

# TRUE PERESTROIKA OR STILL PERFUNCTORY: A DECADE OF DEVELOPMENTS IN RUSSIAN LAW PRACTICE REFORM

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## Abstract

The concept of lawyering in Russia has undergone enormous changes in the last few decades and continues to evolve as the nation ushers in reforms to the profession. Examining the legal profession in Russia on its own without the comparison to the West is most effective. The country was shaped by its own history and societal norms; thus, it cannot resemble any other nation's speed and depth of developments in the legal field. As such, Russia's creation, and development of the "On Work" ethics code and other regulations for the advocates ("advokatura") is a huge accomplishment and reflection of the Western perspective on democracy and rule of law.

Establishment of the professional framework for an advocate's law practice is a serious endeavor and can only be strengthened over time. The numerous amendments and revisions to the "On Work" ethics code within the last decade continue to demonstrate the country's progress in that direction. Accordingly, this Article examines the latest developments in attorney ethics and regulation in Russia and offers a framework for resolving several inquiries that have been raised along the way.

First, it will discuss the composition of the legal profession in Russia and how it is formally divided into five separate fields of practice: notaries, prosecutors, judges, advocates, and jurists. It will also explain the specific accompanying educational requirements, professional responsibilities, and regulations pertaining to each field. Next, this Article will address the practice of advocates ("advokatura") with its applicable professional regulations and ethical standards, highlighting how these rules and laws have been changed and amended in the last decade.

This Article will acknowledge that, although Russia has made significant moves towards a new ethical system of legal representation for advocates, the regulation of jurists still remains nonexistent, thereby creating an uneven playing field in the country's law practice. The validity of this arrangement often comes down to arguments in support of self-regulation of a profession with the potential benefits and downsides weighed against various concerns pertaining to the idea of monopolizing legal services.

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\* Professor, South Texas College of Law, Houston. This Article, along with all my academic work, is dedicated to the precious memory of my father, Dr. Vladimir Z. Parton, who will always remain an inspiration. I would like to extend my deepest gratitude and appreciation to Elena Bolonina, Dusty Smith, Allyssa Baumeister & Elena Contreras for their invaluable assistance in preparation of this Article. I also would like to thank the *Florida Journal of International Law* editors for their terrific edits and helpful suggestions.

Finally, this Article will culminate a proposed solution allowing a workable compromise that would strengthen a respectful and ethical legal profession in Russia going forward, while minimizing the current obstacles. Due to the country's historic nature and deep roots in society's practice, these obstacles cannot be eliminated in a heartbeat. In sum, the proposal will include grandfathering all jurists with significant law practice experience via providing licensure and implementing a mechanism for at least minimal accountability and professional responsibility, while only allowing advocates to join the legal profession moving forward.

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### I. HISTORICAL OVERVIEW

Historically, Russia has been perceived as a country with a civil law legal system,<sup>1</sup> although it is known to have undergone three distinctive phases in the development of its legal profession. The first phase refers to the period beginning with the Tsarist Russia lasting until the Communist Revolution of 1917.<sup>2</sup> The second phase began thereafter and continued until the collapse of the USSR in 1991.<sup>3</sup> The third and final phase began in 1991, and led up to the “current stage, spanning from the

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1. Katerina P. Lewinbuk, *Perestroika or Just Perfunctory? The Scope and Significance of Russia's New Legal Ethics Laws*, 35 J. LEGAL PROF. 25, 28 n.16 (2010) (quoting “William Burnham, et al., *Law and Legal System of the Russian Federation* 3 (3d ed. 2004) and stating “[S]ystematic Reception of Roman and Civil Law Became Possible . . . During The 18th, 19th and Early 20th Century . . . Although it came late and by an indirect route, the civil law tradition in Russia was well established by the time of the Revolution of 1917.”). Moreover, until the recent phase, it has clearly been an inquisitorial system of justice in criminal cases, rather than one that includes a number of adversarial components. Note that, under Putin, one of the “critically important changes in the [criminal procedure] code was the adoption of adversarial principles.” Jeffrey Kahn, *Vladimir Putin and the Rule of Law in Russia*, 36 GA. J. INT’L & COMP. L. 511, 545 (2008). More specifically, “[t]he replacement of the judge-dominated mixed court by the jury was meant to eliminate the judiciary from the task of deciding guilt, replacing them with a group of citizens who were not caught in the web of dependence in which Russian judges found themselves.” Stephen C. Thaman, *Jury Trial and Adversary Procedure In Russia: Reform of Soviet Inquisitorial Procedure or Democratic Window-Dressing* in RUSSIA AND ITS CONSTITUTION 141, 142 (Gordon B. Smith & Robert Sharlet eds., 2008). See also Ekaterina A. Abrosimova, Anna A. Volkova, *Discussion About Anticipatory Breach of Contract in Russian Civil Law*, 7 J. OF EURASIAN STUD. 207 (2019) (in Russian) (examining scholarly debate applicable to commercial law with one side proposing Anglo-American approach).

2. Lewinbuk, *supra* note 1, at 28. For a discussion of the Judicial Reforms taking place in the tsarist Russia in 1864. See NICHOLAS V. RIASANOVSKY & MARK D. STEINBERG, *A HISTORY OF RUSSIA*, 375–77 (6th ed. 2000).

3. Lewinbuk, *supra* note 1, at 28.

1991 collapse of the Soviet Union through the present transitional free market economy and its in-progress democracy.”<sup>4</sup>

In the Author’s previous article entitled “Perestroika or Just Perfunctory? The Scope and Significance of Russia’s New Ethics Laws,” the Author analyzed the status of professional development and changes in the legal profession in Russia up to the time of publication in 2008, noting how much progress was made away from Russia’s previous totalitarian regime and in the direction of establishing new regulations for lawyers.<sup>5</sup> This included the creation of the country’s first professional ethics code,<sup>6</sup> uniform educational requirements<sup>7</sup> and many other lawyering attributes, which began to resemble a professional structure crucial to the development of democracy and law-abiding society which values human rights.<sup>8</sup> More specifically, “[d]emocratic political spheres and evolving capitalist markets require the security of both individual personal and property rights. This is accomplished through laws, enforcement mechanisms, and lawyers who advise their clients on how to navigate within these laws to ensure sustainability of enterprises and protection of civil rights.”<sup>9</sup>

Following the advice and guidance of legal professionals requires a foundational trust in the culture of the legal profession.<sup>10</sup> In order to achieve this foundational trust in the profession, professional ethics should be used as the building blocks as they “are molded to regulate and guide the legal field, ensuring client and societal trust in the legal profession.”<sup>11</sup> It is crucial to examine the merits of the matter of professional ethics with a, “. . . historic, socio-economic, and moral perspective . . .” because the principles of acceptable behavior, rules of conduct, and moral values of a civilized community of people are reflected in the regulation within its professional ethics.<sup>12</sup> As such, the Author previously concluded that the “status of ethical guidelines for the legal profession in Russia is greatly a reflection of the country’s rich and

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4. *Id.* at 28, n.15 (citing NICHOLAS V. RIASANOVSKY & MARK D. STEINBERG, A HISTORY OF RUSSIA 609–65 (6th ed. 2000), which explains the “political, social, and cultural changes that have taken place in Russia since the end of communism”). See also Ekaterina A. Abrosimova, *Obligation in Russian and Foreign Law*, 1 EURASIAN L. J. 82 (2018) (in Russian) (discussing the intertwine between law & society).

5. Lewinbuk, *supra* note 1, at 58, 77.

6. *Id.* at 40.

7. *Id.* at 41.

8. *Id.* at 35–36.

9. *Id.* at 26.

10. *Id.* It may be of interest that Russia now looks into various means of dispute regulation, not just via judicial system or the courts. See Ekaterina A. Abrosimova, *Copyright Disputes: Do we have Anywhere to Go but the Courts and Do We Need To?*, VESTNIK OF ARBITRATION PRACTICE, 5 (84), 42, 52 (2019) (in Russian).

11. Lewinbuk, *supra* note 1, at 26.

12. *Id.*

fascinating history with its changing political regimes, economic structure, and societal values,”<sup>13</sup> and this certainly remains true today.

Examining Russia’s legal ethics laws a decade ago, the Author posed two important questions while attempting to predict the developments in the country’s legal profession. First, in light of the country’s history of frequent failure to apply the laws on the books, the concern was whether the newly-created regulations would be consistently implemented and enforced.<sup>14</sup> Second, the legal profession in Russia was divided into advocates who became subject to these newly-created professional regulations and norms, and jurists, who remained outside of the professional ethical framework and continued to practice law unregulated with a complete lack of accountability to any licensing entity or structure.<sup>15</sup> That reality made one wonder whether the newly-created regulatory framework would lead to any progress towards a trustworthy ethical profession since many of its members continued “lawyering” as they pleased with no applicable professional regulation, accountability or ethical norms.<sup>16</sup>

Accordingly, these questions ultimately turned into whether the restructuring and professional development in Russia would lead to a true perestroika in the lawyering field and practice or whether it would reflect pure perfunctory thereby leading to insignificant and meaningless changes.<sup>17</sup> This Article examines the latest developments in attorney ethics and regulation in Russia in an attempt to revisit these inquiries a decade later.

## II. THE SEPARATE PROFESSIONS INSIDE ONE LAW PRACTICE IN RUSSIA

In the United States, licensed attorneys (who pursue the same educational track of receiving a bachelor’s degree, then graduating law school with a J.D. and afterwards passing the state Bar Exam, along with succeeding on the required character and fitness investigation by the state licensing board<sup>18</sup>) end up pursuing careers in different areas. Attorneys are generally considered to practice in the areas of litigation or transactional law, and these practice areas can be in either criminal (prosecutors and defense attorneys) or civil law (business, property, trusts and estates).<sup>19</sup>

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13. *Id.*

14. *Id.* at 74.

15. *Id.* at 79.

16. *Id.* at 73.

17. *Id.* at 75.

18. Sally Kane, *Education, Training and Testing to Become a Lawyer*, CAREERS (June 25, 2019), <https://www.thebalancecareers.com/lawyer-education-2164358> [<https://perma.cc/GPA4-XUMN>].

19. *Id.*

In contrast, the legal profession in Russia is divided into separate branches of the legal field with each specialty requiring its own educational and examination track. Accordingly, one has to make a choice early on in their career and pursue a certain field of law practice because each branch requires different training and responsibilities and there is no flexibility for change; in fact, one would need to start over from the beginning and obtain a different background, education and training in order to transition to a different legal specialty. Examples of such specialties in Russian law practice include independent professions of notaries, prosecutors (“procurators”), judges, advocates (“advokatura”) and jurists.

Each of these five independent professions will be discussed in the subsequent sections, beginning with notaries, and continuing in the above order.

