

## **Professional organizations as drivers of social changes in developing countries: Some implications from Russian ‘limited access order’**

### **Abstract**

This paper considers the activity of professional organizations of advocates as a factor of transfer from limited access order to open access order, in terms of the theory of North, Wallis and Weingast (2009). Using the analysis of the experience of advocates’ collective action in developing countries, the paper proposes a model explaining the process of mobilization of the legal community for countering the violations of the law by the ruling elite. It shows that collective action of advocates plays a significant role in implementing the principles of rule of law. However, the efficiency of such collective action in a particular country depends on the institutional capacity of its legal association (in terms of Doner & Schneider (2000)) and on the position of the professional elite that is heading it.

The elite of the advocates’ community in developing countries is confronted by a difficult choice between identifying itself with the national political elite and the need to respond to the demand of grass-roots members of the profession regularly encountering violations of the law by representatives of the authorities. E.g. in Tunisia in the 1990’s, the leaders of the legal community preferred to support Ben Ali’s authoritarian regime (Gobe 2010), after which the discontent in the ranks of the professional community started building up ultimately culminating in substitution of the professional elite with people of opposite convictions in the early 2000’s. In Taiwan in mid-1980’s – early 1990’s, on the contrary, the legal elite began distancing itself from the powers-that-be under pressure from “below” (Winn and Yeh 1995), which enabled the corporation of advocates to become the driver of positive social changes in the country. The elite of the Russian advocates’ community will be facing a similar choice in the near future.

We are using a game model to analyze the development of the advocate profession in Russia over the past 25 years. Having encountered a serious external shock connected with the collapse of the Soviet Union and disappearance of entry barriers to the profession of advocate, at the end of the 1990’s the advocates community started displaying a demand for the creation of a strong professional association. The state responded to this initiative and returned entry barriers to the profession (bar exam) having created the Federal Chamber of Advocates (FCA) vested with a high level of autonomy and earmarking financing for advocates’ work on court assignment. These processes reduced advocates’ activeness in the country’s socio-political life in subsequent years in spite of the ongoing tightening of the NGOs regulation regime, increased control over mass media and growing pressure on business.

However, the advocacy reform was incomplete. With the exception of criminal cases, private attorneys also have the right to represent their clients in court. According to expert estimate, their number is way above the number of advocates. At the same time, criminal cases (where clients can be represented only by advocates) in Russia fall into the category of low-income cases.

The resources allocated to the bar association for defending clients on court assignment were gradually eaten up by inflation and no longer suited advocates, while defendants’ rights were increasingly being violated. The initiative of introducing the “advocates monopoly” actively lobbied by FCA would compel all private attorneys handling court cases to seek the status of an advocate. This reform, generally supported by the government, would extend its membership, increase resources at FCA’s disposal and at the same time strengthen its political positions, as

FCA would become a professional association with a vast regional network and over 100 thousand members. In our opinion, receiving the status of Russia's largest non-profit organization whose activity is directly connected with the protection of citizens' rights would confront the Russian professional elite with a choice between supporting the ruling elite (the Tunisia scenario) or responding to the demand of the majority of the professional community involving serious changes within the law enforcement system (the Taiwan scenario). This choice will largely depend on the pressure from the masses which, in its turn, is predetermined by the readiness of ordinary advocates for collective action.

In the third part of the article, we are using the results of a survey of 3317 advocates in 35 regions of Russia to try to find an answer to the question: which groups inside the advocates' community presently demonstrate demand for collective action. Analysis shows that the regional elite (heads of bar associations, the board of a regional chamber) more often includes advocates who acknowledge the existence of problems in the law enforcement system and who are prepared to confront it. In other words, we cannot say that such advocates are loyal toward the authorities. We will then show that both the fact of existence of leadership experience and the fact of encountering violations of defendants' rights lead to advocates' increased demand for active bar associations.

Demand for collective action could be observed in many cases from Russia's recent experience, but, in line with our model, those initiatives did not evolve into something bigger as FCA did not dispose of sufficient resources to change the situation. Therefore, after the introduction of the «advocates monopoly» FCA will have to respond to the already existing demand of the regional professional community elite, otherwise it will face the risk of regional advocates' chambers coming out for replacement of the current advocacy leaders.

Key words: limited access orders, rule of law, elite organizations, quality of law enforcement, bar associations