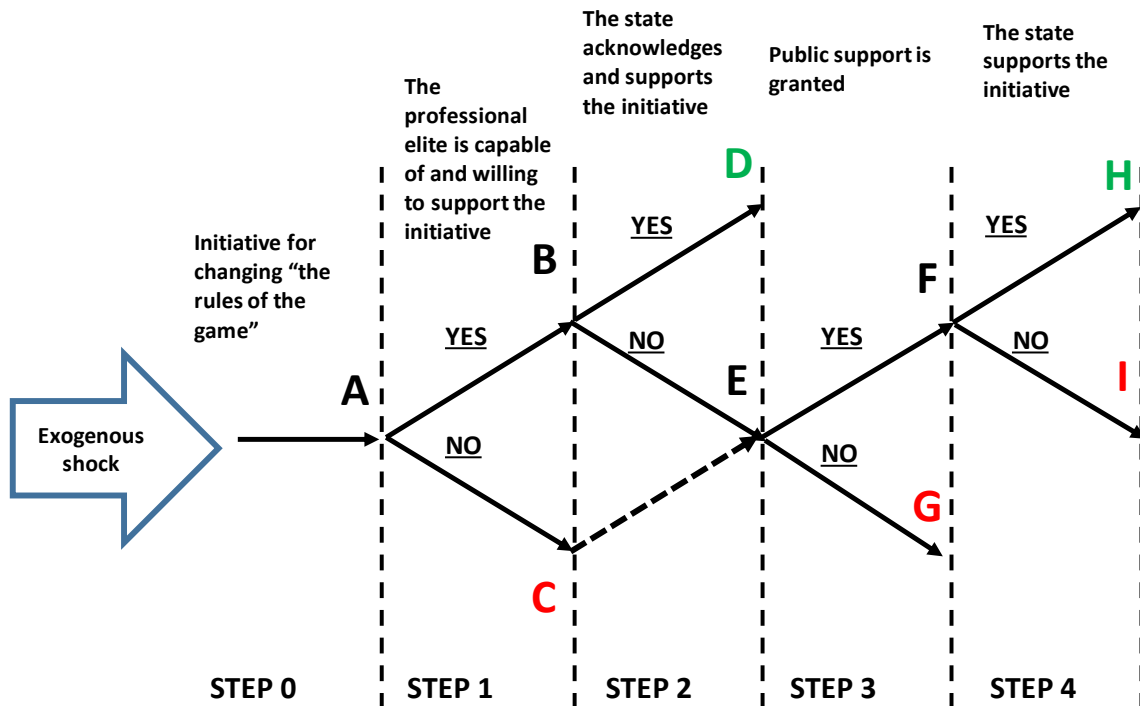
However, even though legal associations in authoritarian regimes often support the authorities, there are examples in which a lack of sufficient motivations and benefits of membership in the association for grassroots lawyers resulted in a change of the association's leaders. The new leaders start by pursuing a new policy that distances them from the authorities. According to (Gobe 2010), before the 1990s, the bar association in Tunisia was loyal to the existing regime and its leaders were members of the ruling party. However, as they failed in achieving the introduction of professional standards, restricting of new market entries and solving a number of other tasks important to the professional community, Beshir Essid was nominated to the organization's leadership position and proposed campaigning for the community's goals through protests.

Therefore, different countries have their own examples of different attitudes held by the legal community toward the authorities – from complete loyalty to overt opposition. The responses of the authorities to lawyers' protests have also been quite diverse – from ignoring their demands to significant concessions (going as far as changing the political regime). Below, we will construct a descriptive model to systematize these experiences.

### **Decision tree of Collective Action of the Bar Community**

We use the analysis of cases of collective action by lawyers from developed countries and the experience of contemporary developing countries described above to construct a decision tree with consecutive adoption of decisions by different actors (Fig. 1).

**Fig. 1. Decision tree**



The collective action is triggered by an exogenous shock such as the assassination or the illegal criminal prosecution of a member of the legal community, the dismissal of judges, the violation of the law by representatives of the authorities. In terms of NWW's theory, this means that the elites use violence to protect their control over rents and in some cases to restrict access to rent by other elite groups (including professional elites).

The exogenous shock provides the initiative for changing the rules of the game, which at the first stage may be represented by individual persons (victims, relatives, friends, colleagues). In our model, we proceed from the assumption that acting alone, these people have practically no chance to be heard in an authoritarian state.

At stage 1, the initiators appeal to their colleagues in the professional community with a request to support their demand. The professional community is represented in our model first and foremost by the legal elite, which constitutes a sort of filter eliminating the initiatives that could endanger it or would be immediately rejected by the authorities. Some bureaucratized legal organizations may refuse to support their colleagues because they consider themselves to be above all servants of the state.

To support an initiative, the professional elite should not only be willing but also able to mobilize its resources. In a segmented and weak professional community, the probability of

collective action is small in principle. Basically, the professional elite has to solve the problem of collective actions described by (Olson 1971).

At the second stage, the authorities may find out about the initiative/demand (this may not happen if the influence of the professional community is small). In the model, the state is presented simply as a monolithic actor making decisions. If the initiative is supported, the collective action is successful.

