



Print ISSN is 2313-5395

Online ISSN is 2410-2059

# KUTAFIN LAW REVIEW

Volume 8 Issue 4 2021

## Issue Topics

LEGAL EDUCATION

PROTECTION OF HUMAN RIGHTS

LABOR MIGRATION



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**Frequency** four issues per year

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**CONTENTS**

<b>EDITORIAL</b> .....	517
------------------------	-----

**RESEARCH ARTICLES**

Maria R. Voskobitova

<b>Online Simulations for Teaching Professional Legal Skills</b> .....	519
--	-----

Svetlana M. Kurbatova, Larisa Yu. Aisner

<b>Modern Technologies as Compensatory Means of Ensuring the Rights of Vulnerable Persons in Criminal Proceedings</b> .....	546
---	-----

Andrey S. Leonov, Irina E. Lisinskaya

<b>Legal Framework of Labor Migration Governance in the Eurasian Economic Union and the European Communities: Comparative Analysis</b> . . .	573
--	-----

**ARTICLES**

Diego Acosta

<b>Regional Free Movement of People at the Global Level: The Case of the Eurasian Economic Union (EAEU)</b> .....	602
---	-----

Irina A. Martynenko, Nataliia N. Karandasheva

<b>Emotional Intelligence in Law Students: Relevance of Development</b> .....	626
---	-----

Olga V. Malyukova

<b>Logical Design of Legal Education. Towards the Anniversary of Kutafin Moscow State Law University</b> .....	647
--	-----

Yuliya A. Khvatsik

<b>Clinical Legal Education in Belarus: Practice-Oriented Pedagogy for Socially Engaged Law Students</b> .....	668
--	-----

Polina E. Marcheva (Korotkova), Elena A. Kholina

<b>Methodology of Teaching Law Disciplines in Russian and English to Law Students: A Digital Form and Traditional Content</b> .....	690
---	-----

Gabriela Belova, Gergana Georgieva

<b>Some Remarks on Legal Education in Bulgaria</b> .....	713
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## **EDITORIAL**

### **Dear Readers,**

Throughout the centuries, legal profession has been challenging and prestigious. That is why legal education and training are so important. From time immemorial, legal education has been of paramount significance: lectures and legal disputes in ancient Rome laid the foundation of modern legal education. Later with the development of universities, law schools and faculties became the core centers for intellectual, cultural and scientific progress, which contributed not only to legal profession itself but also to society in general. As a result, new training programs in jurisprudence were launched.

Transformation of modern society, diversification of legal profession, change in the paradigm of education, new approaches to education could not but affect the teaching of law. Therefore, this raises a question whether law schools are likely to respond to such developments. No matter if it is a public service, entrepreneurship or science, all these spheres demand a substantial review of the methodological component of legal education and some change of approaches to educational process. There is also a need to shift from theory to practice, to put the student into the center of educational process, where the teacher is more a tutor or adviser than a mentor, to create scientific and educational centers, laboratories, law clinics. Digitalization of society seems to be inevitable and penetrates all areas of life, legal education being one of them. This entails new formats in which a law student is educated. Legal education has undergone various modifications, which have improved the quality of the programs and let the students to be engaged in modern and progressive spheres of law.

The issue contains the latest research conducted by lawyers and practitioners, faculty and scientists. International experience in new practices and educational strategies implemented in Russian and foreign universities have been accumulated in the given collection of articles. In the year of the 90th anniversary of Kutafin Moscow State Law University all discussions

focus on traditions and innovations, achievements and discoveries that take place in the modern legal education, whether it is a law clinic, moot courts or case studies, development of emotional intelligence in students or application of artificial intelligence technologies in the educational process. Given all the previously mentioned, there is still an important thing to be kept in mind, namely the academic and fundamental nature of legal science. This becomes more and more important for the reader who is ready to cross the boundaries and achieve new and ultimate goals and who wants to be involved in the process of creating a new modern concept of legal education.

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## RESEARCH ARTICLES

DOI: 10.17803/2313-5395.2021.4.18.519-545

### Online Simulations for Teaching Professional Legal Skills

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**Abstract:** Experiential learning approach in legal education is a global influential trend. Legal clinics is one of the most obvious examples of including experiential learning approach into the educational curriculum for law students. The main educational value of legal clinics is a providing training opportunity for students to apply their legal knowledge and skills in professional simulations like role plays of interviewing, counselling, negotiations, mock trials (first instance hearing) and moot courts (appeal hearing). These type of training programs allow law students to test their ability to client-oriented and problem-solving. The Russian legal clinics community has been actively developing since the mid of 1990s for more than 30 years. More than 100 Law Schools over Russia have own legal clinics. Clinicians overview their experience and share this experience between clinicians community. At the same time only relevantly small part of law students have access to effective training of legal skills because of various reasons, but mostly because of relevantly small number of legal educators who use the experiential-learning approach. Transition of experiential-learning best practices into online format is a good tool of scaling the number of students who could be trained in legal skills significantly. The paper describes the collection of unsupervised online learning modules devoted to legal skills, including case strategy, interviewing, counselling, legal writing and trial skills. These unsupervised online learning modules are developed based on modern instructional approaches to developing of online educational courses. The piloting of the unsupervised online learning modules demonstrates that these modules might be used as

a supplementary educational tool and as a part of main educational curriculum for law students.

**Keywords:** experiential learning approach; legal skills; professional simulations; MOOC

**Cite as:** Voskobitova, M.R., (2021). Online Simulations for Teaching Professional Legal Skills. *Kutafin Law Review*, 8(4), pp. 519–545, doi: 10.17803/2313-5395.2021.4.18.519-545.

## Contents

I. Introduction . . . . .	520
II. Legal Clinics and Experiential Learning Approach in Legal Education . . . . .	521
III. Online Learning Platform for Developing of Professional Legal Skills . . . . .	524
IV. Simulations as a Teaching Method . . . . .	526
V. The Unified Frame of All Modules . . . . .	527
VI. Modules' Description . . . . .	528
VII. Piloting of the Modules . . . . .	539
VIII. Conclusion . . . . .	543
References . . . . .	544

## I. Introduction

Legal education has traditionally been built around knowledge transfer. Most of the approaches to the legal educational programs in Russia were laid down in the Soviet era, although they were revised in connection with the numerous reforms in education over the past 20 years. According to the study by the Institute of Rule of Law (Moiseeva, 2018, p. 5), “Two main topics [discussions in the professional community] are the surplus of lawyers who graduated from distant-learning programs, and the lack of highly-skilled legal personnel” (Moiseeva, 2018, p. 28). In addition, the research states that “now it is not difficult to obtain a law degree and the law degree does not say anything about the level of qualifications of a lawyer. [...] The task of law schools should be not only to provide knowledge of laws, but also to develop professional values. When every other university gives legal education, and many of them are not specialized [in law],

it is difficult to say that they develop general professional and ethical standards of legal activity.” Therefore, it can be argued that modern legal education in Russia does not teach the skills and values that are essential for professional activity. The knowledge provided is often insufficient, sometimes outdated and does not correspond to the recent legal practice, and this is well-known among the professional community (Moiseeva, 2017, p. 68).

## **II. Legal Clinics and Experiential Learning Approach in Legal Education**

Taking into account the research on legal education conducted by the Carnegie Endowment back in 2007 (Sullivan, 2007, p. 8) professionalization of a lawyer includes knowledge (functional knowledge), skills and values that a lawyer should be able to apply to solve a client’s problem, to provide grounds for his or her decisions taking into account the rules of professional conduct.

Professional skills of a lawyer can be considered as implicit knowledge that is poorly transmitted directly (Yasvin, 2020). But they can be learned through experience under the guidance of a qualified lawyer or legal educator. Currently, professional skills include the following:

- case development and case strategy,
- interviewing the client,
- counseling the client,
- legal writing,
- opening statement,
- presentation of evidence in court,
- judicial interrogation,
- closing arguments.

These skills are based on soft skills, but have their own perspectives in relation to the professional activity of a lawyer. For example, case development is founded on soft skills such as critical thinking, problem-solving and decision making; both oral and written communication skills are key to interviewing, counseling, legal technique, litigation and court interrogation skills.

Teaching professional skills through training and gaining professional experience under the guidance of a qualified lawyer is called “legal clinic” (Gutnikov, 2008). In Russia, legal clinics began to develop in 1996. For 25 years, legal clinics have been established in most law schools in the country, including leading universities such as Moscow State University, Kutafin Moscow State Law University, St. Petersburg State University, Ural State Law University and many others. When the legal clinics’ creation was officially established,<sup>1</sup> clinics began to be founded in the universities that lacked educators who were trained to conduct practical legal skills’ training. Therefore, the internal structure of legal clinics in universities can vary significantly. So, the work of students in legal clinics can be credited as a compulsory or elective course, or internship, but it can also be an extra-curricular activity for students. In addition, in a number of universities, legal clinics include mandatory preliminary training and only after that it includes meetings with real clients under the guidance of a professor. But many legal clinics work only as a public reception office, and students do not have access to preliminary training and start working with clients without prior practical skills training. Hence, only a relatively small number of law students have access to practical legal skills training during their undergraduate studies.

In 2011, the Center for the Development of Legal Clinics (hereinafter referred to as the *Center*) was founded.<sup>2</sup> The main purpose of the Center is to promote the ideas of teaching professional skills, as well as to develop guidelines for educators on how to teach professional skills and train educators in practical teaching approaches that are used for teaching professional skills. During last 10 years the Center has created an informal educational environment that includes following elements:

- a community of educators of legal clinics, professional lawyers who share an experiential learning approach in training lawyers,

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<sup>1</sup> Order of the Ministry of Education and Science of the Russian Federation of November 28, 2012, No 994 “On Approval of the Procedure for the creation of legal clinics by educational institutions of higher professional education and the procedure for their operation within the framework of the non-state system of free legal aid.”

<sup>2</sup> The Center of Development of Legal Clinics website: [www.codlc.com](http://www.codlc.com) (In Russ.).

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- experiential-learning guidance to teach practical legal skills, including descriptions of the skills themselves, curricula for teaching skills, as well as a set of cases that are used in training,
- an annual agenda of events for students and legal educators, which provide exchange of experience, practical training for students and educators, creating horizontal links between students and educators. Such events include:

- an annual conference on experiential-learning legal training for educators of legal clinics, the purpose of which is to exchange the experience of educators and promote the most effective teaching methods in a legal clinic and its organization in the educational process (from 100 to 200 participants),

- “School of Clinicians” – 3–4 days full-time training (50–70 students),

- “Competition on Students’ Practical Legal Skills” that has been held for several years in two stages: regional and national.

When additional funding is available, the Center also conducts field training for students and educators, and conducts thematic projects on topics. For example, together with the Office of the United Nations High Commissioner for Refugees in Russia, a project was implemented to develop special clinics to help refugees and internally displaced persons.

Also, since 2012, the Center, together with other partners has been organizing two student schools annually – Summer and Winter Schools – the purpose of which is to develop the professional skills of lawyers, as well as to familiarize students with current legal topics that are not included in the main curriculum of universities, for example, alternative methods of conflict resolution or compliance requirements.

Several times the community of legal clinics educators and legal professionals has summarized the experience of training in professional skills and developed guidelines for trainers of professional skills of a lawyer (Bulakova et al., 2006; Voskobitova et al., 2009; Sarker, 2014; Abrosimova et al., 2015). The last publication was made in 2015 – a manual “Legal Clinic – Education Based on Practical Experience.” The manual consists of two parts, the first of which is devoted to the description of the professional skills of a lawyer, and the second constitutes a collection of teaching materials, such as lesson

plans, a selection of cases on various topics, and materials for business simulation games. This manual was published in both paper and electronic versions, both versions of the tutorial including electronic applications that allowed teachers to use the teaching materials in their teaching practice.

### **III. Online Learning Platform for Developing of Professional Legal Skills**

Despite all activities of the Center of the Development of Legal Clinics, the existing educational environment does not fully meet the need for high-quality training on practical skills for law students. The number of educators who can use experiential-learning teaching methods is relatively small, not all universities have appropriate legal skills courses. The activities of legal clinics in many universities are carried out on a volunteer basis. Additional events for students held by the Center for the Development of Legal Clinics and others several times a year, are designed for a limited number of participants and cannot provide training for everyone who wants to get it. Due to the existing objective reasons, a significant scaling of teaching practical skills cannot be carried out in full-time format.

Therefore, the Center of the Development of Legal Clinics with the support of ABA ROLI created the online educational platform available at [online.codolc.com](https://online.codolc.com) (the Platform). The Platform is developed on the MOODLE platform. The purpose of creating an educational platform is to scale access to high-quality educational content for law students from different regions of Russia. By May 1, 2021, more than 25 different online courses have been posted on the platform, both informational and experiential-learning – simulation courses. They are currently free to users and open to self-enrollment, with the exception of some courses that are available only for specifically created groups. Those courses have a blended format that includes studying of distance-learning modules and webinars with experts.

The idea of developing an educational platform was based on the book “Theory and Practice of Online Learning (Anderson and Elloumi, 2004). In particular, the platform development was aimed to ensure

that all the necessary materials were placed in one frame, which would ensure its application in an asynchronous way. Asynchronous learning would also involve engaging students through the use of a case-study approach, as well as simulations of legal work.

Also, the author took into account the SSDL model created by Gerald Grow (Grow, 1991). Hence, the non-supervised online courses on practical skills are more focused on the first two levels of learners' development – 1) a depending learner and 2) motivated learner, although they could be used as well for 3) involved learner and 4) self-regulated learner. The main purpose of the non-supervised online courses on practical skills is to prepare and to engaged any learner before the face-to-face training. Thus, detailed instructions are included into the courses to allow any learner to navigate smoothly in the courses. The usage of the same format in all courses ensures that the learner's actions are understandable, both technically and substantively. Simulation courses include many involving activities for the motivated learner that keep the learner interested and focused.

The next approach examined by the author covers the hyutogothic approach (Ignatovich, 2013; Hase and Kenyon, 2001). An emphasis was placed on the internal motivation of students, since external motivation can only be an additional element when using the courses.

Thus, the non-supervised courses on practical legal skills are addressed to the scaling up the number of training on practical legal skills and contribute to:

- a) providing an idea of professional skills among students who do not have access to in-person skills training,
- b) more effective developing of professional skills of students who have access to in-person training, since students could become familiar with the basic approaches in advance,
- c) distribution of effective teaching materials among educators who can use them to ensure students' independent work.

To achieve these goals, the educational design of professional legal skills courses was built to ensure the constant involvement of students and their inclusion into mock practice.

The methodology of face-to-face trainings for lawyers is based on an experiential-learning approach (Grow, 1991) that involves 1) gaining

one's own experience, 2) self-observation and self-reflection, during which the students reflect what they have just learned, 3) conceptual comprehension of new knowledge, their theoretical generalization, and, finally, 4) experimental verification of new knowledge and its independent application in practice. This approach provides immersion in the direct activity of a lawyer using hypothetical situations (Abrosimova et al., 2015).

#### **IV. Simulations as a Teaching Method**

There are two main methods that are used in teaching practical skills of a lawyer:

- case-studies that allow the law students to actualize seriousness analytical skills of a lawyer through solving problems,
- simulation of certain types of legal activities, for example, meetings with a client, negotiations, participation in a trial or participation in certain stages of a trial.

Conducting professional skills' legal training, case-studies and simulations can be used complementary to each other. Thus, case-studies based on various hypothetical fact-patterns help a lawyer develop their analytical skills. Small simulations on practical legal skills based on simple case-studies help students practice various communication and trial skills. A bigger simulation based on only one hypothetical fact-pattern allows not only to work out practical legal skills, but also to show the inter-connection of skills. For example, the ability to conduct direct or cross examination in court effectively is based on the case development and case strategy. Therefore, the most effective training method is simulations – mock trials or moot courts.

Simulations ensure a higher level of motivation and involvement of all training participants, since the expected results and their applicability in professional activities are clear for the training participants. Litigation simulations are based on the mechanics of competition, which additionally ensure the involvement of participants. When it is necessary to solve specific professional tasks, albeit in a playful way, the assimilation of the new information is increased significantly. And the students are much more involved, since they are already focused on

why they need this information. Feedback provides its own reflection, as well as the correction of actions and understanding of new information, if necessary. This allows them to reflect the experience gained and conceptualize the knowledge to be ready to apply it in a new situation.

## **V. The Unified Frame of All Modules**

The main task in the development of non-supervised online courses on practical legal skills is to fully preserve the experiential-learning approach that is used in in-person legal skills training. So, upon creation of non-supervised online courses the authors should ensure engagement, keep interactivity and feedback, and ensure the “complexity” of the educational material.

To achieve these goals the “frame” and the “core” of each of the courses should be thought out.

Developing non-supervised simulations was based on the availability of previously created teaching materials (Abrosimova et al., 2015), in particular: detailed description of professional skills, detailed teaching recommendations for professional skills learning, including a description of the expected results for students, hypothetical fact-patterns and attached documents or confidential information for the students.

An additional teaching advantage of simulation courses for law students is the existing requirements of the legislation and the well-established practice of providing legal assistance.

The “frame” of the courses was developed uniformly for all courses on the practical legal skills for [online.codolc.com](https://online.codolc.com):

- 1) the structure of the courses has been determined, based on the list and sequence of application of the professional skills of a lawyer,
- 2) “end-to-end” history and style that ensure the coherence of all skill courses,
- 3) a unified communication style of virtual mentors with students and a feedback system,
- 4) main and additional hypothetical fact-patterns that can clearly demonstrate professional skills,

5) using the main and several additional authoring tools for content creation.

These components ensure the unity of all online simulations and a holistic perception of all educational materials.

Initially, all simulation courses on practical legal skills were planned as integral parts of one online course, but during the development of the online courses, it became obvious that a single course would be too long. Each particular simulation course is a complex training module for studying professional legal skills. Therefore, by the end, 12 courses were created that are sufficient for developing professional legal skills. They are all united by the single hypothetical fact-pattern that needs to be resolved, with the exception of the first online simulation course, where the introductory hypothetical fact-pattern was used. This approach has shown its effectiveness, since the “completion” for each individual course is more than 70 %, which is described in more detail below.

## **VI. Modules' Description**

The structure and sequence of online simulation courses was determined by the list and sequence of the lawyer's professional skills application described in the manual “Legal Clinic – Education Based on Practical Experience.” Thus, the professional legal skills are divided into two main parts: the counseling skills of a lawyer and the trial skills of a lawyer. The counseling legal skills include those that are necessary in order to interact with the principal and analyze the circumstances of the hypothetical fact-patterns. Litigation skills include the skills required to effectively interact with the court. This structure and consistency has been carried over to the online format.<sup>3</sup>

In the course of developing the structure of the courses it became clear that it was necessary to supplement the list of courses with several more online courses in comparison with the in-person training. It was made to ensure the consistency of simulation to avoid unclarity for students. These simulation courses include Module 3 “Case Strategy,” Module 4 “Analysis of Evidence,” Module 7 “Preparation for the

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<sup>3</sup> The list of the courses is available at [online.codolc.com](https://online.codolc.com).

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Preliminary Hearing,” and Module 8 “Preliminary Hearing.” According to the experience of in-person students’ schools on professional skills it is especially difficult for students to understand the analytical legal skills, as well as how exactly the court interacts with the parties after it has been decided that the trial will take place, but before the trial starts. Additional simulation courses show the continuity of a lawyer’s work on a case and methodically ensure the consistency and continuity of the simulation courses, reflecting the reality of a lawyer’s work.

Thus, the structure of the simulation courses demonstrates all kinds of activities of a lawyer on a civil case, from the first meeting with the client and clarifying the legal issue to resolving the case in court on the merits and delivering a court decision. Only the first course of all listed is introductory and based on another fact-pattern. It introduces the format of the simulation, virtual mentors and a general approach to case development.

A cross-cutting hypothetical fact-pattern is about the first civil case of the lawyer who just started. He or she meets law firm partners, who are the mentors, and does different tasks in different locations such as mentors’ offices, meeting rooms, or an office-desk. A cross-cutting hypothetical fact-pattern that unites all courses was chosen based on the experience of numerous face-to-face training sessions. Students tend to have difficulty in case development. An only hypothetical fact-pattern provides an opportunity to demonstrate the coherence of all professional legal skills at every stage of the work on the case. The connectivity of all online simulation courses is provided by tools such as virtual mentors and repeating virtual locations.

The simulation courses use images of active participants (*e.g.*, Arkady, Tatiana, Maxim, Ekaterina) in the legal clinics’ community recognizable for students who have taken part in the activities of the Center for the Development of Legal Clinics. Therefore, the images of mentors can be called as a tool for simulations’ gamification – “Hidden Easter eggs” – recognizable images demonstrate to the student that they belong to the community. Moreover, each practical legal skill’s simulation course uses the names of mentors to create dynamics of movement between different offices in the office and interaction with

mentors, such as *Arkady's Office*, *Tatiana's Office*, *Maxim's Office*, *Ekaterina's Office*, *Office-Desk*, *Meeting Room*.

Trial simulation courses use stylized slides to create the “atmosphere” of a trial with virtual characters. It also uses “Hidden Easter eggs” – a reference to American or English court dramas: in countries of the common law system, filming in the courtroom is prohibited, and sketching of the main characters is common. In addition, in simulation courses on trial skills, there is a virtual judge who reacts in a “typical” way to the actions of the trial participants, which additionally immerses the student in the reality of the trial.

The uniform style of all simulation courses makes it possible to keep the interest in learning throughout the modules, but at the same time gives the student the freedom to stop and start over. At the same time, the same hypothetical fact-pattern makes it easier to enter and navigate any simulation module.

The unified communication style of virtual mentors consists of several methodological techniques based on the “solving-problem” approach. Thus, in each course

- an educational practical task is based on the developing situation,
- sequentially and in parts, the necessary information is provided to solve the case – theoretical, legislative, additional information on the case,
- after each “presentation” part, questions are included to test knowledge and understanding of new information with mandatory instant detailed feedback,
- also, in each training module of the courses, the actual practical part is included, which is accompanied by the instant detailed feedback explaining the legal and practical grounds for the right or wrong choice, in some courses it is also accompanied by the links to legislation or additional documents.

The unity of courses is also underlined by the utilizing of one main authoring tool – the H5P column, which allows making internal algorithms of each simulation course, a link to external sources of information, combine presentations with question sets, and embed videos or *Learning.Apps* elements. Also, the simulation courses actively use dialogue simulators to demonstrate communication skills.

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Another aspect that ensures the unity of all simulation courses is the hypothetical fact-pattern, that is, a provided legal issues for practical tasks. This aspect is best revealed when describing the “core” of each of the courses. The work under the “case” should be attributed to the “core” of the simulation courses, since it constitutes the main educational value of the simulation courses. Based on Benjamin Bloom’s taxonomy, it can be said that the online courses are developed with the following aims:

- to consolidate knowledge about the structure of each practical legal skill and the system of practical legal skills,
- to highlight the most important aspects of each practical legal skills at each stage of work on the case,
- demonstrate the application of practical legal skills in a mock situation.

Thus, non-supervised online simulation courses could be able to solve the problem of preparing students to face-to-face training and entry into independent professional work.

Two hypothetical fact-patterns were selected for the online simulation on practical legal skills. The first hypothetical fact-pattern is introductory and is aimed to demonstrate the case development and case strategy, to underline and to ensure the coherence of all legal work from the first meeting with the client to the litigation. The second and main hypothetical fact-patterns is aimed to demonstrate all stages of work under a civil case.

The degree of elaboration and details of fact-patterns for face-to-face training on professional skills and for online simulation courses on professional skills is significantly different. In the case of face-to-face training a package of documents and confidential information for the participants are shorter, and the results of the solving the case-studies directly depend on the actions of the participants at the training. Therefore, it is possible to predict the development of the situation at the training within the limits of several possible scenarios. In this regard, one of the main skills of the educator at face-to-face training is to provide feedback, depending on the development of the situation, which should be reflective and teaching. This approach is impossible to implement in non-supervised online simulation courses.

On the contrary, the use of case-studies in non-supervised online simulation courses presupposes a detailed “scenario” prescription of the development of the situation. This approach imposes certain requirements on the selection of those cases that can be used. First, the fact-pattern should include only a few facts and only a few documents (evidence) to work on the case-study. Second, the legal issue should be resolved on the several clear sources of law well-known and accessible to students, for example, the Civil Code. Third, the fact-pattern should be decided on the basis of a clear theoretical approach to the case development and facts. Fourth, it is necessary to think in detail about the legal development of the case, limit the potential number of options, develop in detail the most likely options for professional choices that need to resolve the case-study and their validity, including the case-statement of the opposite side, as well as the advantages of the main option and the disadvantages of other options. The civil tort claim fits all mentioned criteria of an “efficient case-study,” like property or personal damage claims. Because of this the fact-pattern of the case-study is about the leakage in the apartment. The facts of this case-study are clear and can be summarized briefly.

In **Module 3 “Case Strategy”** all the necessary information to work on the case-study is organized together to demonstrate clearly its inter-connection. For this purposes the *Accordion* tool from *H5P* is used. Thus, the student immediately gets access to a description of the facts, a list of evidence and necessary documents, and to the applicable legislation. Students also get access to theoretical conceptions on how to analyze arisen legal issues.

Each of the simulation courses provides an opportunity to receive knowledge on a separate stage of work on a civil case in a “slow” pace, allowing the student to focus on important components of a lawyer’s work at each separate stage.

**Module 1 “Case Development”** is an introduction, and its main aim is to clarify the principles of legal thinking. It involves three types of “incoming information” about the circumstances of the client, his/her goals, as well as with existing regulations that can potentially regulate these particular circumstances. Moreover, a lawyer should

transform this information through his analytical activity into a case-statement, including a description of legally important circumstances, legal grounds and legal claims.

Mastering analytical skills is the greatest challenge for law students, despite the fact that this is the main professional activity. Law students are often not taught the ways to apply the law and are not capable in those analytical operations that need to be done in order to compare a specific rule with facts and make a legal conclusion. That is why this course starts all legal skills simulation courses. After this course, the student should have an understanding of what information is needed for a lawyer to work on a case, and, accordingly, what the client should be asked about at the meeting, and how to work with this information further.

**Module 2 “Meeting a Client and Interviewing”** is focused on the skill to gain information from the potential client in order to be able to draw a conclusion whether there are grounds for a legal decision.

An interviewing skill is usually given a lot of attention in training. Although training often focuses on the psychological component of the first communication, for example, on how to create a comfortable and trusting environment for the client. Because of that, it is often difficult for learners to master the other mandatory skill: asking the questions about information that a lawyer needs to counsel. Therefore, the course provides information on the stages of interviewing, the types of questions appropriate to ask, and in this way the course demonstrates a “sample” of the conversation during the first meeting with the client in the format of a dialogue simulator, with an analysis of the typical mistakes of beginners. The course ends with a training task on how to summarize the information received in order to work with this information further in the simulation courses.

The purpose of the third simulation course **Module 3 “Case Strategy”** is to demonstrate analysis of facts and law and those professional choices that usually arise. In particular, the course demonstrates the approach to the legal analysis of a civil law tort according to the course plan.

In the course of work on the proposed fact patterns, students should analyze the patterns and applicable law. To do this, students should consistently answer a chain of questions based on the text of the applicable legal provision, taking into account the distribution of the burden of proof in such cases. Therefore, first students should analyze the mock-documents, the story of the client and decide what kind of claims are in question. Then students should think about who could be a potential defendant, taking into account the available evidence. There are two options to answer this question, so the next step is considering the advantages and disadvantages of both to prepare a client statement for discussion with the client of these two options, as required by rules of professional conduct. Both legal statements are summarized on the slide:

The fourth simulation course **Module 4 “Analysis of Evidence”** is also devoted to analytical skills that are not usually given enough attention in face-to-face training, since it is assumed that the topic of evidence is sufficiently well studied within the framework of procedural law courses. But in practice, theoretical knowledge is not always easy to apply in the framework of a specific case, it is for this that this course demonstrates in detail how a practicing lawyer analyzes evidence, selects the most “strong” and “weak” evidence, works out the possibilities to neutralize the shortcomings of his own evidence, and the possibility of exploiting the lack of evidence of the opposite side.

The result of work on this online simulation course is the demonstration which particular case strategy is the most promising. To make a conclusion the student evaluates each of the available documents according to several formal and informal criteria. The understanding and skill of applying these criteria are the expected learning outcomes of this course.

The fifth online simulation course **Module 5 “Counseling”** demonstrates the skill of a lawyer to provide professional advice. In this course, not only the stages and methods of consulting are given, but also important rules of professional conduct of a lawyer are emphasized. Particularly, the course underlines the client-oriented approach that means that only the client decides whether and what legal actions should be taken.

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Knowledge and understanding of the steps and peculiarities of counseling meetings is demonstrated by a dialogue simulator, in which the student receives detailed explanations on how to talk with a client and explain legal perspectives of the claim.

The sixth simulation course **Module 6 “Drafting a Claim (Legal Writing and Legal Design)”** is aimed at teaching how to write a claim, taking into account the formal and informal requirements, as well as the necessary content of this adversarial submission. Thus, in the training modules of this course, the presentation, practical task and the result of their work are most clearly “linked” to each other, which is provided in the form of a ready-made part of the statement of claim. Below is an example of such a task for preparing the descriptive and motivating part of the statement of claim, as well as the corresponding part of the statement of claim, which students can download.

As mentioned above, the further online simulation courses **Module 7 “Preparation for the Preliminary Hearing”** and **Module 8 “Preliminary Hearing”** are focused more on a consistency of the simulation, they demonstrate the “routine” of the professional life of a trial lawyer, which usually remains outside the scope of attention of the in-person professional training programs, and usually is mastered by lawyers in practice.

**Module 7 “Preparation for the Preliminary Hearing”** demonstrates what lawyer should do after filing a legal claim to the court.

Also, this simulation course is aimed at demonstrating the skill of preparing procedural motions to the court. Since the legal writing requirements for making any written submission to the courts are similar, the bulk of the information on how exactly to write submissions was given in the previous Module. At the same time, there are specific requirements that apply to motions, and these requirements are the focus of the course. In this simulation course the additional tool called *Learning.Apps* was used to create exercises that demonstrate the correct way of informing the court on submitting motions to make it clear for the students how exactly they should do to ask the court for considering motions and why.

This course also has a built-in “entertainment” element that allows students to relax a little bit after previous intensive learning experience and before subsequent ones. The Learning.Apps element teaches to choose appropriate clothes for the court in order to meet the formal and informal requirements of the legal community.

The main focus in the next 8th simulation course is on the preliminary court hearing when procedural issues are discussed and considered by the court together with the parties. For example, is it necessary to call the witnesses for the hearing or is it necessary to provide any other evidence to the court? Despite the fact that the preliminary hearing is a technical step of the trial, participation in it causes serious difficulties for law students. Mostly because nobody explained to the students how exactly they should act during the procedural hearing in the course of their curriculum. Therefore, the main training module of this simulation course is a dialogue simulator that demonstrates a typical situation of a preliminary court hearing.

The last four non-supervised online simulation courses are devoted to the trial legal skills **“Opening Statements, Presentation of Document Evidence, Direct and Cross Examination, Closing Arguments.”**

These online simulation courses include two types of training modules:

- 1) introduction with the description of the purposes of a specific stage of the trial and tests to control the understanding, as well as information on how exactly the lawyer should prepare for this stage of the trial,
- 2) simulation with the demonstration to involve students into the “trial,” which includes not only the actual actions of the students, but also others.

This model is determined by the fact that the main educational purpose of these simulation courses is to provide students with an understanding of how the results of the analytical legal work such as case development, analyzing evidence, legal research and case strategy should be demonstrated to the court during the trial in order to convince the court.

