

Professional Misconduct of Russian Lawyers between Administration of Justice, Clients and State Power

By Rafael Mrowczynski (Universität Leipzig, Germany)

Introductory remarks

This paper is an extract from an article which is work in progress. Due to the spatial limitations, it is reduced to its very ‘core,’ i.e. the presentation of data, methods and empirical findings which answer the research questions.

Research questions

1. What are the peculiar forms of professional misconduct that occur within Russia’s judicial system and its professional ecology due to their institutional setup?
2. What are professional orientations of lawyers who practice within this institutional environment?

Data and methods

I used two types of data to answer the research questions outlined above. I conducted a qualitative content analysis (Mayring, 2008) of conclusions by ‘qualification commissions’ and decisions by councils of Bar chambers available in publications of regional chambers of attorneys. My goal was to identify those types of professional misconduct that are related to the socio-political condition of judicial institutions. I also conducted a documentary analysis of autobiographic narrative interviews with Russian lawyers—regulated as well as unregulated. The goal of this second analytical step was the reconstruction of professional orientations related to the forms of misconduct identified in the first step.

Some, but not all, regional chambers of attorneys provide documentations of their disciplinary proceedings to the broad public. The Moscow City Chamber (APGM) and the St. Petersburg Chamber (APSPb) regularly publish extracts from selected proceedings in their ‘newsletters’ (*vestnik*) which can be downloaded as PDF files. In addition to that, annual compilations of conclusions and decisions combined with introductory analytical reports and some basic (descriptive) statistics are made available on the website of the APGM. These extensive PDF files are

published with a significant time lag: the most recent volume covered disciplinary proceedings conducted in 2009. The Moscow Region Chamber (APMO) has a collection of decisions by its council in individual cases from the period between August 2013 and April 2015 (551 cases in total) on its website. No explanation is given why earlier or later decisions are not available. The Leningrad Region Chamber (APLO) offers no newsletter or other details about its disciplinary proceedings on the Internet, but it has published a collection of case decisions in book form in 2010.*

These publicly available case documentations provide a rich and diverse data basis for a qualitative study that aims at identifying different types of professional misconduct and describing the underlying social mechanisms (Hedstrom and Swedberg, 1998), but they seem to be too fragmented for a systematic statistical analysis. When I began with the content analysis, I already had in mind a general idea about some relevant practices and institutional mechanisms, because professional wrongdoing was frequently discussed in interviews which I conducted earlier. Nevertheless, I decided to ground my typology of professional misconduct in extant data from disciplinary proceedings, because they provide for more reliability as compared to individual storytelling in interviews. These proceedings are conducted in a trial-like, adversarial manner. The general idea of using proceedings documentation as primary data for exploring professional wrongdoing was inspired by Abel's (2008; 2010) studies based on files of selected malpractice cases heard by US courts.

The second data set consists of 54 extensive autobiographic narrative interviews with practicing lawyers (no active judges or prosecutors) conducted between October 2011 and August 2014 in three different Russian regions for a bigger, still ongoing research project 'Societal Transformation, Changing Legal Systems and Professional Habitus of Polish and Russian Lawyers.' (I do not provide details on the Polish sub-sample, because it is irrelevant for this paper.) The sampling strategy followed the principle of maximal structural variation (Kleining, 1982), but elements of 'theoretical sampling' (Charmaz, 2006: 96–122; Glaser and Strauss, 1967: 45–77) were included at a later stage of data gathering.

* Advokatskaia palata Leningradskoi oblasti: *Opyt raboty s 2003 po 2010 god*, Moskva 2010; publication supported by ABA.

The structural sampling criteria beside region were gender (27 females and 27 males), age cohorts (23 interviewees from the ‘socialist generation,’ i.e. born in 1940s or 1950s, 26 interviewees from the ‘post-socialist generation,’ i.e. born in 1970s or early 1980s, and 5 born in 1960s—a kind of ‘by-catch’), forms of professional practice (attorneys and unregulated lawyers practicing in-house as well as on service-for-fee basis) and content-related specialization (penal law, private law, family law, administrative law, corporate law). This sampling outline was operationalized as a procedure of multiple snowballing: the search for interviewees through several institutional access points and interpersonal networks in different segments of the juridical field.