#### A. *Notaries in Russia Today—Regulations and Requirements*

A notary is a distinct and independent branch of the legal profession in Russia, similar to other civil law countries of Romano-Germanic origin.<sup>20</sup> It is not to be confused with the understanding of the function of notaries in the United States. The function of the United States notaries is very limited and has no similarity to what is commonly understood to be a part of law practice;<sup>21</sup> because the notary can obtain a certificate within a day’s training without any educational requirements.<sup>22</sup> The functions and responsibilities of a notary in Russia, however, “fulfill a number of functions that in the United States would fall under a lawyer’s jurisdiction.”<sup>23</sup>

Per applicable Russian law, to become a licensed notary, one must obtain a bachelor-level legal education degree, complete at least a year-long official apprenticeship within an office of a public or private notary and pass a specialty examination.<sup>24</sup> After successful completion of these requirements, one may apply to the Russian Federation Ministry of

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20. Ekaterina Mishina, *Russia: Twenty Years of Private Notaries*, INST. OF MOD. RUSS. (Apr. 22, 2013), <https://imrussia.org/en/rule-of-law/440-russia-twenty-years-of-private-notaries> [<https://perma.cc/XC2F-6LHV>].

21. *Id.*

22. *Id.*

23. *Id.*

24. Federal’nyĭ Zakon RF Ob advokature i advokature v Rossiĭskoĭ Federatsii [Federal Law of the Russian Federation on Advocacy and the Legal Profession in the Russian Federation], SOBRANIE ZAKONODATEL’STVA ROSSIĬSKOĖ FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2002 (as amended 2019), No. 23, Item 2102, art. 9, <https://docs.cntd.ru/document/901819236> [<https://perma.cc/96U4-TGDU>] [hereinafter Law on Advocacy]. See also Mishina, *supra* note 20.

Justice which will exercise its consideration with established procedure and continue to supervise notaries throughout their law practice.<sup>25</sup>

Although there are two types of notary practice, public and private, both ultimately perform the same range of duties.<sup>26</sup> The range of duties performed by notaries in Russia would be similar to various functions performed by transactional lawyers in the United States. For instance, a notary is tasked with the “certification of legal transactions that the legislature has determined needs stricter formal requirements in order to be valid.”<sup>27</sup> Examples would include certification of a will<sup>28</sup> or drafting legal contracts.<sup>29</sup> Overall, the capacity of a licensed notary in Russia allows for providing legal advice and they even “hold some ‘quasi-judicial’ power.”<sup>30</sup> Notaries are known to charge relatively high legal fees, frequently exceeding those charged by other professionals in the legal field.<sup>31</sup>

The Russian Federation Ministry of Justice, however, is not the only regulating body for the notaries. In addition to the Russian Federation Ministry of Justice, the Federal Notary Chamber, which consists of a number of regional chambers of notaries, also has regulatory authority over notaries.<sup>32</sup> In February 2020, the Federal Notary Chamber of Russian Federation consisted of eighty-four regional chambers.<sup>33</sup> While not obligatory for public notaries,<sup>34</sup> notaries engaged in private practice must be members of the chambers in their specific region in order to offer their services in that particular region.<sup>35</sup>

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25. Mishina, *supra* note 20.

26. *Id.*

27. WILLIAM BURNHAM ET AL., *LAW AND LEGAL SYSTEM OF THE RUSSIAN FEDERATION* 223–26 (6th ed. 2015).

28. *Id.* at 161.

29. *Id.*; Mishina, *supra* note 20.

30. BURNHAM ET AL., *supra* note 27, at 161.

31. *Id.* at 162. See also Vadim Konyushkevich & Gleb Bazurin, *Regulation of The Legal Profession In The Russian Federation*, THOMAS REUTERS: PRAC. L. (Apr. 1, 2018), [https://uk.practicallaw.thomsonreuters.com/1-633-8957?\\_lrTS=20210201181758941&transitionType=Default&contextData=%28sc.Default%29](https://uk.practicallaw.thomsonreuters.com/1-633-8957?_lrTS=20210201181758941&transitionType=Default&contextData=%28sc.Default%29) [https://perma.cc/9UHR-G65R] (noting “The calculation of the notary fee depends on the type of notarial act. The official notary fee is a fixed sum or percentage of the transaction value with a minimum or maximum range determined by the Russian tax code. In addition to the official notary fee, notaries frequently request payment for notary services performed on the basis of a separate agreement between the client and the notary.”). Furthermore, notaries may be reasoned to be so high due to the fact that they cannot work within law firms. *Id.* Rather, notaries “can only work within state notary bodies and private notary offices.” *Id.*

32. *General Information*, FEDERAL CHAMBER OF NOTARIES, <https://notariat.ru/ru-ru/federal-notary-chamber/info/> [https://perma.cc/K2XY-DW5X] (last visited June 1, 2020).

33. *Id.*

34. Mishina, *supra* note 20.

35. Konyushkevich & Bazurin, *supra* note 31.

Specific legislation titled “Fundamental Principles of Legislation of the Russian Federation on the Notaries” was adopted in February 1993 to further regulate notary practice in Russia.<sup>36</sup> According to one scholar, this legislation is a result of lobbying by the private notary founders,<sup>37</sup> whose accomplishments cannot be overestimated as they “radically changed the public’s perception of the notary profession and dramatically enhanced its prestige.”<sup>38</sup> More specifically, enacting this law led to a new level of accountability for private notaries, which “not only affected the quality of notaries’ work but also increased people’s trust” toward their professional activity.<sup>39</sup> For instance, the legislation required private notaries to discuss and explain the documents they are tasked with drafting to their clients and determine how to proceed with various transactions in the client’s best interest.<sup>40</sup>

### B. *Expectations of Prosecutors in Russia* (also known as “Procurators”)

In order to exercise prosecutorial activities, one must meet and demonstrate the following requirements:

- a) the citizenship of the Russian Federation; b) higher legal education of a state University; c) age: district state prosecutors older than 25 years, prosecutors of entities older than 30 years; d) professional qualities: the district and city prosecutors – experience not less than 3 years, the Prosecutor of the entity – at least 5 years; e) moral qualities (no criminal record, honesty, etc.); f) oath of allegiance and more.<sup>41</sup>

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36. Mishina, *supra* note 20. See also Federal’nyĭ Zakon RF o Notariate Rossiĭskoĭ Federatsii [Federal Law of the Russian Federation on the Notariate of the Russian Federation], ROSSIĪSKAIA GAZETA [ROS. GAZ.], No. 49, Mar. 13, 1992), [https://www.wto.org/english/thewto\\_e/acc\\_e/rus\\_e/WTACCRUS48A5\\_LEG\\_109.pdf](https://www.wto.org/english/thewto_e/acc_e/rus_e/WTACCRUS48A5_LEG_109.pdf) [<https://perma.cc/29NV-5M3U>].

37. Mishina, *supra* note 20.

38. *Id.*

39. *Id.*

40. *Id.* (“a so-called ‘preventive function’ of a notary was fixed in the legislation, meaning that it was a notary’s duty to explain to citizens and organizations their rights and responsibilities, as well as warn them about the consequences of notarial actions to be performed, so that legal illiteracy could not work to their detriment (article 16 of the fundamental principles). For example, when a notary certifies a contract, the notary is supposed to explain its content as well as its consequences to the concerned parties. Notaries often draft contracts for their clients themselves, which makes them legal guarantors of any deal made. If a notary thinks that a notarial action to be performed fails to conform to legislation, he or she is supposed to refuse to perform such an action. Thus, notaries fulfill a very important function of preliminary control with regard to a large number of contracts.”).

41. Valeriy Grebennikova et al., *Place of The Prosecutor’s Office of The Russian Federation In System of Bodies Involved In Criminal Prosecution*, 11 INT’L J. OF ENV. & SCIENCE EDUC. 7857, 7861 (2016).



The courts, with the prosecutor's input, select cases for prosecution through the lens of the "procedural legislation of the Russian Federation and other Federal laws."<sup>42</sup> The Prosecutor acts as a public servant while bringing criminal cases to court.<sup>43</sup> Per the Russian Federation procedural rules, an application to the court or an intervention in a case to protect a citizen's rights may be allowed at any time throughout the process of a case.<sup>44</sup> The procedural rules of the Russian Federation determine the powers of the prosecutor.<sup>45</sup>

Russia's prosecutor's office is known to be a "complex hierarchically-constructed, Federal centralized system of bodies that perform a wide range of powers for implementing the maintenance of the normal criminal situation in this country."<sup>46</sup> Overall, its functions include creation and implementation of the prosecutorial system and its supervision, as well as criminal prosecution of individuals.<sup>47</sup> As such, the prosecutor's office has the power to initiate criminal investigations (including the right to provide binding instructions in terms of the necessary length and extent) and charges, overseeing ongoing indictments and forwarding selected cases to court.<sup>48</sup> All criminal proceedings in Russia, however, are governed by the applicable body of law.<sup>49</sup>

In fact, the Federal law titled "On The Procurator's Office Of The Russian Federation" specifically states: "The Prosecutor's Office of the Russian Federation is a single federal centralized system of bodies performing supervision over the observance of the Constitution of the Russian Federation and execution of the laws effective on the territory of the Russian Federation in the name of the Russian Federation. The Prosecutor's Office of the Russian Federation also performs other functions established by federal laws."<sup>50</sup>

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42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 7857.

47. Grebennikova et al., *supra* note 41, at 7858.

48. *Id.*

49. *Id.* at 7862.

50. Federal'nyi Zakon RF o Prokurature Rossiiskoi Federatsii [Federal Law of the Russian Federation on the Prosecutor's Office of the Russian Federation], ROSSIISKAIA GAZETA [ROS. GAZ.], No. 39, Feb. 18, 1992, art. 1, ¶¶ 1, 2, [https://www.wto.org/english/thewto\\_e/acc\\_e/rus\\_e/WTACCRUS58\\_LEG\\_83.pdf](https://www.wto.org/english/thewto_e/acc_e/rus_e/WTACCRUS58_LEG_83.pdf) [<https://perma.cc/HU97-HL44>] (providing that "2. . . . the Prosecutor's office of the Russian Federation shall carry out: supervision over the observance of law by the federal ministries, state committees, services and other federal bodies of executive power, representative (legislative) and executive bodies of the subjects of the Russian Federation, local self-government bodies, military administrative bodies, control bodies and the officials thereof, the managerial bodies and heads of commercial and non-commercial organizations as well as the compliance of the legal acts they enact with the law; supervision over the observance

Moreover, the prosecutor's office has recently been made subject to the newly established ethical norms. In fact, the Procurator's Code of Ethics of the Russian Federation was issued on April 13, 2018,<sup>51</sup> setting forth the applicable boundaries for proper practice. The new rules range from making no public statements regarding confidential information, to prohibiting bribery and maintaining civility.<sup>52</sup> Overall, the Code praises ethical and devoted public service.