At stage three, the rejected coalition of professionals may attempt to win the support of the public (political parties, mass media, religious organizations, etc.). The authors of the initiatives dismissed by the professional elite at step one can reach this stage (for simplicity, we will not take this scenario into account, although it could be separated out as the formation of a new professional association as an alternative to the incumbent association controlled by the state).

At stage four, the state would no longer be able ignore the initiative, and it would have to take a decision. If it refused to grant the demands, all parties would stand to lose.

The parties' gains from different scenarios of collective action are summed up in Table 1.

**Table 1. Gains of the parties from different collective action scenarios**

<b>Scenario</b>	<b>Initiators</b>	<b>Professional elite</b>	<b>Society</b>	<b>Description</b>
<b>C</b>	-	0	0	The initiative is filtered by the professional elite and not admitted to the public level.
<b>D</b>	+	+	0 (+)	The initiative is supported by the professional elite and immediately acknowledged by the state.
<b>G</b>	-	-	0 (-)	The initiative is supported by the professional elite but not

				supported by the state or society. A poor scenario for the profession, as it demonstrates its weakness.
<b>H</b>	+	+	+	The initiative of the coalition of professionals wins. This may entail serious changes, including political ones.
<b>I</b>	-	-	-	The initiative of the coalition of professionals and public organizations is suppressed. The use of force is possible. All participants sustain losses.

*Note: + wins, - loses, 0 – no impact.*

In terms of NWW’s theory, scenario H can improve institutions as an LAO or even contribute to the transition to an OAO. Scenario G and especially scenario I could mean a return to instability, delaying the improvement of LAO institutions.

We later turn to the experience of organizations of lawyers in different countries to illustrate how this model works.

### **Illustration of the Decision Tree**

Our proposed pattern helps structure the existing experience of the initiation of collective action within the bar associations of different countries including Russia (the results are presented in Table 2).

**Table 2. Examples of different types of collective action**

<b>Scenario</b>	<b>Description</b>	<b>Example</b>
<b>C</b>	The initiative is filtered by the professional elite and not admitted to the public level.	Assassination of Pat Funicane, Northern Ireland, 1989; (McEvoy and Rebouche 2007)
<b>D</b>	The initiative is supported by the professional elite and immediately acknowledged by the state.	Creation of a national lawyers' association; United States, beginning of the 20 <sup>th</sup> century (Halliday, Powell, and Granfors 1993)
<b>G</b>	The initiative is supported by the professional elite but not supported by the state or society.	Strike in Tunisia in 2006 (Gobe 2010)
<b>H</b>	The initiative of the coalition of professionals wins.	<p>Jasmine revolution in Tunisia in 2011 (Gobe and Salaymeh 2015)</p> <p>Assassination of Rosemary Nelson in Northern Ireland (McEvoy and Rebouche 2007)</p> <p>Protest against a third presidential</p>

		<p>term in Zambia (Gould 2006)</p> <p>Protest against the dismissal of judges in Pakistan (Ahmed and Stephan 2010); Pakistan, 2010)</p> <p>Activity of legal organizations in Taiwan (Winn and Yeh 1995)</p>
<b>I</b>	The initiative of the coalition of professionals is suppressed.	Arrest of Mohamed Abbou in Tunisia, 2005 (Gobe 2010)

In our view, the futile attempt of the legal community of Northern Ireland to draw the Bar's attention to the assassination of a lawyer is an illustration of scenario C. Apparently, there are many similar cases in other countries, but they seldom become the subject of special scientific analysis. Successful lobbying for the creation of a professional association of lawyers in the United States with compulsory universal membership is a good example of scenario D: the professional initiative was acknowledged and fulfilled. Scenario G is illustrated by the strike of lawyers in Tunisia in 2006 involving the association's attempt to push legal reform, which failed and to which society remained indifferent.

There are many examples of scenario H in which a coalition of professionals and society has actually achieved significant sociopolitical transformations. For example, the actions of lawyers in Tunisia in 2011 encouraged the "Jasmine revolution." The Bar of Northern Ireland succeeded in resolving the murder of Rosemary Nelson. The protests of lawyers in Pakistan resulted in the cancellation of the presidential decision to dismiss judges and contributed to the collapse of the country's political regime. LAZ managed to join its efforts with other public organizations and defend the national Constitution. Academic literature has many examples of

scenario H, as it often actually leads to important and considerable changes in the socioeconomic life of a country.

Finally, the most dramatic is scenario I, the failure of the coalition of professionals and society. For example, the arrest of Mohamed d Abbou in Tunisia in 2005 did not result in any positive outcomes for the initiators notwithstanding the mass national protests it stirred.

Our model describing the initiation and implementation of collective action by the legal community has quite a few illustrations from non-Russian experience. Below we will use this model for analysis of development of the legal community in Russia.

### **Applying the Model to the Analysis of Development of the Profession of Lawyers in Russia**

During the Soviet period, criminal defense lawyers (“advokati,” hereafter criminal defense lawyers or advocates<sup>5</sup>) were a small, closed and exclusive professional group, but after the collapse of the Soviet Union, this profession became much more common. This process was objectively caused by the unprecedented growth (in fact, emergence) of the demand for legal services among the business community and the considerably extended access to justice for the population (protection of consumer rights, property disputes over new facilities put into civil circulation, the liability of the state, extending the powers of criminal defense lawyers to stages of investigation in criminal cases). At the same time, this process was accompanied by a radical reduction of entry barriers to the profession and the greater availability of legal education (for more details, see (Kazun and Yakovlev 2014)). These transformations strengthened the community’s non-homogeneity, generating the risk of a dramatic deterioration in the quality of legal assistance. These transformations can be interpreted as an exogenous shock connected with the reorganization of the legal services market, similar to those that were occurring in a number of developing countries.