The autobiographic narrative interview allocates to research participants the greatest degree of discretion as regards the selection of what they talk about, and the way how they do it within the thematic frame proposed by the researcher in the initial stimulus (Rosenthal, 2005; Schütze, 2007). The key methodological assumption behind this interviewing technique is that research participants rely on their ‘systems of relevancies’ (Schütz, 1975) when creating their narratives with as little thematic guidance coming from the researcher as possible. Their selections of specific topics and of ways how they tell their stories indicate what is relevant for them and how they conceptually frame what they tell.

I used the ‘documentary method of interpretation’ for identifying different professional orientations related to selected forms of professional misconduct. This method goes back to Mannheim’s (1952) ‘sociology of knowledge.’* Bohnsack (2010) has developed Mannheim’s ideas into a rigorous set of interpretative steps. This methodology is based on the ‘distinction between two different sorts or levels of knowledge: the reflexive or theoretical knowledge on the one hand, and the practical or incorporated knowledge on the other.’ (Bohnsack, 2010: 100) The earlier type of knowledge is well-organized in the mind of an individual and can be easily communicated in form of subjective everyday theories. But it does not necessarily play the guiding role in individual’s real actions; often it merely provides ex-post rationalizations. ‘It is the latter kind of knowledge which gives orientation to action. This is implicit knowledge. Mannheim also called it “atheoretic-

* English-speaking social scientist became acquainted with the ‘documentary method of interpretation’ mainly through publications by Garfinkel (1967).

cal knowledge”.’ (Bohnsack, 2010: 100) From this perspective, the main goal of the qualitative social research is the reconstruction of ‘general patterns or frames of orientations’ (Bohnsack, 2010: 104). I pursue this goal focusing on professional orientations of Russian lawyers in relation to corruption and betrayal of client’s interests in criminal proceedings.

Nohl (2010) has proposed a combination of the documentary method and the narrative interviewing technique. Drawing on Schütze’s typology of three different modes of speaking in interviews (narrative, description and argumentation), he suggests that narrative and descriptive passages offer the best insights into the ‘atheoretical knowledge’ of interviewees. People tend to tell stories or to describe recurrent situations when they do not have ready-made rationalizations. But the way how they tell these stories indicates how they frame the reported situations. Following this idea, I systematically inspected narrative and descriptive data segments which fulfilled two conditions: they reported about interviewees’ own cases or their own professional conduct and they were related to the particular forms of wrongdoing which I identified in the content analysis of disciplinary case. Due to limited space, I use only single cases for illustration of my general findings about each of the professional orientations.

Findings: Professional misconduct in Russia’s juridical field

Many disciplinary cases handled by qualification commissions and councils of regional Bar chambers concern, of course, very mundane forms of malpractice which can be observed more or less frequently in any country in the world where specialized legal professions of some kind exist. But there are two major categories of serious professional misconduct related to the institutional condition of the Russian state. One of them is the involvement of lawyers in corruption. Another is the betrayal of clients resulting from defense counsels’ cooperation with investigators, prosecutors or judges who display ‘accusatorial bias.’ The latter kind of professional misconduct is specific for members of the Russian Bar, because criminal defense is their only professional jurisdiction within which they do not compete with unregulated lawyers.

Lawyers as corruption brokers

Lawyers can act as facilitators of bribe payments within a judicial system or a state bureaucracy which are believed to be pervasively corrupt as it is still the case in Russia. However, legal professionals often compete in this peculiar field of practice with other actors without any training in law, because the very core of this activity does not require legal expertise. The crucial form of ‘capital,’ as understood by Bourdieu (1986), is in this context rather the ‘social capital’ (trustful interpersonal relations) than the specific juridical form of ‘cultural capital’ (legal expertise). I denote all actors involved in such practices of facilitating bribe payments as ‘corruption brokers.’

A closer look at the phenomenon indicates that legal professionals still have certain advantages when it comes to acting as corruption brokers between their clients and judges, prosecutors, police investigators or other state officials. All professionals within the apparatus of administration of justice and many state officials in other segments of state bureaucracy also hold degrees in law; police investigators are considered to be ‘jurists’ (*iuristy*) in Russia. This fact implies that many lawyers in private practice as well as many judicial officials and state bureaucrats attended the same educational institutions and had the opportunity to establish long-lasting interpersonal ties. These ties can also emerge at later stages of their careers as a consequence of their frequent interactions in courtrooms, pre-trial detention centers, police stations or administrative institutions. Many prosecutors, police investigators or judges became attorneys or unregulated lawyers in the course of the post-socialist transformation, especially in the 1990s, when the Russian state was very weak and could not offer decent remunerations to its servants. Many of them retained their contacts within the state institutions where they worked before transitioning into private practice. These connections can become their most valuable assets if they choose to act as corruption brokers.