### C. Requirements for Judges in Russia

To become a judge in Russia, one must comply with a multitude of requirements. Per the Russian Constitution and Statute of Judges, a person must be a citizen of the Russian Federation (and not a permanent resident of a foreign state), over 25 years of age, and hold a higher degree in law with at least five years of legal practice experience in order to become a judge.<sup>53</sup> Furthermore, the individual must have neither been convicted nor have criminal proceedings that led to termination on exonerative grounds and must not experience any incapacity or impediment of legal, physical, or psychological nature that would be an obstacle to fulfilling one's judicial duties.<sup>54</sup>

The position of a judge of the Constitutional Court can only be held by citizens of Russia over 40 years of age with a higher degree in law and

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of human and citizen's rights and freedoms by the federal ministries, state committees, services and other federal bodies of executive power, representative (legislative) and executive bodies of the subjects of the Russian Federation, local self-government bodies, military administrative bodies, control bodies, the officials thereof, as well as the managerial bodies and heads of commercial and non-commercial organizations; supervision over the observance of the law by the bodies performing operational search, inquiry and preliminary investigation activities; supervision over the observance of the law by bailiffs; supervision over the observance of the law by the administrations of the bodies and institutions responsible for executing sentences and enforcement sanctions ordered by the court, by the administrations of detention and custody facilities; criminal prosecution under the powers established by the criminal procedure law of the Russian Federation; the coordination of the crime-fighting activities of the law enforcement bodies.").

51. E.S. Shmatova & L.I. Zolotareva, "Significance of Codes of Ethics for Representatives of the Legal Profession," 5 RUSS. L. EDUC. PRAC. SCI. 45, 46 (2018) (In Russian).

52. *Id.* at 47 (Explaining that according to the new ethics code for superior prosecutors are to take care of their associate workers; to keep the confidential information received while on duty, and to receive punishment if disclosing such information; [and] to be civil and kind during interactions with co-workers. The code prohibits discussing work of the superior and the prosecutor's office online; establishes a range of punishment for violating the rules of the code, starting with oral reprimand, warning of the unacceptable ethical behavior, and demand of public apology.).

53. Konstitutsiia Rossiiskoi Federatsii [Konst. RF] [Constitution] art. 119 (Russ.) [hereinafter Constitution]. See also *Law on the Status of Judges*, art. 4(1)(1), (1)(3), and (2)(4), SUP. CT. RUSSIAN FED'N, [http://www.supcourt.ru/en/judicial\\_system/law\\_status\\_judges/](http://www.supcourt.ru/en/judicial_system/law_status_judges/) [<https://perma.cc/J4ZC-WWJ9>] (last visited Jan. 23, 2021) [hereinafter Statute of Judges].

54. Statute of Judges, *supra* note 53, art. 4(1)(2) and (1)(4)-(6).

at least 15 years of legal practice experience.<sup>55</sup> To be appointed a judge of the Supreme Court, the candidate must have Russian citizenship and be over the age of 35.<sup>56</sup> In addition, the individual must have a higher degree in law and at least ten years of legal practice experience.<sup>57</sup> To serve on the appellate court, a judge must be a Russian citizen over 30 years old, with a higher degree in law and at least seven years of legal practice experience.<sup>58</sup>

Russian judges are bound only by the Constitution of the country and its federal laws.<sup>59</sup> According to Russian sources, the independence of their judges is

provided for by the irrevocability of their appointment, their immunity from legal process (special procedure of prosecution by the consent of the relevant judicial qualification committee) and social guarantees including lifetime maintenance, obligatory insurance of the judge and his family members, provision of medical services, compensation of travel expenses, and so on.<sup>60</sup>

As such, it is further argued that an “independent judiciary is one of the key constitutional principles of the Russian legal system.”<sup>61</sup> However, one can certainly question whether such independence is truly functional in reality.

The President appoints general jurisdiction and commercial court judges upon the recommendation of the chairman of the Supreme Court.<sup>62</sup> However, the Council of the Federation appoints the Constitutional and Supreme Court judges, per the recommendation of the President.<sup>63</sup>

The Russian court system is often referred to as a mix because it is comprised of several different codified procedures, such as Civil, Commercial, Criminal and Administrative Procedure codes.<sup>64</sup> The mixture of codes, however, aims to adhere to all policies of the adversarial system, which includes the nature of judicial proceedings.<sup>65</sup> However, “due to an absence of general requirements regarding the

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55. *Id.* art. 4(2)(1).

56. *Id.* art. 4(2)(2).

57. *Id.*

58. *Id.* art. 4(2)(3).

59. Constitution, *supra* note 53, art. 120.

60. Vadim Konyushkevich et al., *Legal Systems in the Russian Federation: Overview*, THOMAS REUTERS: PRAC. L. (Feb. 1, 2019), [https://uk.practicallaw.thomsonreuters.com/w-010-2803?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-010-2803?transitionType=Default&contextData=(sc.Default)&firstPage=true) [https://perma.cc/L3VF-5RX2].

61. *Id.*

62. Konyushkevich et al., *supra* note 60.

63. *Id.*

64. *Id.*

65. *Id.*

professional experience and education of the parties' representatives, in practice judges are actively involved in investigating the facts of the case, clarifying the legal positions of the parties, specifying the legal grounds of a claim and so on."<sup>66</sup>

Moreover, all Russian judges are bound by the Code of Judicial Ethics, which was adopted by the 8th All-Russia Congress of Judges in December 2012.<sup>67</sup> According to the Code, the "judicial protection of human rights and freedoms may only be guaranteed by competent and independent justice, based on the principles of fairness and impartiality."<sup>68</sup> The implication of such standard is that all judges must comply with all the rules of professional ethics, execute the duties of the position diligently and with honesty, and rigorously preserve the dignity of the judiciary.<sup>69</sup> The Code states that the

State guarantees of independence, immunity, removability of judges, prohibition to interfere with the activities of a judge, the high level of material and social support are not personal privileges of judges, but a measure aimed at securing the aims of justice—the adoption of lawful, well-substantiated and fair judicial decisions."<sup>70</sup>

Because the judicial office bears great authority and power, it is an absolute necessity for the judges to execute the duties of their office professionally and ethically to secure equally applied justice.<sup>71</sup>

## *D. The Advocates (the "Advokatura") in Russia Today*

### 1. Regulation

Licensed attorneys or advocates, known in Russia as the "advokatura," represent the most desired and highly-paid counsel with qualifications and prestige that makes them stand out completely from

66. *Id.*

67. *Code of Judicial Ethics*, art. 1(1), SUP. CT. RUSSIAN FED'N, [http://www.supcourt.ru/en/judicial\\_system/code\\_judicial\\_ethics/](http://www.supcourt.ru/en/judicial_system/code_judicial_ethics/) [<https://perma.cc/ZN8D-A2AA>] (last visited Jan. 23, 2021). It was later amended by Ruling of the 9th All-Russia Congress of Judges in December 2014.

68. *Id.* at pmb1.

69. *Id.*

70. *Id.*

71. *Id.* ("The judges of the Russian Federation, realizing their responsibility of due administration of justice before the society, based on the provisions of the Constitution of the Russian Federation, the legislation on the judicial system and on the status of judges of the Russian Federation, the universal principles and norms of the international law, developing and specifying them in order to guarantee everyone's right to a fair consideration of a case by a competent, independent and impartial court within a reasonable time, in order to set the standards of conduct of judges as a basis of public trust in the judiciary and in the quality of justice, do hereby adopt the Code of Judicial Ethics.").

jurists, their counter-part, when it comes to client representation and law practice. To put it differently,

At the core of the legal profession, although representing a minority of legal practitioners, is the “advokatura” or the profession of advocates. Members of the advokatura are recognized and regulated by law, subject to registration and qualification requirements, and governed by professional lawyers’ associations at federal and regional level. Advocates have the exclusive competence to represent defendants in criminal proceedings; however, they have no such monopoly in civil and administrative cases.”<sup>72</sup>

In terms of qualifications for becoming a licensed advocate, a candidate is required to obtain an undergraduate degree in law, complete a two-year apprenticeship/legal experience, and pass a qualifying licensing exam, thus, demonstrating core knowledge in the discipline and professional experience.<sup>73</sup>

Since the Soviet times, the Russian Federation has been fighting the public’s distrust towards both individual lawyers and the legal profession as a whole while attempting to rebuild long-lost faith in ethical lawyering. Among the government’s goals is to increase the responsibility and competency of lawyers, as well as to introduce uniform standards for admission into the legal profession and to create a mechanism for professional development in the legal field.<sup>74</sup>

According to the Chairman of the Supreme Court of Russian Federation Vyacheslav Lebedev, in 2019 the Russian courts managed approximately 19.6 million civil cases (which demonstrates a 13% increase from 2018), with additional 1.879 million cases that were resolved via arbitration, while the criminal courts processed 749,000 in the same year.<sup>75</sup> In criminal proceedings, only advocates can represent clients in criminal proceedings,<sup>76</sup> whereas in civil cases there is no such restriction and thus civil cases can be handled by either advocates or jurists.

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72. *Towards A Stronger Legal Profession in the Russian Federation*, INT’L COMM’N OF JURISTS, at 8 (2015), <http://www.icj.org/wp-content/uploads/2015/11/Russia-Towards-a-Stronger-Legal-Profession-Publication-2015-Eng.pdf> [<https://perma.cc/62ZV-MNES>] [hereafter ICJ Mission Report].

73. See Lewinbuk, *supra* note 1, at 41–42 (discussing that the advocates’ educational and professional experience comes from the Code of Judicial Ethics and Law on Advocacy).

74. See *Doing Business in Russia 2020*, Baker McKenzie, [https://www.bakermckenzie.com/en/insight/-/media/files/insight/guides/2020/dbi-russia-2020\\_colored\\_0427.pdf](https://www.bakermckenzie.com/en/insight/-/media/files/insight/guides/2020/dbi-russia-2020_colored_0427.pdf) [<https://perma.cc/D4B2-A58E>] (last visited Feb. 7, 2021) (focusing on the various aspects of “The Russian Judicial System” with functionality of different branches).

75. *The Supreme Court Summed Up the Results of the Courts in 2019*, PRAVO: PRAC. (Feb. 11, 2020), <https://pravo.ru/story/218428/> [<https://perma.cc/E7AM-N9T3>].

76. Konyushkevich & Bazurin, *supra* note 31.

The initial framework of the body of law to regulate the practice and ethical norms of the advocates was passed almost twenty years ago with the 2002 Federal Law “On Advocacy and the Legal Profession in the Russian Federation” (the Law on Advocacy),<sup>77</sup> and the 2003 Professional Ethics Code for Attorneys (Code),<sup>78</sup> by which the Russian advocates are still largely governed today—unlike jurists that have never been subject to a regulating body. The Code consists of two major parts: the first part containing the “general principles and terms of professional conduct of advocates” with the second part providing the basic guidelines and mechanisms for enforcement of disciplinary proceedings in instance of noncompliance.<sup>79</sup> The Code has undergone multiple amendments and revisions since its enactment in 2003: April 2005, April 2007, April 2013, April 2015, and April 2017.<sup>80</sup>

## 2. Major Changes in the Last Decade

The “Law on Advocacy ” has also undergone numerous amendments and revisions since its adoption in 2002: October 2003, August and December of 2004, July and December of 2007, July 2008, July and November of 2011, July 2013, July 2015, June 2016, July 2017, December 2019, and July 2020.<sup>81</sup> While professional regulation of the attorney is an ever evolving concept that reflects the needs and developments of a civilized society, the above-mentioned changes are yet another step in further improving the professional structure and ethical framework of the advocacy in Russia, and shows significant progress since the first edition of the Law on Advocacy.