**Module 9 “Opening Statement”** aims to clarify the purpose of the first stage of the trial and demonstrates how to prepare for the opening statement, and what exactly to say in the opening statement.

In the introductory training module, students can study a presentation on the topic, all the necessary training materials for the case, and take a quiz aimed to develop the open statement for the simulation trial.

The simulation training module demonstrates the relevant part of the court hearing, including all the communication between the judge and participants, so that the students have a clear idea of the appropriate order of actions of all participants at the beginning of the trial.

**Module 10 “Presentation of Documents Evidence”** has the same structure as the previous course: an introduction training module and a simulation training module.

The introduction training module provides a presentation, all the necessary training materials for this stage of work, and a quiz aimed to make a presentation of evidence and highlighting the information that should be “heard” in court, since everything that was not pronounced in court should not be taken into account in the court decision.

The simulation part demonstrates the trial procedure for examining written evidence and the order of the trial procedure.

**Module 11 “Direct and Cross Examination”** includes several explanatory modules and two simulations, namely: dialogue simulators. Direct and Cross Examination is one of the most difficult professional skills of a lawyer. The purpose of direct and cross examination is to provide the court with the information that the witness knows through consistent questioning. Moreover, the purposes of direct examination of “own” witness and cross-examination of “another party’s witness” differ significantly. The purposes of the direct examination are to demonstrate the information known to the witness and to confirm witness’s reliability. The purpose of cross examination of a “stranger” witness is, on the contrary, to question the credibility of this witness, to make him “unreliable.” Explanatory training modules present

information on direct and cross-examination, as well as the specific tools of asking questions and preparing witnesses.

In addition, explanatory training modules include several tasks with the aim to prepare the chain of questions to the direct and cross examination for the simulation trial. For example, students could use a specific tool — a spreadsheet with the navigating questions that might help them to prepare a list of questions for the witness. In the explanation training modules students should draw up a detailed plan for each of the interrogations that are further implemented in dialogue simulators.

The last **12th Module “Closing Arguments”** is devoted to the final stage of the trial. Therefore, it includes not only information about the closing arguments, but also summarizes the results on all 12 courses in the form of the conclusions of a court decision on a civil claim that is made in favor of the student’s virtual client. The simulation course uses the same approach as others and includes explanatory and simulation training modules.

The explanatory module provides information on the purpose of the closing arguments, the advice on the structure, and the quiz on peculiarities of the closing arguments.

The simulation module demonstrates the sample closing arguments. There are no specific tools for non-supervised online courses that allow students to develop their own text that might be supervised by the online platform without experts’ participation. Demonstration as a technique is actively used as well during the in-person training of trial skills. In online simulation on Closing Arguments is also used another educational technique: comments of the virtual mentor to underline important information on the structure and content of the closing arguments. In addition, students can download the closing argument and save it on their computer.

In the very last element of this training module, the trainees could see the conclusion part of the court decision.

Thus, the 12 non-supervised online simulation courses on practical legal skills consistently demonstrate and train all relevant legal skills to work on a civil claim. They are addressed to:

- consolidate the knowledge about the structure of practical legal skills and the system of practical skills,
- provide an understanding of how skills are interconnected with each other,
- demonstrate the application of professional skills in a practical situation.

The online simulation courses are designed in a unified methodological solving-problem approach, which involves a specific fact pattern and case-study approach. The online simulation courses include all the necessary documents and legislation to solve this case study. And students could get immediate feedback with the reasoning for the appropriate and inappropriate choices.

Courses are designed in a unified style and in one main and several additional educational online tools.

All courses taken together are a full-fledged simulation of work on a civil claim from the first meeting with the client to a decision on the court on the submitted claim. At the same time, each of the online simulation courses might be used independently, depending on the needs of the student or the task of the educator.

## **VII. Piloting of the Modules**

As of May 1, 2021, the [online.codolc.com](https://online.codolc.com) educational platform was available to students for 11 months from June 2020. During this period, more than 2,250 unique users signed up for the platform. The platform is non-commercial, the dissemination of information about it is limited to the distribution of information on social networks and information during the face-to-face events of the Center for the Development of Legal Clinics. Considering these factors, we can say that courses on the platform are attractive to users.

12 non-supervised online simulation courses on practical legal skills are created as MOOCs — massive open online courses, which are available for anyone who wants to sign in. Therefore, it is hard to control who starts the online simulation courses, but according to the platform's statistics, it is possible to track how many students start them and how many of them complete the online simulation courses.

So, as of May 1, 2021, the data on the completion of the courses were as follows:

<b>Title of the simulation course</b>	<b>Number of students who started the course</b>	<b>Number of students who completed the course</b>	<b>% of completion the course</b>
Case Development	253	196	77.5
Meeting a Client and Interviewing	492	378	77
Case Strategy	188	164	87
Analysis of Evidence	165	123	74
Counseling	115	90	78
Drafting a Claim (Legal Writing and Legal Design)	148	122	82
Preparation for the Preliminary Hearing	49	42	86
Preliminary Hearing	42	40	95
Opening Statement	38	35	92
Presentation of Documents Evidence	38	36	95
Direct and Cross Examination	47	38	80
Closing Arguments	38	37	97

Thus, the level of completion for each of the simulation courses is above 70 percent, and for some courses, it reaches 95 percent.

It should be noted that in one month from April 1, 2021 to May 1, 2021, the number of participants in all courses, with the exception of the course on Case Development, increased significantly, which is associated with the annual Competition on practical legal skills held by the Center for the Development of Legal Clinics. The Center advised participants of the Competition the online simulation courses as a useful resource for preparing for the Competition, but taking them was not a prerequisite for participating in the Competition. Nevertheless, even a simple recommendation leads to significant increases in the number of students over the past month.

Hence, the number of participants from April 1 to May 1, 2021 increased as follows:

<b>Title of the simulation course</b>	<b>Number of students who started the course</b>	<b>Number of students who completed the course</b>
Case Development	253	196
Meeting a Client and Interviewing	337–492	273–378
Case Strategy	90–188	77–164
Analysis of Evidence	86–165	69–123
Counseling	59–115	51–90
Drafting a Claim (Legal Writing and Legal Design)	119–148	101–122
Preparation for the Preliminary Hearing	35–49	31–42
Preliminary Hearing	29–42	28–40
Opening Statement	27–38	23–35
Presentation of Documents Evidence	27–38	25–36
Direct and Cross Examination	30–47	26–38
Closing Arguments	28–38	27–37

These sheets also show the focus of trainees who are more likely to take courses on communication legal skills, which are more relevant to them, since students in legal clinics most often use these skills. In addition, legal clinic educators are also mainly focused on teaching these skills. And the Competition on practical legal skills is focused specifically on these skills.

The use of trial skills by students is limited by law, since it is possible to represent interests in court only with a diploma in legal education, and therefore students consider these skills in a more abstract way. This may explain the smaller number of participants in the courses on trial skills. But it should also be kept in mind that courses on trial skills became available to students only on January 15, 2021.

The recommendation to take courses before the annual Competition is one example of the inclusion of online simulation courses in the educational environment for teaching the professional skills of a lawyer. So far, it is difficult to say that there is a direct connection between the completion of online courses and the level of legal skills of students who participate in the Competition. But from the experience of other projects that used distance learning modules and face-to-face training, it can be assumed that those students who pre-take online simulation courses will be more successful during face-to-face activities, and later in their professional practice.

Below there are several reviews of students on the online simulation courses.

Review after completing of all 12 non-supervised online courses:

“In general, I am absolutely delighted! I did all 12 courses with great pleasure, studied, copied everything to myself – very, very useful material. And it is convenient, understandable, interesting and not boring to go through everything. It is especially impressive that you immediately receive comments on the correctness or incorrectness of the chosen course of action, as well as the general systematic nature of the presentation of material and tasks. In addition, the most important thing is that a clear algorithm of your actions as a future (or potential) lawyer is formed in your head. Well, and, importantly, you clearly understand and realize those moments where you have gaps or lack of theoretical knowledge. In general, a huge thank you for the impressive, extremely useful work!!!”

Feedback on the course “**Drafting a Claim (Legal Writing and Legal Design)**”:

“A very good course, thanks, everything is clear. I realized that when I participated in the moot court and wrote the statement of claim, I made several mistakes, thanks to your course I understood which ones.”

Feedback on the course “**Preparation for the Preliminary Hearing**”:

“The course is good and will greatly help law students with no experience. For those who already have work experience, it will be rather a way to consolidate and refresh knowledge.”

**Feedback on the course “Preliminary Hearing”:**

“In general, the course is very useful for a novice lawyer, since it is the understanding of the procedure in court that usually causes difficulties.”

Thus, at this stage, it can be argued that the courses meet the request of their target audience – law students – for their training in the professional legal skills. It is possible to say with confidence no sooner than two years from now how much the use of non-supervised online simulation courses on practical skills is reflected in the level of mastering professional skills by law students. During this period, the existing 12 online simulation courses on practical legal skills could be included as a preliminary element of several regular face-to-face events of the Center for the Development of Legal Clinics. Over a longer period of time, it will be possible to track the performance of students at the face-to-face events of the Center for the Development of Legal Clinics and link their level with the completion of the non-supervised online simulation courses.

**VIII. Conclusion**

It should be noted that courses on the practical skills of a lawyer, like other courses posted on the platform, arouse the interest of legal educators as a convenient, interesting teaching material that legal educators can use in their teaching practice in various ways. The online simulation courses could be used in a flipped class format, meaning that students first could do the online simulation courses and to get information about the particular legal skills by themselves before a class. Students had to confirm the completion of the courses with screenshots from their personal accounts in order for them to be credited. And then students could master their knowledge on practical legal skills during face-to-face classes.

Taking into account the relatively small experience of using 12 non-supervised online simulation courses on the practical skills of a lawyer, it is possible to say that the created online simulation courses could contribute to the following purposes:

a) forming an understanding of professional legal skills for students who do not have access to face-to-face legal skills training,

b) more effective mastering of professional skills by students who have access to face-to-face training, since students will already be familiar with the basic approaches in advance,

c) distribution of effective ready-made teaching materials among educators, who can use them to ensure independent work of students.

Developing non-supervised online simulation courses significantly differs from organizing face-to-face programs. The difference lies in the fact that non-supervised online courses require significantly more attention to details and materials' "complexity." In most cases, it is necessary to provide theoretical material and case studies in a non-linear manner to demonstrate immediately how to apply theoretical conceptions to the hypothetical fact-patterns. Questions for quizzes and practical tasks should be very carefully worded to avoid misunderstanding or double meaning. As well, the automatic feedback should be explanatory and clear to the students.

The author opines that the best usage of the online simulation courses on practical legal skills is to combine them with the face-to-face training under the well-trained legal educators' supervision.

### References

1. Abrosimova, E.A., et al. (2015). *Legal Clinic — Education Based on Practical Experience: Teaching Aid. Part I*. Moscow: Legal Clinics Development Center (In Russ.).

2. Anderson, T. and Elloumi, F., (2004). *Theory and Practice of Online Learning*. Alberta: Athabasca University.

3. Bulakova, E.Yu., Voskobitova, L.A., Voskobitova, M.R., Lukyanova, I.N., et al. (2006). *An Advocate: Professional Skills*. Moscow: Wolters Kluwer (In Russ.).

4. Grow, G.O., (1991). Teaching Learners to be Self-Directed. *Adult Education Quarterly*, 41(3), pp. 125–149. Available at: <http://longleaf.net/wp/articles-teaching/teaching-learners-text/> [Accessed 15.11.2021].

5. Gutnikov, A.B., (2008). Clinical Legal Education in Modern Contexts. In: *Proceedings of International Scientific and Practical Conference "The Main Trends of Development of Legal Education*

in the East Siberian Region: Problems, Trends, Prospects” [23–25 January, 2008]. Irkutsk. Available at: [https://codolc.com/bookslib/O\\_juridicheskikh\\_klinikakh/Klinicheskoe\\_yuridicheskoe\\_obrazovanie\\_v\\_sovremennyh\\_kontextah](https://codolc.com/bookslib/O_juridicheskikh_klinikakh/Klinicheskoe_yuridicheskoe_obrazovanie_v_sovremennyh_kontextah) [Accessed 11.10.2021] (In Russ.).

6. Hase, S. and Kenyon, Ch., (2001). From Andragogy to Heutagogy. *Southern Cross University*. Available at: [https://www.researchgate.net/publication/301339522\\_From\\_andragogy\\_to\\_heutagogy](https://www.researchgate.net/publication/301339522_From_andragogy_to_heutagogy) [Accessed 15.11.2021].

7. Ignatovich, E.V., (2013). *Heutogogy as a Foreign Concept of Self-Studying*. Continuing Education: 21st century. Issue 3 (In Russ).

8. Moiseeva, E.N., (2017). Reforming the Legal Services Market in Russia: a Sociological Analysis. *Zakon*, 11, pp. 68–81 (In Russ.).

9. Moiseeva, E.N., (2018). Legal Education in Russia: Analysis of Quantitative Data and Changes since 2012. In: *Analytical reviews on law enforcement issues*. St. Petersburg: IPP EU SPb (In Russ.).

10. Sarker, Sh.P., (2014). *Legal Education in Asia*. Editing by Shuvro Prosun Sarker. The Hague: Eleven International Publishing.

11. Sullivan, W.M., (2007). *Educating Lawyers. Preparation for the Profession of Law*. The Carnegie Foundation of the Advancement of Teaching. Available at: [http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary\\_pdf\\_632.pdf](http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf) [Accessed 15.11.2021].

12. Voskobitova, L.A., Voskobitova, M.R., and Rubinshtein, R.E., (2009). *Methodological Materials for Trainers in the System of Professional Development of Lawyers*. A Study Guide. Moscow: American Bar Association (In Russ.).

13. Yasvin, V.A., (2020). *Instrumental Expertise in the Process of Pedagogical Design of the School Environment*. Author’s Abstract of Doctoral Dissertation. Moscow: Moscow City Pedagogical University (In Russ.).

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## **Modern Technologies as Compensatory Means of Ensuring the Rights of Vulnerable Persons in Criminal Proceedings<sup>1</sup>**

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**Abstract:** This article presents theoretical and practical aspects of the use of modern technologies to promote the rights of persons with disabilities as participants in criminal proceedings. In this context, modern technologies are considered as means of compensatory nature. These technologies help persons with disabilities to become active participants in criminal procedural legal relations and independently exercise their rights and perform duties in the field of criminal proceedings. Through the use of modern technologies, persons with disabilities can level their position in relation to other participants in criminal proceedings who are active subjects of criminal procedural legal relations, and can independently exercise their rights and perform their duties. This is part of the compensatory approach that should be implemented in criminal proceedings in order to compensate persons with disabilities for the restrictions that they have due to circumstances beyond their control. The social vulnerability of individual members of society should be compensated by the state in the person of the legislator and further implemented by state bodies such as law enforcement officers. This is the essence of the compensatory approach. One can note the importance of this approach for observing human rights and building the rule of law and a welfare state in countries that view themselves as democratic. This is also important for improving the quality of international legal acts that introduce a standard for all States, members of the world community.

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<sup>1</sup> In this article, the terms “vulnerable persons”, “persons with disabilities”, “socially vulnerable persons” will be used as equivalent. This is due to the fact that at the moment there is no single generally accepted terminology in the field that forms the subject of this study. At the same time, with a literal interpretation of the content of these terms, you can see their features, and a mismatch as a result. However, given the common essence that they have, in the context of the general topic of the article, the authors will use them as synonyms.

In this connection, it is proposed to develop at the international level the direction of using the achievements of modern science and technology as means of compensatory nature, to equalize the legal status of persons with disabilities participating in criminal proceedings. As a general conclusion, a proposal is made to extend the compensatory approach not only to the field of criminal procedure, but also to the entire legal sphere, both in the norms of international law and national legislation.

**Keywords:** persons with disabilities; criminal proceedings; human rights; technologies; compensatory approach; compensatory means

**Cite as:** Kurbatova, S.M. and Aisner, L.Yu., (2021). Modern Technologies as Compensatory Means of Ensuring the Rights of Vulnerable Persons in Criminal Proceedings. *Kutafin Law Review*, 8(4), pp. 546–572, doi: 10.17803/2313-5395.2021.4.18.546-572.

## Contents

I. Introduction .....	547
II. General Characteristics of the “Socially Vulnerable” Category of Persons. ....	548
III. Reflection of Humanistic Ideas of “Vulnerability” in the Norms of the Russian Criminal Procedure Law .....	552
IV. The Possibilities of Modern Technologies to Ensure the Implementation of the Rights of Vulnerable Persons in Criminal Proceedings .....	555
V. Conclusion .....	566
References .....	567

## I. Introduction

Human rights have now become one of the fundamental institutions in connection with which international and national legal acts are formed, scientific schools are established, new, more diverse concepts and ideas are emerging to understand them, create conditions and provide opportunities for their implementation.

By the end of the twentieth century, the development of the world community and states reached such a humanistic level that one of the manifestations of this fact was the recognition that not all people, for various reasons, can independently exercise the rights granted to them. Age, illness, stress, physiological conditions, social factors and many

other circumstances often become an insurmountable obstacle to this. As a result, human rights are violated. In some countries, because of this fact, a “barrier” is formed on the way to building the rule of law and a welfare state in them.

It becomes obvious that such a situation needs to be corrected, and such persons need to be provided with additional legal guarantees, means by which these subjects can exercise their rights and be full participants in various legal relations. This is the only way to ensure the observance of human rights for persons with disabilities.

Such situations, related to the difficulty of exercising their individual rights become particularly important when it comes to the scope of public law, for example, criminal proceedings. This state of affairs is characterized by the existence in this area of the imperative method of legal regulation and the public nature of legal relations, which can lead to the risk of human rights violations. If we speak about people who are not able to take care of themselves on their own, who are socially unprotected, vulnerable, then this becomes a difficulty to them.

There are different ways to solve this problem. This article will consider one of them, namely the use of modern technologies as a means of compensatory nature, with the help of which persons with disabilities can become active participants in criminal procedural legal relations and independently exercise their rights and perform their duties in the field of criminal proceedings.

## **II. General Characteristics of the “Socially Vulnerable” Category of Persons**

Currently, there are various designations in the legal space that somehow reflect the characteristics of persons who, due to physical, mental, psychological, physiological, social and mixed reasons, need support and additional measures and means to equalize their position in comparison with other members of society. However, it is precisely because of the vagueness of understanding of who exactly belongs to this social group, as well as because of the well-established different approaches to this issue in different states, it is possible to note the variety of terms used.

Thus, in various branches of law, in different spheres of Russian society and the state, you can find such terms as the “disabled,” “vulnerable,” “socially vulnerable,” “cognitively vulnerable,” “socially unprotected” as well as “a person who has found himself in a difficult life situation,” “a person with disabilities,” “a citizen with limited mobility,” etc. (McCormic, 2004).

Examining the content of the definitions of several such concepts, A.M. Plotnikova draws attention to the fact that the “*stable unit*” a person with disabilities “is used as a hyperonym in relation to the hyponyms ‘disabled person’, ‘wheelchair user’, ‘autistic person’, ‘deaf-blind person’, etc. Interpretations offered by traditional explanatory dictionaries demonstrate the dominance of physiological features over social ones, and in ideographic dictionaries of the Russian language, the studied units are included in groups of nominations of persons by type of diseases” (Plotnikova, 2019, p. 209). At the end of her research, she concludes that “a number of issues concerning the use of certain units in the language of law, written business speech of charitable organizations and mass media discourse, as well as their reflection in the dictionaries of the modern Russian language” (Plotnikova, 2019, p. 209), thereby emphasizing the problem of the lack of uniformity in the legal understanding of terminology in this area. This creates a lack of a uniform approach on the part of the state in creating conditions for the full participation of persons from this category of the population in different spheres of life and providing them with opportunities to exercise their rights as participants in legal relations.

One of the options for solving this problem may be international law. The development of humanistic ideas, which began actively in the world since the middle of the twentieth century, as a result of the universal recognition of the importance of human rights that came after the end of the Second World War, is reflected in the content of international documents, and then in the norms of national legislation.

The formation of an understanding of the fact that the existing various socially unprotected groups of the population need to be united into a single general legal category in order to develop a unity of the

conceptual apparatus, the foundations of their special legal status and legal guarantees for its implementation, has become one of the manifestations of this process.

Such a legal category is the term “vulnerable,” which is already used at the UN level and is found in international legal acts. However, currently there is no international legal document that would interpret its concept, establish a list of criteria by which certain persons could be attributed to this category, *etc.* (Lewis, 2002). In the coming years (or even a decade), the adoption of such a legal document is not expected. Therefore, it is difficult to introduce any single terminology in this area at the level of national states: it is not known which basic term will be formulated and introduced as a result—“vulnerable,” “socially vulnerable” or “vulnerability” will disappear from its content altogether.

In any case, according to S.E. Nesmeyanova and E.G. Kalinina, *“states themselves should decide on the application of the concept of vulnerability and create a system for protecting the rights of vulnerable people that corresponds to national interests and international law”* (Nesmeyanova and Kalinina, 2017, p. 7). We should agree with this, since today states, of course, should develop the ideas of the rule of law and a welfare state, improve them, and reflect them in the norms of their legislation. However, they need to be guided by the legal ideas and their semantic expressions and characteristics that have been formed in their legal environment, based on the provisions of international human rights instruments.

As for the grounds for assigning persons to this category, for example, according to V.G. Mikrina, they *“are violations of human rights, lack of equality, discrimination based on gender differences, on physiological characteristics, age and legal status of a person”* (Mikrina, 2019, p. 12). She highlights the fact that *“two factors are involved in the formation of vulnerable groups of the population: external and internal. The external influence on the degree of legal insecurity is exerted by the world community itself, which accumulates unfavorable conditions for a certain category of persons. In turn, internal individual physical or mental characteristics, age, gender, disability, any vulnerability in the legal situation lead to risks*

*of becoming a victim of violations of fundamental human rights and freedoms”* (Mikrina, 2019, p. 13).

E.S. Alisieich also believes that *“the vulnerability of an individual or a group of the population means, first of all, a higher risk than others due to objective external factors and (or) existing physical or psychological characteristics of becoming a victim of violations of human rights and freedoms, including being limited in the ability to realize the rights and freedoms guaranteed to everyone”* (Alisieich, 2012, p. 14).

Adhering to this line of reasoning, as well as taking into account a number of the following factors:

1) the term “a disabled person” currently used in the Russian legislation (and as a result – in society) does not correspond to the spirit and letter of modern international law,<sup>2</sup>

2) there is already a fundamental international act defining the basis for the special status of persons with disabilities – the UN Convention on the Rights of Persons with Disabilities of 2006 (hereinafter also the Convention),

3) the purpose of the Convention is “to promote, protect and ensure the full and equal enjoyment by persons with disabilities of all human rights and fundamental freedoms” (article 2 of the Convention),

4) a number of articles of the Convention aimed at creating conditions for the possibility of participation of vulnerable persons in court proceedings, including in criminal cases,<sup>3</sup>

we can suggest the term “persons with disabilities” should be used in the Russian legislation for the regulation of the rights and interests of this category of the population (including in the field of criminal proceedings).

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<sup>2</sup> Literally translated, “disabled” means “defective”, which is degrading to the human dignity of people belonging to this category. It was on this basis that the UN Convention on the Rights of Persons with Disabilities of 2006 was adopted, which made a departure from the previously existing medical approach to identifying such a category of the population. Now it *“includes persons with persistent physical, mental, intellectual or sensory impairments that, when interacting with various barriers, may interfere with their full and effective participation in society on an equal basis with others”* (Article 2 of the Convention).

<sup>3</sup> For example, Article 12 “Equality of all before the law”, Article 13 “Access to justice”, Article 14 “Freedom and personal integrity”, etc.

### **III. Reflection of Humanistic Ideas of “Vulnerability” in the Norms of the Russian Criminal Procedure Law**

The formation of an enlarged legal category from among persons who, due to external or internal factors, need some external support in order to be full-fledged members of society and enjoy the rights of a citizen of the Russian Federation is a natural process of evolution of the Russian state (Nagornaya, 2021). In some areas, this has been more developed, in some – less (Sinkovskaya et al., 2020). The first ones include the system of social protection of the population, education, the field of providing medical care and providing medical services, labor relations, *etc.* The second category includes, in particular, the sphere of criminal proceedings, the main source of law for which is the Criminal Procedure Code of the Russian Federation (hereinafter also referred to as the Code of Criminal Procedure of the Russian Federation), adopted in 2001.

The basis of this normative legal act is the accumulated historical experience of our state in the field of legal regulation of criminal procedural relations. Indeed, if we analyze the history of the formation and development of the Russian criminal procedure legislation, we can see how gradually, sometimes slowly, sometimes more intensively, changes in the Russian criminal procedure took place, increasingly reflecting humanistic ideas concerning the understanding of the characteristics of certain participants in criminal procedure relations from among the so-called “vulnerable” persons (Kurbatova, 2021b, pp. 146–147).

Despite the ongoing humanization of the criminal policy in our state, the Criminal Procedure Code of the Russian Federation does not differ much in this regard from the previous Criminal Procedure Code – the Criminal Procedure Code of the RSFSR of 1960. First, the categories of persons that are distinguished by the modern legislator as holders of a special procedural status in fact have remained unchanged, these are minors and persons in respect of whom proceedings are being carried out on the application of compulsory medical measures. But even despite the existence of such independent chapters as “Proceedings

on criminal cases against minors” (Chapter 50) and “Proceedings on the use of compulsory medical measures” (Chapter 51), scholars and practitioners have accumulated quite a number of questions about their content (Bertovsky, 2021, pp. 9–15; Vorotnikova, Gavrilov, Drobysheva, et al. in Chernov, 2010, pp. 95–100; Kachalova, 2019, p. 11; Nikolyuk, Kalnitsky, 1990; Shatalov, 2014, pp. 41–45 and others) although there are relevant explanations at the level of the Plenum of the Supreme Court of the Russian Federation.<sup>4</sup> Second, at the same time, the Criminal Procedure Code of the Russian Federation has not established the institution of procedural legal capacity and legal capacity, although the need for such an approach was repeatedly raised by Soviet scholars in the second half of the twentieth century (L.D. Kokorev, I.L. Petukhov, P.V. Poloskov, V.M. Savitsky, M.S. Strogovich, *etc.*).

The category of legal capacity can and should be the basis for the legal regulation of the procedural status of participants in criminal proceedings. First, it is characteristic of the theory of Russian law and familiar to it. Second, it has shown its effectiveness in civil branches, where it has been successfully used for a long period. Third, it would reflect a unified approach to the legal regulation of basic categories, which should be initially uniform in their legal understanding and only then be disclosed taking into account the specifics of a particular branch of law.

Fourth, when it comes to persons with disabilities as participants in legal relations, based on the essence of the institution of legal capacity, they can be classified as holders of “limited legal capacity” or even “incapacitated” with all the legal consequences resulting from this, due to the specifics of a particular branch of law.

With regard to criminal proceedings, it is necessary to differentiate its participants who have limited legal capacity due to the reason and nature of their limited capabilities, as a result of which they cannot

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<sup>4</sup> Plenum of the Supreme Court of the Russian Federation. On the judicial practice of applying legislation regulating the peculiarities of criminal liability and punishment of minors (with amendments and additions) Resolution (2011), in Legal reference system “*ConsultantPlus*”; *etc.*

fully independently exercise their procedural rights, perform duties, and protect their interests:

1) with physical disabilities (limited opportunities are the result of illness, injuries, making it difficult or impossible to have real access to justice in one or another of its manifestation) (Kurbatova et al., 2020);

2) with cognitive disabilities (limited abilities reflect the result of the age-related development of minors, as well as reverse age-related processes in old age, existing mental diseases, psychological disorders, physiological conditions, social factors) (Kurbatova, 2019, p. 134);

3) with physical and cognitive disabilities combined.

If we speak about the first group of restrictions, then we should consider the possibility of leveling them by providing technical means: the use of video conferencing to obtain indications from people with limited mobility, the provision of special devices for blind and visually impaired participants, sign language-for the deaf and hard of hearing, *etc.* (Schmetzke, 2002, pp. 135–136).

In cases where a participant in criminal proceedings has cognitive impairments, evidenced by medical documentation, or gives reason to believe his behavior, as well as age or there is a petition received from himself or from his legal representatives or relatives, this should entail the appointment and conduct of a forensic psychiatric or forensic psychological examination in order to determine the level of his cognitive abilities and the possibility of being a participant in criminal procedural relations (Gudjonsson et al., 2000, pp. 307–314).

In the third case, when there are restrictions caused by both physical and other reasons (for example, prolonged depression due to the amputation of the limbs), it is necessary to use combined means.

These general criteria should be fixed in relation to all participants in criminal procedural legal relations, regardless of their legal status.

The peculiarities of the procedural status of the participant should also be taken into account, but this should be secondary to the basic concept of the procedural capacity of all participants in criminal proceedings.

#### **IV. The Possibilities of Modern Technologies to Ensure the Implementation of the Rights of Vulnerable Persons in Criminal Proceedings**

The analysis of the world history and the development of humanistic ideas allows us to identify the following three stages in the formation and development of the attitude of the authorities to persons with disabilities.

1) Before the 20th century, when the disabled and the sick were perceived as “non-members of society,” they were isolated (especially with infectious diseases), and society itself tried to isolate itself from such people, since the infrastructure and social structure of those eras did not allow people with disabilities to be part of that world, to participate in its life;

2) The 20th century, when, on the one hand, there was an increase in the number of disabled people as a result of wars that became more frequent in a number and scale, on the other hand, the development of sciences took place, including medical and humanistic ideas.

All these factors contributed to a change in the attitude towards these people in society and, as a result, at the level of states and the international community, since the First World War, the institution of rehabilitation has become a policy direction of many states, since “the governments of many countries have faced the need to qualitatively change the existing system of medical and social assistance in order to return disabled people to life and active activity. Temporarily incapacitated sick people of a young and older age, due to the powerful biological potential inherent in them, sought a full-fledged life, and not living out in hospitals and shelters” (Puzin et al., 2017, p. 126);

3) The 21st century, when, along with the medical criterion, social and philosophical criteria (Barinova, 2015, p. 9) are fixed at the international level, and states are tasked with creating conditions for ensuring that persons with disabilities actively participate as members of society, including the implementation of their rights and legitimate interests as participants in legal relations.

For these purposes, the achievements of science and technology become more and more in demand, and modern technologies (Kbar

et al., 2017, pp. 3–20) and innovations largely make up for those missing or impaired functions in people with disabilities (Maksimenko et al., 2016, pp. 166–175).

However, in Russia, until recent years, the emphasis was on medical rehabilitation (Ivanova, 2016, p. 9), aimed at compensating for lost (affected) body functions and maintaining them.<sup>5</sup> Now, especially after adopting the UN Convention on the Rights of Persons with Disabilities by the Russian Federation in 2012, social rehabilitation has been developed. It focuses on creating a “barrier-free and accessible environment,” where a special role is assigned to technical means and technologies,<sup>6</sup> and although there is, in general, a positive trend in providing people with disabilities with technical means (Ryazantsev et al., 2020, pp. 27–28), nevertheless, this is not enough in these two areas of social policy in relation to this category of persons (Andreeva and Bochkova, 2020, p. 82), not to mention their development, spreading to all major areas.

In particular, we are referring to the sphere of criminal proceedings. Thus, the Russian criminal procedure legislation does not contain the norms defining the conditions for the implementation of their rights as participants in criminal procedural legal relations by persons with disabilities participating in criminal proceedings.