Lawyers, who perform this social role, usually ‘cooperate’ only with judges, law-enforcement agents or state officials whom they know very well and with whom they have relations of mutual trust. Corruption, no matter how wide-spread it might be, has always been a crime in Russia. Bribe payments between strangers are risky, because each party can become a target of a sting operation. Transactions between individuals who trust each other are key for the stability and the

prosperity of corrupt circles. The primary ideal-type mode of social coordination in corrupt human relations is network, not open market.

The position of a lawyer or an attorney can become a very useful ‘magic cap’ because it allows corrupt networks of judicial or bureaucratic actors to open access to their peculiar services for a broader public. Lawyers can interact with all kinds of clients including those who wish to ‘solve their problems’ in circumvention of official procedures. They can also send some signals to potential clients that they ‘know the right people.’ Lawyers determine their fees in open negotiations with their clients so they can ‘price in’ a bribe amount promising a ‘positive outcome,’ and then share what they collect from their clients with their ‘partners’ within a judicial or other state institution. Put in a nutshell: lawyers are perfect, because very inconspicuous, corruption brokers in all contexts where state-affiliated jurists are potential recipients of bribe payments. They can perform their informal social role behind the façade of their formal social role.

Disciplinary cases of attorneys who were accused of acting as corruption brokers are quite rare. One explanation of this fact is that individuals involved in corruption networks are not interested in communicating about their activities with outsiders. Even when a conflict between a bribe-offering client and a bribe-facilitating attorney occurs, the earlier will be barely inclined to file an official complaint about the latter with the Bar chamber. Bribery-related activities of Russian attorneys become subject to disciplinary proceedings usually in situations when a corrupt network is busted by anti-corruption investigators.

The topic of bribery, however, is extensively discussed in many Russian interviews. It is hardly surprising that most of my research participants describe corruption only in reference to activities by others. Most of them passionately distance themselves from any possibility of their own involvement. Some interviewees also suggest that many individuals who offer their services as corruption brokers were mere fraudsters: they would simply elicit additional amounts of money from their clients, but they would make no attempts to contact judges or other state officials who are believed by clients to be final recipients of extra payments. In situations when a trial or another law-related proceeding results in a negative outcome for a duped would-be bribe-payer, such fraudsters would claim that ‘the opponents apparently offered more.’ Alternatively, they would return a fraction of

the alleged bribe making their clients believe that ‘the judge has already spent the rest.’

The described form of professional misconduct deserves some attention in its own right. Strictly speaking, it is not a phenomenon of corruption because no judge or state official is actually bribed; no trial or other law-based procedure is manipulated by an illegal payment. It is a peculiar fraud scheme which utilizes the belief wide-spread in the Russian population according to which ‘the administration of justice is for sale’ (*prodazhnoe pravosud’ie*) and ‘all state officials are corrupt’ (*vse chinovniki podkupnye*). This scheme demonstrates how socio-political macro-factors interact with individual frames of social orientation and give rise to peculiar opportunities for professional misconduct of lawyers.

In the interviews, the frequent mentioning of this fraud scheme usually serves as a negative point of reference: most interviewees present themselves as professionals who would stay away from this ‘muddy pond’ where it is difficult to distinguish between ‘honest’ corruption brokers and imposters. My documentary analysis of narrative and descriptive transcript passages about own experiences in Russia’s juridical and administrative fields shows that there are several distinct types of orientation that help legal professionals navigate this cumbersome social reality. These orientations are: (1) a consequent refusal of any involvement; (2) a passive accommodation combined with a grudging acceptance; (3) an active participation for client’s sake.

Type 1: Refusing orientation

The consequent refusal of any involvement in corrupt activities is the most expectable orientation. Hence, its reconstruction requires a particular scrutiny because of the potential social-desirability effect and the corresponding risk of misleading self-presentation by interviewees. It is also remarkable that some research participants who initially emphasize their categorical refusal of everything related to corrupt practices ‘drift’ towards grudging accommodation to these practices without active participation (type 2) as their autobiographic storytelling evolves.