Moreover, the Russian Federation’s Federal Bar Chamber (FBC)<sup>82</sup> has adopted the Rules on advocates’ behavior on the internet.<sup>83</sup> It is of no surprise that the expectation is for the now well-established legislation on advocacy and its regulation of law practice, as well as the existing

77. See Law on Advocacy, *supra* note 24.

78. КОДЕКС ПРОФЕССИОНАЛЬНОЙ ЭТИКИ АДВОКАТА РОССИЙСКОЙ ФЕДЕРАЦИИ [Code of Professional Ethics for Lawyers of the Russian Federation], <https://fparf.ru/documents/fparf/documents-of-the-congress/the-code-of-professional-ethics-of-lawyer/> [<https://perma.cc/CJP8-J436>] [hereinafter Code].

79. *Id.*; see also Konyushkevich & Bazurin, *supra* note 31.

80. Code, *supra* note 78.

81. Law on Advocacy, *supra* note 24.

82. *About the Federal Chamber of Lawyers of the Russian Federation*, FED. CHAMBER OF LAWS. OF THE RUSS. FED’N, <https://fparf.ru/fpa-rf/about/> [<https://perma.cc/N477-NCTX>] (last visited Jan. 24, 2021). “According to the Federal Law, The Russian Federal Chamber of Lawyers coordinates the activity of bar chambers, provides high-quality legal assistance, represents interests of advocates and chambers of lawyers in governmental authorities of the Russian Federation. The decisions of the Russian Federal Chamber of Lawyers and its bodies made within the limits of their authority are obligatory for all regional chambers, legal practices and advocates.”

83. Konyushkevich & Bazurin, *supra* note 31.

professional ethics principles to be equally applicable to the advocates' social media activities.<sup>84</sup> As an example, the advocates' publications and comments made via the internet have to comply with the requirements of the attorney-client privilege doctrine.<sup>85</sup>

The efforts of making the advocates stand out for their professional, qualified, and ethical service to their clients keeps moving forward at full speed in today's Russia. As such, the President of the Federal Bar Chamber has urged to include advocates (the "advokatura") and its function into the Constitution of Russian Federation, stating that the "text of the Constitution has rather detailed mention of a court, notes prokuratura (prosecutors), and only advokatura, without which [true] justice is impossible, is still refused inclusion -- this needs to be changed quickly."<sup>86</sup>

Overall, the current edition of the Law on Advocacy continues to establish specific requirements and aspirational goals for the legal profession in Russia (although specifically applicable to advocates only), consistently rewording various parts of its articles. One of these recent amendments established a brand-new Commission on advocates' ethics and standards.<sup>87</sup> It specifically provides the newly created body with enforcement powers and further tasks it with overseeing ethical regulation.<sup>88</sup> It also further delegated continued legal education standards to be established and implemented by the FBC.<sup>89</sup>

It appears that the most significant change in the Law on Advocacy is allowing contingent fees in all cases except for criminal and administrative cases, which is a big shift from complete prohibition of such a fee in the initial draft.<sup>90</sup> One explanation for this prohibition again dates back to the lack of trust in the advocates' honesty coupled with the public's distrust of the same and, in an attempt to cure the problem, not to allow a scenario where the advocate's personal interests could be in potential conflict with her client's, which is likely to happen when

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84. *Id.*

85. *Id.*

86. *President of FPA Named A Place For Advokatura In The Constitution*, FED. CHAMBER OF LAWS OF THE RUSS. FED'N (Feb. 4, 2020), <https://fparf.ru/news/fpa/prezident-fpa-nazval-mesto-dlya-advokatury-v-konstitutsii/> [<https://perma.cc/V498-UMFW>].

87. Law on Advocacy, *supra* note 24, art. 37.1.

88. *Id.*

89. *Id.* art. 31(9).

90. *Id.* art. 25(4.1). The current edition of Law on Advocacy now allows two or more advocates to open one law firm together if they have been practicing for at least three years versus five that was required before. *Id.* art 22(1). The same length of work experience, at least 3 years, also currently applies to an advocate who elects to individually open their own practice. *Id.* art. 21(1). It has also been added that an advocate can submit a request to a council of advocate chamber to put on hold her advocate status or to even terminate it, with the status being given back no earlier than one year and no later than ten years should the advocate be given the permission to the hold it by the board. *Id.* art. 16(1)(5) and (5).

representation is subject to contingency fees. Removal of this restriction is certainly noteworthy as it shows less concern for both the advocate's integrity and professionalism, as well as increased confidence in the public's perception. Below are additional changes and amendments to the advocates' professional regulation and ethical standards in the last decade.

### 3. Admission to Profession and Schooling Requirements

As previously stated, the Code and the Law on Advocacy require would-be attorneys to obtain a degree in law, pass a qualifying exam, and have two years of legal experience or a legal internship.<sup>91</sup> Some critics, however, argue that even these measures are not always successful to ensure high quality lawyers.<sup>92</sup> Because the testing is conducted regionally by each individual Chamber, it is disputed whether testing practices in some areas are more susceptible to corruption.<sup>93</sup>

Starting in January 2022, the advocates' qualification licensing exam will be changed to include a combination of multiple choice questions and oral parts.<sup>94</sup> The upcoming revised exam will use a new unified automated information system that will provide verification of automated anonymous test scores.<sup>95</sup> To that end, the Federal Chamber of Advocates have posted 343 sample multiple-choice questions to date,<sup>96</sup> which are based on the Code, the Law on Advocacy, and multiple directives and opinions of the Federal Chamber.<sup>97</sup>

Moreover, looking at the revisions and amendments made in this area since the Author's initial findings a decade ago, serving as a law professor (either adjunct or full-time) in a higher education institution now counts as legal work experience towards an advocate status.<sup>98</sup> Finally, the updated version of the Law on Advocacy has expanded the requirement for advocates from having to "continually increase their knowledge and

91. Lewinbuk, *supra* note 1, at 41.

92. ICJ Mission Report, *supra* note 72, at 30.

93. *Id.*

94. Law on Advocacy, *supra* note 24, art. 11(2) and (3).

95. *Id.*

96. *Test Items for Passing the Qualifying Exam for Attorney Status*, COUNCIL OF THE FED. CHAMBER OF ADVOC. RUSS. FED'N, [https://fparf.ru/upload/medialibrary/341/Testovye\\_zadaniya\\_1.pdf](https://fparf.ru/upload/medialibrary/341/Testovye_zadaniya_1.pdf) [<https://perma.cc/EV4J-WB53>] (last visited Aug. 7, 2021) (noting that there are 324 multiple choice questions that have been generated) [hereinafter Test Items].

97. Vladislav Kulikov, *The Moral of the Defense Is: New Tests are Introduced to the Bar Exam*, 157 ROS. GAZ. 7915 (July 18, 2019), <https://rg.ru/2019/07/18/v-rossii-poiaviatsia-novye-testy-dlia-ekzamena-na-status-advokata.html> [<https://perma.cc/9FBN-UMYH>]; *see, e.g.*, Test Items, *supra* note 96, at questions 116, 1, and 138.

98. Law on Advocacy, *supra* note 24, art. 9(4)(8). Also, it is prudent to note that the wording of "Higher Education Institutions" has been changed and expanded to include "Scientific Organizations." *Id.*



improve the skills” to allowing that concept to include independent projects or pursuits on point as directed by the Federal Chamber of Lawyers’ of Russian Federation and regional chambers.<sup>99</sup> These revisions seem to continue the ongoing efforts towards maintaining the advocates’ professional integrity and independence.

#### 4. Grounds for Suspension or Discipline

Per current Russian Law on Advocacy, the actual regional Chambers that will independently oversee discipline.<sup>100</sup> Of interest is a recent case that demonstrates the level of the local chamber’s power over its advocates status and license. In that case, the Russian Constitutional Court<sup>101</sup> found no grounds for accepting the appeal of two advocates that were disbarred by their local regional chambers.<sup>102</sup> After losing in lower courts, one of them appealed the decision of the local regional Bar Chamber on constitutional grounds claiming he was punished for having criticized Judges and the judicial system online.<sup>103</sup> The Court found that the local Bar Chambers had fully vested rights to investigate and discipline, including disbarment, and thus the court had no right to circumvent the process and interfere with its disciplining decisions.<sup>104</sup>

As briefly mentioned, another revision now allows an advocate to request a Council of Advocate Chamber to either put their advocate status on hold<sup>105</sup> or to terminate it.<sup>106</sup> The new language states that an advocate’s status can be terminated (or basically be disbarred) for disclosing

99. *Id.* art. 7.3.

100. ICJ Mission Report, *supra* note 72, at 24.

101. For an overview of the judicial system of the Russian Federation, *See Overview of the Judicial System of The Russian Federation*, Supreme Court of The Russian Federation, [http://www.supcourt.ru/en/judicial\\_system/overview/](http://www.supcourt.ru/en/judicial_system/overview/) [<https://perma.cc/GL3V-6QNL>] (last visited Jan. 24, 2021) (“Currently, Russia’s judicial system is composed of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, federal courts, constitutional (charter) courts and justices of the peace of constituent entities of the Russian Federation.”).

102. *Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii ot 30 yanvarya’ 2020 g.* [Ruling of the Russian Federation Constitutional Court of Jan. 30, 2020], *SOBRANIE ZAKONODATEL’STVA ROSSIISKOI FEDERATSII [SZ RF]* [Russian Federation Collection of Legislation] 2020, No. 34-O, ¶ 2, <http://Base.Garant.Ru/73568576/> [<https://perma.cc/2HSM-Z2TA>].

103. *Id.* ¶ 1.

104. *Id.* ¶ 2.1.

105. Law on Advocacy, *supra* note 24, art. 16 (1)(5). However, there are conditions to the hold status. A person with an advocate status on hold cannot conduct advocate activity and represent clients in court. *Id.* art. 16(3.1). Furthermore, despite the advocate being suspended, the advocate is still subject to the rules code of professional ethics. *Id.* art. 16(3). The status of the advocate can be reactivated (specifically applicable to those put on hold for personal reasons) no earlier than one year and no later than ten years when the advocate was given permission to the inactive status (on hold) by the board. *Id.* art. 16(5).