In response to this, the professional community started a “bottom up” self-organization (a similar process took place in the United States at the beginning of the 20<sup>th</sup> century; see (Halliday, Powell, and Granfors 1993)), which was initially supported by the state in the early 2000s. Specifically, the Federal Law on Criminal defense lawyer’s Activity and the Bar in the Russian Federation (№ 63-FL) was adopted in 2002, and in 2003, the Russian Federal Chamber of Lawyers (RFCL) was created to unite all regional chambers. Currently the RFCL is the most legally protected and autonomous NGO in Russia. An important provision of law № 63-FL is

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<sup>5</sup> Advocate (“advokat”) is a formal status that allows Russian lawyers to work on criminal cases; in European countries, they typically called criminal defense lawyers. There is no distinction between barristers and solicitors in Russia, but there is a clear difference between advocates and private lawyers (“chastnopraktikuyushchie yuristy”) - attorneys who did not pass the bar exam and are not allowed to work on criminal cases.

part 1 of article 3, which states that the legal profession is a civil society institution and is not included in the system of government agencies. Article 11 establishes a qualifying examination, which is very important for controlling the quality of legal services. Simultaneously, the law establishes several restrictions. For example, Article 20 permits only four forms of legal organizations (board, bureau, office and consultation) and does not include legal corporations as a legitimate type of organization. This has become an obstacle for the emergence of large law firms in Russia. The transformations of the early 2000s helped reinforce entry barriers (the new law introduced a compulsory bar exam) and institutionalized a legal “elite,” which automatically included the leaders of the RFCL and other associations and major bar councils.<sup>6</sup> Those legal elites were vested with the opportunity to exercise professional control and started effectively working towards extending their sphere. Regional chambers received the right to exclude unscrupulous members in the course of their own disciplinary proceedings. The RFCL is striving to extend its authority to enhance the supervision of regional disciplinary practices.<sup>7</sup>

An important aspect of the reform was an increase in the financial resources allocated to the bar association. The bulk of criminal cases in Russia are cases against unemployed citizens who have previous convictions. As a result, a considerable number of criminal defense lawyers are engaged in handling cases on court assignment. In such cases, the services of a criminal defense lawyer are paid for by the state.

Before the adoption of the new Code of Criminal Procedure in Russia in 2001, payment for the services of a criminal defense lawyer was the responsibility of the defendant or, in certain cases, the republic’s budget. This created uncertainty concerning the payment for the services of such criminal defense lawyers. The new CCP contained article 51, which guaranteed a defendant’s right to the free services of a criminal defense lawyers. An important change was introduced in 2003 connected with the assignment of the duty to pay for the services of criminal defense lawyers in the federal budget.<sup>8</sup> Unlike the former edition, the new Code contained clearer regulation of the level of a criminal defense lawyer’s compensation depending on the category of the case being handled (including work at night, on holidays and weekends). Payment was from 25% to 100% of the minimal wages level and was to be raised along with the minimum salary. As far as we know from interviews with representatives of major bar associations, work on court assignments has been and remains financially unattractive. However,

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<sup>6</sup> Obviously, the point at issue in this case is exclusively organizational and administrative influence by the elite rather than professional authority. Nevertheless, professional authority nowadays generally coincides with the position of advocates in professional organizations.

<sup>7</sup> <http://www.vedomosti.ru/politics/articles/2016/05/11/640574-vmesto-otvetov-zaprosi-advokati-poluchat-eticheskuyu-vertikal>

<sup>8</sup> Russian Federation Government Resolution of 4 July 2003 No. 400 “On Amount of Compensation of an Advocate Participating in Criminal Proceedings as Defense Council on Assignment of Bodies of Inquiry, Preliminary Investigation or the Court.”



in most regions where demand from business is modest and the population is seldom capable of paying for legal services themselves, these resources ensured an acceptable level of wages for a considerable number of criminal defense lawyers.

Compensation for court assigned cases was not the only financial issue discussed by lawyers. In a 2007 case<sup>9</sup> (№ 1-P) the Constitutional Court considered allowing conditional fees for lawyers (i.e a share of the compensation awarded by a court if a lawsuit is successful). Although the Constitutional Court forbade conditional fees, one of the judges expressed a special opinion that this practice should be allowed.

After these innovations, the bar community remained passive with respect to social and political transformations for a long time. Criminal defense lawyers did not attempt to express a consolidated position either on the “YUKOS” case<sup>10</sup> or on matters related to the tightening of regulations on the activities of NGOs and the greater control of the media. Therefore, the first exogenous shock connected with uncertainty after the collapse of the Soviet Union was on the whole overcome quite successfully. Scenario D was implemented with the state accommodating the professional community and satisfying its demands. In terms of NWW’s theory, the reform of advocacy in early 2000s meant a slight redistribution of rents in the law enforcement system with criminal defense lawyers obtaining a small but constant and institutionalized share. However, as time went by, new exogenous shocks started to occur, and the professional elite of the legal community had to respond to them.