A typical case narrative which indicates the refusing orientation (type 1) goes like this: a client contacts the interviewee and one of his or her first questions aims at finding out about interviewee’s connections to specific judicial officials, e.g.: ‘Do you know judge X?’ What follows is a categorical refusal to delve any deeper into

this topic: ‘Well, I don’t know anybody. I know the law.’ [‘Ahmad’* / 32:3463-3464] There is, of course, no ultimate proof that the storytelling by these interviewees is always true. A residual doubt will always remain. However, there are several indirect indicators which suggest that these recurrent narrative refusals do correspond to the real behavioral pattern at least in some interviewees. Lawyers who consistently display this orientation are not particularly successful as regards the economic outcomes of their activities. Differences in the narrative patterns also become more visible when passages from interviews with this type of lawyers are compared with passages from interviews with legal professionals who display different attitudes towards corrupt practices.

Type 2: Accommodative orientation

An accommodation to the system of courts and state institutions where corruption plays a significant role is another orientation that I was able to identify among Russian lawyers. It is often combined with a strong condemnation of corruption. At early stages of the interview, many of these research participants appear to be strictly opposed to any interactions with actors involved in bribery. Their grudging acceptance of the fact that they have to operate somehow in a highly corrupt environment becomes manifest only gradually in the course of the interview.

Asked about her experiences of cooperating with other legal professionals hired by the same client, ‘Natalya,’ a life-long attorney in her late 50s practicing for business clients in one of the biggest Russian cities, tells the story of a protracted economic-court trial in which she assessed the situation differently than another lawyer. After it turned out that her assessment was correct and the other professional was wrong, she emphasized this fact during a meeting with the client. She admits that doing so was humiliating for the other attorney who was present at this meeting. But as a justification of her spontaneous reaction, she tells the following story which I will analyze in three sequential steps:

‘This attorney came several times to our principal and named specific amounts for which he would be able to solve the problem at the {X} economic court /mhm/ and for me exactly this... If I hadn’t got this inf... And I know it FOR SURE because the principal himself told me about it. He asked me for advice: “Is it a lot or not a lot?” /mhm/’ [10:3746-3751]

* All names of interviewees are pseudonyms. Transcript references include the number of the interview and line numbers in the original transcript.

‘Natalya’ suggests that the other lawyer offered their common client to act as his corruption broker and specified the amount of bribe payment. She perceived this strategy as outrageous and this fact made it somehow acceptable in her eyes to humiliate her colleague later in front of their common client. She also clarifies how she learned about the illicit offer made by the other lawyer to the client: the latter asked the interviewee for her assessment of the bribe amount. The implication is that the client was considering this option. Here the story arrives at the crucial ‘junction.’ Hypothetically, the interviewee has three different options: she can refuse to discuss this topic at all; she can give her sober assessment of colleague’s offer or she can make a better offer to her client. The immediate framing of this narrative passage and the recurrent condemnations of corruption expressed several times in the course of the interview make the first option, of course, the most probable one.

‘And I said: “I have absolutely no clue.” I am saying: “Don’t ask me that.” I am saying: “I cannot even imagine it AT ALL and in general,” I am saying, “when someone only starts to talk to me about this subject, I become deaf, speechless, blind, because,” I am saying, “I can only offer you MY KNOWLEDGE experience ehm reputation whatever you want, but this think, THIS THING is unacceptable for me even if it is in YOUR interest”’ [10:3751-3756]

This data segment confirms the working hypothesis that the interviewee rejected to act as a corruption consultant—not to speak of taking the role of a competing corruption broker. She also constructs an opposition between lawyer’s professionalism based on knowledge, practical experience and reputation on the one hand and bribery (‘this thing’) on the other hand. Had she stopped here, this passage could serve as a vivid example of a categorical refusal to cooperate with a client who considers bribing a judge. But she continues:

‘“There are other people for that if you consider this path as a correct one you may solve it this way. But,” I am saying, “don’t even tell me about that” /mhm/ I am saying “Then it’s easier for me to work.” I assume that every time I go... if I did everything diligently if I assessed all possible risks if I prepared all the evidence and also myself to be able to support {client’s claims} then I assume that I fulfilled my task to provide legal assistance at the given stage.’ [10:3757-3764]

‘Natalya’s’ position shifts within this passage. She indicates that she is able to accommodate to her client’s cooperation with corruption brokers as long as she has no knowledge about it. An alternative would be a categorical refusal to work for a client who attempts to bribe a judge and, by doing so, contributes to the reproduction of corruption within the administration of justice. But ‘Natalya’s’ key intention seems to be the maintenance of her individual self-image as a ‘clean’ lawyer. She wishes to focus on the juridical (professional) aspects of her work on

client's case. If some additional 'dirty work' needs to be done by a corruption broker, she does not want to know about that.