Modern Russian criminal procedure legislation, in addition to minors and persons in respect of whom proceedings on the use of compulsory medical measures are carried out, does not contain any systematic allocation of a category of the population officially recognized by the state as “having limited opportunities,” and as

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<sup>5</sup> Federal Law of the Russian Federation No 323-FZ (November 21, 2011). On the basics of public health protection in the Russian Federation [Electronic resource]; Order of the Ministry of Health and Social Development of the Russian Federation No 1183 (December 20, 2012). On approval of the nomenclature of positions of medical and pharmaceutical workers [Electronic resource]; The State Program of the Russian Federation (adopted by the Board of the Ministry of Health of the Russian Federation on September 28, 2012). Development of Healthcare, *etc.*

<sup>6</sup> Decree of the Government of the Russian Federation No 2347-р (December 30, 2005). On the federal list of rehabilitation measures, technical means of rehabilitation and services provided to a disabled person [Electronic resource]; Decree of the Government of the Russian Federation No 1297 (December 1, 2015). On approval of the state program of the Russian Federation “Accessible Environment” for 2011–2020 [Electronic resource], *etc.*

a result, needing state support measures to ensure the implementation of the rights of participants in criminal proceedings. Accordingly, the issue of removing with the help of modern technologies the restrictions that create limited opportunities for the people with disabilities remains unresolved.

Analyzing the statistics of persons recognized as disabled in Russia (i.e., the medical indicator is taken as the basis in this case), Professor A.S. Shatalov notes (Shatalov, 2021, pp. 203–204) that currently the largest groups among them are represented by the following persons:

- wheelchair users (about 350 thousand people);
- having complete or partial loss of visual function (approximately 11 thousand out of 100 thousand people suffer from blindness);
- there are about 300 thousand citizens in the Russian Federation who are totally deaf, and more than 13 million people with hearing problems. In reality, there are many more, and the vast majority in this group are elderly people who have diseases that lead to gradual hearing loss (including autoimmune diseases, tumors, injuries, infections of the middle and inner ear, diabetes, *etc.*). So, as of October 1, 2020, the number of pensioners in Russia receiving an old-age insurance pension was 36.1 million.<sup>7</sup>

At the same time, it should be taken into account that the number of these people is higher – not all of them, as a result of objective and subjective reasons, begin to formalize their social status and (or) reach the end in this bureaucratic process and thereby are included in official statistics.

In addition, a huge number of diseases that limit human mobility are recorded in Russia (including traumatic brain injuries, strokes, paralysis of various types, motor disorders, pathological vascular atherosclerosis, partial muscular atrophy, *etc.*), their number may well reach one million people, and even more people suffering from various mental disorders: for example, at the XVII Congress of Psychiatrists of Russia held in May 2021, the figure of 5–6 million people was announced.<sup>8</sup>

<sup>7</sup> Federal State Statistics Service. Available at: <https://rosstat.gov.ru> [Accessed 24.07.2021].

<sup>8</sup> Ivanov, A. The number of Russians with mental disorders is named. Available at: [https://360tv.ru/news/zdorove/nazvano-chislo-rossijan-s-psiicheskimi-rasstrojstvami/?utm\\_referrer=https%253A%252F%252Fyandex.ru%252F%253Ffrom%253Dalice](https://360tv.ru/news/zdorove/nazvano-chislo-rossijan-s-psiicheskimi-rasstrojstvami/?utm_referrer=https%253A%252F%252Fyandex.ru%252F%253Ffrom%253Dalice) [Accessed 24.07.2021].

However, physiological and other conditions that do not belong to medical criteria in Russia remain outside the statistics, which means that people live under such conditions do not receive the legal and other protection that they could count on under the UN Convention on the Rights of Persons with Disabilities.

Accordingly, the involvement of these persons in the sphere of criminal proceedings as suspects, accused, victims, witnesses<sup>9</sup> a priori creates a situation where they cannot exercise their rights at all or in full. However, in some cases, modern technologies could be used to help such people.

The essence of criminal proceedings is the process of proof: the collection, verification and evaluation of evidence, which is, information that is relevant to the case and meets the requirements established by law. As a rule, participants in criminal proceedings from among persons with disabilities do not have free access to information, or rather, to the processes for receiving and transmitting it, which is caused by their limited abilities to see, hear, touch, and speak.

However, in ordinary life, the so called “assistive” (auxiliary) technologies are used to overcome such barriers – “*devices, products, equipment, software or services aimed at strengthening, supporting or improving the functional capabilities of people with disabilities*” (Karpov, 2013, pp. 114–115). Let us focus on their general characteristics before turning to the analysis of the use of their capabilities in criminal proceedings.

Assistive technologies are mechanical, electronic, software and other technologies that can be classified according to their purpose (Dokhoyan and Maslova, 2020, p. 39):

- 1) “*technologies for persons with disabilities of sensory functions:*
  - *for persons with hearing impairments (surdo-informational means);*
  - *for people with visual impairments (Al-Jaleeli, 2019, pp. 72–77);*
  - *for persons with speech disorders (voice-forming means);*

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<sup>9</sup> Although we can talk about other participants, nevertheless, it is enough to limit ourselves to the main ones listed in the text of the article to show the significance of the current situation.

2) *technologies for people with disabilities of the musculoskeletal system (motor disorders) (Poveda Zavala et al., 2019, pp. 35–47);*

3) *for people with limited cognitive abilities (mental, developmental disorders) (Shabalina et al., 2018, pp. 565–573);*

4) *technologies for people with general medical restrictions (for example, for the elderly or people with serious illnesses) (Jones et al., 2020, p. 381).*

*For example, today such assistive means are widely used for the rehabilitation of persons with visual impairments, such as: a speech text scanner with speech output, screen magnifiers (magnifiers), screen reading programs, voice calculators, a speech synthesizer for Braille displays and printers, computers for the blind, etc.* For people with hearing disorders, these are hearing aids, cochlear implants, etc.; for people with musculoskeletal disorders-virtual keyboards, mice for computers controlled by feet (“Foot Mouse”) “manipulators-mice,” devices for turning books, tracking the head, eye direction, etc.

Today’s modern technologies use the achievements of science and technology, called the “fourth industrial revolution,” that are based on the automation and digitalization of technical processes under the control of intelligence systems that strive for globalization and a large-scale space of action (Marzec and Stefaniak, 2017, pp. 463–470). It came at the beginning of the 21st century, replacing the “third industrial revolution” that had occurred in the second half of the 20th century, which gave the world automation and robotics.

For people with disabilities, the third revolution contributed to solving many problems related to the accessibility of the environment, with the possibility of self-service there appeared robotic prosthetics of lost limbs, automated wheelchairs, equipment for physiotherapy and sports, mechanisms for movement, orthopedic products were actively developed, etc.

However, thanks to the fourth industrial revolution, the lives of people with disabilities began to change for the better even more significantly. Largely due to the computer gaming industry (Sedykh, 2020, p. 11), which was of interest for investment (Brezhneva, 2017,

p. 129), and thus reached a new level, the technologies were also used to support people with disabilities. This was also facilitated by the general development of network and virtual technologies (Polutin et al., 2005, p. 97).

Taking into account the purpose, objectives and essence of criminal proceedings (Davletov and Azarenok, 2013, p. 124), criminal procedural evidence (Litvinova, 2011, p. 201) the institution of participants in criminal proceedings (Zelenina, 2010, p. 238), in order to ensure equality of citizens before the law and the court, it is possible and necessary to use traditional and modern technologies to promote the proper participation of persons with disabilities in criminal proceedings.

This use of technologies should be aimed at reaching the following tasks:

- providing people with disabilities with information in a clear and accessible form;
- using of various means and forms of communication with them;
- ensuring their physical access to justice at all stages of the process.

In order to facilitate the proper participation of persons with disabilities in criminal proceedings, in particular, modern technologies can be used in the following mode (Kurbatova, 2021a, p. 106).

- Automation of all programs for blind people should be reached. For example, Duxbury Systems have been doing it since the 1970s and they have become the world leader of this software production today. Its most famous product is the Duxbury Braille Translator (DBT) program. It is now used all over the world to prepare for printing any documentation in Braille. The principle of operation is based on bidirectional translation: a regular font is translated into Braille and back. With DBT, you can prepare any document for printing in Braille in many languages, in various encodings.<sup>10</sup>

- Fixing in the Russian Code of Criminal Procedure the possibility to produce protocols of procedural actions in which blind and visually impaired persons participated with the use of such programs, as well as printing out protocols using Braille would largely solve the problem

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<sup>10</sup> Duxbury Braille Translator. Available at: <https://elitagroup.ru/pages/prod-DBT> [Accessed 25.07.2021].

of participation of persons with disabilities and would facilitate their right to directly familiarize themselves with the materials of the criminal case and other relevant to the process (Kurbatova, 2020, pp. 236–241).

- Technologies that can be used to convert human brain signals into digital signals, would allow to create a symbiotic relationship between a person and a machine.<sup>11</sup> These technologies help people with difficult functions of self-expression to control and manage electronic devices, providing themselves, among other things, a communication environment,<sup>12</sup> send text messages, use the capabilities of the Internet and not only with the help of a brain interface (Oxley et al., 2020, p. 102). These technologies are aimed at ensuring that participants in criminal proceedings from among persons with disabilities exercise the right to appeal, to petition and appeal, to give evidence, etc.

- *An algorithm for the early diagnosis of Alzheimer's disease, operating on artificial intelligence, can be elaborated. The use of this diagnosis is especially relevant when the participants in criminal procedural relations are persons of older age groups who, due to their age, belong to the category of people most vulnerable to this disease. For example, the algorithm presented by scientists in 2020 in the Journal of Medical Imaging (Parmar et al., 2020, p. 11).*

- Technologies aimed at eliminating chronic and severe pain, for example, in the extremities, postoperative pain and chronic migraines, etc., can be introduced. The use of such technologies is of particular importance when, for example, it is very important to get the necessary information from an eyewitness whose health was seriously affected as a result of the crime committed for an investigation “in hot pursuit.”<sup>13</sup>

- “Memory prostheses” are being actively developed and, apparently, in the near future, “memory prostheses” will appear in circulation-external devices with the help of which it is possible to load human memory into a computer and then transfer information directly to the hippocampus.<sup>14</sup> For example, this is the endovascular neural interface

<sup>11</sup> Neuralink. Available at: <https://neuralink.com/> [Accessed 25.07.2021].

<sup>12</sup> CTRL-labs. Available at: <https://www.ctrl-labs.com/> [Accessed 25.07.2021].

<sup>13</sup> Neuros Medical. Available at: <https://www.neurosmedical.com/> [Accessed 25.07.2021].

<sup>14</sup> A New Era for Neuroscience. Available at: <https://www.kernel.com/> [Accessed 25.07.2021].

Stentrode, whose task is to provide paralyzed patients with a safe way to put their brain under their control, which in the future will allow, by connecting the brain to a computer, to receive and convert incoming signals into words.<sup>15</sup> Interfaces for controlling a computer using brain activity are developed by Neurable.<sup>16</sup>

- One should introduce technologies aimed at helping people with disabilities to better navigate and interact with the world around them, for example, the blind, those with amputated limbs, spinal cord injuries, *etc.*<sup>17</sup>

- Scientific developments, applications using artificial intelligence and augmented reality that facilitate the interaction of people with speech pathologies should be implemented.<sup>18</sup> For example, computer-based communicators and their derivatives are already widespread, where a text is created on the screen using the SpeechPro software tool, which appears thanks to the suggestions offered by the program, based on the general meaning of its content. These can be the endings of the entered words or phrases that fit the context. As a result, the interlocutor can be presented with the typed text, but also, due to the existing synthesizer, it can be voiced by the program.<sup>19</sup>

Another successfully used software tool — Web TrekConnect, designed for sending emails and messages, is based on an approach where the user does not need the ability to read and write. The program has technologies for automatically generating recording and sending audio messages, which is facilitated by a simple interface, as well as voicing the text of incoming messages.<sup>20</sup> The developed Dragon Naturally Speaking program can translate oral speech into written text with an accuracy of up to 99 % and vice versa.<sup>21</sup>

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<sup>15</sup> Synchron Neurovascular Bioelectronics. Available at: <https://www.synchronmed.com/> [Accessed 25.07.2021].

<sup>16</sup> Neurable. Available at: <https://neurable.com/> [Accessed 25.07.2021].

<sup>17</sup> Paradromics — The new generation brain computer interface. Available at: <https://paradromics.com/> [Accessed 25.07.2021].

<sup>18</sup> Cognixion. Available at: <https://www.cognixion.com> [Accessed 25.07.2021].

<sup>19</sup> Attainment Company, Inc. Available at: <https://www.attainmentcompany.com> [Accessed 25.07.2021].

<sup>20</sup> Attainment Company, Inc. Available at: <https://www.attainmentcompany.com> [Accessed 25.07.2021].

<sup>21</sup> Cognitive Aids — BrainAid. Available at: <http://brainaid.com/index.html> [Accessed 25.07.2021].

• The Reading PenBasic technology, implemented in the form of a large felt-tip pen, has a screen and a sound speaker built in. If such a pen is drawn over a readable word, it appears in large block letters on the screen of the “pen,” and at the same time it is voiced through the built-in speaker. If necessary, by pressing the key on the “felt-tip pen,” the word on the screen will be divided into syllables and also will be voiced by the speaker. There is a key, by clicking on which you can get the meaning of the word, which will also be played by the speaker. The vocabulary capabilities of this technology are still quite limited and they are more focused on meeting the general communication needs of such persons. However, their development and further use in criminal proceedings would contribute to the realization of human rights for participants using the “reading pen,” both to obtain information and to clarify and interpret incomprehensible legal and other terms and words.

• Touch screens help to establish a contact and receive information from persons with limited cognitive abilities, which can also be successfully used for the purposes of criminal proceedings by the subjects conducting the proceedings.

Here are just a few groups of technologies aimed at helping people with disabilities involved in criminal proceedings. They could be used in Russian criminal proceedings, but in fact they are not. There are a number of reasons for this:

– not all of these and similar technologies aimed at helping people with disabilities are widely available;

– this affects their price plays a role: often the cost is quite high and on a large scale their acquisition and use will put a financial burden on their customer, in this case it will be assigned to the state budget;

– currently, there are various problems related to criminal proceedings and technologies in general: its digitalization (Voskobitova, 2019, p. 75), the use of block chain systems (Bertovsky and Devyatkin, 2019, p. 116) and information technologies (Shatalov, 2020, p. 239), etc.;

– one of the reasons, according to S.M. Kurbatova, is the question *“about their admissibility from the point of view of criminal procedure legislation. Accordingly, it is necessary to provide for norms regulating*

*the use of such funds in criminal proceedings. After all, it should be understood that they can provide compensatory assistance to persons with disabilities, but they can also carry certain risks in the event of their malicious use: with their help, it will be possible to influence decision-making or to pass off the result they received as the will of the person against whom they were used. For example, if a paralyzed person gives evidence, while moving the computer mouse with the power of thought or forming thoughts directly into the gadget interface, then there must be a guarantee that this person is doing it, and not, for example, an investigator, an inquirer, a prosecutor, a case officer, etc.” (Kurbatova, 2021a, p. 109);*

– appropriate specialists are needed who would have the skills to work with these technologies.

The need for proper training and regular retraining of employees is now generally recognized in all spheres of labor activity. This determines the importance of a close connection between the labor market and the education system. Especially in recent decades, when constantly changing information and other technologies require employees to have more and more knowledge in this field. Taking into account the fact that modern technologies increase the guarantees of the possibility of protecting personal rights, then, according to the authors, the development of such educational products that are aimed at ensuring this through appropriate training of personnel is of well-deserved interest.

In the context of the problem considered in this article, we speak about the need to form appropriate competencies for law enforcement officers who implement the function of criminal prosecution and related to it.

Professor L.V. Bertovsky believes that modern law has such a criterion as “logistics,” which means that “the norms regulating the use of modern technologies have found their place in almost all modern branches of law. Modern law, on the one hand, being aimed at regulating new relations in increasingly large spheres of life of modern society, where high technologies are the objects (and in some cases already subjects), on the other hand, law itself uses high technologies as a form,

means (and sometimes subject) of its creation and implementation, being logistical, knowledge-intensive and technological” (Bertovsky, 2021, p. 47).

First of all, these are officials of the authorities representing the prosecution – the preliminary investigation bodies (investigators and interrogators), prosecutors. They are the main subjects for collecting, verifying and evaluating evidence, and their understanding of the characteristics of persons with disabilities is of particular importance. The same applies to the court, as a body that administers justice.

It is also necessary to try to involve lawyers and other representatives of participants in criminal proceedings who have the appropriate knowledge and skills to interact with persons with disabilities in such criminal cases. The same is important for officials associated with the implementation of criminal proceedings – operational officers, employees of the penal enforcement system, *etc.*

To do this, it is necessary, first of all, to pay attention to the education system as a whole and to provide additional competencies in the educational programs of higher and secondary vocational education. We speak about both digital content competencies and competencies focused on obtaining more knowledge about people with disabilities as possible participants in legal relations in which a future employee will find himself in the process of implementing his work functions. With regard to “digital competencies,” a positive result is already visible. For example, on the basis of the National Research University “Moscow Institute of Electronic Technology,” students are trained in the direction of training 40.05.01 “Legal support of national security.” A special feature of this direction is the presence in the curriculum, in addition to the traditional disciplines of the legal cycle (criminal law, criminal procedure, civil law, civil procedure, criminalistics, *etc.*), technical disciplines: computer science and information technologies in professional activity, the basics of the Java language, object-oriented programming, hybrid modeling, management of software projects, networks and communications, databases, Internet programming, neural networks, interactive graphical systems and many others. Legal disciplines make up 60 percent of the curriculum,

and technical disciplines – 40 percent. The training is carried out by experienced specialists who have scientific degrees of candidates and doctors of sciences.

Of course, there is no need for a large number of such specialized programs, since not all educational institutions have such a powerful technological and personnel base as MIET. Nevertheless, the need to provide for separate disciplines and (or) modules in disciplines that reflect the technological components of individual areas of professional training, in our opinion, should be implemented. Such a need should also be provided for the formation of knowledge about the peculiarities of persons with disabilities among future specialists in their profession.

It is also necessary to develop (quantitatively and qualitatively) additional education programs. Students of these courses can be employees who, in connection with their work functions, need to have knowledge and skills of communicating with people with disabilities. Taking into account the close connection between technologies and the possibilities of overcoming barriers to communication with people with disabilities with their help, it is necessary to develop such programs of advanced training and professional retraining.

## **V. Conclusion**

Thus, modern technologies in criminal proceedings are aimed at solving a two-pronged goal: first, promoting the realization of human rights and the legal status of participants in criminal proceedings from among persons with disabilities; second, contributing to solving the problems facing criminal proceedings.

Taking into account the fact that we live in the era of automation, digitalization and AI systems, it is necessary to accept this fact and implement the existing technical and other achievements for the benefit of humanity. Since more and more people in the world and in specific states, including Russia, as a result of various reasons cannot be active members of society, and have difficulties with the realization of their rights, it is necessary to expand the scope of the introduction of modern technologies that can resolve the existing problems. One of these areas in the Russian state is criminal proceedings.

Although the widespread introduction of modern technologies and high-tech programs into the criminal process is impossible, first, because of the financial component of the implementation of this policy, and second, because of the difficulties with establishing the reliability of the information obtained with their help, nevertheless modern technologies should be established as a full-fledged institution of criminal procedure law and a section of criminal procedure legislation should be devoted to it. It should fix the features of the use of technologies to ensure the realization of the rights of persons with disabilities participating in criminal proceedings; it is necessary to legislate the concept and types of such technologies, the basis and procedure for their application, the evidentiary value, *etc.* questions; a unified concept of the state's criminal policy should be developed, taking into account current problems in criminal proceedings, including the use of technologies in it and the updating of the content of the institute of participants. In particular, as a special, separate category, it is necessary to single out persons with disabilities. In relation to them, additional procedural guarantees are to be established.

This set of measures will reflect a compensatory approach to ensuring the implementation of the rights of persons with disabilities participating in criminal proceedings.

### References

1. Alisieich, E.S., (2012). *Promotion and protection of the rights of vulnerable groups in international law*. Moscow: The Peoples' Friendship University of Russia (In Russ.).
2. Al-Jaleeli, Y.A., (2019). Providing entertainment for people with visual disabilities on civil aviation using (Braille-Barcode-Listening) BBL. *Academic Journal of Interdisciplinary Studies*. V. 8. (4), pp. 72–77, doi: 10.36941/ajis-2019-0039.
3. Andreeva, O.S. and Bochkova, V.A., (2020). Dynamics of indicators of needs for technical means of rehabilitation for disabled people from among the adult population of the Russian Federation. *Medical and social problems of disability*, 2, pp. 82–88 (In Russ., abstract in Eng.).

4. Barinova, G.V., (2015). *Disability as a social phenomenon of modern Russian society (socio-philosophical analysis)*: Abstract of the Dr. Sci. (Philosophy) Dissertaion. Moscow.

5. Bertovsky, L.V., (2021). Legal regulation of criminal proceedings against minors as an element of criminal law and criminal procedure policy. *Criminal policy in the field of ensuring the rights and legitimate interests of participants in criminal proceedings and the use of modern technologies*: materials of All Russia (national) scientific and practical conference. Krasnoyarsk: Krasnoyarsk State Agrarian University, pp. 9–15.

6. Bertovsky, L.V. and Devyatkin, G.S., (2019). Prospects for the use of blockchain technology in criminal court proceedings. In: *Activity of law enforcement agencies in modern conditions*. Collection of materials of the international scientific and practical conference. Irkutsk, pp. 116–118.

7. Brezhneva, A.D., (2017). The industry of computer games in the world economy. In: *Innovative scientific research: theory, methodology, practice*. Collection of articles of the VIII International Scientific and Practical Conference. Penza, pp. 129–133.

8. Davletov, A.A. and Azarenok, N.V., (2013). Purpose, purpose and tasks of criminal proceedings. *News of higher educational institutions. Law studies*, 1 (306), pp. 124–134.

9. Dokhoyan, A.M. and Maslova, I.A., (2020). *Assistive technologies in inclusive education*. Moscow: IPR Media.

10. Gudjonsson, G.H., et al., (2000). Assessing the capacity of people with intellectual disabilities to be witnesses in court. *Psychological Medicine*, 30(2), pp. 307–314, doi: 10.1017/S003329179900149X.

11. Ivanova, G.E., (2016). Medical rehabilitation in Russia. Prospects of development. *Consillium Medicum*, 18 (2.1), pp. 9–13.

12. Jones, M., et al., (2020). The digital health revolution and people with disabilities: perspective from the United States. *International Journal of Environmental Research and Public Health*, 17 (2), p. 381, doi: 10.3390/ijerph17020381.

13. Kachalov, V.I., (2017). Proceeding on the use of compulsory medical measures appointed by the court: issues of improvement. *Russian justice*, 4 (132), pp. 95–100.

14. Kachalova, O.V., (2019). Can the health status of the accused affect the possibility of considering the case in a special order. *Criminal process*, 2 (170), p. 11.

15. Karpov, A.A., (2013). Assistive information technologies based on audiovisual speech interfaces. *Proceedings of SPIIRAN*, Issue 4 (27).

16. Kbar, G., et al., (2017). Unified interface for people with disabilities (UI-PWD) at smart city (design and implementation). In: *Information Innovation Technology in Smart Cities*, pp. 3–20, doi: 10.1007/978-981-10-1741-4\_1.

17. Kurbatova, S.M., (2019). Formation of a cognitive approach to understanding a person with disabilities at the international legal level and its impact on national law (on the example of Russian criminal procedural legislation). *Issues of Russian and International Law*, 9 (8-1).

18. Kurbatova, S.M., (2020). On the problems of participation of blind and visually impaired persons in criminal proceedings. *Business. Education. Law*, 2 (51), pp. 236–241.

19. Kurbatova, S.M., (2021a). Modern technologies as a means of realizing the rights and legitimate interests of participants in legal proceedings with limited opportunities. *Military-legal and humanitarian sciences of Siberia*, 2 (8), pp. 106–111.

20. Kurbatova, S.M., (2021b). *Theoretical foundations of the criminal procedural status of persons with disabilities: problems of theory and practice*. Krasnoyarsk: Krasnoyarsk State Agrarian University (In Russ).

21. Kurbatova, S.M., Aisner, L.Yu., and Naumkina, V.V., (2020). Accessible environment as a means of ensuring the rights of persons with disabilities and as a task of the modern social state. In: *IOP Conference Series: Materials Science and Engineering. The conference proceedings ICCATS-2020*. South Ural State University (national research university), Irkutsk National Research Technical University, Ural Federal University named after the first President of Russia B.N. Yeltsin, 032074, doi: 10.1088/1757-899X/962/3/032074.

22. Lewis, O., (2002). Protecting the rights of people with mental disabilities: the European convention on human rights. *European Journal of Health Law*, 9(4), pp. 293–320, doi: 10.1163/157180902100387044.

23. Litvinova, E.S., (2011). Goals and essence of proof in the light of the question of the appointment of criminal proceedings. *Problems of Law*, 5 (31), pp. 201–204.

24. Maksimenko, Zh.A., et al., (2016). Technologies of virtual reality as a tool to create constructive behavioral scenarios in people with disabilities. *Recent Trends in Science and Technology Management*, 2, pp. 166–175.

25. Marzec, D. and Stefaniak, R., (2017). Providing equal opportunities for people with disabilities as a contemporary challenge. In: *4th International multidisciplinary scientific conference on social sciences and arts (SGEM)*. Conference proceedings. Sofia, pp. 463–470, doi: 10.5593/sgemsocial2017/34/S13.060.

26. Mikrina, V.G., (2019). *International legal mechanisms for the protection of labor rights of the most vulnerable groups of the population*: dissertation of the candidate of legal sciences. Moscow: Moscow State Institute of International Relations, pp. 12–13.

27. Nagornaya, L.A., (2021). Socialization of people with disabilities in the modern Russian society. In: *European Proceedings of Social and Behavioural Sciences EpSBS*, pp. 1138–1147, doi: 10.15405/epsbs.2021.05.152.

28. Nesmeyanova, S.E. and Kalinina, E.G., (2017). The concept of vulnerability of individual groups of persons: international and national experience. *Russian Law: Education, Practice, Science*, 4, pp. 7–12.

29. Nikolyuk, V.V. and Kalnitsky, V.V., (1990). *Criminal procedural activity on the use of compulsory medical measures*. Omsk: Omsk Academy of the Ministry of Internal Affairs of Russia.

30. Oxley, T.J., et al. (2020). *Motor neuroprosthesis implanted with neurointerventional surgery improves capacity for activities of daily living tasks in severe paralysis: first in-human experience* [online], doi: 10.1136/neurintsurg-2020-016862. Available at: <https://jniss.bmj.com/content/early/2020/10/30/neurintsurg-2020-016862> [Accessed 25.07.2021].

31. Parmar, H., Nutter, B., Long, R., Antani, S., and Mitra, S., (2020). Spatiotemporal feature extraction and classification of Alzheimer's

disease using deep learning 3D-CNN for fMRI data. *Journal of Medical Imaging*, 7 (05), doi: 10.1117/1.JMI.7.5.056001.

32. Plotnikova, A.M., (2019). Names of socially unprotected groups of persons in the legal space and beyond. *Izvestiya UrFU. Ser. 2. Humanities*. Vol. 21, 4 (193), pp. 209–218.

33. Polutin, S.V., Nikishin, M.B., Zakhryapin, A.V., and Mukhametzyanova, A.R., (2005). Application of network and virtual technologies in solving problems of rehabilitation and distance education of people with disabilities. *Integration of education*, 1/2, pp. 97–101.

34. Poveda Zavala, S., et al. (2019). Brain computer interface application for people with movement disabilities. *Lecture Notes in Computer Science*. T. 11354 LNCS, pp. 35–47, doi: 10.1007/978-3-030-15127-0\_4.

35. Puzin, S.N., Gridin, L.A., and Dmitrieva, N.V., (2017). To the history of medical rehabilitation in Russia. *History of medicine*. Vol. 4, 2, pp. 125–135.

36. Ryazantsev, V.M., Lazareva, O.V., and Volkova, Yu.V., (2020). Changes in providing disabled people with technical means of rehabilitation. In: *Collection of materials of the scientific and practical conference on topical problems of medical and social expertise*. Moscow, pp. 27–29.

37. Schmetzke, A., (2002). Accessibility of web-based information resources for people with disabilities. *Library Hi Tech*. 21 (2), pp. 135–136.

38. Sedykh, I.A., (2020). *The industry of computer games*. Higher School of Economics, Development Center. Moscow.

39. Shabalina, O., et al., (2018). A mobile game for training shopping skills for people with intellectual disabilities. In: *Proceedings of the 12th European Conference on Game-Based Learning, ECGBL 2018*. ISBN (Electronic) 9781911218999. Pp. 565–573.

40. Shatalov, A.S., (2014). Ensuring the rights and legitimate interests of minors in criminal proceedings. *Bulletin of the Institute: crime, punishment, correction*, 2 (26), pp. 41–45.

41. Shatalov, A.S., (2020). The use of modern information technologies in criminal proceedings in a criminal case. In: *Criminal proceeding of Russia: problems and prospects of development*. Collection

of materials of the All-Russian scientific and practical Conference. Moscow: Inter-municipal Department of the Ministry of Internal Affairs of the Russian Federation, pp. 239–244.

42. Shatalov, A.S., (2021). On the need to allocate persons with disabilities to a separate group of participants in criminal proceedings. In: *Ensuring the rights of participants in criminal proceedings with disabilities: a compensatory approach*. Materials of the International Scientific and Practical Conference. Krasnoyarsk: Publishing House of the Krasnoyarsk State Agrarian University, pp. 200–207.

43. Sinkovskaya, I.G., et al. (2020). Vitality as an indicator of the life quality of people with disabilities. In: *European Proceedings of Social and Behavioural Sciences EpSBS*. Krasnoyarsk Science and Technology City Hall. Krasnoyarsk, pp. 809–817, doi: 10.15405/epsbs.2020.10.03.95.

44. Vorotnikova, Yu.S., Gavrilov, K.A., Drobysheva, E.E., et al., in Chernov, S.S., (2010). *Humanitarian problems of modernity: man and society*. Novosibirsk: Center for the Development of Scientific Cooperation, book 13.

45. Voskobitova, L.A., (2019). Fundamentals of criminal justice and digitalization. In: *The Russian legal system in the conditions of the Fourth Industrial Revolution: materials of the VI Moscow Legal Forum of the XVI International Scientific and Practical Conference*. Moscow: Prospekt, pp. 75–86.

46. Zelenina, O.A., (2010). The essence of the category “participant of criminal proceedings” in the science of criminal procedural law. *Society and law*, 4 (31), pp. 238–245.

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# Legal Framework of Labor Migration Governance in the Eurasian Economic Union and the European Communities: Comparative Analysis

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**Abstract:** This article provides a comparative analysis of the legal regulation of labor migration in regional integration organizations: the European Communities (ECs) and the Eurasian Economic Union (EAEU). Methodologically, we argue that a synchronous comparison of the European Union (EU) in its current shape and the EAEU is rather inadequate and draw on a diachronic comparison of labor migration regulation in the EAEU and the ECs. On the one hand, we identify a number of important differences. We show, in particular, that while regulatory mechanisms in the EEC aimed at stimulating new migration flows, in the post-Soviet space mechanisms of regional migration governance provide the existing migration flows with an appropriate normative framework. We also show that in the case of the EAEU, the founding Treaty provided for a number of essential social rights for workers from EAEU Member States, whereas in the EEC these rights appeared at a much later stage. Regulation of labor migration in the EEC and the EAEU also differs in terms of distribution of competencies in this area between national and Community / Union levels. On the other hand, we also find a number of similarities, which hint at dynamics of policy learning. This is, in particular, evident in the development of mechanisms aimed at protection of migrants' rights. This is also the case of the Agreement on pensions for workers of the EAEU member states, which seems to borrow from the EU experience opting for coordination of Member States' retirement systems instead of their unification. Overall, some of EEC/EU 'best practices' have contributed to important positive developments in the regulation of intra-Union labor migration in the EAEU.