### **Shrinking Resources Allocated for Work on Assignment**

The amount of compensation for criminal defense lawyers’ work on assignment was actually growing until 2007. Then, the connection between lawyers’ compensation and the minimum salary was abolished by a joint order of the Ministry of Justice and the Finance Ministry, which introduced a fixed level of payment.<sup>11</sup> The only inflation adjustment was made in 2008, after which the compensation of criminal defense lawyers remained unchanged until 2012. Having disconnected the level of compensation from the minimum salary for lawyers working on assignment, the state has actually seized a large share of resources from the community of lawyers, and this gap continues to widen every year. Diagram 1 shows that before

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<sup>9</sup> January 23, 2007 (No. 1-P) Ruling of the Russian Federation Constitutional Court on the case on the constitutionality of the provisions of paragraph 1 of Article 779 and paragraph 1 of Article 781 of the Civil Code of the Russian Federation in connection with the complaints of the limited liability company " Agency of Corporate Security " and the citizen V.V. Makeyev.

<sup>10</sup> Unless we count the refusal of self-administration bodies of the Moscow Bar Association to disbar the advocates representing defendants in that case as taking a position.

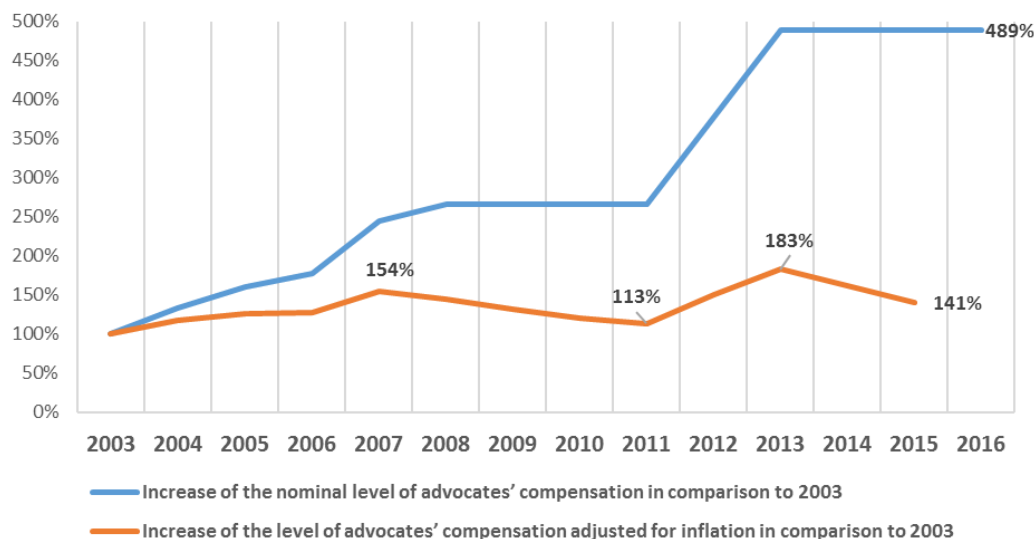
<sup>11</sup> Order of the Russian Federation Ministry of Justice and the Russian Federation Ministry of Finance of 15 October 2007 No. 199/87n for the City of Moscow “On Approval of the Order of Calculation of the Amount of Compensation of an Advocate Participating in Criminal Proceedings as Defense Council on Assignment of Bodies of Inquiry, Preliminary Investigation or the Court, Depending on the Complexity of the Criminal Case.”

2007, real compensation of criminal defense lawyers had increased 1.5 times, but by 2011, these increments had practically been nullified by inflation.

In 2012, criminal defense lawyers staged protests in five regions of Russia demanding a raise in the rate of compensation for work on court assignments.<sup>12</sup> The protesters' initiative was supported by representatives of the Guild of Russian Advocates and acknowledged by the head of the RFCL who promised to handle the situation in exchange for an end to further protests.<sup>13</sup> In 2013, the nominal size of criminal defense lawyers' compensation for work on assignment was raised for the last time with the amount of real compensation peaking that year. However, over the past three years, inflation has devoured all the gains granted to advocates, which raises the possibility of fresh protests.

Apparently, the RFCL is aware of the problem and therefore addressed an official letter to the Russian Government in April 2016 requesting a considerable raise in the level of lawyer compensation for work on assignment<sup>14</sup> to 3000 rubles a day or 700 rubles per hour, arguing that the compensation of arbitration judges and prosecutors was much higher than that of criminal defense lawyers.

**Diagram 1. Change in the nominal and real level of compensation of criminal defense lawyers' work on assignments in comparison to 2003**



<sup>12</sup> For more details, see: Three-Day All-Russian Strike of Advocates Scheduled for the End of April. 11 April 2012. Pravo.ru. 26 March 2012. [<http://pravo.ru/story/view/70969/>]

<sup>13</sup> FCA compares the wages of advocates, judges and investigators of the Russian Investigative Committee, but requests to stop protesting. Pravo.ru. 26 March 2012. [<http://pravo.ru/news/view/70306/>]

<sup>14</sup> The RF FPL Council Appeals to RF Government. 08.04.2016. Official website of the Russian Federal Chamber of Lawyers [[http://www.fparf.ru/news/all\\_news/news/20787/](http://www.fparf.ru/news/all_news/news/20787/)].