On the one hand, there is an obvious blind spot in this logic: whenever 'Natalya' works in such a constellation, she can never know for sure whether her courtroom success is attributable to her professional skills or to the fact that her client bribed a judge or to a combination of both factors. But on the other hand, it is an understandable compromise between one's aspiration to a professional, expertise-based social role and the awareness of the wide-spread corruption within the administration of justice. A principled refusal to work for clients who consider bribery as an option would very likely drive her out of the lucrative market segment.

Type 3: Orientation of Active Participation

Corruption is extensively discussed by many Russian interviewees but only in reference to behavior by others. Passages which come close to the admission of speaker's own active participation in illicit activities of this kind are extremely rare in the entire data set. This fact is hardly surprising because bribery constitutes a serious crime under the law of Russian Federation and all interviews were tape-recorded. Lawyers are also particularly skilled in controlling their speech about normatively sensitive issues. Nevertheless, one interview allows a data-grounded insight into the way of thinking of a person who very likely acts as a corruption / informality broker.

Soon after earning a law degree in law from the local state university, 'Viktoria' (int. 28), born in the early 1980s, started to work in a very low paid in-house position at the regional administration of her home city. She describes this step as a conscious decision aimed at the systematic acquisition of practical skills in administrative law and in dealing with public administration. She worked there in a sub-department charged with issuing permits for large-scale construction projects in the city. She describes the city administration in general terms as a hotbed of bureaucratic red tape, incompetence and corruption. After working there for three years, she was hired by the local office of an international law firm with headquarters in a Western-European country. One of her assets was a very good command of two western languages (English and French), but even more important was her insider knowledge about the city administration.

Immediately after being hired by the international law firm, ‘Viktoria’ began to work in a team which handled a protracted case of two foreign businessmen who planned to setup a production facility in a new industrial district of the city. These investors came from an EU member state which is frequently ranked by Transparency International as one of ten least corrupt countries in the world. In Russia, they encountered, according to ‘Viktoria’s’ words, an endemically corrupt bureaucracy. Initially, they were even unable to understand what was going on around them. The area where they planned to build their plant had not been officially opened for investors yet, but nevertheless Russian companies were already building their facilities there. When they contacted the department, which was in charge of issuing permissions required for the kind of construction they planned, they found themselves confronted with a seemingly impenetrable maze of contradictory administrative regulations. As ‘law-abiding {Westerners*}’—‘Viktoria’ uses this expression several times with a mixture of admiration and irony—her clients insisted on all required paperwork before starting with the construction. The department of the city administration which was in charge of this case happened to be the same unit where she had worked for three years before joining the law firm. She knew how to interpret cryptic letters sent to her clients by the administration and, even more important, she knew the bureaucrats who wrote them. After a protracted procedure, ‘Viktoria’s’ team was able to obtain all required permits for their Western clients. When everything what the interviewee narrates about this process is put together, it becomes very likely that a bribe was paid. In the following transcript segment, ‘Viktoria’ makes the basic principles of her work explicit:

‘How to say? I use not only my juridical knowledge, but also my connections. /mhm/ When I call someone, I don’t merely call as {Viktoria Sidorova}, I rather call as {Viktoria Sidorova} who is recommended by someone or as {Viktoria Sidorova} whom they used to meet at the extended sessions of the legal department. And then, when I call them and say: “You know, we’re sitting in a trap /mhm/ help me out, please.” Generally speaking, they would not let me down then if only no illegal actions are requested. It’s just when I want to get something faster than it is stipulated by the law. One has to pay anyway, but then it is clear to whom. /mhm/ Because this is also a crucial issue. One has to know whom to bring {a bribe; RM}. /uhm/ Well, my {previous; RM} work in the public administration is beneficial for me in many ways, so to speak. I mean, if you plan to keep working in {city G’s} market related somehow to the state apparatus then you have to establish your connections /uhm/ this way or another. It is absolutely impossible to work without them...” [28:1865-1883]

* In fact, she names the nationality of the businessmen. I decided to use the expression ‘Westerners’ here to increase the anonymization of this normatively sensitive case story.