106. Law on Advocacy, *supra* note 24, art. 17(1).

confidential information or systematically failing requests for information.<sup>107</sup> Interestingly, in the case of an advocate's suspension or denial of status renewal, the new provision allows the advocate to challenge the decision by appealing only to the local court.<sup>108</sup> However, in the case of an advocate appealing a termination or disbarment decision, either the court or the Federal Chamber may hear the case concerning the decision.<sup>109</sup> More power is given to local chambers to decide termination.<sup>110</sup>

The newly-added provision titled "Disciplinary proceedings before the Federal Chamber of Advocates" in the article on the Council of Federal Chamber of Advocates authorizes the Federal Chamber to serve as an appellate body for disciplinary issues, and an advocate can appeal within one month after the Chamber's final determination.<sup>111</sup> The Council tasked with review in the Federal Chamber can either accept or decline the appeal within one month; it can request the disciplinary documents from the regional chamber that made the decision, and the regional chamber has seven calendar days to produce the file.<sup>112</sup> The commission has one month to reconsider the decision of the regional chamber and send the file and the decision to the Council of the Federal Chamber.<sup>113</sup> The Council of the Federal Chamber may sustain, reverse, or change the disciplinary decision.<sup>114</sup> The duration of disciplinary proceedings against the advocate begins anew from the date the Federal Chamber accepts the appeal.<sup>115</sup>

The Federal Chamber currently implements a significant number of disciplinary actions against lawyers, hearing nearly 10,000 cases annually, while there are only a total 75,000 advokatura members/advocates of the Federal Chamber.<sup>116</sup> More than half of these hearings result in disciplinary actions. Between 2013–2014, 5,304 lawyers were reprimanded and 722 disbarred.<sup>117</sup> However, the disjointed nature of the way the legal system regulates both jurists and advokatura

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107. *Id.* art. 17(2)–(2.1) (More specifically, article 17 specifically added that an advocate's status would be terminated "When an advokate illegally uses and/or discloses the information received during the representation or when she systematically didn't follow the guidelines re the attorney request for information." (translated from Russian))

108. *Id.* art. 16(5.1).

109. *Id.* art. 17(5).

110. *Id.* art. 17.7 (noting that the initiation of disciplinary proceedings is processed by the qualified commission and council of the applicable chamber).

111. *Id.* art. 37.2(1).

112. Law on Advocacy, *supra* note 24, art. 37.2(2).

113. *Id.* art. 37.2(3).

114. *Id.* art. 37.2(4).

115. *Id.* art. 37.2(5).

116. ICJ Mission Report, *supra* note 72, at 36–37.

117. *Id.* at 37.

means that disbarment does not preclude a person from continuing to practice law.<sup>118</sup>

Despite these disciplinary actions, corruption remains a part of the Russian legal system.<sup>119</sup> A certain group of corrupt lawyers are referred to as “pocket lawyers” -- they work to benefit law enforcement rather than their clients.<sup>120</sup> Those lawyers’ pay depends on the signature of law enforcement officials, which can lead to unethical behavior such as encouraging their clients to confess, and taking little to no action on behalf of their client.<sup>121</sup> To address this problem, the Chamber of Lawyers may need to take a more active approach to addressing corruption.<sup>122</sup> As such, it is arguably less likely for advocates to take part in corruption due to their professional status that is not easy to acquire and maintain by remaining in good standing in light of its accompanying disciplinary standards, than for jurists, their counter-part, who remain unregulated and do not have to comply with any established uniform professional standards.

#### a. Malpractice Insurance & Legal Aid

##### i. Requirement of Malpractice Insurance

In accordance with the law, an advocate must possess professional liability insurance.<sup>123</sup> “In practice, however, advocates are not obliged to arrange professional indemnity insurance until a special federal law governing compulsory professional indemnity insurance is adopted, which has not happened yet.”<sup>124</sup>

##### ii. Required Pro Bono Hours

“Advocates must provide some pro bono services in accordance with the Federal Law “On Free Legal Assistance in the Russian Federation.”<sup>125</sup> An advocate’s participation in pro bono services is organized by regional bar chambers. In practice, other lawyers who are not advocates (especially acting on behalf of leading international and Russian law

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118. *Id.*

119. *Id.* at 38.

120. *Id.* at 39.

121. *Id.* at 38.

122. ICJ Mission Report, *supra* note 72, at 38.

123. Law on Advocacy, *supra* note 24, art. 19.

124. Konyushkevich & Bazurin, *supra* note 31.

125. Federal’nyi Zakon RF O Besplatnoy Yuridicheskoy Pomoschi v Rossiiskoi Federatsii [Federal Law of the Russian Federation on Free Legal Assistance in the Russian Federation], SOBRANIE ZAKONODATEL’STVA ROSSIISKOF FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2011 (as amended 2019), No. 48, Item 6725, <http://Docs.Cntd.Ru/Document/902312543> [<https://perma.cc/AFF6-H48H>].

firms) provide legal assistance on a pro bono basis at their own initiative, but are not required to do so.”<sup>126</sup>

### 5. Permitted Types of Practices for Advocates

Initially, the options for opening a law office were articulated in the Law on Advocacy into one of four forms that are still present in the law today.<sup>127</sup> Specifically, it was explained that advocates can organize their practice using any of the four proposed modules, those being: (1) a solo practitioner office; (2) a “collegium” (partnership of two or more members, where members are not responsible for acts of their partners);<sup>128</sup> (3) an “advocate bureau”- entity, which unites two advocates for rendering legal service;<sup>129</sup> and (4) a “legal advice”- “noncommercial entity.”<sup>130</sup> The new amendments allow an advocate to open their own private practice after three years of practice experience.<sup>131</sup> Similarly, two or more advocates can now form a law firm together if they have been practicing for at least three years each.<sup>132</sup>

In large cities, law firms are typically found to be formed into LLCs (limited liability companies), collegiums or bureaus (referred to as advocacy bodies), or as smaller branches representing international law firms.<sup>133</sup> However, establishing a law firm is not a prerequisite to practicing law, as Advocates are able to choose whether to be a sole practitioner or impart legal advice based upon an individual agreement with each client on behalf of a law firm.<sup>134</sup>

126. Konyushkevich & Bazurin, *supra* note 31.

127. Law on Advocacy, *supra* note 24, art. 20(1).

128. Law on Advocacy, *supra* note 24, art. 22. The new regulation also established a procedure for the collegium of advocates in terms of requirements for acceptance and departure of its members as well as also requiring that a binding agreement be drafted for instances of winding down or termination of the collegium. *Id.* art. 22(5).

129. Law on Advocacy, *supra* note 24, art. 23. The new regulation provides specific requirements for establishing an advocate’s bureau and agreement between its partners. *Id.* art. 23(4). In fact, the advocates are required to execute a partnership agreement, which will enumerate conditions for providing legal services. *Id.* art. 23(3). Such an agreement needs to be signed by partners of the bureau but is not subject to registration by the state. *Id.* The partnership agreement needs to articulate various rules for operation of the partnership, including voting right, division of fees between partners, and consequences for violation of conditions agreed upon by the partners/bureau members. *Id.* art. 23(4)(3), (4)(6) and (4)(7).

130. Law on Advocacy, *supra* note 24, art. 23(2).

131. *Id.* art. 21(1). The initial version of the Law on Advocacy required advocates to have five years of experience prior to practicing law on their own/unsupervised. *Code of Professional Lawyers*, RUSS. FED. CHAMBER OF LAWS., [https://en.fparf.ru/documents/regulations\\_of\\_the\\_rfcl/21467/](https://en.fparf.ru/documents/regulations_of_the_rfcl/21467/) [<https://perma.cc/6T9S-BKBP>] (last visited Aug. 7, 2021).

132. Law on Advocacy, *supra* note 24, art. 22(1).

133. Konyushkevich & Bazurin, *supra* note 31.

134. *Id.*

## 6. Attorney Advertising

Regulation of attorney advertising continues to prohibit testimonials and unsubstantiated comparisons with other attorneys. Furthermore, this has now been extended to apply to Internet advertisement where an advocate remains to be bound by the rules.<sup>135</sup>

## 7. Independence of Judgment and Attorney-Client Relations

The provisions emphasize an advocate's duty to work "honestly, rationally, and conscientiously" in order to promote and defend the "rights and lawful interests" of her client.<sup>136</sup> Moreover, the advocate's relationship with their client is viewed as a binding contract and it has to specify attorney's fees, which are agreed upon by the parties.<sup>137</sup> It is further articulated that professional independence of the advocate is key to her client's trust in her services and representation. As such, it is emphasized that the client's interests are of paramount importance and should not be sacrificed.<sup>138</sup> One such example of professional independence of the advocate is the ability to negotiate contingency fees with their client in cases where the client may be unable to pay attorney's fees out of pocket and would otherwise be limited on legal remedies.<sup>139</sup>

## 8. Conflict of Interest

As before, the advocate is prohibited from acting against their client's "lawful interests," which would include representation of her opponents.<sup>140</sup> Despite that, facilitating conciliation would be appropriate, indicating no significant changes there.<sup>141</sup>

## 9. Confidentiality

Although the regulation previously provided and continues to stipulate that confidential information pertaining to an advocate's legal representation of her client is not subject to subpoena,<sup>142</sup> observers outside of Russia have expressed a concern pertaining to regional

135. Zinaida Pavlova, *Is advertising of advocacy acceptable?*, LAW. PAPER (Apr. 25, 2019), <https://www.advgazeta.ru/diskussii/dopustima-li-reklama-advokatskoy-deyatelnosti/> [<https://perma.cc/3FMX-2TDZ>].

136. Law on Advocacy, *supra* note 24, art. 7(1).

137. Law on Advocacy, *supra* note 24, art. 25.1, 25.4 (3), 25.4 (4).

138. Law on advocacy, *supra* note 24, art. 18.

139. Утверждены правила применения адвокатами нормы закона о "гонораре успеха" (garant.ru); <http://www.garant.ru/news/1343405/> [<https://perma.cc/5BJH-LRVN>].

140. Law on advocacy, *supra* note 24, art. 6.4(2).

141. *Id.* at art. 6.4 (3)

142. *Id.* at art.8.2, 8.3.

Chambers' failure to protect the rights of advocates, especially when it comes to unlawful search and seizure by the government.<sup>143</sup>

## 10. Attorney's Fees

The updated regulation also reiterates restrictions that are applicable to attorney's fees. For example, numerous prohibitions involving attorney's fees are enumerated, including a prohibition to accept "illegal" payments or the payments resulting from self-dealing and not in her client's best interest.<sup>144</sup>

However, as previously stated, the most significant new development pertains to lifting historical prohibition against contingency fees.<sup>145</sup> Specifically, charging a percentage of recovery is the new norm for advocates, except for their attorney's fees in cases involving administrative offenses or criminal charges.<sup>146</sup> On a much larger scale, introducing contingency fee arrangements as a compensation option for an advocate's attorney-client relationship shows a new level of trust in the advocate's ability to maintain independent professional judgment and prioritize the interests of the advocate's client over the interests of that of the advocate. In reality, it opens the door for advocates to take and pursue cases when clients are unable to afford the expenses associated with the lawsuit up front. These cases are now on the table and clients have a chance to be represented by advocates, the most qualified and regulated group of lawyers in Russia.