We believe that the RFCL leaders are aware that resources for work on assignment are a vital factor of the financial stability for the majority of the community of lawyers and can be used as a tool to maintain their loyalty toward the authorities.

### **Weak Institutional Position of the Community of Criminal defense lawyers**

Compared to other law enforcement bodies (courts, the Investigative Committee, prosecution authorities, the Interior Ministry), criminal defense lawyers occupy a weaker position<sup>15</sup> and have fewer financial resources and low opportunities to control professional standards. Although the reforms of 2002-2003 have strengthened the position of criminal defense lawyers and their organization (partly due to the RFCL's ability to collect and accumulate part of the contributions from bar association members in a single budget, i.e., due to the emergence of new source of rent), they did not go much further. There is still a large number of private attorneys in the profession who have no criminal defense lawyer status but operate in the same segment (except criminal cases). As a result, the RFCL is unable to speak on behalf of the entire legal community, and at the same time, it cannot expel unscrupulous representatives of the profession (a person can still practice law despite being deprived of the status of criminal defense lawyer).

The weakness of the RFCL's position has also manifested itself in several episodes that can be classified as scenario G (the legal community comes out with an initiative that is not supported by the state or society).

An example is the case of criminal defense lawyer Vladimir Dvoryak, who was accused of disclosing data from a preliminary investigation. *Novaya Advokatskaya Gazeta* described the story<sup>16</sup>: Dvoryak, from the Republic of Khakassia, was working on a corruption-related criminal case and encountered a situation in which a witness was pressured by law enforcement officers. He managed to record this episode on his mobile phone camera. After the recording was handed over to the media and received wide coverage, the lawyer was accused and later convicted under article 310 of the Russian Criminal Code, Disclosure of Data from a Preliminary Investigation. The community of lawyers in the Republic of Khakassia came out in support of Dvoryak. Moscow criminal defense lawyers joined the campaign and put forward an initiative to introduce amendments to the relevant article of the Criminal Code,<sup>17</sup> which actually sanctioned the application of repression measures against lawyers performing their immediate professional duties. Despite the support of the community and the RFCL, Dvoryak was convicted and

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<sup>15</sup> For more details, see (Kazun, Yakovlev 2015), (Khodzhaeva, Rabovski 2015)

<sup>16</sup> For more details, see: Gritsov A. Defending Dvoryak. *Novaya Advokatskaya Gazeta*. 7/2015 (192).

<sup>17</sup> Advocate's Independence Guarantees. Federal Chamber of Lawyers. 06.04.2016. [[http://fparf.ru/news/all\\_news/news/20511](http://fparf.ru/news/all_news/news/20511)]

sentenced to 400 hours of corrective labor<sup>18</sup>. However, after one of the most authoritative Russian criminal defense lawyers, Henry Reznik, took part in his defense, in June 2016 the Court of Cassation fully acquitted Dvoryak<sup>19</sup>.

Another case of professional struggle without wide public support was that of the violent murder in the Rostov Region in July 2009 of the commander of the Nizhny Novgorod Special Police Force (SOBR), Lieutenant-Colonel Dmitry Chudakov, and his family, as they were returning home from vacation on the “Don-4” highway from Krasnodar to Moscow.<sup>20</sup> Criminal defense lawyer Svetlana Manukian represented Alexei Serenko, who was arrested for murder<sup>21</sup>, and she gathered evidence of his innocence. As a result, the prosecution office refused to support the indictment, and after two years in the pre-detention center, Serenko was released into his own custody. In the process of discharging her professional duties, Manukian was subjected to serious pressure from the investigative bodies of the Rostov Region, including numerous threats and the initiation of a criminal case of falsifying evidence in 2014.<sup>22</sup>

In this case, the community of lawyers, represented by the RFCL, came out resolutely in defense of Manukian. In April 2015, she was awarded the Badge of Honor and Dignity – one of the highest awards in the Russian advocacy. Notwithstanding the support of the RFCL and the full acquittal of Serenko, in early 2016, Manukian was suspended by the court from representing the mother of the murdered Lieutenant-Colonel Chudakov.<sup>23</sup> This case demonstrates that the professional activity of a criminal defense lawyer in Russia poses substantial risks for a defense attorney even with the support of the community and wide media coverage of a case.

An example in which the legal community managed to maintain its interests is the case of Svetlana Davydova, who was charged with high treason. This high-profile case took place in January-March 2015. Davydova was accused of reporting the movement of Russian troops near the town of Vyazma to the Ukrainian embassy. She had lived in Vyazma in April 2014 (8 months prior to the lodging of the charges).<sup>24</sup> Davydova was placed under arrest by officers of the Federal Security Service<sup>25</sup>, and she was assigned a criminal defense lawyer by the court. The criminal defense lawyer not only did nothing to defend his client against illegitimate accusations

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<sup>18</sup> Sentence of the magistrate, court plot № 7, Abakan, Republic of Khakassia, 4 February 2015 and appeal decision of the Abakan City Court, Republic of Khakassia, 24 April 2015.

<sup>19</sup> Case №44y-46/2016. Decision of Court of Cassation of Abakan. 23 June 2016.

<sup>20</sup> Suspect in Murder of Commander of Nizhny Novgorod SOBR Released. RBC. 06.08.2011. [<http://www.rbc.ru/society/06/08/2011/609184.shtml>]

<sup>21</sup> Appeal decision № 22 – 2931 of Rostov Regional Court. 1 June 2011.