As opposed to ‘Natalya,’ ‘Viktorija’ does not perceive the reliance on ‘social capital’—her connections within the city administration—as a negation of her professional skills. In fact, this asset seems to be more important than the juridical knowledge for getting things done when dealing with the corrupt state apparatus. ‘Viktorija’ mediates between actors operating in two different worlds and she is able to speak the languages of each of these worlds. She frames her activity as ‘helping foreign investors’ who come as ‘law-abiding Westerners’ to Russia and land in administrative ‘traps’ set up by a corrupt state bureaucracy.

Betraying client’s interests

The second major form of professional misconduct related to the macro-institutional setup are activities of defense attorneys who rather cooperate with prosecutors and police investigators than help their clients in criminal cases. This phenomenon occurs exclusively among Bar members, because criminal defense, including ‘defense on appointment’ (*zashchita po naznacheniiu*), is within the exclusive jurisdiction of this legal profession.

The Constitution of the Russian Federation stipulates that crime suspects and defendants have the right to defense counsel from the very beginning of a criminal investigation. If someone is unable to afford a retained attorney, the investigating agency (prosecutor’s office, police etc.) or the court are obligated to contact the Bar and request an appointed counsel for this person. The evidence from disciplinary cases handled by Russian Bar institutions and from interviews where this issue is frequently discussed, suggests that the type of misconduct discussed here mainly occurs in cases when defense lawyers work on appointed cases.

For quite a long time, it was very easy for investigators or judges to appoint those attorneys whom they considered to be cooperative—often because they were well acquainted with each other. Appointments of defense counsels are usually handled by ‘statutory practice organizations of attorneys’ (*advokatskie obrazovaniia*) on requests coming from the institution which requires the presence of a defense counsel. Since it was very easy for former police officers, prosecutors etc. to become attorneys in the 1990s, many of them made this transition and established entire ‘colleges of attorneys’ consisting of former officers from different law-enforcement agencies. After the 2002 Statute on the Bar came into force, it also became possible to practice in solo-practitioner offices. As a consequence, inves-

tigators or judges were able to contact ‘colleges’ or solo-practitioner offices of their former colleagues or other acquaintances and de facto handpick appointed defense counsels whenever they needed to.

At the first glance, working as an appointed defender in Russia does not appear lucrative. The Russian states does compensate appointed attorneys since the early 2000s, but the fees are very low as compared to what a retainer agreement can earn. However, there are several factors which still make these appointment fees attractive to some attorneys. First of all, the big number of lawyers—attorneys as well as those in unregulated practice—provides for a fierce competition in the legal-services market and makes even very modest fees attractive to some practitioners. Fees for work on appointed cases are paid de facto per case-related activity per day. This means that an attorney who performs two activities in two different cases on the same day (e.g. appears in the courtroom in one appointed case in the morning and meets a client in another appointed case afterwards) is eligible for two ‘daily’ fees. Friendly relations with investigators and judges can help attorneys to better coordinate their simultaneous work on several appointed cases. Fee regulations bear also additional potential for increased dependence of appointed attorneys on investigators and judges. One of the interviewees (‘Ahmad’/int. 32) reports about some tricks his younger brother, an investigator of the Investigative Committee, uses in his interactions with appointed attorneys: if there are for example five expert reports in a particular case, an appointed attorney can get access to all these reports on one single day. In this situation, he or she would receive a fee for only one day of casework. But the investigator can make these five reports available to the attorney one by one on five different days. In this situation, this appointed counsel would receive five daily fees for doing basically the same work.

Detailed regulations on how attorneys are appointed as defense counsels and how they get remunerated for this work create strong incentives for cooperation with investigators or judges and it can result in a betrayal of client’s interests. The same interviewee (‘Ahmad’) reports referring to his private conversations with acquaintances who work as police investigators that some of them even perceive themselves as ‘employers’ (*rabotodateli*) of defense attorneys and expect their loyalty.

