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## **Who demands collective action in an imperfect institutional environment?**

### **A case study of the profession of advocates in Russia**

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*Abstract: We analyse the profession of advocates in Russia to understand their potential for collective action in an imperfect institutional environment. In 2013, we conducted a survey of 372 advocates in 9 regions of Russia. The following two main hypotheses are tested: 1) lawyers with strong ethical values have a higher demand for collective action; and 2) the negative experience of clients' rights violations by law enforcement officers can motivate advocates to support the foundation of a strong professional association. We suggest that an advocates' profession with bona fide members at the core could be an instrument to estimate and to improve the quality of law enforcement in Russia.*

**Keywords:** collective actions, advocacy, legal ethics, lawyer associations, quality of law enforcement system, violations of the rights of defendants.

**JEL Classification:** K49, D71, L84.

## **1. Introduction**

After perestroika and the collapse of the Soviet Union, two opposite processes could be observed in Russia. On the one hand, the market transition implied the development of legal regulation and the formation of legal institutions accompanied by a growing demand for legal services. (This demand was manifested in a dramatic increase in the number of law students.) On the other hand, because of the weak state and the degradation of the law enforcement system, which was unprepared to address the new realities, most economic entities either ignored legal requirements (e.g., in the form of large-scale tax evasion, barter and non-payments) or tried to manipulate legal norms (which was the case with the legislation concerning bankruptcy and joint-stock companies). The consequence of these two processes was an increase in the size of the profession of advocates with a simultaneous obvious decline in professional standards.

After Vladimir Putin came to power in the 2000s, the restoration of the state led to the strengthening of the law enforcement system and the increased risk for legal noncompliance. However, non-homogeneous staff and a distorted pattern of incentives (caused by the closed nature of the law enforcement system and a lack of public control over it) resulted in a systematic tendency of accusatory court decisions, violent pressure on businesses, corruption, large-scale violations of human rights, and a lack of progress in the fight against crime.

The attempts to reform the existing system (on-going legal reform, the reform of the Interior Ministry, the separation of the Investigation Committee and the Prosecution Office) have thus far produced no tangible results. The key issues connected with law enforcement and judicial system reform are their objective evaluation in an absence of independent courts and genuine political competition and the extremely limited influence of free mass media. Public opinion polls concerning the performance of law enforcement do not provide a reliable picture of the situation because the majority of the population is rarely involved with the courts and the prosecution authorities, and any real encounter often has dramatic implications.

Advocate («advokat») is a formal status that allows Russian lawyers to work on criminal cases. Since 2002 lawyers should have higher legal education and at least two years of legal practice to pass the special exam to become an advocate. Every advocate in Russia is a member of regional chamber of advocates. Advocate pays an annual fee and has to follow the code of legal ethics. Nowadays advocates are the most organised part of the community of lawyers in Russia. This professional group has the clear borders and the strict rules of professional control contrary to private lawyers (so called «chastnopraktikuyushchie yuristy», attorneys who did not pass the bar exam). Therefore, in our study we will focus on advocates as the most organized part of the profession of lawyers in Russia.

We suppose that a corporation of advocates could be subjected to changes in the legal profession under current conditions. Advocates as a special professional group regularly interact with various representatives of law enforcement bodies but are, at the same time, formally independent from them (according to the law they are part of civil society). The question is to what extent this professional group is ready to become a platform for creating an external evaluation of the law enforcement system and practices. In our survey of 372 advocates conducted from November-December 2013 in nine regions of Russia, we proposed a mechanism of this type of "external evaluation". We also assessed the main incentives for collective action in the lawyers' environment, because this mechanism can only be launched in a professional group through the efforts of its members.

## **2. Theoretical approaches to the research of the profession of attorneys**

Research of the legal profession traditionally proceeds in the framework of professionalism (Evetts, 2003). Professionalism emphasises the privileged status of lawyers equipped with special formal knowledge, ethical standards and a developed professional community (Brante, 1988). Some researchers note that professional groups follow a "third logic" (Freidson, 2001) distinctive from the logic of the market and the logic of bureaucracy. Interestingly, business associations occupy a similar marginal place between the state and the market (Schneider, 2004); their mission is to seek a balance between the tasks of the authorities and the interests of entrepreneurs. Professional groups, such as attorneys and physicians, also create this type of association to protect their interests (Parsons, 1939; Halliday, 1987), but professionalism does not reduce to collective action.

Researchers distinguish two different types of the mobilization of law: "legal mobilization" and the "mobilization of lawyers" (Marshall, Hale, 2014). In "legal mobilization", lawyers act as intermediaries between the government and certain groups of citizens. In particular, studies on the legal mobilization of various marginalized groups, such as immigrants (Kawar, 2011), sexual minorities (Barclay, Fisher, 2006), leprosy patients (Arrington, 2014), prisoners (Ratner, 2007; Prabhat, 2011), etc., have recently gained popularity. Researchers have concluded that this mobilization was the result of the growth of accessibility and transparency of justice (Lawrence, 1991; Arrington, 2014). In "legal mobilization", lawyers are often considered "gatekeepers" (Silbey 2005; Marshall, Hale, 2014) concerning changes to social institutions: this profession has unique skills that provide tools for social change (Teles, 2010).

The second type of collective action, "mobilization of lawyers", involves the action of lawyers intended to improve the legal profession and protect their professional status. A good example of this type of collective action is the situation in Pakistan since Pervez Musharraf came to power (Ghias, 2010), especially in 2007 (Faqir, Islam & Rizvi, 2013), where lawyers opposed the politically motivated dismissal of judges.

In both cases, lawyers with different statuses, competencies, expertise and professional backgrounds can be involved in collective action (Prabhat, 2011). In this context, however, it is important to understand the motives for these activities. Some authors identify the presence in these communities' "core", which initiates collective action (Marshall, Hale, 2014).