**Keywords:** Regional migration governance; Eurasia; post-Soviet space; labor migration; free movement; Eurasian Economic Union; Russia; European communities; European Union; migrant rights

**Acknowledgements.** Research for this paper was supported by the European Union through its Erasmus + Jean Monnet Programme (Jean Monnet Module “Shifts in the EU Area of Freedom, Security and Justice: Multi-Dimensional Analysis” (EUSHIFT) (2020–2023), grant number 621131-EPP-1-2020-1-RU-EPPJMO-MODULE). Andrey Leonov is also grateful to the Jean Monnet Foundation for Europe (Lausanne) for support of his stay at their archive in 2016 and to the Grenoble Alpes University for hosting him as a visiting researcher in 2021.

**Cite as:** Leonov, A.S. and Lisinskaya, I.E., (2021). Legal Framework of Labor Migration Governance in the Eurasian Economic Union and the European Communities: Comparative Analysis. *Kutafin Law Review*, 8(4), pp. 573–601, doi: 10.17803/2313-5395.2021.4.18.573-601.

## Contents

I. Introduction .....	574
II. Dynamics of Labor Migration Regulation in the Eurasian Migration System. . .	576
II.1. Before the EAEU Treaty .....	576
II.2. The EAEU Treaty Framework for Labor Migration. ....	581
III. Labor Migration Governance in the European Communities:	
Uneasy Path to a Genuine Freedom of Movement .....	587
IV. Discussion and Conclusion. ....	594
References. ....	598

## I. Introduction

The article focuses on a comparative analysis of the legal regulation of labor migration in regional integration organizations: the European Communities (ECs) (mainly in the European Economic Community (EEC) and in the European Coal and Steel Community (ECSC)) and the Eurasian Economic Union (EAEU). Methodologically, the work is based on a diachronic comparative analysis of the development of labor migration regulation in the EAEU and the ECs. This issue has not been previously approached in a comprehensive way from this perspective. This is unfortunate, since such a comparison allows us to identify and analyze dynamics in regulation of the freedom of movement of workers

within these regional organizations at relatively similar stages of their development. Taking into account different conditions in which migration legislation in both organizations was being developed (Leonov and Korneev, 2019, pp. 205–223), this approach provides an opportunity to address the following questions. Is the EAEU regime of labor migration — free movement of workers — modelled after the ECs' experience? To what extent could the ECs' experience in labor migration regulation be applicable for further developments within the EAEU? Could it contribute to better regulatory and implementation dynamics within the EAEU and help to avoid mistakes made in the ECs? An analysis of similar and diverging trends in the development of labor migration law in the EAEU and the ECs, as well as an assessment of advances and drawbacks in the ECs could help us to better analyze further reforms of the EAEU legal framework and to propose approaches that would help improve regulation of labor migration in the EAEU. Using this method of historic legal comparison, we presume that every complex integration structure inevitably goes a long way of genesis and development, building its identity and getting its particular characteristics. The ECs have passed through several decades to build a genuine free movement regime and create a common labor market. Obviously, the latter did not appear overnight. The EAEU is now only at the very first stage of its development. For this reason, we argue that a synchronous comparison of the European Union (EU) in its current shape and the EAEU would not allow us to properly address our research questions and advocate for more diachronic comparative works in this field.

The theoretical framework of the article builds on legal and interdisciplinary research focusing on the Eurasian migration system (Gabov, Kashirkina, Lukyanova et al., 2012; Ivakhnyuk, 2007, pp. 37–56), freedom of movement in the EU and the EAEU (Bisson and Potemkina, 2014; Davletgildeev, 2018, p. 597), migration governance in the Eurasian (post-Soviet) space (Korneev and Leonov, 2021; Leonov and Korneev, 2019, pp. 205–223; Molodikova, 2018, pp. 334–358; Ryazantsev and Korneev, 2013; Sagynbekova, 2017).

Thus, the aim of this paper is to compare the dynamics of legal regulation of free movement of workers in two migration systems —

those of the European Communities and of the Eurasian Economic Union, to identify similar and diverging characteristics of labor migration regulation within these systems at similar historic periods, and to address the widely discussed issue of borrowing best practices and policy learning.

The article proceeds in the following way. The first section briefly summarizes main legal developments in the field of labor migration in the post-Soviet space before the adoption of the EAEU Treaty. Then, we look at provisions of the EAEU Treaty regulating labor migration; analyze its outcomes and challenges. In the second section, we analyze dynamics of labor migration regulation within the ECs from the beginning to the 1970s. In both sections, we identify certain parallels between two legal systems in terms of labor migration regulation. In the final part, we bring together, discuss all similar and diverging points in both systems, and conclude with a reflection of positive dynamics of legal regulation of labor migration in the EAEU and importance of policy learning between the EAEU and the EEC/EU.

## **II. Dynamics of Labor Migration Regulation in the Eurasian Migration System**

### **II.1 Before the EAEU Treaty**

Although the EAEU Treaty entered into force in 2015, in a broad sense the history of the EAEU is that of the post-Soviet space, starting with the collapse of the USSR. Already in article 5 of the *Agreement on the Establishment of the Commonwealth of Independent States (CIS) of 1991*, as well as in article 19 of its *Charter of 1993*, the member states agreed to guarantee the freedom of movement of nationals within the CIS. The consolidation of this freedom is one of the main achievements of the founding acts of the CIS. As international regional organization, the CIS actively promoted the idea of freedom of movement (Molodikova, 2017). Furthermore, the *Bishkek Agreement* of 1992 established a visa-free regime for nationals of the CIS member states. Although in the early

2000s it transformed into a bilateral agreements scheme on mutual visa-free travels of citizens of the CIS member states, the reality of visa-free movement has remained (Leonov and Korneev, 2019, pp. 205–223; Molodikova, 2018, pp. 334–358). *The Treaty on the Establishment of the Economic Union of 1993*, which became a legal basis for the implementation of the CIS Charter, and for development of integration ties within the Commonwealth, included a set of provisions (e.g., Chapter 5. Social Policy), which we would later find in the Treaty on the EAEU, and which, in many ways, resembled *the Treaty Establishing the European Economic Community (EEC Treaty)* of 1957. Obviously, this case does not mean a similar scope of the respective provisions. However, such a comparison gives cause to think about borrowing the EU legislative experience by the CIS (Davletgildeev, 2018).<sup>1</sup>

One of the important steps towards the EAEU was the *Treaty on Deepening Integration in the Economic and Humanitarian Spheres* of 1996. Article 2 of the Treaty proclaimed building of a single economic space as a goal of integration within the CIS. It would provide effective functioning of a common market of goods, services, capital and labor. Article 12 of the Treaty provided for a mutual recognition of diplomas, documents on conferring academic degrees and titles. Article 13 gave an opportunity for a simplified procedure for obtaining citizenship.<sup>2</sup> This treaty did not involve specific measures to create a common labor market and was rather of a framework nature. However, like the CIS Charter, it was one of the first to proclaim free movement of workers as a goal.

On February 26, 1999, Russia, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan signed the *Treaty on the Customs Union and Single*

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<sup>1</sup> Rustem Davletgildeev points to a “tangible” impact of the EU during the creation of the Treaty on the EEC. He argues that the impact consists in “the value that the member states of the CIS attached to the legal experience of the Western European states within the European Union while creating legal framework of economic integration within the CIS.”

<sup>2</sup> Agreement between the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation on deepening integration in the economic and humanitarian fields. Available at: docs.cntd.ru/document/1901125 [Accessed 07.01.2021].

*Economic Space* (CU/SES Treaty).<sup>3</sup> The goal of building a single economic space consisted in an efficient functioning of the common market of goods, services, capital and labor (article 3). In the CU/SES Treaty there appeared *Section 6 “Common Labor Market and Social Policy,”* which provided for the following set of rights of workers: freedom of movement; abolition of discrimination; creation of a unified legal regime of employment, remuneration and other work and employment conditions; national treatment for those crossing the borders of the member states; the right to stay in one of the member states being engaged in labor market; the right to remain on the territory of a member state after termination of employment contract; crediting the length of service (seniority) in the state of employment to the total length of service, including calculating pensions and benefits; free emergency medical service. The CU/SES Treaty did not provide a full national treatment for workers of the SES. Instead, it guaranteed for nationals of the member states permanently residing on its territory a legal status “as close as possible to the status of citizens of the country of residence” (article 39 of the CU/SES Treaty). Member states kept the option to impose additional restrictions on the right of workers to choose their place of residence and to engage in economic activity. The Treaty did not provide for a right to education although the state parties should ensure the creation of coherent systems of education, uniform rules and conditions for admission to schools and universities, mutual recognition and equivalence of education documents, academic degrees and titles (article 45). The treaty had a tendency to expand the rights of migrant workers, to eliminate obstacles at border crossing.

Some scholars point to similar elements of the CU/SES Treaty and the Treaty on the Functioning of the European Union (TFEU) (as amended by the Lisbon Treaty) in terms of securing freedom of movement, border crossing, and the right to stay on the territory of a member state during and after the end of employment (Davletgildeev and Sycheva, 2015). When comparing it with the EEC Treaty, we can pick out a set of almost identical provisions, as well as some divergences. Unlike the CU/SES

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<sup>3</sup> Treaty on the Customs Union and Single Economic Space (signed in Moscow on 26.02.1999). Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_31914/](http://www.consultant.ru/document/cons_doc_LAW_31914/) [Accessed 07.01.2021].

Treaty, the EEC Treaty does not explicitly mention national treatment for workers. It only arises from a totality of its provisions. Moreover, the EEC Treaty is less explicit in establishing the rights of workers of member states arising from non-discrimination principle based on nationality (article 39 of the CU/SES Treaty and article 48 of the EEC Treaty). The CU/SES Treaty clearly states the intention of the member states to use citizenship for stimulating intra-Union mobility: it provides for a simplified procedure for obtaining and denouncing of nationality in order to facilitate mobility and ensure non-discrimination. There is no such provision in the EEC Treaty. Neither does it mention a single visa policy in relation to third countries in order to prevent uncontrolled migration, as provided for in the CU/SES Treaty. In the EEC/EU primary law, such norm appears later.

In essence, both treaties contain general framework norms, which require further legislation for its implementation. In the case of the CES, the common labor market and freedom of movement are implemented through secondary Community legislation and practice of the Court of Justice (analyzed later in the article). In the case of the CU and the SES it is done through agreements between member states as provided in article 39 of the Treaty.

In October 2000, the member states of the CU and the SES signed the Treaty on the Eurasian Economic Community<sup>4</sup> (EurAsEC), which provided an organizational and institutional framework for the implementation of the CU/SES Treaty, and did not introduce essential changes into its content. Given this, we do not analyze the EurAsEC Treaty in the paper.

During the first decade of the 21st century, the pace of integration within the SES was extremely low. Only three states – Belarus, Kazakhstan and Russia – were genuinely ready and willing to implement the CU/SES Treaty. Inherently, that status quo in the field resembled a multi-speed integration that took place in the European Union where some member states wanted to move forward quicker than the others did. By 2010, these three states prepared 17 agreements creating the SES within

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<sup>4</sup> Treaty on the Eurasian Economic Community (signed in Astana on 10.10.2000). Available at: [www.consultant.ru/document/cons\\_doc\\_LAW\\_106656/](http://www.consultant.ru/document/cons_doc_LAW_106656/) [Accessed 06.01.2021].

its borders. Two of them aimed at regulating freedom of movement of workers: *The Agreement on the Legal Status of Migrant Workers and Members of Their Families*<sup>5</sup> and *The Agreement on Cooperation against Illegal Labor Migration from Third States*.<sup>6</sup> The first agreement introduced some new definitions: “labor activity,” “migrant worker,” “family member of a migrant worker,” “discrimination.” The term “labor activity” included only activity based on an employment contract.

This agreement supplemented the legal status of a migrant worker with the following rights: exemption of migrant workers and their family members from registration within 30 days from the date of entry on the territory of the state of employment (art. 5); the right to conclude a new employment contract within 15 days after the termination of the previous one (art. 8); the right to information about conditions of and procedure for staying and carrying out labor activity (art. 9); the right to join trade unions (art. 16); the right to own, use and dispose of their property and the right to free transfer of funds (art. 14). For the first time, rights of family members of a migrant worker were enshrined in this document. Children of a migrant worker who live together with him/her have the right to attend preschool institutions and receive education in accordance with the legislation of the state of employment (art. 12). However, there were a number of unresolved issues in the Agreement. For example, the concept of “discrimination” was provided in article 1, but there was no explicit prohibition of discrimination in the Agreement. It did not guarantee national treatment either.

Kyrgyzstan, Tajikistan and Uzbekistan put themselves outside the scope of these agreements, giving priority to bilateral arrangements in labor migration issues. These different paths taken by post-Soviet states prevented development of a genuinely regional system of migration governance in post-Soviet Eurasia. Instead, they contributed to the development of several partially overlapping sub-

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<sup>5</sup> Agreement on the Legal Status of Migrant Workers and Members of Their Families (signed in St Petersburg on 19.11.2010). Available at: [www.consultant.ru/document/cons\\_doc\\_LAW\\_117291/](http://www.consultant.ru/document/cons_doc_LAW_117291/) [Accessed 06.01.2021].

<sup>6</sup> The Agreement on Cooperation against Illegal Labor Migration from Third States. Available at: <http://www.eurasiancommission.org/ru/act/finpol/migration/tm/Pages/sogl2.aspx> [Accessed 06.01.2020].

regional regimes of migration governance, including those regulating freedom of movement of workers (Leonov and Korneev, 2019, pp. 205–223). Almost two decades after the collapse of the USSR and the creation of the CIS, and ten years after the CU/SES Treaty there was neither consistency nor significant progress in regulating the common labor market in the post-Soviet space. At the respective stage of development of the EEC, on the contrary, the progress was obvious: the EEC grew from six to nine members over a twenty-year period;<sup>7</sup> the Community adopted secondary legislation aimed at implementing the founding treaties provisions on the freedom of movement of workers and their rights; judicial practice was playing an important role in its development.

## **II.2. The EAEU Treaty Framework for Labor Migration**

On January 1, 2015, the Treaty on the Eurasian Economic Union entered into force. It played a key role in Eurasian integration and became a starting point for a genuine common labor market. In terms of migration issues, the EAEU Treaty replaced the Agreement on the Legal Status of Migrant Workers and Members of Their Families. The Agreement on Cooperation against Illegal Labor Migration from Third States remains in force in parallel with the EAEU Treaty.

The Treaty provides for a set of basic rights of the EAEU workers. Article 1 establishes the four freedoms within the EAEU, necessary for building a common market: freedom of movement of goods, services, capital and labor. One of the goals of the Union, enshrined in article 4, is building a common market of labor resources. Labor migration provisions are found in Section XXVI “Labor Migration” of the EAEU Treaty. It should be noted that the vast majority of labor migration rules included in the Treaty were borrowed from the Agreement on the Legal Status of Migrants and Members of Their Families. However, the EAEU Treaty introduces a number of novelties and changes into the legal status of a migrant worker that has been developing since 2010. An important novelty refers to some legal definitions and concepts enshrined in article 96. The Treaty no longer uses the concept of a “migrant worker”

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<sup>7</sup> Ireland, Denmark and the UK joined the EC on January 1, 1973.

and replaces it by the term “worker of a member state,” which means a national of a member state, legally residing and legally carrying out labor activity on the territory of the state of employment, of which he/she is not a citizen and in which he/she does not reside permanently.<sup>8</sup> The definition completely coincides with that used in the Agreement on the legal status of migrant workers of 2010, but the wording has been changed. Thus, it emphasizes a fundamentally new approach to a migrant worker in the integration union. Labor activity now includes both activity on the basis of an employment contract and activity on the basis of a civil-law contract. It is a meaningful change in comparison with the Agreement of 2010. This novel expanded the *ratione personae* of the Treaty. The Treaty simplifies the entry procedure for nationals of the Union member states: when entering the territory of a member state, using an international passport (not a national ID), they can be exempted from using a migration card if the duration of their stay does not exceed 30 days from the date of entry. The Treaty explicitly distinguishes between workers from the Union member states and labor migrants from beyond the Union (from the CIS and outside), who (the latter) are required to obtain either a work patent (non-visa migrants) or a work permit (visa migrants). There are no quotas applicable for workers from the Union member states,<sup>9</sup> and the Treaty provides for assistance to organized recruitment. This practice has been greatly promoted in the region by the World Bank and IOM (Korneev, 2017). However, it has been criticized by many researchers who believe that migrant networks are a more effective and natural tool to facilitate the mobility of labor migrants.

A significant development of the EAEU Treaty is the establishment of a single taxation scheme for nationals of the EAEU member states. Since they are subject to national treatment, their income from the first day of their work is taxed at the same rate that applies to the income of nationals (tax residents) of the state of employment. In the Russian

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<sup>8</sup> Treaty on the Eurasian Economic Union (signed in Astana on 29.05.2014) (as amended 15.03.2018). Available at: [www.consultant.ru/document/cons\\_doc\\_LAW\\_163855/71efcf18e602fbec2b04586c62051e164f507f14/](http://www.consultant.ru/document/cons_doc_LAW_163855/71efcf18e602fbec2b04586c62051e164f507f14/) [Accessed 06.01.2021].

<sup>9</sup> Quotas are neither applicable for non-visa labor workers who are required to buy patents.

case, it arises to 13 percent, while income taxation rate for migrant workers from other CIS countries is set at 13 per cent only after six months of employment. The first six months of work they are subject to 30 percent rate of income tax, the same as for nationals from all other states. Andrey Leonov and Oleg Korneev argue that “unification of taxation rules that cover the rights of labor migrants is an important step towards the creation of a genuine single labor market” (Leonov and Korneev, 2019, p. 213).

An indisputable achievement of the EAEU Treaty is consolidation of social rights of workers and members of their families, such as the right to free medical service on an equal basis with nationals of the host state, social insurance, crediting the length of service in the state of employment to the total length of service, the right of children residing with a worker in the state of employment to attend preschool institutions and to receive education in accordance with the legislation of the state of employment. This set of rights contributes to make labor market of a particular host state more attractive, acting as a driver for migration. They also aim at stimulating integration of migrants in a broad sense, especially in socio-economic dimension; help to resolve the issue of irregular labor migration. The provisions of article 98 of the EAEU Treaty are fully in line with the highest international standards of labor migrants rights and, in particular, with those enshrined in the *Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CRMW) of 1990*. As argued by Andrey Leonov and Oleg Korneev, this fact is especially important in the context of non-participation of Russia and Kazakhstan in this convention, since it may point to a greater efficiency of regional mechanisms of migration governance in comparison with universal ones (Leonov and Korneev, 2019, p. 213). In other words, states are more willing to assume obligations within a clearly defined circle of counterparties, rather than to adherer to a universal agreement.

An important reform within the EAEU, which has been prepared by the Eurasian Commission since 2014, is that of pension benefits of the workers of the member states of the EAEU and members of their families. *The Pension Agreement for Working Population of the*

*Eurasian Economic Union Member States*<sup>10</sup> was signed on December 20, 2019 and came into force on January 1, 2021.<sup>11</sup> This agreement is an important step towards ensuring the freedom of movement within the common market, since the pension systems of the EAEU countries differ in terms of retirement age, pension benefits, and structure of financing pension payments (Dyatlov, Feygin and Lebedeva, 2017). According to article 3 of the Agreement, workers of member states of the EAEU enjoy pension rights on the same conditions as nationals of the state of employment. Article 5 establishes a right of a family member to pension upon the death of a worker.<sup>12</sup> The amount of pension benefits depends on the length of service on the territory of a member state. Moreover, they are calculated in line with national rules of the state of employment. The agreement provides for an export mechanism of pension benefits between the member states of the EAEU. For the purpose of implementation of the Agreement, the Council of the Eurasian Commission has adopted a procedure and mechanism for interaction between competent authorities of the EAEU countries and the Eurasian Economic Commission.<sup>13</sup>

It is not the time to assess efficiency of the Agreement since it has just been launched, and we can forecast rather a challenging implementation given the issue is complex and particularly sensible. Nevertheless, from the perspective of the goals of the Agreement we argue that it should contribute to reducing illegal labor activities through

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<sup>10</sup> In translation from the website of the Eurasian Economic Commission.

<sup>11</sup> The Pension Agreement for Working Population of the Eurasian Economic Union Member States enters into force. Available at: <http://www.eurasiancommission.org/ru/nae/news/Pages/12-01-2021-01.aspx> [Accessed 20.02.2021] (In Russ.).

<sup>12</sup> The Pension Agreement for Working Population of the Eurasian Economic Union Member States. Available at: [https://docs.eaeunion.org/docs/ru-ru/01424533/itia\\_13012020](https://docs.eaeunion.org/docs/ru-ru/01424533/itia_13012020) [Accessed 20.02.2021] (In Russ.).

<sup>13</sup> On the Procedure for Interaction between Authorized Bodies, Competent Bodies of the Member States of the Eurasian Economic Union and the Eurasian Economic Commission on the Application of the Pension Agreement for Working Population of the Eurasian Economic Union member states of December 20, 2019, Decision of the Council of the Eurasian Economic Commission, No 122, 23 December, 2020. Available at: [https://docs.eaeunion.org/docs/ru-ru/01428255/err\\_31122020\\_122](https://docs.eaeunion.org/docs/ru-ru/01428255/err_31122020_122) [Accessed 20.02.2021] (In Russ.).

offering a comprehensive system of financial benefits and guarantees to foreign workers coming from other member states of the EAEU.

Up to date, there are some challenges related to migration regime established by the EAEU Treaty. Mostly they occur during its implementation. It should be noted that there is an objective difference in the socio-economic development of the present member states. It has a significant impact on the efficiency of the Treaty implementation. However, some scholars, for example, Caress Schenk notes that major problems preventing from smooth implementation of the Treaty are mostly associated with Russia, as the main receiving country within the EAEU (Schenk, 2015). They often refer to its bureaucratic system which is not willing, in their view, to fully implement the provisions of the Treaty.

Some researchers note insufficient level of ensuring the rights of workers within the EAEU, pointing out, in particular, at the imbalance between the status of workers from the Russian Federation and Belarus, on the one hand, and workers from Armenia, Kyrgyzstan and Kazakhstan, on the other hand. They refer to the special regime within the Union State of Russia and Belarus, which, in terms of migration issues, is considered as national treatment (Davletgildeev, 2016, p. 306). However, such an imbalance is the result of a more advanced cooperation between Russia and Belarus, established long before the EAEU Treaty, which has nothing in common with the latter. In our view, this “gap” is a good example of multi-speed integration, which can be found within the European Union after the enlargement 2004.

Another “weak point” of the EAEU Treaty often referred to by some academics is a lack of explicit nationality-based non-discrimination provision (Davletgildeev, 2016, p. 306), which could have been modelled on article 6 of the TFEU. Problems of (or deliberate unwillingness to) bringing national legislation in line with the EAEU Treaty has also been fairly criticized by scholars. In particular, some administrative legislation provisions of the member states, and above all, of the Russian Federation, are often cited in connection with the so-called “black lists” of migrants who have been banned from entering the Russian Federation (Kluczevska, 2014). Another problem is the reluctance of employers to enter into formal contractual (labor) relations with

foreign workers from the EAEU countries, which obviously reduces the efficiency of the Treaty. In this regard, the case of Russia is referred to most of all. Such situations are sometimes considered as failures of the EAEU Treaty (Schenk, 2015). Nevertheless, most of the issues come from the implementation of the Treaty and not from the text itself. Weak implementation in terms of legislation harmonization, adaptation of respective national acts to Treaty provisions, proper law enforcement measures results in above-mentioned cases.

When analyzing the EAEU migration regime and its shortcomings, some scholars argue that relationship within the EAEU in the field of migration regulation should evolve from economic and political logic to civilizational one.<sup>14</sup> Thus, it could provide an integration model in which host member states do not make any distinctions between their citizens and the citizens of other Union members in labor migration issues, granting national treatment and equal rights to all workers. However, we cannot ignore that labor migration is a part of state economy; it is largely regulated by market rules, the thesis which is supported by most classical and postclassical approaches to labor migration (Zhulikova and Strizheus, 2019, pp. 21–32). Therefore, economic rationale (Korneev and Leonov, 2021) will be always prioritized over migrants' rights, especially when it comes to large flows of labor migration typical for the EAEU with its clear distinction between receiving and sending countries.

For this comparative study, it is important to consider the difference between the EU and the EAEU in terms of the scale of internal labor migration mobility. In the EU, decades after the development of the free movement regime, only around 3 per cent of EU citizens actively use this right (Boswell and Geddes, 2011). From 1961 to 1967, 1 753 818 initial work permits were issued to workers moving within the EEC, which accounts to about 1 % of the population of the six member states of the EEC.<sup>15</sup> Both relative and absolute figures of internal labor mobility

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<sup>14</sup> About Eurasian migration system, its factors and trends see Ivakhnyuk, 2012.

<sup>15</sup> Complete freedom of movement for workers now a reality. Information Memo P-50/68, July 1968. [EU Commission — Press Notice] (archives of the University of Pittsburgh. Available at: <http://aei.pitt.edu/id/eprint/29937>). It is interesting to mention that 80 % of all workers granted with work permits during that period were Italian nationals.

within the EAEU are many times greater. The reason for this lies in the fundamentally different goal setting of European and Eurasian integration in labor migration and free movement issues. In the EEC Treaty (as well as in the ECSC Treaty (art. 69)), the provisions on freedom of movement are aimed at stimulating labor mobility between member states for the sake of economic integration and development of a common market (De Bruycker 2017; Geddes, 2000). In other words, the treaties seek to create a new migration reality in Western Europe (Leonov and Korneev, 2019, pp. 205–223): its provisions contributed to unlimited labor migration between the EEC member states. In the EAEU, the situation is quite the opposite: the provisions of Chapter 26 of the EAEU Treaty reflect and create rules for the migration situation “on the ground” that has been existing between the member states for many years before and after the collapse of the Soviet Union. Unlike the EU, intra-Union labor migration in the EAEU is significant, and the Treaty only creates legal framework for it and contributed to its facilitation. It may explain why no member state raised objection to the provisions on labor migration (Chapter 26 of the Treaty) when signing the Treaty. By contrast, in the case of the EEC Treaty only Italy (dependent on immigration and remittances) and Belgium supported the provisions on free movement of workers (Groenendijk, 2009, pp. 11–24).

### **III. Labor Migration Governance in the European Communities: Uneasy Path to a Genuine Freedom of Movement**

Today the European Union is the most developed integration organization that has built a genuine internal market and provided the four freedoms necessary to create a common market. Freedom of movement is not only a legal right, but, due to its importance, is a principle of the EU internal market. As noted above, it would not be entirely fair to compare the EAEU and the EU in terms of the current state of legal regulation of freedom of movement, given that the EU is a much more mature organization with almost seventy years of history. In this regard, we will consider the main stages and features of legal development of the freedom of movement of workers during the first

three decades of the European Communities. Although it significantly exceeds the five-year history of the EAEU, it is quite commensurate with post-Soviet development of regional law in the field of freedom of movement and labor migration.

European integration started as economic integration. The construction of a common market would be impossible without effective freedom of movement of goods, services, capital and persons. Therefore, freedom of movement of workers is enshrined in the first constituent documents. *Treaty establishing the European Coal and Steel Community of 1951* contains chapter VIII “Wages and movement of workers.” The treaty provided for elimination of all restrictions based on nationality upon the employment in the coal and steel industries of workers who are nationals of Member States and have recognized qualifications in a coalmining or steelmaking occupation. However, states were free to apply restrictions based on the requirements of health and public policy (article 69). Discrimination in payment and working conditions of migrant workers was prohibited.<sup>16</sup>

The freedom of movement of workers was further enshrined in the *Treaty establishing the European Economic Community of 1957 (EEC)*. The treaty aims at economic integration by means of creating a common market. For this purpose, a transition period of 12 years was established, shortly before the end of which the common market became a reality. This happened in three consecutive stages through adoption of three regulations in 1961, 1964 and 1968. The Regulation 1612 was adopted 18 months before the planned transition period was over. It meant that by that moment the consensus on the free movement of workers among the EEC member states took place. For the sake of our comparison, we should note that it took a decade, which had passed since the adoption of the Rome Treaty, when out of all members only Italy had actively supported that idea.

Article 48 establishes the right of workers of the member states to free movement within the Community, the abolition of any discrimination on national grounds against workers of the member

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<sup>16</sup> Treaty establishing the European Coal and Steel Community. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:xy0022> [Accessed 20.09.2021].

states with regard to recruitment, remuneration and other working conditions and employment. Paragraph 3 of article 48 guarantees the right of member states' nationals to accept offers of employment actually made within the labor market of the member states, to move freely within their territory for this purpose, to stay in a member state for the purpose of employment and to remain in its territory after having been employed in that state.

The founding treaties do not give much attention to workers' rights, which confirms an instrumental character of the freedom of movement as a tool of economic integration. The treaties indicate willingness of the member states to support measures for protection of national labor markets. They establish freedom of movement only for workers, not for all nationals of the member states. They could enjoy this freedom only for employment purpose in one of the members of the EEC.

As noted above, the creation of a single labor market and freedom of movement in the EEC happened through the secondary law of the Community and the Court of Justice practice, which develop and specify the provisions of the Treaties. The first acts of this kind were *Council Regulation No 15 of August 16, 1961, on initial measures to bring about free movement of workers within the Community*<sup>17</sup> and *Council Directive of August 16, 1961, on administrative procedures and practices governing the entry into and employment and residence in a Member State of workers and their families from other Member States of the Community*. These acts were adopted pursuant to article 49 of the EEC Treaty, which empowered Community institutions to take "measures necessary to implement free movement of workers through directives or regulations."

While establishing the right of workers from the EEC member states to enter and stay on the territory of another member states, these legal acts, nevertheless, largely retained the priority of interests of national labor markets. These acts required obtaining a work permit to start working on the territory of a EEC member state and respecting a three-week period after the opening of a vacancy so that state authorities could

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<sup>17</sup> Règlement n° 15 relatif aux premières mesures pour la réalisation de la libre circulation des travailleurs à l'intérieur de la Communauté, OJ 57, 26.8.1961.

make sure that no appropriate national candidate was willing to take up that offer (article 1 of Regulation No 15). This provision is a protectionist one. A worker could only move to another EEC member state if there was a job offer and the purpose of his/her move was to accept it. Moreover, a worker could be limited in terms of the territory of his/her stay, where he/she received the right to work, and of the type of activity that he/she was entitled to carry out (article 4 of Directive 57, articles 3 and 6 of Regulation No 15). Only after four years of regular work in a member state could a foreign worker receive an unlimited access to the labor market as to types of activities and in five years he/she could work without territorial restrictions. The freedom of movement extended to family members of a worker, although only legal spouses and children under the age of 21 were considered as such. Important achievements of Regulation No 15 and Directive 57 were that they 1) prohibited quotas on the number of foreign workers from the EEC member states and 2) abolished the requirement to obtain visas to cross internal borders for employment purposes.