Several disciplinary proceedings in the sample indicate that even individuals who do have a retained attorney are not always safe from this form of professional misconduct. Investigators can exert pressure on crime suspects in pre-trial detention and force them to fire the attorney of their choice. This happens usually when the defender shows too much zeal. Then a more cooperative attorney is appointed at investigator's request. If a crime suspect is not willing to fire his or her retained attorney despite the pressure from investigators, the latter can create some sudden obstacles which prevent suspect's lawyer from participation in an interrogation. Once the defense counsel of suspect's choice is absent, investigators request the appointment of another attorney who is sometimes referred to as 'defender-double.'

The flawed institutional regulations described above have resulted in the rise of 'pocket attorneys' (*karmannye advokaty*). These Bar members, as the expression suggests, 'sit' in pockets of investigators or judges. They show no zeal when defending their assigned clients. Instead they cooperate more or less openly with the apparatus of criminal justice which is still dominated by the 'accusatorial bias.' In other words, these attorneys betray their clients' rights and interests. Their conduct constitutes the most serious form of professional wrongdoing in the domain of criminal defense, because it violates the constitutional right of every crime suspect and every defendant standing a criminal trial to be represented by an independent defense counsel.

This form of professional misconduct is perceived as a particularly serious problem within the Russian Bar, because it causes a severe reputational damage to the entire profession. Regional chambers use two parallel strategies to cope with it. One strategy is, of course, to open disciplinary proceedings against specific Bar members accused of this kind of behavior. Complaints are usually filed either by clients who feel betrayed or by other lawyers—especially in situations when 'pocket attorneys' are accused of acting as 'doubles.' When handling this category of cases, qualification commissions and Bar councils have to account for the fact that some defendants, after their conviction, advance unjustified accusations against their defense attorneys, because they hope that such claims may help them to overturn their sentences on formal grounds (lack of proper defense). Another limitation in this category of disciplinary cases results from the fact that institu-

tions of professional self-regulation are not in charge of investigating alleged crimes. Some commissions and councils terminate many proceedings in cases of this category arguing that forcing suspects into confessing their crimes constitutes a criminal act which should be investigated and prosecuted under the penal code, not in a disciplinary proceeding of the Bar. But other commissions and councils still find enough professional wrongdoing in behavior of this kind.

If a betrayal of a client is established in the course of a disciplinary proceeding, the culprit is usually disbarred. This most severe sanction handed by the institutions of professional self-regulation is more effective in relation to this particular form of misconduct as compared to other types of malpractice, because work on criminal cases, including appointed cases, is open to Bar members only. As a consequence, a disbarred ‘pocket attorney’ cannot continue his or her operations as an unregulated lawyer.

The second strategy of Bar chambers deployed against ‘pocket attorneys’ is the introduction of more sophisticated procedures for providing appointed attorneys on requests from investigative institutions and from courts. The traditional procedure of submitting requests to statutory practice organizations was inherited from the Soviet period when there was only one legal consultation office under the regional ‘college of attorneys’ within the territorial jurisdiction of every court. This procedure became dysfunctional with the rise of ‘parallel colleges of attorneys’ in the 1990s and with the introduction of solo-practitioner offices as a new statutory practice setting after 2002. These changes made the hand-picking of ‘pocket attorneys’ possible. Some Bar chambers responded by centralizing the appointment process: once a request is submitted, they select an attorney from an alphabetic list of all members or by using a random generator. On the one hand, these measures prevent judges and investigators from knowing who is going to be appointed as defense counsel in a particular case. But on the other hand, they also cause some technical problems. It happens frequently that those who were selected from the list or ‘by the computer’ are unavailable and the opportunity for a secondary appointment on a short notice opens. One of my interviewees in a city in the Urals (int. 43) reported that her chamber used a computer software (a random generator) and text messages sent to mobile phones for the appointment procedures. This system had, however, no easily accessible feedback channel that would allow ad-

dressees to inform the chamber about scheduling problems etc. As a consequence, attorneys appointed through this system were quite often unable to appear in courtrooms or at interrogations. Such ‘emergencies’ could be then used by judges or investigators to appoint their ‘pocket attorneys’ who would be available on short notice. It is no accident that ‘pocket attorneys’ are sometimes also referred to as ‘hallway attorneys’ (*koridornye advokaty*) because some of them spend most of their time in hallways of court buildings waiting for short-term appointments.