In the literature regarding lawyers' collective action, we distinguish two main theoretical frames that explain the motives of lawyers for "mobilization": "cause lawyering", developed by Sarat and Scheingold (Sarat, Scheingold, 1998), and "political lawyering", suggested by Halliday, Karpik and Feeley (Halliday, Karpik, & Feeley, 2007). "Cause lawyering" focuses on the individual motives of lawyers, whereas "political lawyering" connects the activity of lawyers with political motives and social structure. Cause lawyering is often associated with human rights protection (Hajjar, 1997; Ratner, 2007; Tam, 2010; Moley, 2014) and "pro bono" work (Sandefur, 2007; Granfield, 2007). These actions could be either oppositional to the state or aimed at assisting the government (Woods, Barclay, 2008). The internal motives of lawyers in this approach are very important (Boukalas, 2013) because economic goals cannot

explain the mobilisation of lawyers. Sociologists usually considered the nature of attorneys' work in terms of a "contract" between society and professionals; according to this contract, society provides high status and privileges, and professionals obey professional ethics (Evetts, 2003: 400). This tacit contract is necessary because neither society nor professional groups are capable of completely controlling the quality of the professionals' work (Saks, 1995). This partial control is why professional ethics and its oversight are key to any profession, including advocates. Therefore, this approach could be associated with the vast literature devoted to legal ethics (Weinstein, 1972; Abbott, 1983; Overman, Foss, 1991; Beggs, Dean, 2007) and problematic interactions between lawyers and clients (Fried, 1976; Pepper, 1985; Sarat, Felstiner, 1988; Kritzer, 1998; Moorhead, 2003; Mather, 2003; Marshall, Hale, 2014). Abbott distinguishes the following three conventional levels of professional control: individual, informal, and formal (Abbott, 1983). Each of these control mechanisms is implemented by entities important to any profession, namely, the university, professional community, and the state, respectively. We consider it extremely important to follow the professional paths of Russian advocates. Their university and work experiences and relationships with other parts of the profession (especially law enforcement) determine their views on the professional ethics that they follow.

Legal ethics provide legitimate justifications for seemingly opposite ideological positions (Silver, Cross, 2000; Parker & Evans, 2007: 13-27). On the one hand, an attorney can present himself as an impartial servant of the law. Presumably, these ethics are more characteristic of judges and prosecutors (Alexander, 1994). On the other hand, a lawyer may work for an individual client and, similar to a doctor, do everything the client would do for himself if he had the necessary expertise. This approach is traditionally attributed to advocates. In addition, some lawyers may act from positions of public morality, attempting to improve legislation according to the principles of humanism. These views are generally embraced by the few most prominent and authoritative representatives of the profession (e.g., judges of the constitutional court). However, in the reality the situation is much more complex because one lawyer can easily combine different logics in his everyday activity.

The logic of advocates in authoritarian state also depends on their political views. Liu and Halliday suggested a way of grouping lawyers (Liu & Halliday, 2011). They distinguished five types attorneys in

China based on two main expressions of lawyers' everyday politics: political liberalism and political embeddedness. Balancing political liberalism and political embeddedness is also relevant for Russian advocates.

For "political lawyering", external causes play a decisive role. In this context, many researchers (e.g., Dinovitzer & Garth, 2007; Kavar, 2011) have used Bourdieu's approach of "juridical fields" (Bourdieu, 1977), which considers hierarchy, status and social capital in the legal profession and society as a whole to explain the reasons for legal mobilization. In the case of cause lawyering, legal mobilization has much in common with "pro bono" work with vulnerable groups of people. Political lawyering has many similarities with professional lobbying (Heinz, Paik, Southworth, 2003; Paik, Heinz, Southworth, 2011), which is usually well organized and based on a high level of economic and social capital. In this regard, a discussion regarding political lawyering could be similar to the literature concerning the concept of "professional projects" and an attempt of professionals to "monopolize" the market (Freidson, 1984, 1986, 1988; Evetts, 2003; Gobe., 2013).

Recently, the research regarding lawyers' collective action has focused primarily on the United States and countries that share the Anglo-American legal tradition (Kavar, 2011). The experiences of these countries cannot always be used in the analyses of post-communist countries with continental legal systems. In Russia, judges and other representatives of the law enforcement system often feel that they are part of the state rather than independent agents (Solomon, 2005). In this context, it is important for the legal profession to search "safe" areas of the law where lawyers can behave independently (Hirschl, 2006) and participate in collective action. Studying the Russian profession of advocates, we cannot presume that this theory will work in practice. However, we proceeded from the thesis that the profession is not homogeneous. The advocates are divided on the basis of both professional specialisation and ethical principles. From the perspective of activity, the legal profession in Russia is traditionally categorised into advocates, private lawyers, international lawyers, public notaries, officers of the Interior Ministry and the prosecution, and judges and their staff. The third logic is characteristic of different representatives of the legal profession in different measures. The prosecution and the courts are largely exposed to bureaucratic logic. Volkov and his colleagues (2012) provide numerous examples of the hierarchical practice of court

decisions. The heavy-handed system of reporting that persists among law enforcement officers and judges (Paneyakh, 2014) is a manifestation of the fact that the formal level of professionalism control in these groups prevails over informal peer control or self-control through the adherence to ethical standards. Formal regulations in these segments overrule all other considerations, and bureaucratic logic is thriving.

Baird and Javeline (2010) likely conducted the most wide-scale quantitative research of Russian lawyers before 2014. From 2003-2005, they collected data from more than 1,800 randomly sampled lawyers (private lawyers and advocates) in 12 Russian cities. However, their survey focuses on the problem of the independence of judges and funding sources rather than the internal problems of the profession of lawyers. Interestingly, lawyers in this study were considered not only the most available part of the Russian law enforcement system but also experts who can provide an independent external evaluation of the system. The inaccessibility of the law enforcement system in Russia is likely the most serious limitation for studies in this field.

The profession of advocate is relevant in this context because it lies exactly between the logic of the market and the logic of bureaucracy. On the one hand, attorneys are not appointed by higher-ranking officials, and, on the other hand, their work prohibits the possibility of selling their expertise as services (Bear, 1961: 976). The example of attorneys can be used to identify the mutual relations among ethical standards, informal professional standards and formal regulations.