143. ICJ Mission Report, *supra* note 72, at 50.

144. *Id.*

145. The Constitutional Court of The Russian Federation, disallowed contingency fee in the past, while permitting different types of legal fees. Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii ot 23 yanvarya' 2007 g. [Ruling of the Russian Federation Constitutional Court of Jan. 23, 2007], SOBRANIE ZAKONODATEL'STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2007, No. 6, Item 828, <http://doc.ksrf.ru/decision/KSRFDecision19703.pdf> [<https://perma.cc/2X82-W3RQ>]. Compare Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii "Ekonomicheskiye Spory ob administrativnykh pravootnosheniyakh" ot 10 iyul' 2019 g. [Russian Federation Supreme Court Plenary Ruling on Economic Disputes About Administrative Legal Relations of July 10, 2019], at [https://kad.arbitr.ru/Document/Pdf/1d6c0cba-0f50-46f7-b132-8e47babc87b2/44f4412a-5e3d-4347-b5d5-cb36a91802a8/A76-27948-2018\\_20191007\\_Opredelenie.pdf?isAddStamp=True](https://kad.arbitr.ru/Document/Pdf/1d6c0cba-0f50-46f7-b132-8e47babc87b2/44f4412a-5e3d-4347-b5d5-cb36a91802a8/A76-27948-2018_20191007_Opredelenie.pdf?isAddStamp=True) [<https://perma.cc/9QXH-3BDK>] with Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii "Po Zhalobe Grazhdanina /Organizatsii" ot 30 sentyabrya' 2019 g., [Russian Federation Supreme Court Plenary Ruling on the Complaint of a Citizen/Organization of Sept. 30, 2019], at [http://vsrf.ru/stor\\_pdf.php?id=1822270](http://vsrf.ru/stor_pdf.php?id=1822270) [<https://perma.cc/F745-S3PJ>] (noting that the same court came to the opposite decision in a different case).

146. Law on Advocacy, *supra* note 24, art. 25(4)(4) (noting the legal agreement between advocate and client must contain the essential term of procedure and amount of compensation for the expenses of the advocate) and art 25(4.1) (authorizing, in essence, contingency fees, and subjecting said fees to the rules of the Federal Chamber of Advocates).

While it was previously specified how court appointment expenses were compensated, the new regulation clarifies that the council of advocate for its regional chamber is to establish specific guidelines on compensating the advocate for legal work accepted via court appointment, or in civil or administrative or pro bono work, while the prosecutor's (procurator's) office is responsible for the same when pertaining to criminal cases.<sup>147</sup>

a. Establishment of Commission on Ethics and Council of Federal Chamber of Advocates

As a substantial step towards reforming the "advacatura" to become and remain a profession of integrity and public trust, the Commission on Ethics and Standard was established in 2016. The Commission still exists today and promotes ethical standards for law practice (as it pertains to advocates) with its standards being mandatory versus purely aspirational.<sup>148</sup> The commission had been established to function for four years and consisted of sixteen people with the following breakdown: ten members are licensed advocates (including the President of the Federal Chamber with nine advocates elected by the All-Russian Congress); two members representing federal judiciary; two members acting on behalf of State Duma of Russia's Federal Assembly; and finally, two members on behalf of Russia's Federal Assembly.<sup>149</sup> The chairman of the commission was appointed President of the Federal Chamber.<sup>150</sup> The commission was tasked with determination of the appropriate standards in legal ethics to be followed by all advocates; it was also expected to provide explanations of the same for the use of regional chambers (of Federal Chamber).<sup>151</sup> The importance of the organization's mission appears unquestionable in light of how it was established and based on the selection of its members.<sup>152</sup>

As in the past, the Council of Federal Chamber of Advocates continues to establish the priority list pertaining to providing legal services in criminal cases by court-appointed advocates.<sup>153</sup> It further coordinates the work of legal chambers, including management of pro bono services, and it is now also tasked with monitoring ethics

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147. *Id.* art. 25.

148. *Id.* art. 37.1

149. *Id.* art. 37.1(3).

150. *Id.* art. 37.1(4).

151. *Id.* art. 37.1(5)(1)–(2).

152. See generally ORLOV A. PROFESSIONAL ETHICS OF ADVOCATE, CHAMBER OF ADVOCATES FOR MOSCOW REGION (2016) (providing a thorough discussion on ethics and regulation of the legal profession in Russia) (in Russian).

153. Law on Advocacy, *supra* note 24, art. 37(3)(3.1)–(4).

compliance.<sup>154</sup> The Council also develops and adopts common methodologies for meeting quality standards for legal services provided by the advocates, while simultaneously determining the boundaries for services that can be provided by legal assistants and interns.<sup>155</sup> Additionally, it can make recommendations to regional chambers on issues of disciplinary regulation, while it is mainly focused on establishing the rules of procedure of the Ethics and Standards Commission of the Federal Chamber of Lawyers.<sup>156</sup>

The amended regulations specifically require the Council of Federal Chamber of Advocates to elect a maximum of 33 members.<sup>157</sup> Regional chambers can put forth their members for consideration to fill the vacant positions in the council.<sup>158</sup> The amended regulation also requires that the President of the Federal Chamber be elected for four years via majority vote.<sup>159</sup>

The regulation further provides that, “in extraordinary cases,” the President on his own or with the help of the Vice-President, has the capacity to initiate disciplinary proceedings for an advocate in the interest of the uniform application of ethical norms.<sup>160</sup>

## 11. The Advocates as One Unified Profession

The original regulations, as well as its ongoing multiple amendments and revisions, demonstrate a strong determination to structure and organize the requirements for advocates as one unified profession with emphasis on professional integrity, transparency, and ethical compliance. One newly implemented requirement for regional chambers and the Federal Bar is to post their financial information, as well as decisions and transactions of the chamber where any members might have a personal interest over its internet website.<sup>161</sup>

Another example is regarding an advocate’s request of documents and evidence from government and non-government bodies, which changed from providing 30 days for these bodies to answer the request to

154. *Id.* art. 37(3)(4).

155. *Id.* art. 37(3)(5) and (3)(10).

156. *Id.* art. 37(3)(5) and (3)(9).

157. *Id.* art. 37(2). (Prior to the 2019 amendment, guidelines allowed a maximum of 30 people).

158. *Id.*

159. Law on Advocacy, *supra* note 24, art. 37(6.1). The presidential candidates have to come from current council members and the election is to be conducted via secret vote. *Id.*

160. *Id.* art. 37(7.1). The wrongdoing can range from acts or failure to act in violation of the Russian federal law, code of ethics, etc. *Id.* The disciplinary action must be sent to the advocate’s local chamber where the accused advocate is a member. *Id.* See also Law on Advocacy, *supra* note 24, art 31(2) (detailing the election process for the council of legal chamber, as well as the election of the council’s president and vice-president).

161. Law on Advocacy, *supra* note 24, arts. 29(11), 35(8).



providing them the same 30-day period to also produce documents, as well as implementing a notification system should there be a delay.<sup>162</sup>

### E. *Jurists and Where They Stand Today*

After having discussed the educational standards and a small fraction of the numerous regulations and compliance pertaining to advocates, it is bewildering to comprehend the extreme distinction from this, to what is expected of jurists, the advocates' counterpart who is also practicing law in Russia. Outside of criminal practice, jurists face no restrictions on law practice notwithstanding whether they are private individuals or a part of a law firm.<sup>163</sup> Jurists are known to be of "widely varying levels of qualification," and still they "have taken on a significant role in the profession" especially "in regard to civil, administrative and commercial cases."<sup>164</sup> This type of lawyer operates outside of but "parallel to the profession of advocates" and they "represent the vast majority of those practicing law within the Russian Federation."<sup>165</sup> In fact, there is nothing to show a requirement for jurists to even have a law degree in order to practice law, to say the least. Although some may be lingering in law practice since the Soviet days, others who join the profession during modern times may still avoid all the regulations and credentialing requirements on the advocates' end.

#### 1. Jurists v. Akvokatura

In order to close this extraordinary gap between the two types of lawyers, the Russian Ministry of Justice published Concept Papers in 2015, 2016, and 2017, proposing the creation of a unified profession that would combine the advocates and jurists.<sup>166</sup> The most recent paper emphasized the need for client protection, efficiency, and adoption of a new bar meant for higher quality in law practice and to eliminate corruption.<sup>167</sup>

The 2017 document established a specific five-year plan that would be implemented by 2023.<sup>168</sup> This plan, however, called for adjustments in the Labor Code and Civil Procedure Code in order to be successful.<sup>169</sup> These changes are set out in three distinct phases to be accomplished over

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162. *Id.* art. 6.1(2) (Various new timelines have also been added for requests for production of evidence etc.)

163. ICJ Mission Report, *supra* note 72, at 10.

164. *Id.* at 8.

165. *Id.*

166. Susan Carle et al., *The Reform of The Russian Profession: Three Varying Perspectives*, 42 *FORDHAM INT'L L. J.* 271, 287 (2018).

167. *Id.* at 288.

168. *Id.* at 290.

169. *Id.*

the proposed five-year period.<sup>170</sup> More specifically, the phases are characterized by the first phase of disclosing and implementing the new norms, the second phase addressing the admission of non-regulated legal professionals acting as lawyers, and the third and final phase would involve maintaining regular surveyance and adjust timing as needed.<sup>171</sup>

Scholars have long argued that “[u]nregulated jurists today do not belong to any collective professional organization and they do not operate under any uniform ethical code” and that the “absence of any ethical code or organizations to enforce it has a number of consequences that are prima facie detrimental.”<sup>172</sup> In the modern times, the idea of legal professionals with no requirements to attain their status and no governing body of any kind is beyond comprehension. Even with the lack of expertise and quality control aside, jurists can cause damage to their client by the mere lack of protections allotted to an attorney-client relationship.<sup>173</sup> To that end, known scholars have explained that,

Jurists in Russia have no legal grounds to assert privilege to keep client secrets confidential or to protect attorney-client communications, documents reflecting such communications, or attorney work product. Jurists are therefore vulnerable to "executive interference" with their work, including through searches and seizures, surveillance, and/or demands to provide information about clients to government officials.<sup>174</sup>

Interestingly, the same group of scholars believe that the problems of low-quality legal services and corruption still is not cured in Russia “despite the existence of institutions of self-policing” and thus advocates are not immune to it either.<sup>175</sup>

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170. *Id.*

171. *Id.*

172. Carle et al., *supra* note 166, at 281 (noting further that “the lack of professional regulation deprives the profession of any monopoly power to police barriers to entry into it. Because any individual can hold himself out as a jurist, many individuals do so. Some jurists have had little or no legal training, and some engage in unscrupulous practices. The quality of services provided ranges greatly, and outside of standard contract, tort or criminal liability, there is no regulatory mechanism through which to police quality and ethical practices in the interests of safeguarding clients' welfare. This presence of unscrupulous practitioners deepens the problem of corruption within the Russian state apparatus.”).

173. *Id.*

174. *Id.* See also ICJ Mission Report, *supra* note 72, at 12–13.

175. Carle et al., *supra* note 166, at 281. See also ICJ Mission Report, *supra* note 72, at 65.

## 2. Self-Regulation & Russian Jurists

### a. Self-Regulation of the Legal Profession—Is it the Only Way?

An interesting debate surrounds the issue of self-regulation.<sup>176</sup> Although this is the foundation of American law practice, it is a rather unique concept in many parts of the world. What are the arguments for and against self-regulation of the legal profession?