Client betrayal by appointed attorneys is a phenomenon well-documented in published case files of disciplinary proceedings conducted by different regional chambers. This practice also does frequently occur in the interview data, but exclusively as criticism of professional wrongdoing by others. Only one transcript includes some clues suggesting that the interviewee (‘Lidya’/int. 43) herself might be involved in practices of this kind, but there is definitely no ‘smoking-gun passage’ in it. Several characteristics of her practice setting indicate that she maintains close relations with the judges of the local court. Her office is located in a building right next to the court building so she can ‘jump in’ within a few minutes. Court clerks brought some documents to her office for signature several times during the interview which was also interrupted by one or two phone calls from the court. From ‘Lidya’s’ narrative, it became clear that she usually travels to and from work by car together with one of the local-court judges who is a good friend of hers. All these details indicate that she may have close personal ties to the local judges which can make her more conciliant when acting as defense attorney, but they, of course, do not constitute any proof of her misconduct.

More indicative for the orientation of this research participant are several case stories included in the interview, especially when compared to case stories told by other interviewees doing criminal defense. Other defense attorneys, even when they are convinced that their clients were guilty, focus their storytelling on procedural violations committed by investigators and on the ‘accusatorial bias’ displayed by judges. Against this background, they usually present themselves as fighters for their clients’ rights—even for guilty clients. Several case stories told by ‘Lidya’ have a different recurrent pattern: she introduces her clients—suspects and defendants—as guilty individuals who claim to be innocent. Then she narrates

her efforts to convince them that it makes no sense to deny ‘things that are obvious.’ They should confess instead and ask for a lenient sentence.

‘Lidya’s’ storytelling could be a narrative expression of a professional orientation that is characteristic for ‘pocket attorneys.’ This interpretation is supported by the fact that she displays a strong identification with the apparatus of criminal justice. Her criticism of Russian courts, police and other investigative institutions is very limited as compared to interviews with other defense attorneys. It is an orientation that can at least facilitate a willing participation in the activities of a ‘court-room working group’ (Eisenstein and Jacob, 1977; Khodzhaeva and Rabovski, 2015).

Concluding discussion

The evidence from Russia demonstrates that the macro-political institutional order is an important factor influencing normative aspects of lawyers’ professional conduct. There are particular forms of severe intentional wrongdoing which result from the condition of the judicial apparatus and the law-enforcement agencies. The findings suggest that such acts of professional misconduct contribute to the reproduction of the institutional order which makes them possible. It is a vicious circle that is very difficult to break.

Lawyers’ active participation in corruption can be conceptualized as a particularly far-reaching form of ‘client capture’—a more general phenomenon that has attracted researchers’ attention in Western countries for some time (Dinovitzer et al., 2014; Leicht and Fennell, 2001: 105–107). By supporting or even initiating attempts to bribe judges or other state officials, legal professionals advance their clients’ interests with illegal means and ignore their “duty to the law” (Wilkins, 2012: 26). I suggest to expand the fourfold typology of ‘client capture’ constellations proposed by Dinovitzer, Gunz and Gunz (2014) by accounting for the following dimensions: (1) ‘Client capture’ can have a law-compliant or a law-transgressing character. An example of a law-compliant client capture would be a situation when a legal professional finds loopholes in the legislation which help to hide debtor-client’s assets. Acting as a corruption broker is a vivid example of law-transgressing client capture. (2) Capture can be explicitly initiated by clients (‘Can you talk to judge A and solve this problem?’) or it can have an anticipatory character on the side of professionals as ‘Viktoria’s’ case indicates: Her Western clients were clueless and naively requested that everything is done by the book,

but she did what, as she thought, had to be done in a corrupt institutional environment.

The second form of professional misconduct related to the character of state institutions is the betrayal of clients' interests by attorneys who cooperate with prosecutors, police investigators or biased judges. This phenomenon goes beyond the bipolar conceptualization of lawyer's social role as a mediator between the rights and interests of clients on the one hand and the social order inscribed in law on the other hand. The juridical field in Russia has a third very powerful pole: it is the judicial system and the law-enforcement apparatus which often pursue their members' group interests or follow orders coming from the political system and, as a consequence, bend or even ignore the law. This finding can enrich the discussion on professional misconduct in broader international comparison.

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