The classification of attorneys on the basis of their attitudes towards professional ethics does not coincide with their professional segmentation. Many foreign surveys emphasise the following types of lawyers: those concerned with the public benefit, those oriented to corporate values, and those concentrating on personal benefit (Tapp & Levine, 1974; Mindes & Acock, 1982; Overman & Foss, 1991). These motivations can be characteristic of law enforcement officers and attorneys. The crucial issue is the interrelation of these ethical views inside each professional group. Legal departments of universities play a prominent role in this respect (Erlanger & Klegon, 1978; Abbott, 1981; Mertz, 2007) because they form certain normative patterns among future professionals. However, this impact in some cases is controversial. For example, (Granfield, 2007) notes that the effect of a specific law school on a lawyer's views regarding pro bono service (usually considered to be connected with ethical values) is minimal.

Conducting a survey of the profession of attorneys, we expected to establish the dynamics of these values and their dependence on the biographical and professional characteristics of the advocate. The status of attorneys in society and the law enforcement system makes their opinions crucial for understanding the problems and development prospects of the entire legal profession. There is an opinion that advocates in Russia have traditionally been on the fringes in a type of isolation (Solomon, 2005, 2008), whereas prosecutors and judges occupied a central position. The accusatory tendency in the administration of justice makes full acquittal of clients practically impossible – the proportion of acquittals in Russian courts has not exceeded 1% for over 20 years (Volkov, 2012). Interestingly, however, a similar situation is observed throughout the entire post-Soviet region in Latvia, Poland, Ukraine, Georgia, and Bulgaria. (Volkov, 2012).

These problems could and should be addressed by a strong professional association that includes the majority of members of the profession of attorneys (Bonelli, 2003) and is capable of efficiently lobbying their collective interests at the level of the state, similar to the American Bar Association (see Kavar, 2011). Russian advocates could be members of different lawyer associations (like Association of Lawyers of Russia), but it appears that thus far, these associations have not been fulfilling these functions.

In this context, the approaches used by many researchers for analysing the formation of business associations in developing countries are useful to study the development of the profession of advocate in Russia (see, for example, Pyle, 2006). Specifically, using the case of Brazil and Southern Italy, (Locke, 2001) shows that business associations can ensure community coordination and can contribute to the strengthening of trust among the main players and the establishment of a dialogue with the state even if the market and state institutions are weak. With this end in view, business associations should undergo the following three main phases: the creation of demand in the community, support from the state in return, and an increase of the association's authority and independence in response to the support received. Professional associations of lawyers in Russia are currently close to the second phase of this process. The development of a truly authoritative professional association is possible only with collective action intended to strengthen trust towards the professional community.

### **3. The advocacy in the Soviet Union and Russia**

The professional association of advocates in Russia has a long history. The status of advocates at law performing the functions of defence counsel in court trials was introduced as part of the judicial reform in 1864. After the October revolution in 1917, the Bolsheviks decided that the new communist society had no place for the legal profession. Therefore, a 1917 decree of the Council of People's Commissars "on the Court" abolished the institution of the bar in Russia. However, in 1922, the Provision on the Bar Council returned the defence advocates to the judicial process. Moreover, advocates were granted the right to create professional associations.

In the Soviet Union, advocates could provide their services only to private individuals, which explained their specialisation primarily in criminal and family law. Advocates were largely independent of the party bureaucracy system, which gave them the unique status of a "free profession" (Mrowczynski, 2012). Autonomy is crucial to professionalism because professionals can obtain high social status and efficiently pursue their interests (Larson, 1977). Advocates in the Soviet Union enjoyed this high status. In addition, advocates had opportunities for informal income (Mrowczynski, 2012: 106), which strengthened their position in Soviet society even more. According to the Provision on the Bar adopted in 1939, advocates had a right to establish associations organised in regions. Consistent with the Provision, a person with a higher legal education, a graduate of a law school, or a person with three years' experience working at a court or the prosecution's office was eligible to practice law as an advocate. These requirements are very important in the framework of professionalism and for the formation of a strong profession enjoying a privileged status. During the pre-war period, the requirement of obligatory higher legal education was not established even for judges. In 1946, 14.6% of judges in the Soviet Union had higher legal education (Volkov, 2012), and the proportion of advocates with a university degree in 1947 was 41.7% (Razi, 1960), which indicates the significant professional superiority of advocates. Therefore, advocates were the elite among the legal community until the collapse of the Soviet Union.

With the beginning of perestroika, bar associations began losing their positions because entry barriers to the profession radically declined.

Russian advocates did not become formally organised in a single association until 2002 (whereas in Poland, attorneys were organised much earlier (Mrowczynski, 2012)). The Soviet Lawyers' Union was created in 1989 but only lasted until 1991. The collapse of the Soviet Union was followed by a considerable dilution of the profession of advocates because it was joined by many lawyers from the prosecution's offices, courts and other agencies. The rapid growth of the legal profession began in the final Soviet years; in 1965, universities were annually preparing only 6,900 graduates in law, whereas in 1980, 40 legal departments and 4 legal universities prepared 16,700 graduates (Feldbrugge, Berg & Simons, 1985: 473). During these 15 years, the total size of the legal community in the Soviet Union doubled (from 100,000 to 200,000 lawyers with higher education).

In 1970, the Soviet Union had 15,000 advocates (i.e., one advocate for almost 16,000 residents) and 40,000 legal advisers. In 1980, 20,000 advocates were practicing law in the Soviet Union (13,000 residents per advocate) in addition to 70,000 legal advisers (Feldbrugge, Berg & Simons, 1985: 473). The growth of the number of advocates in the 1970s and 1980s proceeded at a much slower pace than the growth in other segments of the legal profession, which indicates the relatively closed nature of the professional group of advocates in these years.

According to different estimates, the ratio of advocates in the Russian Federation in the 1990s (considering the population decrease compared with the Soviet period) grew 4- to 5-fold (Mrowczynski, 2012). An important change in lawyer activity after the collapse of the Soviet Union was the opportunity of working in the commercial sphere. An increase in the number of private companies created a need for qualified lawyers who actually didn't have to be advocates. The emergence of the market has become a driving force for increasing financial incentives to join the profession, which produced an even more rapid growth in the number of lawyers and legal departments at universities.