<sup>22</sup> Gorbunova E. “Saving Face” and Advocate’s Duty. *Novaya Advokatskaya Gazeta*. No. 21, November 2014 (182).

<sup>23</sup> Goryaev O. Victim in the “Rostov Amazons” Case Left without Defense. The Court Suspends the Advocate of the Mother of the Murdered SOBR Officer. // *Kommersant*, No. 10, 25.01.2016, p. 5. [<http://www.kommersant.ru/doc/2900300>]

<sup>24</sup> Udalov L. Enemy of the State: Mother of Seven Svetlana Davydova Confesses to “High Treason” // *Moskovsky Komsomolets*. 31.01.2015 [ <http://www.mk.ru/social/2015/01/31/mat-semerykh-detey-obvinyaemaya-v-gosizmene-dala-priznatelnye-pokazaniya.html> ]

<sup>25</sup> Case 221-601, the decision of Lefortovo Court. 22 January 2015.

(Davydova did not have access to state secrets and therefore could not be tried under the article cited in her accusation) but also induced her to admit her guilt and even made a public statement that Davydova had confessed to all the accusations. Because this was a high profile case, prominent representatives of the legal community became involved. The defendant refused the services of the lawyer assigned by the court, and all the charges were soon dropped<sup>26</sup>. In April 2015, criminal defense lawyer Andrei Stebnev, who represented Davydova on assignment of the court, was disbarred for violating the Law on Advocate's Activity and the Bar and the Advocate's Ethics Code.<sup>27</sup>

The Davydova case illustrates that sometimes the legal community can achieve its ends through public support, though this is an exception. In the given situation, the community responded to a very serious threat to its reputation in the wake of public interest that had already been incited. That is to say, in this case, collective action was initiated by public figures rather than criminal defense lawyers. Lawyers joined the campaign when they could no longer ignore it. In other words, "high-profile" cases with a political subtext compel the community of lawyers to respond. Such cases are invariably triggered by violations of the lawful rights of defendants by representatives of law enforcement.

### **Large-Scale Violations of Defendants' Rights**

According to studies (Gerber and Mendelson 2008; Kazun 2015; Rochlitz 2014; Yakovlev, Sobolev, and Kazun 2014), law enforcement agencies in contemporary Russia are actively involved in placing pressure on businesses. As a group, criminal defense lawyers regularly interact with law enforcement and are acutely aware of this problem. Encountering violations of defendants' rights also constitutes an exogenous shock that can motivate criminal defense lawyers to make public statements about their position. However, the RFCL has thus far remained neutral in most such cases.

Although some cases of violent pressure on businesses may not be made public for various reasons (often businessmen themselves do not want the publicity), another category of cases that are politically charged may receive broad coverage irrespective of the position of the professional elite. The conflict around the Khimki Forest, the Bolotnoe case, and the Pussy Riot case were high-profile events that allowed individual criminal defense lawyers to receive substantial attention from the media and public organizations over the head of the RFCL. In other words, the development of social media networks and the growing protest activity related to these cases created conditions for the emergence of scenarios C-E in which a criminal defense

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<sup>26</sup> Decision of Moscow state court. [see <http://www.mos-gorsud.ru/news/?id=810>]. 16 February 2015.

<sup>27</sup> Advocate of Davydova, Accused of High Treason, Debarred. 15 April. INTERFAX.RU, 15 April 2015. [<http://www.interfax.ru/russia/436498> ]

lawyer's initiatives are put to public judgment bypassing the decision of the RFCL elite (regardless of whether official complaints were filed).

This creates a dual problem for the RFCL leadership. First, these initiatives by criminal defense lawyers show that collective action does not always require the approval of the professional elite. Second, the public activity of lawyers may not be approved by the national political elite, which would in turn threaten the entire community. In other words, the RFCL loses its role as a "filter" which maintains the status of the current elite of the community and cautions the community against dangerous clashes with a more powerful government machine.

### **A "Monopoly of Criminal defense lawyers" as a Response to Exogenous Shocks and Possible Action Strategies of the Professional Elite**

The idea of a "monopoly of criminal defense lawyers," which would ensure that a client's interests in any court would be represented only by a criminal defense lawyer, has been under discussion for quite some time.<sup>28</sup> In April 2013, the Russian Government approved the State Program "Justice," developed by the Justice Ministry.<sup>29</sup> One of the innovations of this program was the beginning of the transfer to a monopoly of criminal defense lawyers representing clients in court. This process became particularly active in 2015 when Yuri Pilipenko was elected President of the RFCL. The reactions to this reform have been diverse. Representatives of the community of criminal defense lawyers have been actively supporting this idea for a long time,<sup>30</sup> whereas lawyers and independent experts have been criticizing it. In particular, human rights lawyers mentioned additional access barriers to justice for the population.<sup>31</sup> At the same time, the restricted functionality of advocacy activity constitutes a problem for the legal services business. According to Moiseva and Bocharov (2016), the interests of professional lawyers could be fulfilled at lower cost by a commercial organization allowing the distribution of profit among the participants. This simplified taxation procedure also plays an important role in this suggestion as it can be applied by a commercial organizations but not by criminal defense lawyers. A factor preventing criminal defense lawyer support of big business is the legislative ban on a client signing a direct contract with an organization of criminal defense lawyers rather than an individual criminal defense lawyer.