Subsequent European acts expanded the list of workers' rights in the EEC. Thus, *Regulation 38/64 "On the free movement of workers within the Community"* and *Directive 64/240*, adopted in 1964, cancelled the priority of the interests of the national labor market<sup>18</sup> and the requirement of three weeks' waiting period. The Regulation 38/64 applied to all wage earners and not only to permanent workers. It covered frontier and seasonal workers to whom Regulation No 15 did not apply and who were accorded the same rights as other worker. The Regulation formally abolished "national priority" clauses established in the previous acts (article 8 of Regulation 38/64). This abolition was, however, subject to derogation applied by Member States: they were entitled to reintroduce priority measures in cases where some regions and trades areas had surplus work force. By default, nationals of six Member States had access to employment throughout the EEC on a footing of full equality, with only one important exclusion that

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<sup>18</sup> Regulation and Directive on free movement of workers – second stage. Information Memo P-20/64, April 1964. [EU Commission – Press Notice] (Archives of the University of Pittsburgh. Available at: <http://aei.pitt.edu/15326/>) [Accessed 20.09.2021].

foreigners had to obtain a work permit. We should note that work permits established by the Directive of August 16, 1961, was then enshrined in the Regulation 38/64 and became directly applicable in the member states. A certain dynamics took place in the field of family rights of foreign workers. The Regulation guaranteed the right of workers to be joined by his/her family members whose list was considerably extended. Apart from spouses and children under the age of 21, it included relatives both descendants and ascendants, as well as spouse's relatives, dependent on the worker or his/her spouse. This right was conditional on worker's dwelling available for his family. It should be assessed normal under the same criteria as for nationals working in the same region (article 17 (3) of Regulation 38/64).<sup>19</sup> Thus, these new acts were an advanced step in progressive introduction of freedom of movement of workers in the EEC pursuant article 49 of the EEC Treaty.

*Regulation 1612/68 on the free movement of workers within the community* of October 15, 1968, is one of the most important EEC acts in the field of labor migration law and a significant advance in the field of freedom of movement and workers' rights in the Community. This Regulation was designed to create a genuine single labor market all over its space. It removed remaining discriminatory elements making difference between national workers and foreign workers from other member states, and represented an important milestone on the road to European citizenship for Community workers.<sup>20</sup>

It prohibited both direct and indirect discrimination against foreign workers. Article 7 prohibited discrimination based on nationality regarding conditions of employment and work, wages, dismissal, reinstatement and re-employment. Article 3 of the Regulation aimed at eliminating indirect discrimination through national legislative and administrative acts or administrative practice, targeted at restricting access of foreign nationals to labor market of a particular Member State.

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<sup>19</sup> This requirement was later examined by the EU Court in 249/86 Commission v. Germany, 1986, ECR 1263.

<sup>20</sup> Complete freedom of movement for workers now a reality. Information Memo P-50/68, July 1968. [EU Commission — Press Notice] (Archives of the University of Pittsburgh. Available at: <http://aei.pitt.edu/id/eprint/29937>). [Accessed 20.09.2021].

The Regulation abolished work permits for common market workers. They had to comply only with requirements for residence permits, which were issued for a five years period and were automatically renewable. Community workers enjoyed the same tax treatment and social benefits with nationals, had equal access to housing and property. Moreover, the Regulation guaranteed a right of foreign workers to study in vocational schools, to join trade unions. Article 10 established the right of community workers to be joined by family members and dependants in their place of residence. It also guaranteed the rights of family members to employment and education.<sup>21</sup>

The concept of “worker” is a key one within this Regulation. It received a broad interpretation in the practice of the Court of the European Communities (Entin and Pirker, 2019), according to which it had a single meaning throughout the EEC and did not depend on national labor legislation. As the Court pointed out, “an essential characteristic of an employment relationship is the fact that one person for some time provides services for the other person under his direction in exchange for which he receives remuneration.”<sup>22</sup> Due to such a broad approach, freedom of movement of workers was significantly expanded to professional sportsmen, trainees, as well as persons who had de facto labor relations with their employers.

The *Directive on the abolition of restrictions on movement and residence of workers of the Member States and their families within the Community* involved changes necessary to harmonize its provisions with the Regulation 1612/68. In particular, all workers changing their place of residence within the Community were granted standard residence permits entitled “Residence permit of a national of an EEC Member State.” With the adoption of these acts, creation of freedom of movement envisaged by the EEC Treaty entered into its final stage (De Bruycker, 2017).

*Regulation (EEC) No 1251/70 of the Commission of June 29, 1970, on the right of workers to remain in the territory of a Member*

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<sup>21</sup> Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31968R1612> [Accessed 20.09.2021].

<sup>22</sup> Affaire 344/87 “Bettray”, Rec.

*State after having been employed in that State*<sup>23</sup> expanded the scope of freedom of movement of workers by guaranteeing to the workers residing in the territory of a Member State the right to remain in that territory when he/she ceased to be employed in that State because of a retirement age, by reason of permanent incapacity to work or after three years of continuous employment and residence in the territory of that state, even if he/she worked as an employed person in another member state, while retaining his/her residence in the first state, to which he regularly returned (article 2).

Although the freedom of movement in the EEC was primarily an instrument of economic integration, it would have been impossible without establishing social rights and guarantees. In the early 70s, the EEC started developing legal regulation on social issues. In order to coordinate various social security systems, the Council of the EEC adopted the *Regulation No 1408/71 of June 14, 1971, on the application of social security schemes to employed persons and their families moving within the Community*.<sup>24</sup> Article 4 of the Regulation applied to all legislation concerning different branches of social security: sickness and maternity benefits, invalidity benefits, old-age benefits, survivors' benefits, benefits in respect of accidents at work and occupational diseases, death grants, unemployment benefits, family benefits. The Regulation laid down the rules workers had to comply with in order to receive benefits, the procedures for exchange of information between social security institutions of the EEC members, for refunds between institutions, etc.

Despite the fact that over two decades the EEC witnessed a significant evolution in the regulation of freedom of movement, nevertheless the latter was limited exclusively to workers and not all individuals moving within the EEC. Further changes and shifts from purely

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<sup>23</sup> Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31970R1251> [Accessed 20.09.2021].

<sup>24</sup> Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31971R1408> [Accessed 20.09.2021].

economic rationale of freedom of movement took place in the seventies and eighties. The Court of Justice played a significant role in that process through gradually expanding the scope of freedom of movement. Nevertheless, that process was not easy. Thus, the initiative of the Commission to adopt new directives to complete Community law in this area by extending the right of residence to those European citizens who did not yet have that right on the basis of existing Community acts (articles 48–86 of the EEC Treaty; Regulations 1812/68 and 1251/70 and Directives 68/360, 73/148 and 75/34) (students, persons receiving pension or allowance, *etc.*) was blocked by the Council in 1979 and practically postponed for 10 years.<sup>25</sup> In other words, the path that the EEC travelled in establishing a genuine freedom of movement for all persons, and not only for workers, was difficult and took almost four decades.

#### IV. Discussion and Conclusion

Historically, European and Eurasian region-building projects have started with steps in the field of economic integration. However, the degree and significance of economic goal setting were different in these two cases, especially in regards to regulating mobility of workers coming from member states of the respective regional organizations to the territory of other member states. In the EEC, workers moving within the Community were perceived as a factor of production ensuring the creation of internal market. This reflected a market-oriented rationale of European integration. We argue that Eurasian integration is more multifaceted in terms of interests, goals and needs, which were at its basis. In the field of labor migration governance, this process was largely justified by needs of reintegration of the post-Soviet space, preservation and maintenance of relations between former republics of the USSR, linked through family, economic, cultural and other ties between their peoples. Political and legal instruments in the field

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<sup>25</sup> Proposal for a Council Directive on the right of residence for students. Proposal for a Council Directive on the right of residence for employees and self-employed persons who have ceased their occupational activity. Proposal for a Council Directive on the right of residence. COM (89) 275 final, 26 June 1989. Archives of the University of Pittsburgh. Available at: <http://aei.pitt.edu/12236/> [Accessed 20.09.2021].

of migration regulation, thus, have reflected the realities of the post-Soviet space. In particular, they targeted those migration flows that already existed and required such region-level regulation. In this sense, the economic background, which exists in both cases, was turned upside down: whereas in the EEC integration tools aimed at stimulating new migration flows, in the post-Soviet space they provided the existing ones with a normative framework.

Due to economic priorities, issues of social protection in the early years of the EEC and the EAEU were either insignificant or mostly of framework nature. The rights to free border crossing and employment opportunities were prioritized within both organizations. However, establishing freedom of movement of workers was impossible without taking into account their social rights, which could be subject to limitation after border crossings and changing state jurisdiction. Therefore, in both cases there was a tendency to expand the scope of rights of workers and members of their families. It is important to note that in the case of the EAEU, already the founding treaty itself initially provided for a number of essential social rights for Union workers, which was important for a more comfortable integration of foreign workers in the state of employment. In the EEC, these rights appeared only in the Regulations of 1964 and 1968.

The EAEU Treaty prohibits establishing any restrictions in order to protect national labor markets, with the exception of special cases that also took place in the EEC law and remain to this day in the European Union. The trend of protecting national labor markets characterized the European integration during the first few years of the EEC. Moreover, unlike the EAEU, in the EEC those restrictions were established by the founding Treaty, and were removed only by the Regulation of 1964.

Pension reform is one of the recent positive legal developments in the EAEU. The agreement on pensions for workers of the EAEU member states borrowed the EU experience. In particular, the EAEU took the path of coordinating pension systems of the member states, as in the EU, and not unification. This initiative should contribute to reducing illegal labor activities through offering a comprehensive system of financial benefits and guarantees to all Union workers.

In the Eurasian migration system, there is a tendency to borrow the EU experience in developing fundamental rights of migrants. It can be traced back to the CU/SES Treaty of 1999. We find similarities in the way the objectives of the EEC and the Single Economic Space were established in the respective treaties, namely “effective functioning of the common market for goods, services, capital and labor, improving living standards of the population.” Article 39 of the CU/SES Treaty prohibited discrimination in employment, remuneration and work conditions. The Treaty established the right to remain on the territory of a member state, guaranteed crediting the length of service. The CU/SES Treaty provided forward-looking provisions, some of which, unfortunately, were not included in the current EAEU law. One of the most prominent examples is the principle of non-discrimination, which was guaranteed by the CU/SES Treaty, but was not explicitly included into the EAEU Treaty. We argue, however, that comprehensive interpretation of the Treaty confirms the compliance to this principle. Rustem Davletgildeev notes that “keeping quiet about the principle of non-discrimination is not accidental, but is due to the lack of anti-discrimination legislation in the EAEU Member States” (Davletgildeev, 2019, p. 185). We believe that this principle should have been explicitly formulated in the EAEU Treaty as basis for legal status of all nationals of the EAEU states moving within the Union with purposes of employment under the labor law or service provision under the civil codes of respective countries.

Today in the EAEU, there is some imbalance in the rights of workers from EAEU member states arriving in Kazakhstan, Armenia, Kyrgyzstan, on the one hand, and Russia and Belarus, on the other. Some researchers consider this as a shortcoming of the EAEU Treaty (Davletgildeev, 2019, p. 185). The Treaty establishing the Union of Belarus and Russia set up a national regime in terms of wages, working hours, rest time and other issues of employment with respect to citizens of the Union state. We agree that such imbalance should be removed or smoothed down in the EAEU on its way to a genuine freedom of movement. However, within a framework of a diachronic comparison, it is interesting to point out that this situation is very similar to the coexistence of the Benelux Economic Union (1958) and the EEC. In the Benelux Economic Union (as well as in the Union state of Belarus and Russia) there was a genuine

freedom of movement of all citizens of member states.<sup>26</sup> This was very different from the situation in the EEC, which came to the freedom of movement of nationals (and not workers) only 60 years later (Guild, 2009, pp. 25–38).

Regulation of labor migration in the EEC and the EAEU also differs in terms of distribution of competencies in this area between national and Community/Union levels. According to the EAEU Treaty, the Union does not enjoy the competence in the field of freedom of movement of workers. This power belongs to the member states and is implemented within the framework of intergovernmental cooperation (article 96). In the EEC, the competence in the field of intra-community labor mobility was initially assigned to the Community. We believe that in the EAEU this step should be considered as crucial for further creation of a genuine common labor market, and these changes should be established in the EAEU Treaty.

One of the best practices of the EEC that is worth borrowing is a significant role of the Court of Justice in the interpretation of freedom of movement of workers. As noted above, it was the Court that contributed to the development of the concept of “worker” and of other relevant provisions in the field. To date, the EAEU Court is very limited in such legal opportunities. Expanding the scope of competence of the EAEU Court should be an important step towards the development of a common labor market in the EAEU.

Overall, the EAEU is characterized by important positive developments in the regulation of intra-Union labor migration. To some extent, positive experience and good practices of the EEC and the EU have also contributed to this. Since its creation, the EAEU labor market regulation was even more advanced on some issues than its European counterpart was. This can be explained by the fact that the EAEU has been developing against the background of the existing EU common market, and has at least partly used an opportunity to learn from its experience.

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<sup>26</sup> Treaty Establishing the Benelux Economic Union, The Hague, February, 3 1958. See Article 2 establishing freedom of movement of people and equal treatment.

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## References

1. Bisson, L.S. and Potemkina, O.Yu., (2014). Freedom of movement of citizens in the European Union: Achievements or a Problem. *APE*, 4. Available at: <https://cyberleninka.ru/article/n/svoboda-peredvizheniya-grazhdan-v-evropeyskom-soyuze-dostizhenie-ili-problema> [Accessed 08.01.2020] (In Russ.).
2. Boswell, C. and Geddes, A., (2011). *Migration and Mobility in the European Union*. Basingstoke: Palgrave Macmillan. ISBN-13: 978-0230007482; ISBN-10: 0230007481.
3. Davletgildeev, R.Sh. and Sycheva, O.V., (2015). International and Legal Cooperation Development on Labour Migration Issues: From EurAsEC to Eurasian Economic Union. *Journal of Russian Law*, 3(6), doi.org/10.12737/11444 (In Russ.).
4. Davletgildeev, R.Sh., (2016). *International Law Employment Regulation at the Regional Level*. Doctoral dissertation. Kazan: Kazanskiy Federalnyy Universitet (In Russ.).
5. Davletgildeev, R.Sh., (2018). International legal regulations of labour migration in the Eurasian region: A Tentative Attempt at Approximating the EU's Free Movement of Workers? *The Journal of Social Policy Studies*, 16(4), pp. 595–610, doi.org/10.17323/727-0634-2018-16-4-595-610 (In Russ.).
6. Davletgildeev, R.Sh., (2019). *International legal regulations of labour migration and academic mobility in the European Union and the Eurasian region: Possibilities for exchanging experience. Regional aspects of integration: European Union and the Eurasian region*. Moscow: Statut (In Russ.).
7. De Bruycker, Ph., (2017). The European Union: From freedom of movement in the internal market to the abolition of internal borders in the area of freedom, security and justice. In: Nita, S., Pécoud, A., De Lombaerde, Ph., Neyts, K., and Gartland, J., eds., (2017). *Migration, Free Movement and Regional Integration*. Paris/Bruges: UNESCO — UNU-CRIS, p. 287. Available at: [https://cris.unu.edu/sites/cris.unu.edu/files/Migration%20of%20free%20movement%20and%20regional%20integration\\_o\\_o.pdf](https://cris.unu.edu/sites/cris.unu.edu/files/Migration%20of%20free%20movement%20and%20regional%20integration_o_o.pdf) [Accessed 08.01.2021].

8. Dyatlov, S.A., Feygin, G.F., and Lebedeva, L.F., (2017). Transformatsiya pensionnykh sistem stran Yevraziyskogo ekonomicheskogo soyuza. *Economy of Region*, 4, pp. 1151–1163, doi.org/10.17059/2017-4-14 (In Russ.).

9. Entin, K. and Pirker, B., (2019). Bosman's Second Life? The Eurasian Economic Union Court and the Free Movement of Professional Athletes. *Legal Issues of Economic Integration*, Issue 2, 46, pp. 129–148.

10. Gabov, A.V., Kashirkina, A.A., Lukyanova, V.Yu., et al. (2012). *Free trade area and the custom union: Legal problems of the post-Soviet integrating unions*. Lukyanova, V.Yu., ed. Moscow: Ankil. ISBN 978-5-86476-366-7 (In Russ.).

11. Geddes, A., (2000). *Immigration and European integration: Towards fortress Europe?* Manchester: Manchester University Press. ISBN: 978-0-7190-7466-0.

12. Groenendijk, K., (2009). Forty Years of Free Movement of Workers: Has it Been a Success and Why? In: P. Minderhoud and N. Trimikliniotis, eds., (2009). *Rethinking the Free Movement of Workers: The European Challenges Ahead*. Nijmegen: Wolf Legal Publishers. ISBN: 9789058504647. Pp. 11–24.

13. Guild, E., (2009). Free Movement of Workers: From Third Country National to Citizen of the Union. In: P. Minderhoud and N. Trimikliniotis, eds., (2009). *Rethinking the Free Movement of Workers: The European Challenges Ahead*. Nijmegen: Wolf Legal Publishers. ISBN: 9789058504647. Pp. 25–38.

14. Ivakhnyuk, I.V., (2007). Eurasian Migration System. *Vestnik Moskovskogo universiteta. Ser. 6. Ekonomika*, 3, pp. 37–56. Available at: [https://www.elibrary.ru/download/elibrary\\_12839769\\_27812631.pdf](https://www.elibrary.ru/download/elibrary_12839769_27812631.pdf) [Accessed 12.11.2020] (In Russ.).

15. Ivakhnyuk, I.V., (2012). Eurasian Migration System: From Economic Pragmatism to Civilization Solidarity Renaissance. Available at: <http://www.gumilev-center.ru/evrazijskaya-migracionnaya-sistema-ot-ekonomicheskogo-pragmatizma-k-vozhrozhdeniyu-civilizacionnogo-edinstva/> [Accessed 12.11.2020] (In Russ.).

16. Kluczevska, K., (2014). *Migrants' Re-entry Bans to the Russian Federation: The Tajik Story*. Central Asia Security Policy Briefs.

Available at: [https://osce-academy.net/upload/file/Policy\\_Brief\\_16.pdf](https://osce-academy.net/upload/file/Policy_Brief_16.pdf) [Accessed 12.11.2020].

17. Korneev, O. and Leonov, A., (2021). 'Home-grown' vs. 'imported' regionalism? Overlapping dynamics of regional migration governance in post-Soviet Eurasia. *Journal of Ethnic and Migration Studies*, doi: 10.1080/1369183X.2021.1972566.

18. Korneev, O., (2017). International Organizations as Global Migration Governors: The World Bank in Central Asia. *Global Governance: A Review of Multilateralism and International Organizations*, July-September 2017, 23(3), pp. 403–421, doi.org/10.1163/19426720-02303005.

19. Leonov, A. and Korneev, O., (2019). Regional Migration Governance in the Eurasian Migration System. In: A. Geddes, M. Vera Espinoza, L. Hadj Abdou and L. Brumat, (2019). *The Dynamics of Regional Migration Governance*. Edward Elgar Publishing, pp. 205–223.

20. Molodikova, I., (2017). Two decades of CIS coexistence: The transformation of the visa-free movement. In: S. Nita, A. Pécoud, Ph. De Lombaerde, K. Neyts and J. Gartland, eds., (2017). *Migration, Free Movement and Regional Integration*. Paris/Bruges: UNESCO – UNU-CRIS. Available at: [https://cris.unu.edu/sites/cris.unu.edu/files/Migration%20of%20free%20movement%20and%20regional%20integration\\_o\\_o.pdf](https://cris.unu.edu/sites/cris.unu.edu/files/Migration%20of%20free%20movement%20and%20regional%20integration_o_o.pdf) [Accessed 08.01.2021].

21. Molodikova, I., (2018). Eurasian Migration towards Russia: Regional Dynamics in the Era of Globalisation. In: A. Triandafyllidou, ed., (2018). *Handbook of Migration and Globalisation*. Cheltenham and Northampton, MA: Edward Elgar Publishing. ISBN: 9781785367502. Pp. 334–358.

22. Ryazantsev, S. and Korneev, O., (2013). *Russia and Kazakhstan in Eurasian Migration System: Development Trends, Socio-Economic Consequences of Migration and Approaches to Regulation*. CARIM-East Regional Report, 2013/44. Robert Schuman Centre for Advanced Studies, European University Institute, Florence. Available at: [https://cadmus.eui.eu/bitstream/handle/1814/29930/CARIM-East\\_RR-2013-44.pdf?sequence=1&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/29930/CARIM-East_RR-2013-44.pdf?sequence=1&isAllowed=y) [Accessed 08.01.2021].

23. Sagynbekova, L., (2017). *International Labor Migration in the Context of the Eurasian Economic Union: Issues and Challenges of Kyrgyz Migrants in Russia*. Working Paper, No 39, University of Central Asia, Bishkek.

24. Schenk, C., (2015). *Labor Migration in the Eurasian Union: Will Freedom of Movement Trump Domestic Controls?* PONARS Eurasia Policy Memo No 378, George Washington University, Washington, DC, 2015. Available at: [https://www.ponarseurasia.org/wp-content/uploads/attachments/Pepm378\\_Schenk\\_Aug2015.pdf](https://www.ponarseurasia.org/wp-content/uploads/attachments/Pepm378_Schenk_Aug2015.pdf) [Accessed 12.11.2020].

25. Zhulikova, O.V. and Strizheus, A.V., (2019). Classical and post-classical approaches to labour migration as a socio-economic phenomenon. *Social Economic Phenomena and Processes*, 14–2(106), pp. 21–32, doi.org/10.20310/1819-8813-2019-14-2(106)-21-32 (In Russ.).

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## ARTICLES

DOI: 10.17803/2313-5395.2021.4.18.602-625

### **Regional Free Movement of People at the Global Level: The Case of the Eurasian Economic Union (EAEU)**

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**Abstract:** The paper research is on free movement of people at the Eurasian Economic Union (EAEU). It introduces the main components of the EAEU's free mobility regime, its promises and challenges. The author argues that the free movement of people regimes are not similar and respond to different needs and origins. Trying to answer, if free movement of people in the EAEU Treaty is the EU Model, the author discovers that in fact, the EAEU's scheme finds its roots in regional treaties signed and developed in the post-Soviet space in the 1990s. The paper has a discussion on the challenges of implementation and interpretation and situates them within a larger global panorama of regional free mobility schemes beyond the EU. Conclusions are made with some thoughts and suggestions for future research, also in light of the general closure of borders during the COVID-19 pandemic. This paper offers different insights on the free movement of workers at EAEU level. It has identified how the EU cannot really be considered as a model on several key aspects, notably the absence of the principle of non-discrimination enshrined in the Treaty and the lack of a secure residence status beyond the conclusion of an employment agreement. Researchers will need to continue to measure and investigate its implementation and the effects the free movement regime has in the inclusion of EAEU workers. More research will also be needed in light of the closure of borders during the pandemic and the effects that might have in the near future on the EAEU's free movement regime.

**Keywords:** Eurasian Economic Union (EAEU); free movement of people; Eurasian integration; migration law

**Acknowledgements:** The author would like to thank Ashleigh Guest for her revisions and comments.

**Cite as:** Acosta, D., (2021). Regional Free Movement of People at the Global Level: The Case of the Eurasian Economic Union (EAEU). *Kutafin Law Review*, 8(4), pp. 602–625, doi: 10.17803/2313-5395.2021.4.18.602-625.

## Contents

I. Introduction .....	603
II. Free Movement of People in the EAEU Treaty. Is the EU a Model? .....	605
II.1. Who Can Move? .....	607
II.2. Rights during Stay .....	609
<i>Access to the Labour Market and Quotas</i> .....	609
<i>Family Reunification</i> .....	610
<i>Civil and Socio-Economic Rights</i> .....	612
II.3. Prospects for Permanent Residence .....	613
III. Implementation and Interpretation .....	614
III.1. Implementation .....	615
III.2. Interpretation .....	616
IV. Conclusion .....	619
References .....	621

## I. Introduction

This paper is situated within the burgeoning literature on global migration law and policy that does not concentrate on the EU, North America and Australia as the sole objects of study (see among many others Acosta, 2018; Kubal, 2019; Tsourapas, 2018). More specifically, it is located within the increasing number of works investigating the legal regulation of regional free movement of people at global level, outside the well-known example of the EU (see generally on this: Pécoud and de Guchteneire, 2007; Nita et al., 2017). In a world where intraregional

mobility exceeds interregional movement and where South-to-North migration is smaller than South-to-South flows (Ratha, Plaza, and Ozden, 2016, p. 2020), it is perhaps surprising that these two trends are only now being slowly investigated.

A powerful narrative insists on depicting migration as a widespread problem being tackled by the erection of borders – both physical and legal. This is well exemplified by classical texts on the subject, which present a ‘crisis of immigration control’ that major immigrant-receiving countries are facing (Hollifield, Martin and Orrenius, 2020). Such emphasis on the Global North leads others to affirm that migration regulation is characterised by a landscape where ‘no new ideas are emerging’, or where the only ones emerging point in the direction of further control and restriction (Dauvergne, 2016, p. 7).

These accounts only offer a partial picture and do not allow academic and policy debates to move forward. Regional migration agreements tell us a different story about the alleged global trend of border closures. Contradicting this accepted narrative, regional agreements ease the crossing of borders for at least those holding certain nationalities. Examples are abundant. Already in 2007, the editors of a first volume on the subject concluded that the world was “progressing towards more, not less, freedom of movement” of people (Pécoud and de Guchteneire, 2007, p. 2). The boom in the last 12 years is notable and more than 30 regional organisations have adopted policies and legal instruments (Nita et al., 2017, p. 5). Scholars are picking up on these developments and are also leaving aside simplistic accounts where the EU is presented as the only functioning regime and the rest as merely aspirational (Geddes et al., 2019; Chetail (2019) devotes an entire section to the right to free movement under regional treaty law in his latest work).

Against this background, the inclusion of a legal regime facilitating labour migration in the 2015 founding Treaty of the Eurasian Economic Union (EAEU)<sup>1</sup> can be understood not only as a continuation of free

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<sup>1</sup> Treaty on the Eurasian Economic Union, Astana, 29 May 2014. The Treaty came into force on 1 January 2015. The three original Member States were Russia, Kazakhstan and Belarus. Armenia joined on 2 January 2015 whilst Kyrgyzstan obtained full membership on 12 August 2015. The Eurasian Economic Union has absorbed the previous Eurasian Economic Community (EURASEC), Eurasian Customs Union and the Single Economic Space (Art. 99 EAEU Treaty).

mobility in the region since the demise of the Soviet Union,<sup>2</sup> but also as part of an understanding whereby immigration control, or its management, is best achieved by, paradoxically, discontinuing the control of certain administrative requirements for those who are nationals of a group of regional states. This is not a minor issue for those interested in comparative migration law, since Russia is the second largest host of migrants in the world, only after the USA (Kubal, 2019, p. 2), and Kazakhstan hosts 3.7 million non-nationals representing 20 % of its population (United Nations, 2019).

This paper is divided as follows. The next section will briefly introduce the main components of the EAEU's free mobility regime, its promises and challenges. Some authors have argued that the EAEU is modelled on the EU. Whilst this might be true with regards to some aspects of the EAEU's institutional structure, this paper argues that the free movement of people regimes are not similar and respond to different needs and origins. In fact, the EAEU's scheme finds its roots in regional treaties signed and developed in the post-Soviet space in the 1990s. Nonetheless, the EU's experience, as well as other regional free movement regimes, for example in South America, can be helpful in anticipating possible knotty issues in the construction of a regional mobility regime, suited to the idiosyncrasies in the EAEU, and reflect on adequate answers before they become truly problematic. In that regard, section three will discuss the challenges of implementation and interpretation and situate them within a larger global panorama of regional free mobility schemes beyond the EU. The paper will conclude with some thoughts and suggestions for future research, also in light of the general closure of borders during the COVID-19 pandemic (Madiyev, 2021).

## **II. Free Movement of People in the EAEU Treaty. Is the EU a Model?**

Some scholars have presented the EAEU as being inspired by or modelled on the EU (Sagynbekova, 2017, p. 8; Golam and Monwar, 2018, p. 170). Whilst this might be true with regard to certain aspects,

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<sup>2</sup> Among many other multilateral and bilateral treaties, the Agreement on visa-free movement of citizens of the states of the Commonwealth of Independent States on the territory of his participants, 9 October 1992, Bishkek, Kyrgyzstan; Agreement on visa-free movement of EURASEC citizens within the Community, 2000.

such as the EAEU's institutional structure (Petrov and Kalinichenko, 2016), this section assesses the validity of such a claim when it comes to labour migration. It does so by dissecting Section XXVI of the EAEU Treaty on Labour Migration (Articles 96–98). Attention is paid here to the three main elements in any migration trajectory (namely entry, rights during stay and exit/expulsion or permanent residence). The EAEU provisions will be contrasted with the EU's mobility regime and its development.

This comparison must be performed with some caveats in mind. To begin with, in the EAEU's case, no country argued against the inclusion of a Section on labour mobility during the negotiations of its Treaty. That was not the case among the six founding members of the European Economic Community (EEC); all of them opposed free movement of workers except for Italy, who had “millions of unemployed workers” and “needed remittances,” and Belgium (Groenendijk, 2009, p. 12; Maas, 2007). Moreover, the post-Soviet space has a long history of free movement multilevel norms since 1992 (domestic, bilateral and regional) (Molodikova, 2017) and a fluid understanding of nationality and alienage. In Russia, for example, five million former Soviet Union citizens from other republics naturalised between 1992 and 2002) (Leonov and Korneev, 2019). Since 1999, Russia and Belarus have had in place a Union agreement through which “citizens of both countries have equal rights of travel, residence, work and welfare” and citizens of both countries are citizens of the Union State (Molodikova, 2017; Pirker and Entin, 2020).<sup>3</sup> With the exception of the Benelux Economic Union, this was not necessarily the case when the European Communities were established in the 1950s.<sup>4</sup> Finally, the present EU's regime is the result of more than 60 years of development, where free movement of workers has been partly transformed into free movement of citizens (Guild, 2009), as well as several setbacks, not least Brexit.

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<sup>3</sup> Article 14 of the Treaty on the Establishment of the Union State of Belarus and Russia, signed on December 8, 1999. Citizens of the Union enjoy equal rights and bear equal duties on the territory of another member state, unless provided otherwise by the legislative acts of the member states or treaties between them.

<sup>4</sup> Treaty establishing the Benelux Economic Union, The Hague, 3 February 1958. See Article 2 establishing freedom of movement of people and equal treatment.

By contrast, the main interest in the post-Soviet space has been since the 1990s to create a visa-free travel area and to allow those who obtain an employment contract, and their family members, but not others, to reside and work for the duration of such a contract.<sup>5</sup> Given differing contexts, each region must develop its own narratives for regional mobility that make sense for the time and place.

Groenendijk (2009, p. 17) has identified four elements that, from the 1960s, were at the core of the inclusion of Community workers in the other Member States: “access to employment and education, equal treatment with national workers, secure residence rights and family reunification”. Paramount among these elements was the abolition of discrimination based on nationality between workers of the Member States when it came to employment, remuneration and other conditions of work.<sup>6</sup> By contrast, the EAEU’s more modest aspirations are limited to the coordination of labour law systems, free movement of labour, cooperation on labour migration, and basic labour and social rights – including medical insurance and the right of children to access education – for EAEU workers (Lyutov and Golovina, 2018, p. 95). All this considered, the following pages assess the EAEU free movement provisions and offer some comparative thoughts on the evolution of the EU’s regime, by concentrating on entry, rights during stay and exit/expulsion or permanent residence.