According to the Association of Lawyers of Russia, 166,000 students were annually receiving legal education in Russia as of 2009 (which is 10 times more than in the Soviet Union in the 1980s). Although many graduates do not work in their specialty, this excess of new specialists results in a devaluation of diplomas and a gradual dilution of the boundaries of the legal profession. This dilution of the boundaries

had several directions. First, many graduated students started to work as lawyers without being the advocate. They provided the same services for all types of clients (from citizens to business) in all cases except for criminal proceedings. Second, no bar exam existed in Russia since the collapse of Soviet Union and before 2002. Therefore, many people with poor qualification and lack of experience receive the status of advocate in this period.

The reform of the legal practice market by the adoption of the Federal Law on Legal Practice and Advocacy in the Russian Federation on 31 May 2002 led to the formation in 2003 of the Federal Chamber of Advocates (FCA) with compulsory membership for all advocates in its regional branches. The merger of the Russian Law Society and the Law Society of Russia in 2005 resulted in the creation of the Association of Lawyers of Russia (ALR) – one of the biggest association with voluntary membership in Russia. ALR unites not only advocates but also private and corporate lawyers, law enforcers, judges and even some state officials with legal education.

#### **4. Advocacy in contemporary Russia**

Despite the membership of many high-ranking officials in the ALR (including Russian President Vladimir Putin and Premier Dmitry Medvedev), according to the data as of 28 October 2013, there were only 2,030 advocates among its members (i.e., 3 % of the total number of advocates in Russia). At the same time, there was 2.5 % annual growth in the number of advocates registered in Russia in the past five years and growth in the number of lawyers who are members of the ALR, although this does not account for the number of advocates.

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Figures 1 – 2

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Although the absolute number of advocates in Russia is growing, the proportion of the number of advocates to the size of the population is slightly below the figures for European countries. A comparative evaluation of the number of advocates is complicated by the fact that not all countries make a distinction

between advocates and lawyers, and not all countries have data on the number of attorneys in the legal profession. Considering approximately 300,000 private lawyers in Russia (no one knows the exact number because private lawyers are not registered anywhere), there are 390 residents per lawyer in Russia, which exceeds the figures for Germany, Ukraine and Poland but is lower than the level of the United States and Italy.

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Table 1

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Many legal services in Russia are being provided by persons who have not taken a bar exam. This fact indicates there is a lack of control over the quality of professional training and legal ethics of most market participants who are not members of either lawyers' chambers or professional associations. This situation was negatively assessed by advocates who agreed to give us an interview, and they also expressed full support (91%) of the "monopoly of advocate" (an idea that only advocate should have an access to court proceedings is all types of cases) . However, the quality of work of 68,000 advocates cannot be univocally characterised as high. For example, in April 2014, Mikhail Barshevsky, spoke at the 1<sup>st</sup> All-Russian Conference of Experts working at the Institute of the Russian Presidential Commissioner for Entrepreneurs' Rights concerning "pro bono publico" terms. Barshevsky voiced the provocative thesis that only 50 to 100 Moscow advocates out of the total 10,000 have sufficient qualifications.

After the collapse of the Soviet Union, the number of advocates in Russia radically increased (Mrowczynski, 2012), whereas there was no bar exam at that time. The lack of a bar exam could eventually lead to a decline in the quality of work of advocates and the dilution of professional values. This situation is why it was important for us to register the differences in the views of advocates representing different generations (see Table 11).

## **5. Sample frame formation**

Research of the legal profession encounters the problem of opposition to normativism (Halliday, 1985). Lawyers refer to concrete regulations and consider their profession in the categories of the "normative

standard" compared with the empirical approach relying on the analysis of actual conduct. Volkov (2012) confronts this difficulty when considering the way Russian judges issue decisions. The actual situation often differs from regulatory prescriptions. In this context, the task of studying the profession of advocates is not different from the survey of Russian judges. This professional group should be analysed on the basis of real legal practices (which could be reconstructed from statistics) rather than legal acts regulating these practices. Statistical methods are relatively new to the study of lawyering (see, for example, Barclay, Chomsky, 2014).

However, the problem of normativism does not end here. Normativism created considerable challenges during the preparation of the questionnaire. Lawyers often have a ready answer to many questions referring to regulations. This is why we held six in-depth, informal interviews with advocates and many meetings with representatives of the legal profession to determine that our questions were properly formulated and do not allow dual interpretations.

The final version of the questionnaire generally reflects the aspects of the research on the legal profession described above. In the context of questions regarding different levels of professional control, we paid considerable attention to the problem of ethics and the professional paths of advocates. We tried to explain the isolation of the advocates and its role in the conditions of the existing accusatory judicial tendency. We asked questions concerning interactions with representatives of the law enforcement and judicial systems and the reasons that could have produced such a small number of acquittals.

Considering the increasing number of advocates in Russia, we asked about the demand for advocates and whether the quality of services was changing. With 300,000 private lawyers, the idea of introducing an «monopoly of advocates» was important, as were questions concerning the current reforms of the law enforcement and judicial systems as a whole.

Finally, we devoted one block of questions to the formation of a profession and the role of legal associations in the activities of advocates.

## **6. Survey characteristics**

The project of the Institute for Industrial and Market Studies (IIMS), University – Higher School of Economics (HSE) involved a survey of 372 advocates from nine Russian regions representing all federal districts. The survey was conducted on the basis of a formalised questionnaire. The response rate was about 20-25% for all regions that is quite a lot for such object as professional advocates (taking into account their busyness). The list of regions and the number of respondents in each of them are presented in Table 1. The survey was conducted through regional branches of the ALR. Because one of the purposes of the survey was to establish the differences between ALR members and non-members, minimal quotas of respondents in each group were established for each region, which provided an opportunity to conduct a comparative analysis. As a result, as shown in Table 3, the proportion of advocates who are ALR members in our sample considerably exceeds the proportion of advocates – ALR members in the aggregate membership of advocates in relevant regions (40% compared with 3%).

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Tables 2 - 3

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To evaluate the potential incentives of the advocate for collective action, we formed several hypotheses.

*Hypothesis 1. The demand for collective action (exercised through professional associations) will primarily be expressed by advocates with high ethical standards.*

The risks of the declining reputation of the profession are more tangible to these advocates and may be manifested in an overall drop of prices for legal services because of a lack of quality signals (similar to the market of lemons described by George Akerlof (Akerlof, 1970)).