#### i. The Benefits of Self-Regulation

Strong arguments can be made in support of self-regulation to be distinguished from regulations that are issued by the state.<sup>177</sup> To begin with, a self-regulatory regime benefits from the profession's possession of information, which minimizes the cost for the creation and development of a quality standard.<sup>178</sup> Moreover, cost of enforcement of a self-regulatory system would be "lower than those with state-issued regulation."<sup>179</sup>

Next, self-regulation offers flexibility. Unlike rigid government regulations, self-regulation is less bureaucratic, and professionals are more likely to create, examine and revise regulations in a speedy and accurate manner.<sup>180</sup> Finally, self-regulation is more advantageous compared to government regulation due to its lower routine and administrative costs.<sup>181</sup>

#### ii. Potential Downsides of Self-Regulation

On the other side, self-regulatory bodies that do not report to third parties are usually the only ones to establish their own self-regulatory system.<sup>182</sup> It is like a closed circle! Moreover, self-regulatory standards are likely to create entry barriers and obstacles in order to enable the profession to create "super-competitive profits"<sup>183</sup> and would also exclude certain groups in the process. One could argue "[i]t is not

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176. See generally Org. Econ. Coop. & Dev. (OECD), *Policy Roundtables: Competitive Restrictions in Legal Professions*, OECD Doc. DAF/COMP (2007) (Apr. 27, 2009), <http://www.oecd.org/regreform/sectors/40080343.pdf> [<https://perma.cc/2RN8-LAC5>] [hereinafter OECD Report]. Carle et al., *supra* note 166, at 281–83.

177. See generally OECD Report, *supra* note 176, at 27–28.

178. *Id.* at 28.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. OECD Report, *supra* note 176, at 28.

necessarily justified that members of a profession can enact rules on market entry and conduct without any control” from the outside.<sup>184</sup>

It is undisputed that for the self-regulation to serve its purpose and for the benefits to materialize, self-regulatory professional bodies should “not abuse their powers to restrict competition.”<sup>185</sup> Clearly, to obtain any benefits of self-regulation, it has to be “subject to the caveat that self-regulation should not be misused to restrict competition.”<sup>186</sup>

### iii. Concerns of Monopolization

Although frequently analyzed by scholars, it is questionable whether monopolization of the legal profession via self-regulation is a substantiated concern. Historically, legal professions are not known to be subject to competitive forces operating in multiple commercial aspects of the economy.<sup>187</sup> On a global scale, legal professions have been regulated by government directly and/or largely through adoption of regulations and norms issued by self-regulating professional entities.<sup>188</sup> In fact, the legal professions have been largely subject to heavy regulations in various countries<sup>189</sup> which restrict entry into professional lawyering with various well-established and accepted governing modules for professional conduct of lawyers dictated through statutory language and “self-regulatory rules issued by professional bodies.”<sup>190</sup> Restrictions pertaining to joining the profession include educational, training, and other criteria.<sup>191</sup>

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184. *Id.* (“The absence of a significant lay/consumer input into the decision-making process exacerbates the problem. If consumers are not well-organized and if there is no countervailing power at the buyers’ side, the views of consumers will not be sufficiently taken into account. To remedy this problem, consumer associations have advocated a significant consumer representation in the boards of professional bodies.” *Id.* at 28–29).

185. *Id.* at 29 (“In the past, these bodies were mostly concerned about practices harming the status and dignity of the profession, as well as ‘unprofessional’ behavior in contacts with colleagues, and tended to neglect quality assurance vis-à-vis clients.”).

186. *Id.* (“If the professions can limit competition, they may be able to successfully resist the competition from newcomers adopting more liberal rules.”).

187. *Id.* at 17.

188. *Id.*

189. OECD Report, *supra* note 176, at 9 (discussing “Attorneys, Barristers/Solicitors, Advocates, Latin Notaries” as members of legal professions globally).

190. *Id.*

191. *Id.* (“With respect to entry, there are not only qualitative restrictions (education, apprenticeships and exams) but also quantitative restrictions based on demographic or geographic criteria. In addition, professional titles are protected and membership of professional bodies may be required. With respect to business conduct, there are often ruled on advertising, forms of business organization and partnerships”).

Professor Laurel Terry analyzed the monopoly of the legal profession prospects in the global context.<sup>192</sup> Her research naturally applies to the issues pertaining to the partial regulation of the legal profession or a lack of such regulation pertaining to Russian jurists. One of Professor Terry's findings acknowledges that the degree of difficulty in determining the regulations for the legal field in a country outside of your own is high, partially due to distinguishing between the "law on the books and law in action."<sup>193</sup> Additionally, recognizing institutions such as the International Conference of Legal Regulators and the International Association of Legal Ethics are great tools to use to gain insight into regulation of lawyering from a global perspective.<sup>194</sup> Addressing monopoly concerns as it pertains to the legal profession, it specifically concluded: "In most jurisdictions, lawyers only enjoy a monopoly over representing clients in courts. The market for legal advice remains largely open."<sup>195</sup>

As such, the overall findings are in support of regulation of the legal profession.<sup>196</sup> Monopoly or otherwise, it is hard to imagine the potential harm to the public should the legal profession remain unregulated.

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192. See Laurel S. Terry, *The Legal Profession's Monopoly on The Practice of Law: Putting the Legal Profession's Monopoly on The Practice of Law in A Global Context*, 82 *FORDHAM L. REV.* 2903 (2014). Noting that "[w]hen considering the proper scope of the U.S. legal profession's monopoly, regulators and commentators may find it useful to compare the scope of the U.S. monopoly with the legal profession monopolies found in other countries." *Id.* Other sources have addressed the issues of various,

global challenges to lawyer regulation, including questions about who should regulate legal services, what is regulated (e.g., individuals or entities; people or services), when regulation should occur, where regulation should occur (and issues about how to adapt a geography-based regulatory system to a virtual world), why regulation should occur, and how regulation should occur.

*Id.* at 2935.

193. *Id.* at 2907.

194. *Id.* at 2903, 2929–30.

195. *Id.* at 2906; see also OECD Report, *supra* note 176, at 11.

Certain regulations are in the public interest as a remedy to market failures arising from (a) information asymmetries and (b) negative externalities. Legal quality and integrity are difficult to assess for inexperienced individuals who do not buy these services regularly. Consequently, there is a risk of adverse selection (quality deterioration) in particular segments of the legal services market where professionals meet buyers without independent legal expertise. Apart from adverse selection, information asymmetries also lead to principal-agent problems. Professionals may reduce quality below optimal levels or generate excessive demand. Other market failures justifying regulation are negative externalities. Poorly qualified legal professionals cause harm to third parties and society at large if legal transactions turn out to be invalid.

OECD Report, *supra* note 176, at 9.

196. See OECD Report, *supra* note 176, at 9.

Lawyers, which are trusted with their client's livelihood—and even life when pertaining to criminal charges in certain jurisdictions—cannot operate without a regulating body that keeps them accountable for their professional activities. Without a regulatory system, there would be no quality control regarding a lawyer's knowledge to take on and conduct representation of her client and no recourse for the harm potentially endured by individual clients. That would not be an acceptable standard in a civilized society. In countries where attorney regulation is conducted by the government, the profession loses its independence and becomes a tool in the hands of the government.<sup>197</sup> Thus, despite some possible downsides in self-regulation, even considering its disputably controlling nature restricting pathways into the profession, it has arguably proven to be the only workable solution in existence.<sup>198</sup>

Again, unlike the advocates, Russian jurists are not subject to any type of professional regulation. As previously stated, this scenario leads to an endless number of challenges and concerns, primarily pertaining to quality of representation, a lack of accountability and unprotected nature of frequently vulnerable clients that might even lack awareness of when and how their representation should be unfolded and pursued.

### 3. Background, History and Scope of Possible Reform

Many views and perspectives compete to explain the nature, history and status of the tension between parts of the legal profession in Russia and predicting its path into the future. A group of scholars who have analyzed different approaches to reforming the legal profession in Russia,<sup>199</sup> perceive the movement towards the reform for possible regulation of Russian jurists as “an interesting example of the tension

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197. *E.g., Modern legal profession in China is only 35 years old*, UCLA INT'L INST.: CTR. CHINESE STUD. (Jan. 28, 2014), <https://web.international.ucla.edu/china/article/136768> [<https://perma.cc/5ZP7-8G3Y>].

198. *See* Anita Balakrishnan, *Self-Regulation: The End of an Era? Lawyer Discipline and the Role of Law Societies*, CANADIAN LAW. (Nov. 14, 2019), <https://www.canadianlawyermag.com/resources/professional-regulation/self-regulation-the-end-of-an-era-lawyer-discipline-and-the-role-of-law-societies/321919> [<https://perma.cc/F2LJ-2A2C>]; *See also* OECD Report, *supra* note 176, at 59 (“Economic analysis is helpful in understanding the rationale for governmental regulation and self-regulation of legal professions and also sheds light on restrictions which are unnecessary or disproportionate to the relevant policy goals. Each type of restriction (exclusive rights and regulation of entry, regulation of fees and advertising, restrictions on free choice of business structure and multidisciplinary partnerships) may generate both positive and negative effects on social welfare. Since theoretical explanations point into different directions, the magnitude of the costs and benefits of regulation, including self-regulation, is ultimately an empirical issue. In spite of its limitations, particularly the difficulty in measuring quality, cost-benefit analysis may substantially improve the quality of political decision making. Policy changes which have already taken place in some OECD member countries also provide very useful information about the expected results of deregulation.”).

199. Carle et al., *supra* note 166, at 281.

between international ‘best standards’ in professional regulation, and the specific constraints that arise from discrete historical circumstances.”<sup>200</sup> They further explained that “Russia now finds itself in the unusual position of having a large majority of unregulated practitioners, which would seem to militate for a speedy introduction of norms.”<sup>201</sup>

Moreover, the scholars believe the possibility of the Russian reform “raises the question of the place of the legal profession in the wider development of the rule of law,” noting that the “absence of regulation of the legal profession coexists with a wider legal system that suffers from a number of systemic weaknesses, connected to the functioning of the state itself.”<sup>202</sup> At the end, this challenge comes down to the “tension between government driven regulation of the profession and contribution of the legal profession itself to this process.”<sup>203</sup>

Another perspective can be described as Russia being in the process of “developing a Russian vision of the rule of law and Russian style of democracy that comport with its uniquely Russian worldview.”<sup>204</sup> Some argue, however, that Russia failed to develop a “logical and rational value system and framework for the rule of law,”<sup>205</sup> which can also attribute to this tension between such distinctive counterparts in the same profession. Adding a historical perspective to this multi-level historical dispute, it is worthwhile noting that the Russian Orthodox Church was “the central, binding force in Russian culture for thousands of years,”<sup>206</sup> which constantly emphasized “the mystical and subjective, rather than the objective, formalistic, and rationalistic.”<sup>207</sup>

After all, philosophy and history are inseparable from any developments in Russia, in its culture, history and of course the law. The

200. *Id.* at 322. See also Trikoz Elena N. et al., *Russian experience of using digital technologies in law and legal risks of AI*, 224 E3S WEB OF CONFERENCES (2020) (discussing new developments in digital technologies leading to a wide range of legislative and enforcement challenges.)

201. *Id.*

202. *Id.* at 323.

203. *Id.* (emphasizing existing regulation of foreign lawyers that work in Russian law firms).