### **II.1. Who Can Move?**

Free mobility schemes determine the conditions for the crossing of borders, residence and work in a second state in a named region. The EAEU Treaty calls upon the Union to adopt measures to ensure the functioning of an internal market guaranteeing free movement of labour (Art. 28 EAEU Treaty). However, Article 96 is less specific in its wording and merely demands that Member States agree on “common principles

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<sup>5</sup> For example, the Commonwealth of Independent States (CIS) agreement on cooperation in the field of labour migration and social protection of migrant workers, Moscow, 15 April 1994.

<sup>6</sup> Council Regulation 15/1961/EEC [1961] OJ L 1073/6. Regulation relatif aux premières mesures pour la réalisation de la libre circulation des travailleurs à l’intérieur de la Communauté, Preamble.

and approaches in the sphere of labour migration” and assist in the organised recruitment of workers (Art. 96 (1) and (3) EAEU). Workers are defined as those who, being nationals of a Member State, lawfully reside and lawfully engage in labour activities in the state of employment of which they are neither nationals nor permanent residents (Art. 96.5 EAEU). Employment refers to activities performed under an employment contract or in execution of works (services) ‘under a civil law contract carried out on the territory of the state of employment in accordance with the legislation of that state’ (Art. 96.5 EAEU). Employers are defined as natural or legal persons who provide a job based on an employment contract, in line with the legal requirements demanded in each state of employment (Art. 96.5 EAEU). The emphasis on the “employment contract” is palpable and determines the legality of residence of the individual. This “formalistic” approach (Pirker and Entin, 2020, p. 515) has always prevailed in the region since at least 1994.<sup>7</sup>

In a clear contrast with the EU’s regime, the Treaty remains silent as to any right of entry. This might seem paradoxical in theory, but the entry is not the main issue in practice in the region due to visa-free travel among the Member States (Molodikova, 2017). In the particular Russian case, migrants who do not require a visa to enter need to obtain a ‘patent’ in order to work. In order to obtain it, they need to fulfil certain conditions (e.g., medical insurance and a civic and language knowledge certificate) and there is a limited timeframe of 30 days after the entry to obtain it (Kubal, 2019). However, EAEU workers are not required to obtain any employment permit, meaning that they do not need to pass any civic or language knowledge exam (Art. 97.1 EAEU). Employers can engage their services without any restrictions, except those related to national security and public order (97.2 EAEU). Both articles have direct effect and direct applicability (Pirker and Entin, 2019, p. 134).

In the EU’s case, defining who is a worker has resulted in a long line of cases by the Court of Justice of the European Union (CJEU). A worker is an individual who “pursues an effective and genuine activity as an

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<sup>7</sup> Art. 6, Commonwealth of Independent States (CIS) agreement on cooperation in the field of labour migration and social protection of migrant workers, Moscow, 15 April 1994.

employed person.”<sup>8</sup> In order to determine if a person is employed, the individual has to provide services for a period of time, under the direction of another person for remuneration.<sup>9</sup> Thus, in contrast to the EAEU, where the employment and civil law contract is a necessary condition to obtain residence, the EU’s regime is more flexible provided the work is genuine and effective. Southern Common Market (*Spanish* – Mercado Común del Sur (MERCOSUR)) also offers an interesting approach that takes into consideration the large percentage of informality in labour markets in South America (Acosta, 2018, ch. 7).

In countries with very high degrees of informality in the labour market, such as Russia (according to some authors as high as 48 percent of the GDP in Russia. Schenk, 2018, p. 64), this is a matter deserving further attention. In practice, some employers prefer to engage EAEU workers without signing a contract to avoid taxes and social insurance contributions (Schenk, 2015, p. 4; Sagynbekova, 2017, p. 18). As seen below, this has legal implications for the security of residence of EAEU workers and for the success of the free movement regime itself, and it is something deserving further research.

## II.2. Rights during Stay

### *Access to the Labour Market and Quotas*

Access to the labour market includes not only the right to work under the direction of others but also the right to self-employment and entrepreneurship. States often restrict both elements through various methods such as tying residence permits to one job or labour sector. Other restrictions comprise impeding self-employment activities, requiring companies to employ a minimum percentage of national workers, or establishing quotas.

In the EU’s case, the only possible restriction refers to employment in the public administration,<sup>10</sup> a provision that has been interpreted as referring only to jobs where the individual “is entrusted with the

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<sup>8</sup> Case 53/81, Levin, 23 March 1982, paragraph 21.

<sup>9</sup> Case 66/85, Lawrie-Blum, 3 July 1986, paragraph 17.

<sup>10</sup> Art. 45(4), Treaty on the Functioning of the European Union.

exercise of powers conferred by public law and with responsibility for safeguarding the general interests of the State.”<sup>11</sup>

As mentioned, the EAEU Treaty prohibits quotas or any other labour market protective measures (Art. 97.1 EAEU)<sup>12</sup> and workers have the right “to engage in professional activities” (Art. 98(1) EAEU). Workers have the right to have their degree certificates obtained in other Member States recognised, except in the educational, legal, medical or pharmaceutical sectors, where a domestic recognition procedure might be set out by Member States (Art. 97.3 EAEU).

Nonetheless, the EAEU Treaty allows Member States to restrict access to employment based on national security considerations (e.g., in sectors of strategic importance) and public order ones (e.g., in certain geographical areas) (Art. 97.2 EAEU). Since these are exceptions to the general rule, they should be interpreted strictly. The precise contours of the terms *public security* and *public policy* has led to extensive, at times contradictory, jurisprudence where the CJEU has made use of the proportionality principle on a case by case basis (Thym, 2016; Koutrakos, 2016). In its first Advisory Opinion on the matter, the Eurasian Court of Justice referred to the CJEU’s jurisprudence in *Bosman* and *Simutenkov* and also applied the proportionality principle to the case at hand, as will be seen below.<sup>13</sup>

### ***Family Reunification***

As mentioned earlier, family reunification was one of the original and key elements in the development of the EU’s free movement of workers regime. Family reunification can be central to the migratory process for many individuals and there are certain categories of foreigners (e.g., seasonal workers) who are often excluded in domestic laws from any

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<sup>11</sup> Case C-149/79, *Commission vs Belgium*.

<sup>12</sup> Quotas have been often used in the past two decades by Russia (Schenk, 2018). They are currently used in Russia with regard to work permits which are those required by migrants who need a visa to enter the country. They are however not applied to EAEU workers or to “patents” workers, which are those coming from countries who do not require a visa to enter Russia.

<sup>13</sup> Case CE-2-2/5-18-BK Eurasian Economic Commission, Advisory opinion of the Grand Chamber of the Court of 7 Dec. 2018, *Opinion on Professional Athletes*.

family reunion route. Whilst family life is intrinsically related to family reunification, no international instrument provides an indisputable right to family reunification and the consequent right of entry for family members. However, family reunification has become a standard clause in regional free movement regimes. In this regard, migrants have three questions in mind: does an individual right to family reunification exist? Which family members may join the sponsor? What are the conditions of residence and rights of family members?

In the EU's case, from the outset the first 1961 EEC's Regulation included the right to family reunification for workers with spouses and children under 21. Two conditions were set: the worker had to have regular employment and adequate housing. Family members were entitled to work under the same conditions as the sponsor.<sup>14</sup> These requirements have seen some modifications (e.g., the abolition of the requirement to prove adequate housing) and are now regulated in Directive 2004/38.

The EAEU's provisions differ in some respects. First, family members are either spouses or children who are dependent on them. The Treaty does allow Member States to expand this category 'in accordance' with their legislation.<sup>15</sup> Second, there seem to be no conditions to allow family reunion for those who are not workers under the Treaty. Third, the Treaty remains silent on whether family members have the right to work. It might be argued that family members also holding the nationality of a Member State will be able to do so in so far as being under the personal scope of the Treaty. They could thus sign an employment agreement under the same conditions as the sponsor. However, in the absence of any specific provisions, family members not holding the nationality of a Member State will depend upon national legislation in order to determine their right to employment.

Regarding other rights, family members enjoy equal treatment with citizens of the state of employment regarding social protection (except for pensions)<sup>16</sup> and free medical assistance in emergency

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<sup>14</sup> Arts. 11–14, EEC Regulation 15/61.

<sup>15</sup> Art. 96 EAEU Treaty.

<sup>16</sup> Art. 98(3) EAEU Treaty.

situations.<sup>17</sup> Children of workers have the right to “attend pre-school institutions and receive education in accordance with the legislation of the state of employment” (Art. 98(8) EAEU). In the absence of any other provisions, other rights will depend on national law.

### ***Civil and Socio-Economic Rights***

Several civil and socio-economic rights are enshrined in the EAEU Treaty. The Treaty does not include any political rights. Whilst some of these rights may already be found in international agreements that all five Member States have ratified,<sup>18</sup> some others are similar to,<sup>19</sup> or go beyond, the UN Convention on the rights of migrant workers that only Kyrgyzstan has ratified – Armenia having signed it. This exemplifies how regional agreements might extend rights to a group of regional migrants, when the same rights are already enshrined in international treaties whose ratification is more cumbersome.

Civil rights include the right to use, possess and dispose of property, as well as its protection; the free transfer of funds (Art. 98(2) EAEU); and the right to join trade unions under the same conditions as nationals (Art. 98(5) EAEU). The free transfer of funds goes beyond the UN Convention on migrant workers<sup>20</sup> and it is particularly important for Armenian and Kyrgyz workers and the remittances they send to their home countries (Brownbridge and Canagarajah, 2020).

Considering socio-economic rights, the Treaty provides for equal treatment with nationals on social security, except for pensions which are

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<sup>17</sup> Annex 30 to the Treaty on the Eurasian Economic Union, Protocol on The Provision of Medical Care to the Member States Employees and to their Family Members.

<sup>18</sup> Art. 17 Universal Declaration on Human Rights (right to own property); Art. 22 International Covenant on Civil and Political Rights (right to join trade unions).

<sup>19</sup> The right to information enshrined in Article 98.6 EAEU is enshrined in Art. 33 UN Migrant Workers Convention. The EAEU Treaty also provides migrant workers with the right to obtain, free of charge, a document from the employer certifying the work performed, the period and the wages (Art. 98(7) EAEU). Such a right does not exist in the UN Migrant Workers Convention.

<sup>20</sup> Art. 47(2) only refers to the obligation for states to “take appropriate measures to facilitate such transfers”.

regulated by domestic law and the recently adopted Pension Agreement. Finally, workers and their family members have equal treatment with nationals regarding free emergency or urgent medical treatment.<sup>21</sup> However, the provision of other medical services is regulated by domestic law and by any bilateral, or international treaties, adopted by the Member States.<sup>22</sup>

### II.3. Prospects for Permanent Residence

A secure residence status has been presented as being one of the key components facilitating social inclusion in a destination country (Groenendijk, 2009). Foreigners may generally have their residence permits withdrawn if the reason that motivated their entry has ended or if they commit a criminal offence. States often distinguish between temporary residents and permanent ones, who enjoy stronger protection from expulsion. In the EU's case, the requirements to exclude or expel migrant workers were already set in 1964 in a Directive.<sup>23</sup> Today, permanent residence is obtained after five years and permit-holders can then only be expelled on grounds of public policy, public security or public health.<sup>24</sup>

The EAEU's regime differs. Residence is intrinsically associated with employment. The Treaty refers to "temporary" stay as depending 'on the duration of' a contract (Art. 97.5 EAEU). The word "temporary" leaves no doubt as to the intention of the legislator. If a contract ends,

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<sup>21</sup> Annex 30 to the Treaty, Protocol on Provision of Medical Treatment of Workers of the Member States and their Family Members, Art. 4.

<sup>22</sup> Annex 30 to the Treaty, Protocol on Provision of Medical Treatment of Workers of the Member States and their Family Members., Art. 3.

<sup>23</sup> Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health OJ 56, 04.04.1964, pp. 850–857.

<sup>24</sup> Art. 27, Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC. OJ L 158, 30.04.2004, pp. 77–123.

workers may engage in another job within 15 days (Pirker and Entin, 2020, p. 517). EAEU nationals who do not have a contract have their stays limited to 90 days. This is not regulated by the EAEU Treaty, since it does not cover visa issues as such. This is rather regulated by the Commonwealth of Independent States framework and by bilateral agreements (Schenk, 2015, p. 2).

Finally, the unwillingness of some employers to sign contracts results in some migrants ending up with an entry-bar in Russia (the so-called blacklist) making them deportable and banning their return for three years (Schenk, 2015, p. 2). An entry bar might be imposed not only on those who work without a contract but also on those who commit two minor administrative offences in a three year period, including “speeding or parking tickets, or being caught crossing the street in the wrong place” (Kubal, 2019, p. 28). The EAEU Treaty does not address this issue (Leonov and Korneev, 2019, p. 215).

### **III. Implementation and Interpretation**

Deficient implementation, gaps in application and the lack of strong supranational institutions of regional free movement regimes outside the EU might lead some to consider them as merely aspirational and lacking in accomplishment. These “intellectually dead-end explanations” run the risk of presenting the rest of the world as exotic while invoking “arguments about how law does not really work there” (Kubal (2019) highlights in the Russian case, p. 77). Moreover, these arguments unduly emphasise a fictitious dichotomy between an idealised domestic migration law, as well as EU citizenship law, that works and a superfluous idealistic non-European regional framework that does not. This offers those whose work solely concentrates on the Global North a quick exit to deny the importance of processes taking place in other regions. This section discusses the issues of implementation and interpretation and proposes some elements for discussion that can be useful in moving the debate forward beyond self-defeating explanations.

### III.1. Implementation

A recurrent argument when discussing free movement regimes outside the EU in international academic fora is the issue of implementation. Some consider that without strong supranational institutions, similar to those the EU has, implementation is significantly impaired and doubtful. While implementation has to be taken seriously, this dismissive approach is problematic on various grounds.

First, it has been abundantly proven that “immigration law in practice differs drastically from immigration law in theory [leading to a situation where] law in action is filled by countless government decisions that reflect the exercise of discretion, which responds to political and economic pressures that fluctuate over time” (Motomura, 2014, p. 4).<sup>25</sup> Second, as the work of scholars such as Groenendijk (2009) shows, the application of European law on free movement of workers in the 1960s and 1970s was deficient. Indeed, lawyers, rather than using EU law, which State authorities were not prepared to implement, needed to often resort to other informal channels to help their clients (Groenendijk, 2009). Third, even today, several authors have convincingly explained how certain EU nationals, such as the Roma, find it difficult to assert their rights in the face of ongoing discrimination (Parker, 2021; Aradau et al., 2013, Carrera and Atger, 2010). Finally, immigration law in practice sometimes hits those who are nationals, but cannot prove it, even in States where the rule of law is taken for granted, as exemplified by the recent Windrush scandal in the UK (Wardle and Obermuller, 2018).

Lack of compliance is not always the result of bad faith on the part of state authorities but may be due to shortcomings in administrative capacity or information for all relevant actors including potential beneficiaries, bureaucracies, and courts (Sagynbekova, 2017). There is a process of sedimentation before any rule is understood and applied consistently by all relevant actors. Rather than concentrating on each instance of misapplication and portraying it as an insurmountable failure, it might be more fruitful to approach the matter with a fresh

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<sup>25</sup> His book discusses the case of the United States but can be applicable to any other Western democracy when it comes to migration law.

perspective to identify tools facilitating the progressive realisation of rights. As Evans has explained with respect to the work of the Committee against Torture, the focus must be “on practical steps that might be taken to improve the enjoyment of the right... [and] the pursuit of bettering the immediate situation as a stepping stone toward an end which might either be as yet unachievable in full, or is not yet an agreed outcome” (Evans, 2015, p. 46). Three such steps might be mentioned.

First, the incorporation of new migration categories into domestic laws to reflect a new reality where certain non-nationals, e.g., regional migrants, cannot be considered as normal foreigners any longer, is an important step. This has taken place in all EU Member States who were obliged to implement EU law on the subject,<sup>26</sup> but its importance can also be seen in other regions (see, for example, for the Ecuadorian case and its introduction at domestic level of a South American citizen migration category (Ramírez et al., 2019)). Second, the role of regional courts but, also importantly, the dialogue they establish with domestic courts is of utmost importance to interpret concepts and provisions in the founding treaties or secondary regional law. The Court of Justice of the EU is often mentioned in this respect, but other regional courts (e.g., in the Andean Community, in CARICOM or in the East African Community) have already produced important rulings on regional migrants that can be taken into account by the EAEU Court (Acosta, 2019, pp. 14–15). Finally, training and information campaigns are essential both in informing potential users, but also bureaucracies, national lawyers and judges. The integration of regional law into law schools’ curricula also enhances this process.

### **III.2. Interpretation**

The interpretation of the EAEU legal corpus, including not only the Treaty and its Protocols but also decisions of the bodies of the Union, falls upon the shoulders of the Court of the Eurasian Economic Union, whose main task is to ensure uniform application of the law.<sup>27</sup>

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<sup>26</sup> For example, EU Directive 2004/38 on the rights of EU citizens.

<sup>27</sup> Annex 2 to the Treaty, Statute of the Court of the Eurasian Economic Union.

Standing is limited in that only Member States and economic entities may submit a dispute to the Court. Economic entities can only challenge decisions and actions, including the failure to act, of the Eurasian Economic Commission when those decisions directly affect their “rights and legitimate interests” and when there has been a “violation of any rights and legitimate interests of the economic entity granted by the Treaty or international treaties within the Union”.<sup>28</sup> Economic entities are referred to as either legal persons or natural persons who are registered as individual entrepreneurs. Member States and bodies of the Union, including the Commission, may request the Court for an Advisory Opinion.<sup>29</sup> Since Advisory Opinions are not binding, this mechanism has been presented as being ‘weak’ and the lack of preliminary references as a “dis-integration” of the judiciary between the regional court and the domestic counterparts (Karliuk, 2019, p. 434).

Whilst some scholars have presented the Court of Justice of the EU (CJEU) and its case law as a “useful benchmark” (Pirker and Entin, 2019, p. 130), there are crucial differences in the functioning of both courts. The CJEU receives most of its cases via the preliminary reference procedure through which national courts request the CJEU to give a ruling – when such a ruling is necessary to allow the national court to decide on the particular case at hand – on the interpretation or validity of EU law.<sup>30</sup> The CJEU also receives an important number of cases from the European Commission through the infringement procedure when a Member State has failed to fulfil its obligations under EU law.<sup>31</sup> The combination of both procedures has led to an enormous amount of case law, not always consistent or coherent, dealing with EU citizens and their free movement rights (Kochenov, 2017).

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<sup>28</sup> Annex 2 to the Treaty, Statute of the Court of the Eurasian Economic Union, chapter IV.

<sup>29</sup> Annex 2 to the Treaty, Statute of the Court of the Eurasian Economic Union, Arts. 46–47.

<sup>30</sup> Art. 267 Treaty on the Functioning of the European Union.

<sup>31</sup> Art. 258 Treaty on the Functioning of the European Union.

To date, the EAEU Court has only produced one Advisory Opinion on free movement of workers.<sup>32</sup> This resulted from a request from the Commission in a case where Russia imposed quotas on the maximum number of foreign players, including EAEU workers that could participate in sport competitions. Even though the Commission had already produced a Decision in 2017,<sup>33</sup> exhorting the Russian Federation to ensure the adequate application of the Treaty, no steps had been taken.<sup>34</sup>

In its Advisory Opinion, the Court found that since Articles 97.1 and 97.2 were capable of direct effect and direct applicability; any quantitative restrictions to professional sportsmen were forbidden. Professional sportsmen were indeed workers who had clear and precise rights deriving from the Treaty. Whilst Member States may limit free movement of workers based on national security (including in economic sectors of strategic importance) and public order, they must do so in line with the principle of proportionality.<sup>35</sup>

As Pirker and Entin have rightly argued, the Advisory Opinion is important in several respects. By referring to EU law cases such as *Bosman* or *Simutenkov* and using them by analogy, the EAEU Court establishes some parallelism with the CJEU in its reasoning. This facilitated certain conclusions such as the fact that Member States are obliged to implement Commission Decisions (Pirker and Entin, 2019, p. 136) and that in cases of conflict between domestic and EAEU law, the latter would prevail (Pirker and Entin, 2019, p. 137). However, as mentioned, the Commission does not have the capacity to launch an infringement action against a Member State and it instead uses the Advisory Opinion “to fill this lacuna” whilst the EAEU Court tries to make all the “judicial remedies at its disposal as effective as possible” (Pirker and Entin, 2019, p. 145).

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<sup>32</sup> Case CE-2-2/5-18-BK Eurasian Economic Commission, Advisory opinion of the Grand Chamber of the Court of 7 Dec. 2018, *Opinion on Professional Athletes*.

<sup>33</sup> Decision number 47, 11 May 2017.

<sup>34</sup> Decisions of the Commission form part of the Union law and are directly applicable on the territories of the Member States. Paragraph 14, Annex 1 to the Treaty, Regulation on the Eurasian Economic Commission.

<sup>35</sup> Case summary on the clarification on the application filed by the Eurasian Economic Commission, No.CE-2-2/5-18-BK, Available at: <http://courteurasian.org/page-26481> [Accessed 15.07.2021].

Considering these limitations, it could be argued that as important as the EAEU Court's role will be, domestic actors — namely national administrations and domestic courts — emerge as crucial to implement and interpret EAEU norms. This is not the place to engage in a complex analysis of dualism and monism theories and their application to the five EAEU Member States (other authors have already conducted this exercise: Karliuk, 2017; Kalinichenko et al., 2019).

Nevertheless, there needs to be a serious debate on how to make access to rights deriving from regional mobility agreements as effective as possible. One possible option would be to have the Commission working in conjunction with national independent mechanisms focusing on prevention. Prevention mechanisms could also facilitate the role of domestic courts. Again, the training of judges on regional law is essential, as is the sharing of relevant domestic rulings among the participant states.

#### **IV. Conclusion**

With the adoption of mobility agreements, nationals of the countries involved obtain a new status that eliminates, in theory, the possibility of being undocumented while also expanding their labour, family reunification and socio-economic rights. The gradual opening of borders at the regional level, coupled with increasing entitlements in certain areas, approximates foreigners' status to a privileged category closer to nationals. Through that process, states partially forfeit their capacity to control who is entitled to reside and work in their territory.

Following the demise of the Soviet Union, the resulting states have adopted numerous domestic, bilateral and multilateral regulations facilitating mobility and residence, with a strong focus on access to the labour market. Russia, as the second largest recipient of migrants globally and the main destination for regional migrants, has been at the centre of such debates. This historical legacy and the Russian need for millions of migrant workers are essential to understand the idiosyncrasy and peculiarities of the EAEU's free movement regime (Schenk, 2018, pp. 11 and 17).

The EAEU recognises a reality of mobility on the ground that has been ongoing for almost three decades (Leonov and Korneev, 2019,

p. 211). This is not different from other regions that have opened borders just to see that mobility did not dramatically increase, such as in the case of MERCOSUR (Acosta, 2018, ch. 7). As explained by Groenendijk (2009, p. 14), when referring to the EU's case, mobility often happens before the adoption of any agreement regulating it. Thus, for example, Romanians in Spain (Acosta and Martire, 2014, pp. 368–369), Paraguayans in Argentina or Kyrgyz in Russia will in many cases simply see their previous residence regularised and facilitated. In a world where “amnesties” for undocumented migrants seem to be controversial, there is no more powerful regularisation than the adoption of a new free movement regional scheme. Whilst multilateral mobility regimes might seem a novelty to some, they have been a normal occurrence in international law since at least the 19th century (for the South American Case, Acosta, 2018, ch. 3) and they are nothing but a replication of the dozens of bilateral agreements already taking place on a global scale. Bilateral agreements on labour migrants have been used extensively in the Post-soviet space since the 1990s (Molodikova, 2017, p. 319).

Discontinuing control through the opening of borders has important implications for the lives of individuals. In the EU's case, the gradual demise of immigration authorities and employer's discretion in the 1960s led to an “extension of the rule of law in a field that was dominated by police power, bureaucratic arbitrariness and interests of the state” (Groenendijk, 2009, p. 16). It is not surprising the Kyrgyz workers in Russia refer to simplified employment procedures leading to savings in bureaucratic processes, coupled with less abusive interference by the police, as some of the major changes the EAEU has brought in practice (Sagynbekova, 2017, p. 18; Leonov and Korneev, 2019, p. 216).

This paper has offered two different insights on the free movement of workers at EAEU level. First, it has identified how the EU cannot really be considered as a model on several key aspects, notably the absence of the principle of non-discrimination enshrined in the Treaty and the lack of a secure residence status beyond the conclusion of an employment agreement. This presents a distinctive regime that will evolve in a divergent manner from the EU due to the specific needs of the

region. Second, the paper has enunciated two major challenges for any free movement regime at global level, namely gaps in implementation and the interpretative role of courts. These are aspects that demand further research from various angles and disciplines in the coming years.

Despite the challenges, the EAEU can be rightly located among the increasingly large number of regional agreements at global level outside the EU facilitating mobility, residence and work. These agreements are already making a difference in the lives of millions of individuals whether in South America (International Organization for Migration, 2018), the Caribbean (Ama, 2019) or Africa (Okunade and Ogunnubi, 2019). It is urgent in that regard to establish a dialogue between the different regions which facilitate mobility outside the EU, with a view to explore shared challenges and solutions.

Free movement of workers in the EAEU's case is a structural element that will continue with peaks and valleys depending on economic performance, mainly by Russia. Uzbekistan and Tajikistan might also join the EAEU in the coming years in order to facilitate the mobility of their own nationals to Russia, but also to Kazakhstan (Madiyev, 2021). Russia has indeed a declining working age population and a severe demographic problem where population growth results only from immigration (Schenk 2018, pp. 11, 17). Russian, as a *lingua franca*, will also make mobility easier than, for example, in the EU (Groenendijk, 2009, p. 14). The extent to which the agreement is known by authorities, lawyers, migrants and employers will also determine its future success. With only six years of application it is still very early to make an accurate judgement on this aspect. Researchers will need to continue to measure and investigate its implementation and the effects the free movement regime has in the inclusion of EAEU workers. More research will also be needed in light of the closure of borders during the pandemic and the effects that might have in the near future on the EAEU's free movement regime.

## References

1. Acosta, A.D. and Martire, J., (2014). Trapped in the Lobby: Europe's Revolving Doors and the Other as Xenos. Diego Acosta Arcarazo and Jacopo Martire. *Trapped in the lobby: Europe's revolving doors and the Other as Xenos*, 39, pp. 362–379.

2. Acosta, A.D., (2019). The Expansion of Regional Free Movement Regimes. Towards a Borderless World? In: P. Minderhoud, S. Mantu, K. Zwaan (Eds.). *Caught In Between Borders: Citizens, Migrants and Humans. Liber Amicorum in Honour of Prof. Dr. Elspeth Guild*. Wolf Legal Publishers, pp. 9–15.

3. Acosta, D., (2018). *The National Versus the Foreigner in South America: 200 Years of Migration and Citizenship Law*. Cambridge University Press.

4. Ama, F., (2019). *Free Movement & Disaster Displacement: A Caribbean Case Study*. Sabin Center.

5. Brownbridge, M. and Canagarajah, S., (2020). *Migration and Remittances in the Former Soviet Union Countries of Central Asia and the South Caucasus: What Are the Long-Term Macroeconomic Consequences?* The World Bank.

6. Carrera, S. and Atger, A.F., (2010). *L’Affaire des Roms: A Challenge to the EU’s area of freedom, security and justice*. CEPS Liberty and Security in Europe, September 2010.

7. Chetail, V., (2019). *International Migration Law*. Oxford University Press, pp. 97–118.

8. Dauvergne, C., (2016). *The new politics of immigration and the end of settler societies*. Cambridge University Press, p. 7, doi: <https://doi.org/10.4000/etudesafricaines.22017>.

9. Evaluación del Acuerdo de Residencia del MERCOSUR y su incidencia en el acceso a derechos de los migrante, (2018). International Organization for Migration, Buenos Aires (In Span.).

10. Evans, M., (2015). Challenging Conventional Assumptions: The Case for a Preventive Approach to the Protection of the Freedom of Religion or Belief. In: *The Changing Nature of Religious Rights under International Law*. Oxford University Press, pp. 25–50.

11. Geddes, A., Espinoza, M.V., Hadj Abdou, L., Brumat, L. eds., (2019). *The dynamics of regional migration governance*. Edward Elgar Publishing.

12. Golam, M. and Monowar, M., (2018). Eurasian Economic Union: Evolution, Challenges and Possible Future Directions. *Journal of Eurasian Studies*, 9 (2), pp. 163–172, doi: <https://doi.org/10.1016/j.euras.2018.05.001>.

13. Groenendijk, K., (2009). Forty Years of Free Movement of Workers: Has it Been a Success and Why? In: P. Minderhoud

and N. Trimikliniotis, eds., (2009). *Rethinking the Free Movement of Workers: The European Challenges Ahead*. Nijmegen: Wolf Legal Publishers. ISBN: 9789058504647. Pp. 11–24.

14. Guild, E., (2009). Free Movement of Workers: From Third Country Nationals to Citizen of the Union. In: P. Minderhoud and N. Trimikliniotis, eds., (2009). *Rethinking the Free Movement of Workers: The European Challenges Ahead*. Nijmegen: Wolf Legal Publishers. ISBN: 9789058504647. Pp. 25–38.

15. Hollifield, J.F., Martin, P.L., and Orrenius, P.M., (2020). The dilemmas of immigration control. In: *Controlling Immigration*. Stanford University Press, pp. 3–34.

16. Kalinichenko, P., Petrov, R., and Karliuk, M., (2019). International law in Russia, Ukraine, and Belarus: Modern integration projects. *Russian Law Journal*, 7, pp. 107–133.

17. Karliuk, M., (2017). Russian legal order and the legal order of the Eurasian Economic Union: an uneasy relationship. *Russian Law Journal*, 5(2).

18. Karliuk, M., (2019). The Disintegration of the Judiciary Within Eurasian Integration. *Review of Central and East European Law*, 44(3), pp. 406–435.

19. Kochenov, D., (2017). *On Tiles and Pillars: EU Citizenship as a Federal Denominator*. *EU Citizenship and Federalism: The Role of Rights*. Cambridge University Press, pp. 3–82.

20. Koutrakos, P., (2016). *Public security exceptions and EU free movement law*, pp. 190–217.

21. Kubal, A., (2019). *Immigration and Refugee Law in Russia*. Cambridge University Press.

22. Leonov, A. and Korneev, O., (2019). Regional migration governance in the Eurasian migration system. In: *The Dynamics of Regional Migration Governance*. Edward Elgar Publishing, pp. 205–223.

23. Lyutov, N. and Golovina, S., (2018). Development of labor law in the EU and EAEU: How comparable? *Russian Law Journal*, 6(2), pp. 93–117.

24. Maas, W., (2007). *Creating European Citizens*. Rowman & Littlefield Publishers.

25. Madiyev, O., (2021). The Eurasian Economic Union: Repaving Central Asia's Road to Russia? *Migration Policy Institute*, Feature,

2 February 2021. Available at: <https://www.migrationpolicy.org/article/eurasian-economic-union-central-asia-russia> [Accessed 14.05.2021].

26. Molodikova, I., (2017). Two decades of CIS coexistence: the transformation of the visa-free movement. *Migration, Free Movement and Regional Integration*. Paris/Bruges: UNESCO – UNU-CRIS, pp. 313–344.

27. Motomura, H., (2014). *Immigration outside the law*. Oxford University Press.

28. Nita, S., Gartland, J., Neyts, K., De Lombaerde, P., and Pécoud, A., (2017). Migration, free movement and regional integration: concluding remarks. *Migration, Free Movement and Regional Integration*. Paris/Bruges: UNESCO – UNU-CRIS.