*Hypothesis 2. A personal encounter with the violations of the rights of defendants by law enforcement will create an incentive for advocates' collective action.*

This circumstance may be indirectly registered through advocate assessments of the existing law enforcement practices and the reasons for the "accusatory" tendency.

By suggesting these hypotheses, we try to determine both internal motivation (professional ethics) and external stimuli (violations of the rights of defendants) for collective action. Therefore, we can combine

ideas from cause lawyering and political lawyering and evaluate the intention for mobilization of Russian advocates on a general level.

## **7. A brief portrait of an advocate**

According to the data presented in Tables 4 and 5, the average age of our respondents is 40, and their average professional experience is 9 years. Approximately 42% of the advocates received their legal education before the 2000s (46% of ALR members), and approximately 30% of respondents took a distance course in jurisprudence. Approximately 28% of respondents became advocates immediately after graduation, and 20% joined the bar after working at commercial companies. Approximately 19% of advocates who were ALR members were previously employed in the law enforcement and judicial systems, and this proportion among ALR non-members is 27.5%. Generally, in the opinion of most advocates (57% of ALR members and 73% of ALR non-members), new advocates currently often join the profession having experience at law enforcement agencies.

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Tables 4-5

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Approximately 25% of ALR members and 33% of ALR non-members received distance legal education. The proportion of respondents with distance education is considerably higher among those who were admitted to the bar from law enforcement agencies and the judiciary system (35% and 45%, respectively). We also asked our respondents whether they share the opinion that some advocates act as intermediaries between the legal system and their clients, helping them achieve a certain outcome of the case. In all, 22% of respondents consider this a widespread practice, and 60% said this occasionally occurs.

We did not directly ask the respondents regarding their income level because the number of refusals is traditionally high. Nevertheless, we received over 300 responses concerning the approximate incomes of advocates. ALR members consider that the average income of a novice to the profession is 29,000 roubles per month, whereas the incomes of an experienced advocate are approximately 114,000 roubles per

month. The same estimates made by respondents who are not ALR members are 23,000 roubles and 103,000 roubles, respectively.

### **8. Incentives for collective action 1: ethical principles**

The findings show that members of the advocacy with a higher level of ethical standards are more enthusiastic regarding the need for a strong professional association (see Table 6).

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Table 6

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The point at issue is the values for reputation (professional level of control according to Abbott (1983)). For an advocate oriented towards personal benefit, a strong professional association could become an obstacle. A strong professional association may produce additional signals concerning the quality of services, such as developing professional standards, creating blacklists of unscrupulous entities and inadequate universities, controlling adherence to ethical standards, etc.

The non-homogeneity of the advocacy is substantiated by our findings. Our cluster analysis (see Table 8-9) enables the classification of advocates in three groups (based on factors; see Table 7), conventionally called "reputation-oriented," "holders of a cynical view of the profession," and "benefit-oriented." The "benefit oriented" is the least complete, which meets our initial assumptions that advocates oriented towards personal benefit less frequently agreed to answer our questionnaire.

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Tables 7-9

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The remaining part of the advocates is divided in two approximately equal groups depending on the "image of the profession" formed by the advocate (see the detailed description of the groups in Table 10). Part of the legal community is certain that the population does not trust lawyers (70%) and that the verdict

in a criminal case is more important than the truth (50%). They also believe that an honest lawyer cannot make a career in public law (47%). Only 13% of advocates in this group regard lawyers as examples of honest, law-abiding and ethical professionals. At the same time, nearly all "reputation-oriented" advocates agree with this opinion (94%), and all of them are convinced (99%) that a lawyer must treat his clients equally regardless of their financial status. This category of advocates particularly favours the idea of the creation of a strong professional association.

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Table 10

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However, advocates with a cynical view of the profession also demand collective action much more often than those who are oriented towards personal benefit. For them, an association may also be a means of rectifying the current situation and returning prestige to the profession.

Therefore, the legal profession has a certain nucleus that shares ethical values and expresses a demand for collective action and a group of advocates who would potentially join this association. In this case, both positive orientations ("development of the community") and negative motivations ("rectify the situation") may become an incentive for development of the professional group and collective action. Advocates oriented towards personal benefit and ready to leave the profession for more favourable opportunities are much less inclined towards collective action. These advocates may be interested in association membership only from the perspective of obtaining additional status.

Recent years have witnessed a certain dilution of professional values in the profession of advocates: lawyers become increasingly oriented towards personal benefit rather than professional reputation (see Table 11).

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Table 11

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Two-thirds of benefit-oriented advocates and advocates with a cynical view of the profession (65% and 64%, respectively) received their higher education after the 2000s. The degradation of professional values may eventually become a serious obstacle to the development of a professional group.

### **9. Incentives for collective action 2: facing injustice**

Questions concerning the violations of client rights by representatives of various law enforcement bodies (police, investigators, prosecutors) were included in the questionnaire to test the sample for the possible evaluation of the performance of the entire law enforcement system. These questions allow the identification of regions where an agency violates client rights more frequently (Table 12).

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Table 12

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Table 12 shows a statistically significant strong regional variation in the number of these violations by various agencies. The worst assessments were given to Moscow, the Moscow Region, the Far Eastern Federal District, and – regarding police – the Sverdlovsk Region. In our opinion, the quality of the law enforcement systems in different regions should be evaluated compared with other regions and average indicators. The quality of law enforcement should not be evaluated on the basis of absolute numbers that may be slightly higher because advocates and law enforcement officers are often ex officio in opposition to one another. We plan to conduct a survey of all of Russia, which will allow a comparison of the performance of law enforcement agencies and the situation in different regions of Russia on the basis of advocate assessments.

There are differences in the evaluation of the scope of violations of client rights inside the profession of advocates (Table 13).

Violations of client rights are most often registered by bar advocates. Advocates regularly encountering violations of client rights much more frequently see the reason in a lack of independent courts (89% compared with 47% who rarely encounter these violations). Moreover, one-third believe that advocates frequently act as intermediaries between the client and the justice system to obtain a certain outcome in the case (respondents granting in-depth interviews referred to these advocates as "deciders"). The cluster of advocates oriented towards personal benefit are closest to "deciders" in terms of values (and close to the cluster called "pragmatic brokers" in (Liu & Halliday, 2011)) and less frequently register violations by investigators and police officers. Advocates who often register violations frequently have a negative image of the profession.