204. Whitney Cale, *Through the Russian Looking Glass: The Development of a Russian Rule of Law and Democracy*, 7 LOY. U. CHI. INT’L L. REV. 93, 98 (2010), <https://lawcommons.luc.edu/cgi/viewcontent.cgi?article=1031&context=lucilr> [<https://perma.cc/7UL9-7LHC>].

205. Cale, *supra* note 204, at 102.

206. Michael Newcity, *Why Is There No Russian Atticus Finch – Or Even A Russian Rumpole?*, 12 TEX. WESLEYAN L. REV. 271, 292–93 (2005) (“Traditionally, in order to be considered Russian, an individual had to be orthodox and it appears that this traditional view has experienced a resurgence in post-communist Russia. Just as Catholicism and its protestant offshoots have been extremely important in shaping the western legal tradition, the orthodox church, its doctrine, even its liturgy have been central in the formation of a distinctive Russian legal tradition, which, in turn has colored popular perceptions of legal institutions, law, and its practitioners.”).

207. *Id.* at 293.

law itself “does not symbolize morality, honesty, and justice. Rather, it is seen as a tactical game requiring expertise in maneuver, influence, and persuasiveness.”<sup>208</sup> In contrast to the law, another scholar argues that justice to Russians has a “moral and spiritual value” that can be “reached through internalization, thoughtfulness and collective consciousness.”<sup>209</sup> Moreover, Russians are known to have been critical and resentful of the law as it was often perceived as a form of western imperialism.<sup>210</sup>

Overall, Russia’s legal system has undergone a stunning number of institutional reforms in the last twenty years.<sup>211</sup> Based on these developments, it has made substantial steps towards “the ideal ‘rule of law.’”<sup>212</sup> However, law does not exist simply on paper as it only becomes meaningful when put into action.<sup>213</sup> Whether Russia’s legal culture has undergone as much of a radical change as its institutional structure is a dicier question.<sup>214</sup> Thus, one can focus on enforcement status and, in that regard, Russia will clearly not comply with the western expectation for how rules are supposed to be consistently followed and implemented on a daily basis.<sup>215</sup>

Yet others attempt to understand and analyze the Russian legal system through the country’s famous literature,<sup>216</sup> insisting that Russian classics, such as Tolstoy and Dostoevsky, have shaped society’s understanding of

208. Marina Kurkchyan, *The Illegitimacy of Law in Post-Soviet Societies*, in LAW AND INFORMAL PRACS.: THE POST-COMMUNIST EXPERIENCE 43 (Oxford Univ. Press 2003).

209. Jessica C. Wilson, *Russia’s Cultural Aversion to The Rule of Law*, 2 COLUM. J. E. EUR. L. 195, 197–198 (2008).

210. See Newcity, *supra* note 206, at 284 (providing as example the judicial reforms of 1864, which introduced various new legal concepts into the Russian legal system, all while being perceived as the “western-style” institutions). *But see* Malinovsky A.A. et al., *International Treaty Rulemaking as a Political Process: History and Theory Issues*, 18 INT’L PROCESSES, 6–30 (2020) (discussing the contribution of international organizations and conferences, especially the League of Nations and the UN, to the cooperative way of developing regulations in modern rulemaking).

211. Kathryn Hendley, *Assessing the Rule of Law in Russia*, 14 CARDOZO J. INT’L & COMP. L. 347, 370 (2006).

212. *Id.*

213. *Id.*

214. *Id.*

215. See Lewinbuk, *supra* note 1, at 74–77 (for a discussion of enforcement challenges).

216. See Newcity, *supra* note 206, at 272 (“By itself, such critical portrayals of legal processes and institutions are not unique; many literary works from England and America, for example, include unflattering portrayals of the legal system. Bleak House and Billy Budd come readily to mind. But in anglophonic literature, it seems that for every work that portrays the legal system in a critical or hostile light, there is at least one other work - and possibly more - that portray it positively. The Merchant of Venice, To Kill a Mocking Bird, and John Mortimer’s Rumpole stories, for example.”).



the meaning of social norms and the rule of law,<sup>217</sup> coupled with the deeply embedded concepts of legal fiction and themes in their writings.<sup>218</sup>

It is alleged that “[n]o Russian writer has ever commented at greater length on the legal system in both fiction and nonfiction than Fyodor Dostoevsky.”<sup>219</sup> The criticism of the “legalistic, formalistic nature of Western society have not been the concern only of nineteenth-century writers.”<sup>220</sup> Another famous writer, Alexander Solzhenitsyn, living during the Soviet Times, has shared similar perspectives and criticisms.<sup>221</sup>

I have spent all my life under a communist regime and I will tell you that a society without any objective legal scale is a terrible one indeed. But a society with no other scale but the legal one is not quite worthy of man either. A society which is based on the letter of the law and never reaches any higher is taking very scarce advantage of the high level of human possibilities. The letter of the law is too cold and formal to have a beneficial influence on society. Whenever the tissue of life is woven of legalistic relations, there is an atmosphere of moral mediocrity, paralyzing man's noblest impulses . . . . And it will be simply impossible to stand

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217. *Id.* at 280 (“Though law and legal themes may not have loomed as large in nineteenth century Russian literature as they did in Anglophonic literature, Russian writers of this period certainly wrote about law and its institutions. Major novels by both Dostoevsky and Tolstoy examined such themes at length. Their diaries, letters, and essays also discussed Russian law and legal institutions. In these works, the authors were bitterly critical of the new, reformed judicial system. For somewhat different reasons, both of these great writers believed that lawyers, judges, and juries subverted the course of justice and truth rather than promoted it. The reforms of the 1860s, the effects they had on Russian society, and the necessity of solving Russia’s manifest problems preoccupied Russian writers of the second half of the nineteenth century. Preeminent among those writers are Fyodor Dostoevsky and Lev Tolstoy, both of whom devoted substantial attention to the new and reformed legal system.”).

218. *See generally* Newcity, *supra* note 206.

219. *Id.* at 271. Newcity states, “the most extensive treatment of legal themes in a single work in nineteenth-century Russian literature may be found in Leo Tolstoy’s final novel, resurrection [ . . .]” (citing L.N. TOLSTOY, RESURRECTION 312 (Rosemary Edmonds Trans., Penguin Books 1966) (1899)). *See generally* T.S. KARLOVA, DOSTOEVSKII I RUSSKII SUD (1975). *See also* GARY ROSENFIELD, WESTERN LAW, RUSSIAN JUSTICE: DOSTOEVSKY, THE JURY TRIAL, AND THE LAW (2005); *See also* HARRIET MURAV, RUSSIA’S LEGAL FICTIONS 15, 125–56 (1998) (analyzing legal themes in Dostoevsky’s writings, focusing primarily crime and punishment, the brothers Karamazov, and Dostoevsky’s non-fictional commentary on contemporary Russian court cases in diary of a writer.).

220. Newcity, *supra* note 206, at 286.

221. *Id.*

through the trials of this threatening century with only the support of a legalistic structure.<sup>222</sup>

Considering all of these interesting historic and societal perspectives on the status of the legal profession in Russia today, a deeper understanding of its nature and developmental steps, as well as the resistance against them, is accomplished. Nonetheless, no matter what the reasons are, a reform is essential to lessen the current tension between advocates and jurists as it exists today, and most important, to keep the profession moving towards reconciliation between its two counterparts to provide quality legal services to the Russian people.

### III. AIMING AT PERESTROIKA AND NOT JUST PERFUNCTORY

Every new generation of advocates is now joining the ranks of the profession only after having met the various established requirements, which are accompanied with the ongoing accountability to the profession. As such, the advocates are already accustomed to the described level of professional responsibility and the concept is not to be questioned going forward. Where a licensed advocate stands today in Russia clearly resembles a true perestroika in that part of the legal profession as one must remember that lawyers were mere paper-pushers and under full government control in the past, with the concepts of independent judgment and professional responsibility being totally foreign and inapplicable to the nation's legal system. Ups and downs are inevitable in every field and country,<sup>223</sup> but it is critical to look at the big picture while assessing the status of the profession at least one decade at a time.

Problems with consistent enforcement of most laws and regulations in Russia are certainly still present today, but it is important to remember that it takes years to fully change the mentality and operation of any society. In fact, Russia is taking consistent steps towards at least a partially self-regulated profession, with only advocates having a right to

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222. ALEKSANDR I. SOLZHENITSYN, *THE ADDRESS: A WORLD SPLIT APART*, IN SOLZHENITSYN *AT HARVARD: THE ADDRESS, TWELVE EARLY RESPONSES, AND SIX LATER REFLECTIONS* 3–20 (Ronald Berman ed., 1980).

223. The World Justice Project annually releases an index measuring the rule of law globally based on the four principles of accountability, just laws, open government, and accessible justice. *What is the Rule of Law?*, WORLD J. PROJECT, <https://worldjusticeproject.org/about-us/overview/what-rule-law> [<https://perma.cc/S8NT-3V8B>] (last visited Apr. 5, 2021). In the 2019 report, Russia was given a global rank of #88, which recognized a 6-point increase since the previous year. *Rule of Law Index 2019*, WORLD J. PROJECT, <https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf> [<https://perma.cc/3997-L4ML>] (last visited June 1, 2020). However, in the 2020 report (as the 2021 report has not been published yet), Russia is currently globally ranked #94 which represents a 4-point decrease in ranking from 2019. *Rule of Law Index 2020*, World Justice Project, [https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf) [<https://perma.cc/Q48X-KGGL>] (last visited on June 1, 2020).

practice criminal law and thus, it is only the civil field of law practice that is still in need of major reform due to the presence of unregulated jurists.<sup>224</sup>

Jurists, unlike the advocates, represent a lack of progress and continue to remain an obstacle for the ethical and regulated law practice, as discussed in this Article. Because major changes provoke resistance and take a long time to implement, a compromise is substantial in considering these circumstances. Instead of trying to eliminate jurists altogether (the goal that will cause a tremendous resentment and is unlikely to succeed), it is worthwhile to create abbreviated regulations for the jurists that have been practicing law for *at least* three to five years. Per this proposal, all jurists with less experience would not be allowed to perform legal services but they would have the option of starting on the “advocate” track or choosing any other legal specialty, subject to meeting its specific requirements. To that end, the more “experienced” jurists should be “grandfathered in,” conditioned upon successful completion of specified legal education courses and becoming subject to at least minimal professional regulation and requirements. A special entity should be created via legislation in order to oversee this new type of practice that should also create a method for filing and reviewing complaints against jurists for possible disciplinary violations. As such, the concept of accountability shall be introduced and become the new norm over time. The distinctions between advocates and jurists will remain in place for the time being, but with this compromise the gap will eventually lessen over time with any new groups of advocates joining the profession every year, which will ultimately lead to the elimination of jurists. Should such approach be adopted, it is likely that jurists who are at the beginning of their career will be encouraged to pursue an advocate’s path while those that are “grandfathered in” will at least be subject to some degree of accountability. Slow transition is not ideal, but it is realistic and offers an opportunity to close the gap between these two counterparts in the legal profession in Russia with a vision towards ethics, accountability, and high-quality legal services.

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224. Code of Criminal Procedure of the Russian Fed’n, art. 49.2.