29. Okunade, S.K. and Ogunnubi, O., (2019). The African Union Protocol on Free Movement: A panacea to end border porosity? *Journal of African Union Studies*, 8(1), pp. 73–91.

30. Parker, O., (2012). Roma and the politics of EU citizenship in France: Everyday security and resistance. *JCMS: Journal of Common Market Studies*, 50(3), pp. 475–491.

31. Pécoud, A., de Guchteneire, P., Guchteneire, P.F., eds., (2007). *Migration without borders: Essays on the free movement of people*. Berghahn Books.

32. Petrov, R. and Kalinichenko, P., (2016). On Similarities and Differences of the European Union and Eurasian Economic Union Legal Orders: Is There the ‘Eurasian Economic Union Acquis’? *Legal Issues of Economic Integration*, 43(3), pp. 295–307.

33. Pirker, B. and Entin, K., (2019). Bosman’s Second Life? The Eurasian Economic Union Court and the Free Movement of Professional Athletes. *Legal Issues of Economic Integration*, 46(2), pp. 129–148.

34. Pirker, B. and Entin, K., (2020). The Free Movement of Persons in the Eurasian Economic Union – between Civis Eurasiaticus and Homo Oeconomicus. In: *European Citizenship under Stress*. Brill Nijhoff, pp. 508–532.

35. Ramírez, J., Linares, Y., and Useche, E., (2019). Geo Políticas Migratorias, Inserción laboral y Xenofobia: Migrantes Venezolanos en Ecuador. En Cécile Blouin, Después de la Llegada. Realidades de la migración venezolana. Lima (Perú): Themis-PUCP (In Span.).

36. Ratha, D., Plaza, S., and Ozden, C., (2016). *Migration and development: A role for the World Bank Group*. World Bank Group. Retrieved May, 25, p. 2020.

37. Sagynbekova, L., (2017). *International labour migration in the context of the Eurasian Economic Union: issues and challenges of Kyrgyz migrants in Russia*. University of Central Asia, Institute of Public Policy and Administration, Working Paper, 39.

38. Schenk, C., (2015). *Labor Migration in the Eurasian Union: Will Freedom of Movement Trump Domestic Controls?* PONARS Eurasia Policy Memo No 378, George Washington University, Washington, DC, 2015. Available at: [https://www.ponarseurasia.org/wp-content/uploads/attachments/Pepm378\\_Schenk\\_Aug2015.pdf](https://www.ponarseurasia.org/wp-content/uploads/attachments/Pepm378_Schenk_Aug2015.pdf) [Accessed 12.11.2020].

39. Schenk, C., (2018). *Why control immigration? Strategic uses of migration Management in Russia*. University of Toronto Press, pp. 73–97.

40. Thym, D., (2016). *The Constitutional Dimension of Public Policy Justifications*.

41. Tsourapas, G., (2018). *The politics of migration in modern Egypt: Strategies for regime survival in autocracies*. Cambridge University Press.

42. United Nations, Population Division, (2019). International migrant stock. Available at: <https://www.un.org/en/development/desa/population/migration/data/estimates2/estimates19.asp> [Accessed 14.05.2021].

43. Wardle, H. and Obermuller, L., (2018). The windrush generation. *Anthropology today*, 34(4), pp. 3–4.

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## Emotional Intelligence in Law Students: Relevance of Development

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**Abstract:** The article focuses on the need for the development of emotional intelligence as the most important quality of professional competence of a future legal specialist, manifested in personality-oriented activities. The authors provide an in-depth analysis of the literature on the topic and describe the results of their empirical research that reveals the level of emotional intelligence of law school students. The results obtained allow us to conclude that the development of emotional intelligence denotes the ability to be aware of one's emotions, recognize the emotions of other people, manage their emotional states, allow a law student not only to successfully adapt to environmental conditions, constructively build interpersonal interaction, but also effectively manage difficult life situations, to successfully cope with various life difficulties. The listed qualities then become the basis of his successful professional activity. Current terms of remote study process and work create new challenges for testing the emotional intelligence. The authors suggest ways of solving the problem of emotional intelligence development in modern conditions.

**Keywords:** emotional intelligence, development, legal, professional, EQ

**Cite as:** Martynenko, I.A. and Karandasheva, N.N., (2021). Emotional Intelligence in Law Students: Relevance of Development. *Kutafin Law Review*, 8(4), pp. 626–646, doi: 10.17803/2313-5395.2021.4.18.626-646.

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## Contents

I. Introduction . . . . .	627
II. Emotional Intelligence in Russian and Foreign Scientific Literature. . . . .	628
II.1. Modern Developments of Russian Scientists . . . . .	630
II.2. Emotional Intelligence and the Legal Profession . . . . .	632
II.3. Emotional Intelligence and Remote Work of a Lawyer. . . . .	633
III. Methods of Research. . . . .	636
IV. Results. . . . .	638
V. Discussion . . . . .	639
VI. Conclusions . . . . .	641
References. . . . .	642

## I. Introduction

In the modern era, the ability of an individual to understand and evaluate emotional information and to apply this understanding to make decisions and effectively resolve problems is acquiring particular relevance. Practical interest in the development of emotional intelligence significantly outstrips the level of its theoretical elaboration. While a significant body of evidence confirms the importance of emotional intelligence in social and professional functioning, neither the neural basis, nor as such, the impact of this ability on professional communication has not been sufficiently studied to date. Thus, the main reason for the widespread dissemination of the idea of emotional intelligence both in the scientific and practical sphere and in popular publications is the existing need for an accurate designation of the abilities necessary for effective professional activity in areas associated with good emotional regulation, and empathy.

The methods for measuring emotional intelligence have been criticized because, despite the fairly reliable scales developed using empirical research, the latter intersect with methods that measure personality traits and social skills. There is still no consensus among scientists about the validity of research on emotional intelligence, but they emphasize the positive results in the formation of the scientific foundations of emotional intelligence and substantiate the need for further research that could strengthen the scientific status of the concept

of emotional intelligence. Intelligence and develop more valid methods for measuring EI for appropriate practical application. Proponents of the theory of emotional intelligence argue that the knowledge gained enriches psychological and pedagogical knowledge.

The purpose of this article is to contribute to the study of the influence of emotional intelligence on the professional activity of a lawyer in modern conditions, from the student's bench to the remote form of employment.

## **II. Emotional Intelligence in Russian and Foreign Scientific Literature**

Research into the relationship between the intellectual and emotional spheres of a person has a rather long history. Scientists have tried to find a connecting element for cognitive and emotional processes.

The active beginning of the studying emotional intelligence as a subject matter, both in Russia and abroad, fell on the beginning of the new millennium. The influence of emotional intelligence on the successful realization of an individual in professional activity is firmly entrenched in the scientific literature as a predictor of educational success (Belkina, 2009) and as the basis of success in business (Magazannik and Demyanovsky, 2005). However, the premise for the emergence of the concept of emotional intelligence is laid in the works of Edward Thorndike (1920), Joy Hilford (1967), Hans Eysenck (1995), each of which is devoted to social intelligence (Simbirtseva, 2008). Howard Gardner described the model of "multiple intelligences" that includes seven subspecies (forms) of intelligence, of which intrapersonal and interpersonal intelligence was of particular interest for further research (Gardner, 2007).

In 1990, Peter Salovey and John Mayer developed and introduced into scientific circulation the definition of emotional intelligence: the ability to track one's own and other people's feelings and emotions, distinguish them and use this information to guide thinking and actions (Salovey, 1990). The model is viewed as a set of cognitive abilities that are closely related to the processing of emotional information.

Cognition of the ways of developing the abilities of an individual in psychological science led to its development in general and in the late 90s of the twentieth century prompted the emergence of other studies on models of emotional intelligence, aimed at enhancing the role of personal characteristics. For example, Daniel Goleman combined cognitive abilities with personal characteristics, defining emotional intelligence as “a person’s ability to interpret his own emotions and the emotions of others in order to use the information received to realize his own goals” (Goleman, 2009). Reuven Bar-On expresses a different point of view in his work, considering the model of emotional intelligence as a set of non-cognitive abilities and skills that affect the ability to successfully cope with the demands and pressures of the environment (Bar-On, 2004).

The rapidly growing interest around the introduced new criterion of success raises an urgent question: how to measure emotional intelligence? Reuven Bar-On answers this question, introducing in 1985 EQ – emotional quotient – the coefficient of emotionality, the first developed psychometric tool to assess the emotional and intellectual behavior of people.

In 1997, the work of John Mayer, David Caruso and Peter Salovey was published, improving the previously developed model of emotional intelligence (Simbirtseva, 2008). Emotional intelligence, according to the model under consideration, is a set of hierarchically organized abilities (“branches”) to process emotional information.

Among many models of emotional intelligence, the idea of a broader interpretation of the phenomenon under study is known: as abilities – the traditional psychology of intelligence, measurement takes place by performing tasks, intellectual tests; as a trait – it is assessed by the stability of the individual’s behavior in various situations. To measure it, questionnaires should be used (Petrides and Furnham, 2000). Scientists draw their attention to the fact that the nature of the model is determined not so much by theory as by the methods used to measure the construct.

Comprehensive studies on the formation of the concept of emotional intelligence were carried out by such domestic scientists as Lev S. Vygotskiy (Vygotskiy, 2005), Sergey L. Rubinstein (Rubinstein,

2000), Aleksey N. Leontev (Leontev, 1977). Daniel Goleman, Richard E. Boyatzis and Annie McKee analyzed emotional intelligence through the prism of leadership skills development (Goleman, Boyatzis and McKee, 2010). By identifying specific categories that contribute to the development of emotional intelligence, scientists highlight special knowledge and skills, cognitive abilities and traits that indicate high emotional intelligence.

Irina Andreeva shows that the level of emotional intelligence development in adolescence is interconnected with individual manifestations of self-actualization. Also, this author notes that highly developed intrapersonal emotional intelligence contributes to the naturalness of emotional manifestations and a positive self-attitude, which, in turn, make it possible to establish deep and close relationships with other people (Andreeva, 2009).

Interdisciplinary scientific works of recent years show that the interest to emotional intelligence as a key factor in human development in many areas is still highly relevant. *See*, for example, (Chung, Sabirova and Umurkulova, 2019), (Kryukova, Shestova and Kornilova, 2020), (Sergienko, Khlevnaya and Osipenko, 2020), (Vanyushina, Makarova and Shanturova, 2020), (Bhullar and Schutte, 2020), (Martynenko and Karandasheva, 2021), (Agnoli, 2021), *etc.* Besides, we observe a focus on the research of neural systems underlying EQ (Pisner, Smith, Alkozei, Klimova and Killgore, 2017).

### **II.1. Modern Developments of Russian Scientists**

Among the concepts of emotional intelligence studied by the authors, we can highlight the works of Russian scientists Irina Andreeva, Olga Belokon, Olga Gulevich, Dmitriy Lyusin, Viktoriya Ovsyannikova, Elena Sergienko, Tatyana Sysoeva, Dmitriy Ushakov and others. These works are of general orientation, namely emotional intelligence is viewed in inseparable connection with its influence on the success of an individual in professional activity, as well as leadership.

For example, Olga Belokon presumes that leaders with high emotional intelligence manage to organize well-coordinated work of employees. They are also not only able to create a favorable psychological climate

in the team, but, first of all, to motivate employees to perform tasks of the organization (Belokon, 2009).

Natalia F. Yezhova writes about the disclosure of the emotional intelligence of law students in an English lesson (Ezhova, 2018). The author offers a number of methodological techniques aimed not only at developing the skills and abilities of language proficiency, but also at the formation of the emotional intelligence of law students as an indicator of their professionalism.

An important contribution to the paradigm of the Russian science was made by Dmitriy Lyusin. He presented a model of emotional intelligence that is fundamentally different in its construct, which provide for the introduction of personal characteristics (Lyusin, 2004).

A detailed chronological analysis of the formation of the essence of the emotional intelligence development in our study, as well as the study of modern theoretical concepts, allows us to conclude that, first presented in the scientific community in the second half of the twentieth century, the formation of the concept and essence of emotional intelligence was initially reduced to properties and skills mind. Then, through the practical research of the theories presented, scientists concluded that emotional intelligence is not an innate ability of an individual, but a set of skills and abilities that directly depend on the level of impact on them through the forms of individual behavior and perception of reality. In other words, emotional intelligence is a learned ability to use feelings to make good decisions. This is the ability to process all types of information related to the management of one's own and others' emotions, understanding the social mood in and around oneself, reflection, the ability to persuade and lead. A person with a high level of emotional intelligence can use emotions, sometimes negative ones, to achieve a goal.

Regarding the lack of unity in the definition of emotional intelligence, the following should be noted: the complexity of the studied phenomenon as a personal integrated education, uniting opposite spheres of the human psyche, was studied in isolation. Therefore, the essence and content of the phenomenon under study did not receive a generally recognized reasonable interpretation.

Taking into account the competence strategy, the scientific community has come to an agreement that for the successful fulfillment of the assigned professional tasks or professional duties, the often-conditional criterion of mental development, the accumulated knowledge and skills is not enough to build a successful career. There is an impressive number of theories and sociological studies that prove the influence of a high level of emotional intelligence (EQ) on performance, success in comparison with the level of IQ. During the analysis of the main factors influencing the achievement of success and implementation in the profession, it was revealed that 20 % depends on the use of intelligence and 80 % on emotional intelligence (Gasanpur, 2014).

In our opinion, the most practical methods for measuring the levels of emotional intelligence are:

1) Questionnaire on emotional intelligence Emin by Dmitriy Lyusin (Lyusin, 2006);

2) Test by John D. Meyer, Peter Salovey and David Caruso “Emotional Intelligence” (MSCEIT v.2.0) in the adaptation of Elena A. Sergienko and Irina I. Vetrova (Sergienko and Vetrova, 2010). We consider them rather capacious and not time-consuming.

## **II.2. Emotional Intelligence and the Legal Profession**

A high level of emotional intelligence in the legal profession acts as a system of signals that help to read what is happening, feel the mood of people, analyze their actions and emotions and build up a favorable atmosphere for joint activities. All these factors are reflected in the final result.

The study of the features of the purposeful development of emotional intelligence is associated with the increasing need to prevent the emotional health of the personality of a lawyer, which is explained by the need for effective communication between representatives of professions of the “person-to-person” type. Emotional intelligence in the professional activity of a lawyer reflects the level of emotional awareness, the ability to understand the emotions of the interlocutor, the preparedness of the professional, the system of signals with the help

of which the specialist demonstrates his attitude to specific situations. The ability of a lawyer to regulate his emotions and the emotions of his interlocutor makes it possible to predict the likelihood of conflicts and take the necessary measures. At the same time, EQ prevents professional burnout, which positively affects the emotional health of the lawyer in general.

The legal profession often involves extremely strong and long-term psychological stress, for example, negotiations with counterparties or litigation. In such situations, a lack of emotional intelligence can lead to emotional sparseness and stress, which disorganizes work and disrupts professional activity. The value of relatively advanced emotional intelligence among lawyers in the digital age is manifested in the ability to quickly adapt to significantly changed working conditions. The manifestation of both cognitive abilities and personal characteristics of an individual will lead to a better result in work.

At the university stage, the integration of cognitive and linguistic techniques into the process of learning English contributes not only to the development of students' language skills, but also to the expansion of their professional horizons and the development of emotional intelligence. Students learn to adequately interpret English legal concepts, which allows them to deepen their professional knowledge and develop professionally oriented communication skills (Martynenko, Borodina, 2018). Thus, for example, during a conversation with a colleague from Great Britain, a lawyer with developed emotional and intellectual competencies will not ask him the question of what year the last constitution of the United Kingdom dates from, because there it belongs to the rank of unwritten ones. A sign of developed emotional intelligence can be considered the ability to maintain a lively conversation with an English-speaking colleague about alternative methods of resolving conflicts that are common in Western legal relations and are only gaining momentum in the Russian Federation.

### **II.3. Emotional Intelligence and Remote Work of a Lawyer**

Depending on the socio-cultural conditions, on the role that we perform (father, son, boss, subordinate, *etc.*), the environment, people

expect from us certain behavior, certain emotional reactions (or lack thereof) to certain events. We strive to meet these expectations, to demonstrate emotional states that correspond to the assumed role.

In the first half of 2020, due to the spread of the coronavirus infection, the share of telecommuting for lawyers has significantly increased. Today, the remote form of employment is increasingly more integrated in everyday legal relations. The emerging web pages, which post vacancies only for filling positions at remote work, contain a lot of advertisements that require a specialist with legal training.<sup>1</sup>

Replacing personal professional communication with electronic communication in a slightly different way reveals the level of emotional intelligence of a person, in particular, a lawyer. Considering Internet communication as an alternative to face-to-face verbal contact, it is necessary to pay attention to the statistics of EQ researchers who talk about the loss of the ability to recognize the true emotions that are hidden behind the standards of business correspondence and corporate ethics. The previously proposed communication models functioned successfully and allowed to increase the productivity of workers in the previous conditions. The current situation increases the relevance of developing ways to increase emotional intelligence. The mechanisms developed for improving skills are becoming insufficient, new theoretical and practical approaches to the emerging reality are needed. The situation is aggravated by the lack of prescribed or tacitly created norms of behavior in distance learning / form of work based on the experience of at least one generation of citizens.

Not a single specialist, in particular a lawyer, as a rule, becomes successful overnight. The success of a lawyer is a combination of factors, one of which is the skill of instantly reading emotional information, processing it while taking into account the situational environment and making the most correct decision in the current conditions, ideally, which is a consensus for all parties involved. The described skill is often not innate, it is an acquired skill, and the university teaches a lot in this aspect.

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<sup>1</sup> See, e.g., Remote-job website. Available at: <https://remote-job.ru/page/udalennaya-rabota-na-domu-yuristom-vakansii> [Accessed 15.05.2021].

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Today, students' ability to assess the online learning environment and self-integrate into these circumstances comes to the fore. Not everyone successfully passes this seemingly simple test: a naked torso, a dressing gown, unkempt hair, an unmade bed in the background, a loud sipping of tea in front of the camera – this is what a teacher often sees in front of him on a computer screen during practical online classes. And here it should be noted that the appearance of the teacher, the business style of dress, does not affect the situation. A student who allows himself not to wear the lower part of his wardrobe for the duration of the seminar and at the same time stands up to adjust the camera, is indifferent to how the teacher looks and what message he carries with his external appearance.

Let us emphasize that in this case we are not talking about upbringing, but about emotional intelligence: only a new generation of schoolchildren, by the will of fate, is now receiving the skills of distance education and the rules of behavior indicated by teachers in such circumstances. Previous generations do not have such an experience and are called upon to outline for themselves the boundaries of what is permissible and acceptable.

Thus, the causal relationship “student in distance education” – “lawyer in a distance position” today rests not only on the acquired professional competencies, but also on the development or underdevelopment of emotional intelligence. A student who has not turned on the camera in practical classes will not try to turn it on when communicating with a client online, which will inevitably lead to a reduction in the client base. A student who has allowed himself to conduct personal correspondence in parallel the entire seminar, going to work remotely with such a model of behavior, risks losing the client's trust. And, finally, an unrepresentable appearance, for which no one reprimanded a student “remotely,” can play a cruel joke on him later, if he does not have time to understand before going to work that professional communication via a computer does not cancel basic behavioral norms.

To solve the problem of the development of emotional intelligence in modern conditions, it seems reasonable:

1) to analyze the content of existing methodological approaches and trainings for the development of emotional intelligence by such authors as Daniel Goleman, Gitu Orme (Goleman, 2009; Orme, 2003), and others, as well as the emotional development program RULER — a scientifically based approach to social and emotional learning (SEL), developed by at the Yale Center for Emotional Intelligence;<sup>2</sup>

2) to develop methodological rules for summing up the development of emotional intelligence of employees and students at law schools and faculties during remote learning and use them in Internet communications;

3) to develop and implement on the basis of the school education a methodological program for the development of emotional intelligence, which could subsequently meet the modern requirements of remote work;

4) to make Hall (N. Hall's method for emotional intelligence) and Lucin's tests publicly available by optimizing their interface.

In general, it is individuals with developed emotional intelligence who form a healthy society. Moreover, today it is a challenge to translate the Russian concept "intelligentny" into English as it includes a wide range of qualities like intelligent, educated, cultured, restrained, and trained in manners. In addition, it means that in fact a person obtained a developed emotional intelligence.

### **III. Methods of Research**

A group of 2nd year law students of Kutafin Moscow State Law University (MSAL) totaling 52 (aged 19–21) participated as respondents. As a research tool, Nathan Hall's methodology for emotional intelligence was chosen.<sup>3</sup> We found this questionnaire most suitable for interviewing students and calculating the results. The questionnaire is distinguished by a balanced number of questions (30) and their content, and the

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<sup>2</sup> See Yale Center for Emotional Intelligence. Available at: <http://eqinstitut.com/ycei/> [Accessed 27.07.2021].

<sup>3</sup> See Nathan Hall's method for emotional intelligence. Available at: <https://psycabi.net/testy/21-emotsionalnyj-intellekt-eq> [Accessed 22.06.2021] (In Russ.).

method for identifying the final result is clear and concise. Students were suggested answering the given questions as follows:

**Table 1. Variants of answers  
and counting scope suggested to MSAL students**

Strongly disagree	– 3 points
Mostly disagree	– 2 points
Partly disagree	– 1 point
Partially agree	+ 1 point
Basically agree	+ 2 points
Completely agree	+ 3 points

This emotional intelligence test shows how people use emotions in their lives and takes into account different aspects of emotional intelligence: attitude towards themselves and others, the ability to communicate; attitude to life and the search for harmony. There are 5 scales of measure: “Emotional awareness,” “Managing your emotions,” “Self-motivation,” “Empathy,” and “Managing the emotions of other people.”

1. *Emotional awareness* is awareness and understanding of your emotions, and for this, constant replenishment of your own vocabulary of emotions. People with high emotional awareness are more aware of their inner state than others.

2. *Controlling your emotions* is emotional appeasement, emotional flexibility, etc., in other words, voluntary control of your emotions.

3. *Self-motivation* is managing your behavior by managing emotions.

4. *Empathy* is an understanding of the emotions of other people, the ability to empathize with the current emotional state of another person, as well as a willingness to provide support. This is the ability to understand the state of a person by facial expressions, gestures, shades of speech, posture.

5. *Recognition of the emotions of other people* is the ability to influence the emotional state of other people.

According to the calculation method of applied EQ Test, for each scale, the total number of points is calculated considering the answer sign (+ or -). The greater the plus sum of points is, the more pronounced this emotional manifestation is.

The levels of partial (separately for each scale) emotional intelligence in accordance with the sign of the results: 14 and more – high; 8–13 – medium; 7 or less – low.

The integrative (sum over all scales) level of emotional intelligence, considering the dominant sign, is determined by the following quantitative indicators: 70 and more – high; 40–69 – medium; 39 or less – low.

#### IV. Results

To conduct our research, we chose the integrative (sum over all scales) level of emotional intelligence, considering the dominant sign, first, for quicker gaining the results, second, for getting the overall notion at once. The results are as follows:

**Table 2. Results of the research carried out in MSAL**

<b>The integrative (sum over all scales) level of emotional intelligence</b>	
High	6 students
Medium	17 students
Low	29 students

The results showed that the majority of those surveyed have low levels of emotional intelligence. Only a few people showed good results.

It should be noted that the factor of academic performance did not affect the state of students' emotional intelligence. For instance, among high EQ level students not everybody has best university study results. On the contrary, many excellent students fell into the group with a low level of emotional intelligence.

However, our empirical research, correlation analysis suggests that there be a relationship between the components of life resilience and emotional intelligence in post-adolescents. And this allows us to

conclude that the development of emotional intelligence (the ability to be aware of their emotions, recognize the emotions of other people, manage their emotional states) will allow them not only to successfully adapt to environmental conditions, constructively build interpersonal interaction, but also to effectively manage complex life situations, to successfully cope with various life difficulties.

## **V. Discussion**

We compared the results obtained with the results previously gathered by other Russian researchers in the sphere of measuring EI. Thus, in 2016 J. Gordeeva studied the emotional intelligence in a complex approach consisting of Dmitriy Lyusin technique, V. Morosanova technique and the conflict-handling modes in N. Grishina's adaptation. The correlation of these constructs was traced in 72 students of humanities, undergraduate specialties of "Journalism" and "Advertising and public relations" at Omsk State University (Gordeeva, 2016).

In the future experts in advertising and public relations are found higher mean group values on the scale of the planning and programming; prevalence of adaptation strategies; positive correlation with Interpersonal EI programming and the general level of self-regulation, with EI intrapersonal modeling intrapersonal understanding of the strategy of rivalry. Students of "Journalism" department demonstrated Interpersonal positive correlation between EI and modeling intrapersonal EI and planning, interpersonal management and competition strategy, and negative correlations on the scale Interpersonal EI and interpersonal understanding the strategy of avoidance.

In 2013 Yuliya Golubina attempted to diagnose the levels of emotional intelligence and its components, using the following instruments:

- 1) questionnaire on emotional intelligence EmIn by Dmitriy Lyusin;
- 2) Test by John Meyer, Peter Salovey and David Caruso "Emotional Intelligence" (MSCEIT v.2.0) in the adaptation of Elena Sergienko and Irina Vetrova (Golubina, 2013).

The study involved men and women aged 16 to 57; 12 men and 34 women.

With the help of the emotional creativity tests, data were obtained that make it possible to judge the general level of emotional creativity in the subjects and the level of emotional creativity as a personality trait. Also, data were gathered to assess the structure of the emotional creativity of each subject according to the following indicators: emotional productivity; emotional flexibility; emotional originality; the development of emotions (the components of emotional creativity are highlighted by analogy with the characteristics of Torrance's divergent thinking).

Based on the research findings, Yuliya Golubina summarized that there is a relationship between emotional intelligence and emotional creativity. In particular, a positive relationship was found between indicators of interpersonal emotional intelligence and indicators of personal emotional creativity (Golubina, 2013).

Other research also showed the connection between the level of emotional intelligence and vitality, regardless of chosen instrument and age of people interviewed (Vyskochil, 2009; Zabrodina and Khasianova, 2015; Oshepkova and Makhin, 2018). All these measurements, including ours, are narrowed down to one general observation: *the higher a person's level of emotional creativity as a personality trait is, the better his ability to manage other people's emotions is developed, and vice versa.*

On the other hand, our findings on the impact of EI on academic performance differ from those of colleagues. The principle that emotional intelligence and self-attitude affect the performance of students in higher educational institutions in various areas of professional training (Oshepkova and Makhin, 2018, p. 117) did not work in our case.

We connect this with the imperfection and diversity of the currently existing methods of measurement. Correlation links were established between the indicator of emotional creativity as a personality trait and the indicators of emotional intelligence according to Dmitriy Lyusin's model, which, as mentioned earlier, is difficult to attribute to models of abilities. At the same time, the indicators of emotional intelligence according to the model of John Mayer, Peter Salovey and David Caruso found connections (albeit at the level of tendencies) with the components

of emotional creativity, identified by analogy with Torrance's divergent thinking, i.e., components of emotional creativity as an ability.

The lack of unified models of emotional intelligence and emotional creativity complicates research, as well as hinders the creation of more reliable research methods on the topic. It is the development of a unified concept that will unite ideas about emotional creativity as a personality trait and as an ability, as well as ideas about emotional intelligence in the same planes, that seems to us the main goal of further work on this issue.

Furthermore, currently there is still no unified generally accepted scientific theory of emotions, as well as accurate data on the centers and how these emotions arise and what is their neural substrate. As evidenced by the results of neuropsychological studies, needs, motivations and emotions have different morphological substrates.

But all in all, the results we have obtained allow us to assert that students with a high level of emotional intelligence are the best in the group to orient themselves in the prevailing environment, they react most quickly (and react correctly) to coming changes and control their emotional background best of all. This directly confirms our thesis about the connection between EI and the professional success of a lawyer. In our opinion, listed qualities are crucial for a professional lawyer and his successful career.

## **VI. Conclusions**

The development of the emotional intelligence of a lawyer begins at an early age. It is especially important at the stage of university training and is the result of efforts made in this area in the form of his professional activity, both in full-time and remote forms of employment.

To date, the theoretical concepts of emotional intelligence are outlined by both domestic and foreign scientists quite clearly. However, there are still not enough tools for its precise definition and differentiation of its subdivisions. There is a huge field for further scientific developments in this area, which are of particular relevance in modern conditions. Further development of the concept of emotional intelligence should contribute to the understanding and detailed

consideration of such scientific and practical problems as prevention, correction and rehabilitation of deviant behavior, emotional burnout, development of creative abilities, socialization of the individual, increasing stress resistance and the standard of living of the individual as a whole.

People who are better able to manage their emotions find it easier to develop competencies such as initiative, the ability to work in a stressful situation, and responsibility. Daniel Goleman on the basis of his research (Goleman, 2009) proves that the coefficient of intelligence affects the success of human activity with a probability of 4 to 25 %. However, in order to climb the career ladder, one needs a different kind of ability associated with understanding emotions and control. We consider reasonable the idea that due to IQ, you get a job, and due to EQ, you make a career. Positive factor is that EQ is developmental as opposed to IQ.

Our empirical research has shown that law students with a high level of emotional intelligence measured by means of Nathan Hall's scale are better able to control their emotions and cope with the difficulties that arise in the educational process. In the future, this skill, we believe, will become a component of their professional success in the legal field.

Further development of a methodology for measuring emotional intelligence and adequate methods of practical use of the knowledge gained is required. The implementation of "emotional education" is important at all age stages and can be a statistically significant factor in improving the culture of interpersonal communication.

### References

1. Agnoli, S., (2021). Emotional Intelligence. In: *The Palgrave Encyclopedia of the Possible*. Ed. by Glăveanu, V.P. Palgrave Macmillan, Cham, Springer Nature, doi: 10.1007/978-3-319-98390-5\_33-1.
2. Andreeva, I.N., (2009). Emotional intelligence as a factor of self-actualization. In: *Socialnyy i emocionalnyy intellekt: Ot processov k izmereniyam*. Ed. by D.V. Lyusin, D.V. Ushakov. Moscow: Russian Academy of Sciences Publishing, pp. 31–39 (In Russ.).

3. Bar-On, R., (2004). *Emotional Quotient Inventory (EQ-i): A Measure of Emotional Intelligence*. Technical Manual. Toronto: Multi-Health Systems.
4. Belkina, O.A., (2009). Emotional intelligence as a predictor of educational success among mathematically gifted high school students. *Izvestiya YuFU. Tekhnicheskie nauki*, 11, pp. 92–101 (In Russ., abstract in Eng.).
5. Belokon, O.V., (2009). Emotional and social intelligence and the phenomenon of leadership. In: *Sotsialnyy i emotsionalnyy intellekt: Ot processov k izmereniyam*. D.V. Lyusin, D.V. Ushakova, eds. Moscow: Nauka (In Russ.).
6. Bhullar, N. and Schutte, N.S., (2020). Emotional Intelligence. In: Blackwell, W. *The Wiley Encyclopedia of Personality and Individual Differences: Models and Theories*, 1, pp. 173–177, doi: 10.1002/9781119547143.ch30.
7. Chung, M.C., Sabirova, R.Sh., and Umurkulova, M.M., (2019). The interrelationship between policemen’s coping strategies and features of emotional intelligence. *Vestnik Karagandinskogo Universiteta. Seriya Istoriya. Filosofiya*, 94(2), pp. 120–126.
8. Ezhova, N.F., (2018). Development of emotional intelligence of law students in the classroom of the English language. *Courier of Kutafin Moscow State Law University (MSAL)*, 11(51), pp. 47–53, doi: 10.17803/2311-5998.2018.51.11.047-053 (In Russ., abstract in Eng.).
9. Gardner, H., (2007). *Structure of the Mind. Multiple intelligences theory*. Moscow: Williams (In Russ.).
10. Gasanpur, M.K., (2014). Comparison of emotional intelligence in student athletes and non-athletes in terms of its role in the management of individual and social emotions. *TSU science vector. Series: Pedagogy, Psychology*, 1(16), pp. 46–49.
11. Goleman, D., (2009). *Emotional intelligence*. Moscow: VKT (In Russ.).
12. Goleman, D., Boyatzis, R., and McKee, E., (2010). *Emotional Leadership: The Art of Managing People Based on Emotional Intelligence*. Moscow: Alpina Publishers (In Russ.).
13. Golubina, Yu.Yu., (2013). The relationship between emotional creativity and emotional intelligence. *Pedagogika i psihologiya obrazovaniya*, 1, pp. 80–87 (In Russ.).