We are particularly interested in the fact that the advocates who see frequent abuses by law enforcement agencies are more active in their support of a strong professional association (Table 13), which could perform controlling and representative functions. These advocates see in this association the possibility of influencing the authorities to overcome the problems of the law enforcement system that they encounter in their practice.

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Table 13

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The review of the problem of violent pressure on business in Russia based on the case of the Centre of Public Procedures "Business against Corruption" (CPP BAC) shows that confronting injustice can actually be a catalyst for collective action (<authors article>, 2014). CPP BAC already has several examples of the protection of businessmen against unscrupulous representatives of the law enforcement system. These examples would hardly be possible without dozens of experts from the legal profession ready to work on pro bono terms.

However, we cannot assert that this pattern is not a coincidence or a derivative of some other cause (e.g., value orientations) before conducting a system analysis of all the factors influencing the demand for collective action. We therefore proceed to the regression analysis of the data.

#### **10. Regression analysis: hypotheses testing**

To test the patterns by ordinal logistic regression, we constructed a variable based on 5 questions. These questions concerned whether advocates need a professional association to fulfil one of the following functions: screening draft laws, control over the quality of legal education, control over professional ethics, holding congresses and conferences, and representing the interests of the advocates at the state level. All respondents were categorised in 6 groups depending on the number of times they answered that this association is "definitely needed" (from 0 to 5 times). We used the factors based on variables of ethical values and the question of the frequency of encountering violations of client rights as the main regressors. We added control variables for education, work experience, specialisation, their membership in the ALR, and also a dummy variable for the region and the sphere of previous work.

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Table 14

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Regression model 1 substantiates our hypothesis that reputation-oriented advocates (professional level of control according to (Abbott, 1983)) express greater demand for collective action. Moreover, advocates striving to maximise their personal benefit are less interested in the activity of a professional association (the factor of "benefit maximising" is significant with a negative sign). In addition, a "negative image of the profession" does not impact advocate support for collective action.

We added to the regression a variable characterising the frequency of violations of the rights of advocates' clients by police, investigators and prosecutors. After adding this variable, factors connected with the value orientations maintain their significance while the explanatory power of the model increases. This outcome confirms our assumption that experiencing violations by law enforcement provides additional motivation for advocate participation in "collective action."

## **11. Conclusion**

The findings indicate a strong qualitative inhomogeneity in the profession of advocates, differing in ethical values and readiness to participate in professional associations. There is an alarming tendency for negative selection in the legal profession caused by the dilution of professional boundaries and the growth in the number of "deciders." Most advocates note the deteriorating quality of legal education and the overproduction of lawyers with university degrees. These circumstances led to a decline of ethical values and the forming of a negative image of the profession characteristic of legal students and the advocates.

We know from the literature on business associations that the development of standards through professional associations relies on the sector's healthy nucleus. The collective action of advocates could be intended to create these quality signals for consumers of legal services. An example of this signal is the project of the Association of Lawyers of Russia concerning the accreditation of legal departments in Russian universities. The question is: to what extent advocate in Russia are ready for this action?

Our survey demonstrated that the advocacy in Russia still has a healthy core that could initiate collective action to develop and support professional standards and enhance the social status of advocates. This initiation would come from advocates oriented towards professional reputations rather than personal benefit, especially those who regularly encounter violations of client rights by law enforcement officers. This result is why one of the possible incentives for initiating collective action would be the creation of a public mechanism for the assessment of the law enforcement and judiciary systems.

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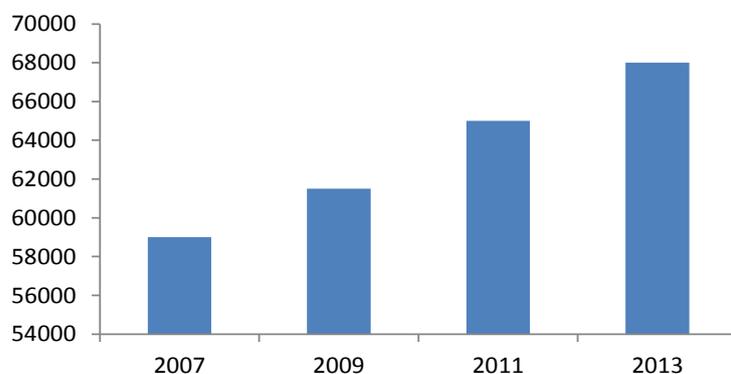
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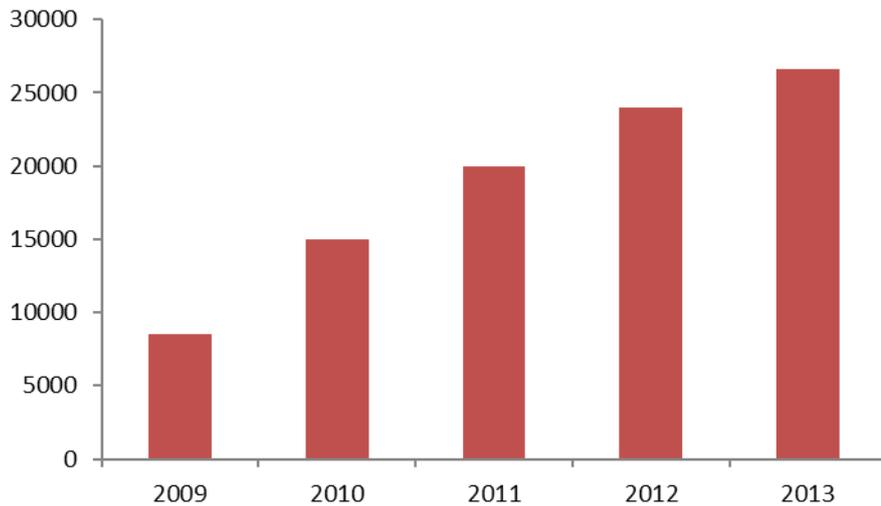
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## Appendix