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<sup>28</sup> Krokhamlyuk A. (2012) On the Future of the Bar — with Optimism // *Novaya Advokatskaya Gazeta*, No. 10 (123), May 2012. - <http://www.advgazeta.ru/rubrics/5/855>

<sup>29</sup> RF Government Instruction of 04.04.2013 No. 517-r.

<sup>30</sup> See, inter alia, Burobin V. Monopoly of Advocates: Pros and Cons. How can we achieve the provision of legal services only by those who do it with proper quality? // *Novaya Advokatskaya Gazeta*, No. 20, October 2010. <http://www.advgazeta.ru/rubrics/13/557>

<sup>31</sup> Khalatov S. (2015) Sudden Monopoly of Advocates. // *Vedomosti*, No. 3979 of 11.12.2015. <http://www.vedomosti.ru/opinion/articles/2015/12/11/620556-advokatskaya-monopoliya>

Critics of the “monopoly of criminal defense lawyers” note that the idea itself is not new. In 2004, Part 5 of Article 59 of the Arbitration Procedure Code assumed that the arbitration process would be open only to employees of the company and criminal defense lawyers (i.e. private lawyers were excluded from this process). The Constitutional Court declared this provision unconstitutional<sup>32</sup>. A similar fate befell Federal Law № 80-FL "On Amendments to Article 59 of the Arbitration Procedure Code of the Russian Federation". According to this law, the interests of state bodies and local authorities in the arbitration court could be represented only by officials or criminal defense lawyers (once again private lawyers were excluded), but it was repealed less than one year after passage (according to the Federal law of 31.03.2005 № 25-FL).

Nevertheless, at present, the balance is shifting towards the decision to support the “monopoly of criminal defense lawyers” taking into account the position of the Justice Ministry which started supporting criminal defense lawyers and in December 2015 submitted to the Government concept for the reform of the legal services system, which should be completed by 2017.

In our opinion, this policy of the Justice Ministry means that having encountered the risks of criminal defense lawyers forming a political opposition, the powers-that-be are ready to offer the creation of new “selective incentives” for the community of criminal defense lawyers. Following the logic of NWW’s theory, to avoid the risks of collective action by criminal defense lawyers, the state is ready to increase their share of rents.

In the event of the introduction of the “monopoly of criminal defense lawyers,” the RFCL and regional chambers will have effective control tools for entry into the market of lawyers’ services. The criminal defense lawyers will be dealing with an increased flow of civil and arbitration cases, which often involve higher compensation than criminal cases. The growth of the membership base will also contribute to the improvement of funding for the RFCL’s activity, which, in turn, will make it more autonomous.

At the same time, having gained a monopoly on the control of professional activity, the RFCL will have to start responding to initiatives and questions filed from “below” including those concerning violations of the rights of defendants and the violations of the rights of criminal defense lawyers themselves. Simultaneously, having gained support from the authorities, the RFCL may come under informal pressure from “above” aimed at expelling the most active human rights lawyers from the profession.

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<sup>32</sup> July 16, 2004 (No 15-P). Ruling of the Russian Federation Constitutional Court on the case on the constitutionality of the provision of Part 5 of Article 59 of the Arbitration Procedure Code about the requests of the State Assembly of Kurultai of the Republic of Bashkortostan, the Governor of the Yaroslavl region, the Arbitration Court of Krasnoyarsk Territory, the complaints of several organizations and individuals.

At present, we cannot predict the reaction of the professional elite to such pressure from “above” or from “below.”

It is quite probable that the community leaders, relying on the “silent majority,” would prefer to remain loyal to the authorities and agree to disbar opposition-minded criminal defense lawyers. As we have demonstrated above, this was the development in Tunisia in the 1990s. The leaders of the legal association in China also has tried to act according to this scenario in recent years. However, in the mid- and long-term, such a strategy may discredit the “official” functioning professional elite and weaken the role of the entire community of criminal defense lawyers.

According to another possible scenario, the leaders of the community may succumb to the pressure from “below” and start distancing themselves from the authorities, which was the case in Taiwan in the mid-1980s to early-1990s. Events developed in a similar way in Pakistan in 2007-2008 when President Musharraf was forced to resign after having encountered mass protests initiated by lawyers.

The creation of “selective incentives” by the state (implemented through increased financing of criminal defense lawyers’ work on court assignments, the involvement of RFCL representatives in the legislative process within a relevant government commission, etc.) will undoubtedly play a significant role in the choice between those scenarios in Russian conditions. These tools may enhance the loyalty of the authorities toward the elite of the community of lawyers. At the same time, the inclusion in the bar of representatives of law firms, who work predominantly for businesses, are characterized by considerably more liberal views, and have much greater financial resources, may provoke a change in the balance of forces within the RFCL itself. Strengthening the role of the legal services for business within the RFCL framework may create the preconditions for the greater distancing of the bar association from the authorities over time.

## **Conclusion**

In this article, we used data on the development of the profession of criminal defense lawyers in contemporary Russia and relied on the concept of LAOs proposed by NWW. With this information, we have revealed some common tendencies in the evolution of elite professional organizations under LAOs. This evolution can be described according to the following logic:



1. The ruling elite, interested in tuning the control mechanisms of certain social or professional groups, undertakes the creation of professional associations, vesting them with certain resources and authorizations.