**Figure 1. Dynamics of the number of advocates in Russia (according to data of the Federal Chamber of Advocates)**



**Figure 2. Dynamics of the number of members of the Association of Lawyers of Russia**



**Table 1. Number of lawyers in different countries around the world**

Country	Number of attorneys (thousand)	Residents per attorney
USA	1260	248
Italy	234	260
Germany	158	516
Romania	24	885
Ukraine	50	911
India	1300	951
France	54	1221
Latvia	1.35	1500
Turkey	46	1658
Russia	68 (368*)	2100 (390*)
Poland	10.4 (40,5**)	3700 (950**)
Belarus	2	4730

*Note: number of attorneys according to the information of the Council of Bars and Law Societies of Europe for 2012, for Russia – according to the information of the Federal Chamber of Advocates for 2013; \* number including private lawyers; \*\* number including legal advisers (for more details on their activity, see (Mrowczynski, 2012)).*

**Table 2. Total number of respondent advocates and advocates registered in the regions of the survey**

	Total respondents	Including ALR members	Advocates in the region	Advocates in ALR
Volgograd Region	41	19	1277	21
Vologda Region	35	14	392	25
Far Eastern Federal District	28	16	1301	37
Krasnoyarsk Territory	40	22	2759	121
Moscow	39	15	8346	174

Moscow Region	42	16	5130	91
Penza Region	66	16	456	40
Sverdlovsk Region	41	24	1949	63
Stavropol Territory	40	9	1510	120
<b>Total:</b>	<b>372</b>	<b>151</b>		

Our sample has a wider representation of advocates operating in bar associations and law offices and a much lesser representation of advocates operating through legal advice offices compared with the general total (see Table 2). In addition to the formal questioning, the IIMS HSE experts held six in-depth, informal interviews with advocates.

**Table 3. Form of legal practice**

	Respondents			% of the sample	% according to data of the Federal Chamber of Advocates
	Total (n)	% of ALR members	% of ALR non-members		
<b>Bar association</b>	278	71	78.6	74.7	66
<b>Law office</b>	21	11.3	2	5.6	4.8
<b>Legal advice</b>	57	12.6	17	15.3	28.1
<b>Legal counselling office</b>	11	4.6	1.5	3	0.3

**Table 4 Main descriptive statistics**

	ALR member	ALR non-member	Total
Proportion of males (%)	60	54	56.5
Average age (years)	40	39	40
Married (%)	67	63	65
Average experience of advocate's work (years)	10	8	9
Proportion who received legal education before the 2000s (%)	46	37	42
<b>Form of education (%)</b>			
Full-time	67	61	64
Evening course	8	6	7
Distance course	25	33	29
<b>Specialisation by types of clients</b>			
Population (over 60%)	46%	74%	62%
Business (over 60%)	26%	12%	18%
Mixed	28%	15%	20%
<b>Advocates' estimate of the average income of their colleagues with different work experience (roubles per month)</b>			
Novice	29,000	23,000	26,000

1-3 years of experience	36,000	31,000	33,000
Experienced advocate	114,000	103,000	108,000

**Table 5. Sphere from which the respondents came to the bar (%)**

	ALR	Non-ALR	Sample at large
Immediately after graduation	27	29	28
From private legal practice	18	12	14
From a commercial organisation	18	20	19
From law enforcement bodies	15	22	19
From the judiciary system	4	6	5
From public administration agencies	9	5	7
From scientific/educational institutions	3	2	2
From other public sector organisations	3	3	3
Other	3	2	3

**Table 6. Relationship between ethical values and the position concerning the need for a strong professional association**

		Advocates need a strong professional association...		
Thesis	Position	For screening draft laws	For enhancing control over the quality of legal education	For control of compliance with professional ethics by lawyers
"If my peer regularly violates professional ethics norms, I would prefer not to work with him"	Disagree	33%	36%	28%
	Agree	<b>53%</b>	<b>53%</b>	<b>52%</b>
"The opinion of a lawyer's peers about his professional competence is very important to him"	Disagree	38%	38%	38%
	Agree	<b>56%</b>	<b>57%</b>	<b>55%</b>
"A private attorney should first and foremost think about his personal income, and only afterwards about the client's benefit"	Disagree	<b>53%</b>	<b>54%</b>	<b>51%</b>
	Agree	29%	27%	37%
"A lawyer should treat all clients equally, regardless of their financial status, social standing, education, etc."	Disagree	45%	43%	43%
	Agree	<b>51%</b>	<b>52%</b>	<b>50%</b>
"Lawyers make money"	Disagree	42%	46%	46%

out of "loopholes" in the legislation"	Agree	<b>62%</b>	<b>56%</b>	<b>54%</b>
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**Comments: Pearson Chi Square is significant at 0,00. In BOLD differences that are significant at 0,05 level (Adjusted standardized residuals >1,96 or < -1,96).**

**Table 7. Factor analysis (based on questions about professional ethics)**

Statement about values	"Negative image of the profession"	"Maximising benefit"	"Profession level of control"
"An honest lawyer cannot make a career in public law bodies"	0.648		
"Lawyers make money out of "loopholes" in the legislation"	0.582		
"The verdict rather than the establishment of the truth is important in a criminal case"	0.561		
"Russians who have no legal education often mistrust lawyers"	0.395		
"If my peer regularly violates professional ethics norms I would prefer not to work with him"		-0.743	
"I am prepared to give up my profession if I find a job with a higher level of salary but not in the same specialty"		0.615	
"A private attorney should first and foremost think about his personal income, and only afterwards about the client's benefit"		0.466	
"The profession of a lawyer in Russia is an example of honest, law abiding and ethical professional conduct"			0.687
"The opinion of a lawyer's peers about his professional competence is very important to him"			0.604
"A lawyer should treat all clients equally, regardless of their financial status, social standing, education, etc."			0.562

*Note: Rotation "Varimax"*

**Table 8. Clusters from factors (table 7)**

Factor	Cluster	Reputation-oriented	Holders of the "negative image of the profession"	Benefit-oriented
"Negative image of the profession"		-0.17353	<b>0.50392</b>	-0.54648
"Maximising benefit"		-0.23983	-0.46987	<b>1.48018</b>
"Professional level of control"		<b>0.76307</b>	-0.74578	-0.41468

**Table 9. Basic characteristics of clusters**

	Reputation-oriented	Holders of the "negative image of the profession"	Benefit-oriented
N	145	111	60
Males	55%	59%	51%
ALR members	38%	44%	57%
Average age	40 years	38 years	38 years
Specialisation in client categories			
Population (over 60% of clients)	63%	61%	50%
Business (over 60% of clients)	17%	21%	16%
Mixed specialisation	20%	18%	34%

**Comments: Pearson Chi Square is significant at 0,00.**

**Table 10. Description of clusters**

Statements about values	Reputation-oriented	Holders of the "negative image of the profession"	Benefit-oriented
"If my peer regularly violates professional ethics norms I would prefer not to work with him"	92%	99%	33%
"The profession of a lawyer in Russia is an example of honest, law abiding and ethical professional conduct"	94%	13%	57%
"The opinion of a lawyer's peers about his professional competence is very important to him"	83%	64%	32%
"I am prepared to give up my profession if I find a job with a higher level of salary but not in the same specialty"	10%	20%	63%
"An honest lawyer cannot make a career in public law bodies"	22%	47%	18%
"The verdict rather than the establishment of the truth is important in a criminal case"	39%	50%	43%
"Russians who have no legal education often mistrust lawyers"	50%	70%	45%
"A private attorney should first and foremost think about his personal income, and only afterwards about the client's benefit"	10%	12%	30%
"A lawyer should treat all clients equally, regardless of their financial status, social standing, education, etc."	99%	70%	63%
<b>During the past 10 years people started feeling less respect for advocates</b>	18%	<b>46%</b>	19%
<b>The following attributes are or paramount importance to an advocate:</b>			
Honest reputation	85%	66%	52%

Good references	75%	78%	58%
Work experience	82%	73%	59%
<b>The registered violations of clients' rights are often committed by...</b>			
<b>Prosecutors</b>	20%	<b>30%</b>	25%
<b>Investigators</b>	47%	<b>57%</b>	36%
<b>Police</b>	58%	<b>65%</b>	48%
<b>Feel a need for a strong professional association performing the following functions</b>			
Public screening of draft laws	<b>50%</b>	36%	13%
Enhancement and control of the quality of legal education	<b>52%</b>	36%	13%
Free legal assistance to the population	<b>50%</b>	35%	16%
Holding conferences and congresses, exchange of experience and information within the professional community	<b>48%</b>	37%	16%
Control of lawyers' compliance with professional ethics	<b>52%</b>	35%	12%

**Table 11. Difference in ethical values of different generations of advocates**

Received legal education in	1970's-80's	1990's	2000's-2010's	Students*
"If my peer regularly violates professional ethics norms I would prefer not to work with him"	92%	91%	<b>80%</b>	62%
"The opinion of a lawyer's peers about his professional competence is very important to him"	75%	74%	<b>59%</b>	41%
"A private attorney should first and foremost think about his personal income, and only afterwards about the client's benefit"	12%	11%	<b>18%</b>	22%

Comments: Pearson Chi Square is significant at 0,00. In BOLD differences that are significant at 0,05 level (Adjusted standardized residuals >1,96 or < -1,96). \*The data about students is taken from the survey [author's article].

**Table 12. Violation of clients' rights by law enforcement bodies by region (% of advocates admitting that violations are frequent)**

Region	Prosecutors	Investigators	Police
Volgograd Region	18%	33%	48%
Vologda Region	13%	21%	36%
Far Eastern Federal District	50%	52%	74%
Krasnoyarsk Territory	30%	54%	51%
Moscow	34%	71%	68%
Moscow Region	33%	79%	77%

Penza Region	15%	32%	47%
Sverdlovsk Region	16%	49%	76%
Stavropol Territory	43%	58%	64%
Average estimate for the 9 regions	28%	50%	60%

**Comments: Pearson Chi Square is significant at 0,00.**

**Table 13. Distinguishing features of advocates frequently encountering violations of clients' rights**

Variable	Seldom encounter violations	Sometimes encounter violations	Regularly encounter violations	Sample as a whole
Work at a bar association	73%	74%	<b>83%</b>	76%
The reason behind the accusatory tendency is the lack of genuine independence of courts	<b>47%</b>	80%	89%	75%
Believe that advocates often act as intermediaries between the clients and the justice system attaining a certain outcome of the case	19%	21%	<b>33%</b>	23%
Agree that "the opinion of a lawyer's peers about his professional competence is very important to him"	<b>57%</b>	67%	<b>71%</b>	66%
<i>Believe that advocates definitely need an association for screening draft laws</i>	<b>38%</b>	47%	<b>64%</b>	49%
<i>Believe that advocates definitely need an association for controlling ethics compliance</i>	<b>31%</b>	47%	<b>71%</b>	50%

**Comments: Pearson Chi Square is significant at 0,00. In BOLD differences that are significant at 0,05 level (Adjusted standardized residuals >1,96 or < -1,96).**

**Table 14. Regression models 1 and 2 (ordinal logistic regression)**

Number of regression model	1		2	
	Estimate	Sig.	Estimate	Sig.
<b>Dependent variable: "See a need for a professional association" (from 0 to 5)</b>				
<b>Independent variables</b>				
The factor of "cynical view of the profession"*	0.13	0.25	0.09	0.43
The factor of "maximising benefit"*	-0.25	<b>0.04</b>	-0.25	<b>0.04</b>
The factor of "professional level of control"*	0.34	<b>0.00</b>	0.37	<b>0.00</b>
Rarely encounter violations			-1.16	<b>0.00</b>
Sometimes encounter violations			-0.50	<b>0.05</b>
Often encounter violations			0a	.

<b>Control variables</b>				
Distance or evening education	-0.42	0.09	-0.39	0.12
Specialisation in business	-0.44	0.07	-0.52	0.06
Work beyond the bar	0.18	0.49	0.30	0.26
Sex	-0.21	0.38	-0.25	0.29
Age	-0.01	0.51	-0.01	0.50
ALR membership	-0.01	0.96	-0.01	0.95
Region control	yes		yes	
Previous work sphere control	yes		yes	
<b>R square</b>	<b>0.18</b>		<b>0.22</b>	
<b>N</b>	<b>298</b>		<b>292</b>	

Note:\* see description of the factors in Table 7.