2. The real management of a professional association is concentrated in the hands of the professional elite, which demonstrates loyalty toward the ruling elite in return for access to rent flows. Simultaneously, the professional elite transfers part of the received rent to grassroots members of the association, mobilizing them to support the political regime.

3. If the flow of rent decreases, the professional elite can exert pressure on the ruling elite. In this case, the very organizational structure of the association formed for the purpose of ensuring control over the professional community in the interests of the ruling elite can be used for protest mobilization. This means that the professional elite can put pressure on the ruling elite.

4. However, this pressure is only efficient if the professional elite maintains connections with the “grassroots,” is capable of acting on their requests, and can interact with the ruling elite on behalf of the “grassroots” (thus distancing themselves from the ruling elite by some measure). In our opinion, this particular trajectory meets the logic of “viable” organizations, which do not depend on their founders and are capable of maintaining the interests of wider social groups within LAOs. NWW regard the emergence of such organizations as one of the “thresholds” for the transition to OAOs.

5. The inability to do the tasks mentioned in part 4 or shrinking rent flows would cause tension in the professional community and sooner or later result in a shift of power in the professional association, either by its being split into smaller competing entities or by a change of the association leaders. Such a trajectory would in fact be equivalent to an institutional degradation of the LAO with its movement from a mature to a basic or even a fragile stage.

The evolution of the legal community in Taiwan is an example of implementation of the trajectory described in part 4. The illustration of the trajectory described in part 5 is the destiny of most elite professional organizations created in the Soviet Union in spheres that were considered a priority for the ruling elite. For example, in the Soviet period, such privileged professional groups included “ideological fighters” (writers, cinematographers, theater workers, journalists) and the academia who were expected to demonstrate not only political loyalty but also creative yield, which required a certain degree of freedom. This is precisely why associations of creative professions and the USSR Academy of Sciences were granted access to special supplies, their own art centers, sanatoriums, opportunities for traveling abroad, and a certain measure of intrinsic autonomy.

However, a close blending of the professional elite of these communities with the ruling political elite led to a situation in which the existing professional organizations turned out to be unable to play the role of feedback mechanisms and perform the function of the system's driver during the acute sociopolitical ordeals of the late 1980s. The consequences included not only the degradation of those organizations but also the painful collapse of the entire system. Regarding the former socialist bloc as an alternative development mechanism (in some respect similar to the Taiwan scenario), we can cite the example of Poland in which the sociopolitical stabilization and the launch of the negotiation process between the authorities and the opposition involved the presence of institutionally strong organizations autonomous from the state e.g., the "Solidarity" trade union movement and the Catholic church.

Contemporary Russia (despite all the distortions of its institutions) is radically different from the Soviet Union, as the market system underlies the existing public order. This has two consequences. First, the market cannot function without private business and notwithstanding all the changes in relations with the authorities during Putin's presidency, business has objectively been and remains a privileged social group with its own strong organizations (RSPP, Business Russia, OPORA, the Chamber of Commerce and Industry, and numerous other sector-specific organizations). Second, the market has a much more complicated structure than the planned economy. The market relies on more complex "rules of the game," and this brings about a need for specialists capable of comprehending and interpreting these rules and settling conflicts and disputes in interactions between economic entities. This role has traditionally been played by lawyers. The status of the legal profession has been increasing as the rules became more formal and were transferred from the sphere of pure economy to the realm of political relations. This growing recognition of the legal profession has been characteristic of all countries undergoing a process of market and democratic transformation.

This means that within LAOs, lawyers as a professional community are one of the most significant professional groups, and whose loyalty is important for the ruling elite. The ruling elite would be ready to draw lawyers into its ranks (providing them with opportunities of social lift within the government and the judicial and law enforcement systems), or be prepared to provide "selective incentives" to those lawyers who are not directly incorporated into the government staff and may side with the opposition. Such lawyers include, first of all, criminal defense lawyers. The fact that the principles of justice are fundamental to the legal profession constitutes an objective condition for their potential opposition. However, these principles function poorly under LAOs, which are traditionally characterized by a high level of social inequality.

Turning back to the evolutionary prospects of the community of criminal defense lawyers in Russia, The RFCL is presently Russia's largest nonprofit organization; it operates on the basis of a special law, it has a vast regional network and a high level of autonomy. In our opinion, this status has become possible due to the concessions made by the ruling elite in the 2000s to secure the political loyalty of criminal defense lawyers. Moreover, finding analogies with other countries' legal associations, the RFCL, for various reasons, has still not managed to unlock the potential of this status. The RFCL's future is in the hands of the present professional elite. In the case of a "bad scenario" of a split from the "grassroots" and a merger with the political elite, the RFCL could repeat the fate of the "creative associations" at the end of the Soviet era. At the same time, considering that RFCL leaders are functioning criminal defense lawyers themselves, we consider the scenario of the RFCL gradually distancing from the ruling elite more probable. In this case, in conditions of serious sociopolitical shocks, the RFCL will be able to claim the role of independent mediator and negotiator for key elite groups.

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**Anton Kazun**

Research Fellow, International Centre for the Study of Institutions and Development, Lecturer,  
Department of Applied Economics, HSE, [akazun@hse.ru](mailto:akazun@hse.ru)

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