14. Gordeeva, Yu.V., (2016). The relationship of self-regulation and behavior in conflict with emotional intelligence among students of humanitarian specialties. In: *Proceedings of XL Regional Student Scientific and Practical Conference "Youth of the Third Millennium"*. Omsk: Omsk State University, pp. 665–667 (In Russ., abstract in Eng.).
15. Kryukova, E.A., Shestova, M.A., and Kornilova, T.V., (2020). Emotional intelligence: trait or ability? (To the results of the Russian language adaptation of the short version of the questionnaire "Trait emotional intelligence questionnaire"). In: *Abilities and mental resources of a man in the world of global change*. Moscow: Institut psihologii RAN (In Russ.).
16. Leontev, A.N., (1977). *Activity. Consciousness. Personality*. Moscow: Politizdat (In Russ.).
17. Lyusin, D.V., (2004). *Modern concepts of emotional intelligence. Social intelligence: theory, measurement, research*. Ed. by D.V. Lyusin, D.V. Ushakova. Moscow: Institute of Psychology of RAS (In Russ.).
18. Lyusin, D.V., (2006). A new technique for measuring emotional intelligence: the EmIn questionnaire. *Psychological diagnostics*, 4, pp. 3–22. Available at: <https://www.sites.google.com/site/emocionalnyjintellekt5555/metody-diagnostiki-ei/oprosnik-emin-d-lusina> [Accessed 07.07.2021] (In Russ.).
19. Magazannik, V.D. and Demyanovsky, V.A., (2005). Emotional intelligence as the basis for business success. *The human factor: problems of psychology and ergonomics*, 3-2(32), pp. 18–19 (In Russ., abstract in Eng.).
20. Martynenko, I.A. and Borodina, E.A., (2018). Cognitive linguistics: modern trends and practice of its application in a law school. *Philological sciences at MGIMO*, 4 (16), pp. 85–92, doi: 10.24833/2410-2423-2018-4-16-85-92 (In Russ., abstract in Eng.).
21. Martynenko, I.A. and Karandasheva, N.N., (2021). Current influence of the emotional intelligence level on the educational and professional activities of a lawyer. *Proceedings of the Southwest State University. Series: Linguistics and Pedagogics*, 11(2), pp. 123–133 (In Russ., abstract in Eng.).

22. Orme, G., (2003). *Emotional thinking as a tool for success*. Moscow: KSP+ (In Russ.).

23. Oshepkova, A.A. and Makhin, S.A., (2018). Features of relationship between emotional intelligence, self-attitude and academic achievement among students in various directions of professional training. In: *Tavrishesky scientific bulletin. Pedagogy and psychology. Proceedings of scientific and practical seminars of the Faculty of Psychology of the Taurida Academy*, pp. 108–118 (In Russ., abstract in Eng.).

24. Petrides, K.V. and Furnham, A., (2000). On the dimensional structure of emotional intelligence. *Personality and Individual Differences*, 29, pp. 313–320.

25. Pisner, D., Smith, R., Alkozei, A., Klimova, A., and Killgore, W., (2017). Highways of the Emotional Intellect: White Matter Microstructural Correlates of an Ability-Based Measure of Emotional Intelligence. *Social neuroscience*, 12(3), pp. 253–267, doi: 10.1080/17470919.2016.1176600

26. Rubinstein, S.L., (2000). *Fundamentals of General Psychology*. St. Petersburg: Piter (In Russ.).

27. Salovey, P., (1990). Emotional intelligence. In: P. Salovey, D. Mayer. *Imagination, Cognition and Personality*, 9, pp. 185–211.

28. Sergienko, E., Khlevnaya, E., and Osipenko, E., (2020). Development of an objective methodology for measurement of emotional intelligence. Emotional intelligence and socio-demographics of employees in Russian organizations. *Organizational psychology*, 10(1), pp. 45–61.

29. Sergienko, E.A. and Vetrova, I.I., (2010). *Test by J. Mayer, P. Salovey, D. Caruso "Emotional Intelligence" (MSCEIT v.2.0)*: Manual. Moscow: Institute of Psychology of RAS (In Russ.).

30. Simbirtseva, N.V., (2008). Modern theoretical concepts of emotional intelligence. *Vestnik Kemerovskogo Gosudarstvennogo Universiteta*, 3(35), pp. 54–56 (In Russ., abstract in Eng.).

31. Vanyushina, N., Makarova, A., and Shanturova, G., (2020). An integrative model of emotional intelligence development of the Chinese secondary language personality in the context of modern management. *Ekonomichnij chasopis-XXI*, 183(5–6), pp. 142–149, doi: 10.21003/ea.V183-14.

32. Vygotskiy, L.S., (2005). *Psychology of human development*. Moscow: Smysl (In Russ.).

33. Vyskochil, N.A., (2009). The relationship of characteristics of temperament with emotional intelligence. *Mir obrazovaniya – obrazovanie v mire*, 4(36), pp. 181–187 (In Russ.).

34. Zabrodina, L.A. and Khasianova, A.A., (2015). Relationship of the components of viability of adolescents with their emotional intelligence. *Innovacionnye tekhnologii v nauke i obrazovanii*, 1, pp. 215–217 (In Russ.).

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## **Logical Design of Legal Education. Towards the Anniversary of Kutafin Moscow State Law University**

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**Abstract:** The paper deals with the problem of interrelation between two research programs — logic and jurisprudence — from antiquity to the present. Traditional logic has created and developed the Great Triad “Concept — Judgment — Inference” that has become an educational and methodological canon of humanitarian knowledge and education in general and legal knowledge and legal education in particular. The doctrine of the concept, the doctrine of judgment, the doctrine of inference (more precisely, the doctrine of proof) are essentially used in legal proceedings, law-making, and law enforcement. The author resorts to modern achievements of the theory and technology of scientific knowledge as a research methodology. Logical knowledge itself appears in the form of methodology. Under this approach, any science, both natural and humanitarian, necessarily defines its conceptual corpus. Any science, creating its own description of the subject area, uses theoretical provisions in the form of a set of theses and arguments expressed by judgments. Any science substantiates its vision of the world using a system of evidence. All these properties are subject to and correspond to the subject of logics taught in every law school in the context of legal logics or logics for lawyers. The place of logic in the framework of legal education is considered as a hierarchy of problems of the relation between the phenomena of “*the logical*” and “*the legal*” within the framework of the world-historical process, the relation between the phenomena of “*the logical*” and “*the legal*” within the framework of domestic history and domestic education system before 1917, i.e., before the overthrow of the monarchy and the

establishment of the Soviet power, the relation between the phenomena of “*the legal*” and “*the logical*” in Soviet and post-Soviet history, creation of an education system, including legal education, in our country and the development of the logical science and logical education at Kutafin Moscow State Law University. The uniqueness of the study is associated with the use of the Transcript of the All-Soviet Meeting of Logic Teachers of Higher Educational Institutions held on June 21–26, 1948 in Moscow discovered and introduced into scientific circulation by the author of the paper. The result of the study proves the special importance of logic for lawyers as a reliable tool in situations of lawmaking, law enforcement and interpretation of legal norms.

**Keywords:** Formal and dialectical logic; concept; judgment; inference; logical culture of thinking; legal logic; logical education; Sector of Logic

**Cite as:** Malyukova, O.V., (2021). The Logical Design of Legal Education. Towards the Anniversary of Kutafin Moscow State Law University. *Kutafin Law Review*, 8(4), pp. 647–667, doi: 10.17803/2313-5395.2021.4.18.647-667.

## Contents

I. Introduction .....	649
II. Interrelation between the Terms “the Logical” and “the Legal” in the Framework of the World Historical Process .....	650
III. Interrelation between the Terms “the Logical” and “the Legal” in the Framework of National History and the National Education System before 1917 .....	653
IV. Interrelation between the Terms “the Logical” and “the Legal” in the Soviet and Post-Soviet History: Establishment of Education System and Legal Education in Russia .....	655
V. Logical Science and Logical Education at Kutafin Moscow State Law University .....	663
VI. Conclusion .....	666
References .....	666

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As for science, everything is simple here:  
You take the rule of law in one hand (as a general rule),  
in the other hand you take the client's story (as a special case),  
and you push one on top of the other.  
If it doesn't work, add the necessary details  
or remove unnecessary ones.  
This is called "building a syllogism"  
and refers to formal logic that is taught  
during the first year of the university.

*Vladimir Livshits*

## **I. Introduction**

Traditional logic has created and developed the Great Triad "Concept — Judgment — Inference" that has become an educational and methodological canon of humanitarian knowledge and education in general, and legal knowledge and education in particular. Strictly speaking, this is exactly what Vladimir Livshits, a famous practicing advocate and the author of the book describing advocate's daily life, tells us about in his story (Livshits, 2009). Indeed, syllogistics remains in Livshits's memory and in the memory of many lawyers, although in fact traditional logical knowledge is the aforementioned triad, and he treats syllogistics rather cautiously and does not consider it a leading component of logic. The doctrine of the concept, the doctrine of judgment, the doctrine of inference (more precisely, the doctrine of proof) developed by logic are essentially used in legal proceedings, law-making and law enforcement. For the first time, a student actually encounters a logical complex of knowledge during the first year at a law school, because secondary schools for inexplicable reasons have been withdrawn from the formation of logical culture. Applicants are sure that a concept is what they have understood, judgment is an opinion or point of view, and inference is an intuitive cognitive act. Logical education aims at eliminating this gap and forming a logical culture of thinking. Any science, both natural and humanitarian, necessarily defines its conceptual corpus. Any science, creating its own description of the subject area, uses theoretical provisions in the form of a set of theses and arguments expressed by judgments. Any science substantiates its

vision of the world using a system of evidence. All these properties are present in jurisprudence.

A logical design or logical support of legal education at Kutafin Moscow State Law University is an undoubted fact and a circumstance that significantly influenced the nature and content of legal education because, being the common basis of humanitarian education, logic (and rhetoric).constitutes a unifying factor for it in general, That is why logic as a science and logic as an academic discipline has always occupied a worthy place within the educational program of Kutafin Moscow State Law Academy (former All-Union Correspondence Law Institute).

A decent place of logic in the framework of legal education is associated with a number of circumstances and can be considered as a certain hierarchy of the relevant problem:

The first element of the hierarchy involves the correlation between the phenomena (terms) of “*the logical*” and “*the legal*” within the framework of the world-historical process.

The second element involves the correlation between the phenomena of “*the logical*” and “*the legal*” within the framework of national history and the national education system before 1917, i.e., until the overthrow of the monarchy and the establishment of Soviet power.

The third element concerns the interrelation between precisely “the logical” and “the legal” in Soviet and post-Soviet history, as well as the creation of an education system, including legal education in our country.

The fourth element involves the logical science and logical education at Moscow State Law University.

## **II. Interrelation between the Terms “the Logical” and “the Legal” in the Framework of the World Historical Process**

The appearance of the terms “*the logical*” and “*the legal*” in their traditional form should be attributed to the era of classical antiquity that begins in the 8th century BC. *The Logical (or initially the rhetorical)* is realized in the educational sphere, namely, in the activities of rhetorical schools. *The legal* is embodied in practice, namely, in the system

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of court proceedings. Both phenomena represent a combined interest in the argumentative practices, systems of arguments, i.e., in reasoning.

Until now, logic has been defined as the theoretical science of correct reasoning. The internal sources of the logic emergence include formulas, reasoning and proofs. These basic phenomena are necessarily present in the science of logic, but they arose long before its appearance. In the historical order, formulas first appeared about 4 thousand years ago in the Ancient East. Then, in the 7th century BC in ancient Greece, the first reasoning was recorded, and then in the 6th century BC the first proofs appeared (*see* Thales' theorem and Pythagoras' theorem).

The external factors of the emergence of logic include problems with reasoning that arose in connection with the appearance of sophisms and the discovery of paradoxes. Sophistry appears in Greece in the 1st half of the 5th century BC, i.e., about a century before logic appeared. The first examples of paradoxes appeared even earlier. Sophisms and paradoxes turned out to be linguistic reasoning, unacceptable for unknown reasons. Logic was called upon to overcome the problems that arose in reasoning (Anisov, 2002).

The emergence of sophistry is directly related to the development of legal practices, in particular, the judicial system. In the second half of the 5th century BC in the Greek city-states (*polis*), a democratic type of government was established where the aristocracy lost its political privileges, but retained its wealth. In the new conditions, courts were gaining in importance: every free citizen could summon another citizen to court in order to compensate for actual or perceived damage. It is not a matter of the poor, so the danger of being summoned to court as a defendant threatened primarily the wealthy strata of the population. Unlike the modern court, where the prosecution and the protection is the business of legal professionals (prosecutors and lawyers), in the wood of ancient-Greek court a plaintiff and a defendant had to accuse and defend themselves, speaking for themselves personally.

A large number of judges decided the cases publicly, and even with a large gathering of people, judge's opinion often played a decisive role, and, therefore, the plaintiff and the defendant had to convince the audience that they were right. It was impossible to do without reasoning but, after all, not everyone possessed this art to the proper extent. Now

there are paid teachers of eloquence — sophists ready to teach the art of persuasion to anyone who has the opportunity to pay them. The goal of this art is to win an argument.

For already in antiquity, in a legal dispute, the main thing was to win the case, even if in reality you were wrong. The Sophists tried to give the same status to different and opposite human interests, their complete cognitive equal right. The famous sophist Protagoras, for example, stated: “Of all things the measure is man, of the things that are, that they are, and of the things that are not, that they are not.” Sophistry, as an extreme expression of relativism was very comfortable Philosophy, because it allows justifying everything, anything. Since a man is the measure of all things, then he acts as a measure of truth and falsehood. Hence the thesis of the sophists that every statement can be justified or disproved with equal success. As an example of this thesis, numerous sophisms were created, clever tricks that implicitly contained a logical error.

Generally speaking, a logically erroneous course in reasoning is called paralogism, and sophism is a deliberately veiled paralogism calculated on ignorance of logic and theory of reasoning. In those days when logic did not exist, judicial practice could not oppose anything to sophistry; therefore, the task of creating a logical science was extremely relevant. Furthermore, in the process of reasoning philosophers, lawyers, speakers and others, accidentally and unintentionally, got into an argumentative dead end, the way out of which was not obvious. For example, from an intuitive point of view, the reasoning did not contain paralogisms, but suddenly it led to unacceptable conclusions. A convincing reasoning that leads to an unacceptable conclusion is called a *paradox*. The most famous reasoning of this type is the *liar paradox*.

The action of internal and external factors ultimately had a beneficial effect. The science called traditional logic or syllogistic was created by Aristotle in the 4th century BC and existed unchanged for over two thousand years. This is an unprecedented event in the history of science. All other sciences changed, and only logic remained aloof from the large and small scientific revolutions that were taking place. No significant transformations in logic occurred in antiquity, in the

Middle Ages, or in modern times. Philosophers, logicians, lawyers, physicians and theologians of subsequent centuries only expounded and commented on the works of Aristotle. Indeed, minor changes took place, for example, the philosophical understanding of logic changed, the sets of terms changed, new logical examples appeared, individual additions and clarifications were created, but the core of logic remained unshakable. This core consisted of three parts: the doctrine of the concept, the doctrine of judgment, and the doctrine of inference. In the educational literature, the scheme of presentation of the material was lined up in the form of a chain of *concept – judgment – inference*. This scheme seemed very reasonable for twenty-five centuries.

In this configuration, at the end of antiquity in the 8th century AD, logic became a part of the “seven liberal arts,” which, in addition to logic, included grammar, rhetoric, arithmetic, geometry, music and astronomy. In medieval Western Europe, an educated person could be considered only one who studied this cycle of disciplines in a general education school or, in a deeper version, in the emerging universities at the “faculties of arts” (otherwise the propaedeutic or philosophy faculty). The Faculty of Arts was the first stage of higher education, and the second stage was represented by the Faculties of Theology, Medicine and Law. This structure of universities remained until the 18th century. Thus, Moscow University was still created according to this principle (of course, without a theological faculty, which is impossible for Orthodoxy). Thus, logic entered the required set of disciplines in the legal educational program. It is because of this circumstance that the factual material of logic (examples and explanations) made significant use of the data of legal science and practice.

### **III. Interrelation between the Terms “the Logical” and “the Legal” in the Framework of National History and the National Education System before 1917**

The history of logic in Russia begins in the 17th-18th centuries and represents an acquaintance with logic as an academic discipline. Logic was taught at the first higher theological educational institution in Moscow, the Slavic-Greek-Latin Academy, built on the model of the

Kiev-Mohyla Academy. It taught in accordance with the canon of the “seven liberal arts,” and Hieromonk Sophronius Likhud (1652–1730) became the first teacher of logic and the head of the Academy (Slinin and Fedeorov, 2001). And he did teach the logic.

According to the information available, Hieromonk Sophronius Likhud began reading logic on March 17, 1690, and quitted his career on August 11, 1694. But he did not have a chance to read philosophy. Likewise, in 1694, the Likhud brothers (elder brother Ioanniki) were dismissed from the Academy with the wording “We were having fun around philosophy.” Theological education did not require the knowledge of philosophy, and there was no other education in Russia available at that time. However, after a while the Likhud brothers resumed teaching at the academy. Moreover, they are considered to be the founders of Russian higher education.

The epoch of Peter the Great transformations, the formation of the secular system of Russian education made logic a standard discipline taught initially in Latin and Greek, and then in Russian. The 19th century became quite favorable for logic as an official academic discipline. Logic was taught in higher educational institutions, in gymnasiums and real schools, as well as in all theological educational institutions. In the Russian Empire, legal educational institutions appeared in addition to the law faculties of universities. *Tsarskoye Selo Lyceum* (1811–1918), the School of Law (1835–1918), *etc.* had a legal profile. One of the first professors of Tsarskoye Selo Lyceum Prof. Nikolai F. Koshansky (1781–1831) wrote quite successful textbooks “General Rhetoric” and “Private Rhetoric,” using which several generations of students studied. Logic at the Lyceum was also taught by Aleksandr P. Kunitsyn, who was praised by his students Aleksandr S. Pushkin, Aleksandr I. Galich and many others. The majority of the faculty had a law degree and were well acquainted with logic. A number of disciplines of the logical cycle were developed, namely, logic, rhetoric, exegesis, Russian literature. Gradually, logic has become not only an academic subject, but also a field of scientific research. The first Russian scholars appeared in the field of logic, both traditional and symbolic. Indeed, figures of the level of de Morgan, Frege, and Boole did not appear in Russia, but Russian logicians founded their own schools of thought dealing with the subject

matter of logic; they offered new solutions to important logical problems. Aleksandr I. Vvedensky, Mikhail I. Vladislavlev, Nikolai Ya. Groth, Mikhail I. Karinsky, Leonid V. Rutkovsky, Platon S. Poretsky and others formed the core of the school of logic in Russia. At the beginning of the 20th century, logic continues to develop both as an academic discipline in universities and gymnasiums, and as a direction of scientific research. Specialists in logic were trained, textbooks and teaching aids for self-education were published. The most famous authors of textbooks on logic were Mikhail I. Vladislavlev and Aleksandr I. Vvedensky, Vladimir M. Karinsky, Aleksandr E. Svetilin, Georgiy I. Chelpanov, Sergei I. Povarnin and others. Textbooks by Willam Minto, Christoph von Sigwart et al. were translated into Russian.

#### **IV. Interrelation between the Terms “the Logical” and “the Legal” in the Soviet and Post-Soviet History: Establishment of Education System and Legal Education in Russia**

A natural progressive development of logic ceased after the Great October Socialist Revolution (1917). This did not happen immediately, but gradually. There were practically no representatives of the Bolshevik Party among the teachers, the university faculties and scholars in the humanities. Among university professors in philosophy, jurisprudence, logic predominated the representatives of the cadets political party<sup>1</sup> and Socialist-Revolutionaries.<sup>2</sup> Many of them (Nikolai A. Berdyaev, Pyotr B. Struve, et al.) went through the stage of “legal Marxism.”<sup>3</sup> They knew the philosophy of Marxism well and saw its shortcomings. And most importantly, none of the pre-revolutionary teachers of the humanities envisioned the actual introduction of a monopoly on beliefs: they

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<sup>1</sup> Cadets Party (or Constitutional Democracy Party) was a centrist, liberal political party in the Russian Empire promoting Western constitutional monarchy.

<sup>2</sup> Socialist Revolutionary Party (or Party of Socialist-Revolutionaries) was a leading political party in the late Imperial Russia and early Soviet Russia promoting socialist ideas and democracy supporters.

<sup>3</sup> Legal Marxism was a Russian Marxist Movement based on specific interpretation of Marxist theory acknowledged for promoting its ideas in legal publications.

believed in freedom of speech, founded new educational institutions (e.g., Nikolai A. Berdyaev).

As for logicians, the ability to reason made it possible to criticize the basic provisions of dialectical materialism. As a result, in 1921–1922, all departments of philosophy were closed because they hosted idealists; the most prominent representatives of philosophy and jurisprudence were expelled from the country. At the same time, teaching of logic and rhetoric ceased. The Revolution not only did not need historians, it also did not need people capable of independent reasoning.

However, after the closure of the departments of philosophy, the pre-revolutionary teachers of philosophy and logic were not left out of business. The higher education system reform took place: the old universities were preserved and new educational institutions appeared, such as the Institute of Philosophy, the Communist Academy, the Moscow Institute of Philosophy, Literature and Art, the Academy of Social Sciences, and they usually taught ancient literature, logic, rhetoric. The first proper legal educational institution was the All-Union Correspondence Law Institute (1931). In 1940, the so-called Military Institute of Foreign Languages (the name changed frequently) was founded. Its objective was to train personnel for military prosecutors' officers and military tribunals.

Teachers representing pre-revolutionary period were also involved in teaching (as bourgeois specialists in this area). Their further fate evolved in different ways, sometimes tragically. The fate of outstanding scholars Pavel A. Florensky, Gustav G. Shpet et al. was tragic. But most of the pre-revolutionary logicians survived terrible times and did not lose their qualifications. Since 1939, the “countdown” of a gradual return to the educational process began for logic. The idea of returning logic to education was inspired by the state authorities. For what purpose? The development of the independent thinking of workers and collective farmers could hardly have been the objective pursued by the governmental authorities. Most likely, the goal was to create proletarian logic as a variant of proletarian science as a whole. The priority of Soviet science as a proletarian science, as opposed to bourgeois science, was a favorite theme of the Soviet leadership.

The process of creating proletarian Marxist-Leninist philosophy went through a number of stages, from a discussion between mechanists and dialecticians to writing a Short Course in the history of the All-Union Communist Party of Bolshevics, from criticism of the History of Philosophy to a philosophical discussion led by Andrei A. Zhdanov in 1947.<sup>4</sup> Finally, the turn came to logic, which was called formal logic and, apparently, was doomed in the same way as formal genetics. The role of proletarian logic was intended for dialectical logic. The procedure for the formation of proletarian logic went through a number of stages: from its return to the educational process to the foundation of the department of dialectical logic.

Logic as an academic discipline began to return to the educational process in 1946 after 25 years of almost complete oblivion. In pre-revolutionary Russia, logic was taught in the senior grades of gymnasiums, in universities and theological schools according to a tradition established since the middle ages. In the 19th century, textbooks on logic written by Russian authors and scholars who contributed to the further creation of non-classical logic were published. Indeed, logic was not a leader in the national science, but it occupied quite a worthy place. The generation of logicians at the beginning of the 20th century was represented by such scholars as Georgiy I. Chelpanov, Sergei I. Povarnin, Valentin F. Asmus, Pavel S. Popov, Aleksey A. Chudov, Semyon N. Vinogradov and others. It was they who, having started teaching logic at various educational institutions, survived the October Revolution; they saw the complete abolition of teaching logic as a “harmful science” in 1921, witnessed the departure of “philosophical steamers”<sup>5</sup> in 1922. For 25 years, they managed to teach logic and survived up to the Resolution of the Central Committee of the All-Union Communist Party (Bolsheviks) of 1946 on its renewal in the educational process (Georgiy I. Chelpanov died in 1936).

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<sup>4</sup> Andrei A. Zhdanov, a revolutionary and Soviet politician and statesman, made a speech at a Conference of Soviet Philosophical Workers in 1947 where he accused philosophers of failing to develop Marxist-Lenin philosophy.

<sup>5</sup> A collective name given to several steamers that in 1922 took out to West Europe a large group of most well-known Russia's scientists and scholars (almost 200 people) expelled out of Soviet Russia by the Soviet Regime.

In the matter of reviving logic, a decisive role was played, oddly enough, by Iosif V. Stalin. Two common versions of that event have survived until now. Professor Avenir I. Uemov liked to voice the first version, according to which young philosophers Mark B. Mitin and Pavel F. Yudin are alleged to have come to Iosif Stalin and they asked when dialectical logics would be created. In response to that, Stalin suggested that they, first, should master the formal logics and demonstrated them Chelpanov's textbook published in 1946 that Stalin took out of his safe. The second version was voiced by Valentin A. Bazhanov (Bazhanov, 2007) who refers to the story told by Valentin F. Asmus. In early 1941, at night Valentin F. Asmus was summoned to the Kremlin to see Stalin. Stalin complained that his commissars did not know how to think, and they needed to be taught logic. However, the Great Patriotic War soon broke out, and the commissars fought without having mastered the science of correct thinking.

Meanwhile, the idea of the use of logic remained in the head of the former seminarian. In addition, Avenir I. Uemov (Uemov, 2000) remembered a story about Valentin F. Asmus being called to Vyacheslav M. Molotov, Chairman of the Council of People's Commissars of the USSR, who asked the scholar to give lectures on logic for members of the Soviet Government. These stories prove the existence of a certain interest in logic on the part of the country's party leadership. Perhaps, that interest was due to the needs of Soviet diplomacy that had not yet fully mastered the art of diplomatic discourse and was inferior in this field to Western diplomacy. Also, they might have seen in logic another powerful weapon of the working class. Having mastered it, one can bring the victory of Communism around the world closer by means of logics. The legend that Vladimir I. Ulyanov (Lenin) had only one "good" mark in his Education Certificate contributes to the understanding that the logics' destiny was predetermined, since the only good mark was given in logics. Thus, certain hopes for a miracle were associated with the restoration of logic.

As a result, on December 4, 1946, the Resolution of the Central Committee of the All-Union Communist Party of Bolsheviks (AUCP (b)) on Logic and Philosophy Teaching in Secondary Schools was adopted. The text of the Resolution reads: "The Central Committee

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of the AUCP (b) discussed the issue of teaching logic and psychology in secondary school and adopted a resolution on this issue. The Central Committee of the All-Union Communist Party of Bolsheviks admitted that it was absolutely abnormal that logic and psychology were not taught in secondary schools. The Central Committee of the All-Union Communist Party (Bolsheviks) admitted that it was necessary to introduce, within four years, starting from the 1947/48 academic year, the teaching of psychology and logic in the graduating classes of secondary school. Logic and psychology should be taught by qualified teachers who have received special training in the field of psychology and logic.”

The text of the Resolution was published, which was quite unusual, only in *Uchitelskaya Gazeta* [The Teachers’ Newspaper]. An editorial in the “Uchitelskaya Gazeta” of December 14, 1946, reported the following: “Logic is of tremendous importance for disciplining our thinking. As a science about the laws of correct thinking, logic establishes those principles by following which we can avoid mistakes in our judgments and conclusions and come to correct, logically grounded evidence. The study of logic is excellent brain training, training our thinking to strict discipline. The practical use of logic is that it teaches people to make correct judgments, teaches to draw consistent inferences and seek rigorous evidence, which is so necessary for any mental activity. Logic fosters the economy of thinking, protecting from vain delusions, unnecessary, fruitless disputes that arise in the absence of justified, i.e., logical proof. The study of the logic of thinking is a necessary step for the study of dialectical logic.” (Korsakov, 2016).

The introduction of logic into the educational process began earlier than the adoption of the Central Committee Resolution. The Department of Logic of the Faculty of Philosophy of Moscow State University was founded in 1943. In summer 1946, by the efforts of the department’s faculty and specifically for the training of teachers of logic, special courses were initiated in Khimki town on the basis of the Institute of Culture. The Khimki Courses brought together future teachers of logic from all over the country. Yevgeniy K. Voishvillo, future professor of the Department of Logic, was among the participants of the courses. The courses lasted 6 weeks; lectures were given by Valentin F. Asmus,

Pavel S. Popov, Aleksey A. Chudov and Semyon N. Vinogradov. They used, most likely, the preserved pre-revolutionary textbooks.

Frontal teaching of logic in universities and pedagogical institutes of the country began in the fall of 1947. The textbook by Georgiy I. Chelpanov, the textbook of logic for secondary schools by Semyon N. Vinogradov (first published for grammar schools in 1912) and the first Soviet textbook of logic by Valentin F. Asmus (published in March 1947) had a huge circulation of 100 thousand copies. As expected, there was not enough educational literature for everyone, the level of logic teachers was quite low, the academic discipline itself turned out to be difficult, both for students and teachers, and there were a lot of complaints on behalf of every participant of the process. The Ministry of Higher Education of the USSR checked the activities of the departments of logic of a number of universities, including the Department of Logic at Moscow State University.

On March 23, 1948, following the results of a ministerial audit held by the Department of Logic of Moscow State University (Order No 361 of the USSR Minister of Higher Education), Sergey V. Kaftanov, then the Minister of Higher Education of the USSR, condemned the department in general and personally Pavel S. Popov, Valentin F. Asmus and Semyon N. Vinogradov for formalism.

On June 21–26, 1948, the All-Union Conference on Logic was convened (Anisov and Malyukova, 2019) to discuss the Order No 361 of the USSR Minister of Higher Education and, more specifically, to discuss Asmus's textbook. The Conference took place in Moscow, in the Assembly Hall of Moscow State University and all the republics of the USSR and all university centers were represented there. At the meeting, a transcript was kept; it contained about 450 pages. The transcript was recently discovered among the papers of the now deceased Prof. Vyacheslav I. Kirillov, former head of the Department of Philosophy of Kutafin Moscow State Law University (MSAL).

The meeting was opened by the Deputy Minister of Higher Education of the USSR, Professor Vasilii I. Svetlov. In his lengthy speech, he said the following:

“The All-Union Conference on Logic was convened after a year of practice in teaching logic. The introduction of a course in logic

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in universities is aimed not only at acquainting a wide range of students with this science, but also at training logic teachers for secondary schools. On this basis, about two years ago, the Ministry initiated courses for teachers of logic, and in 1947/1948 the expired academic year, special departments of logic and psychology were created in 16 universities and 15 pedagogical institutes.

As a result, a new group of logic teachers was created, albeit still unexperienced and having not enough knowledge, but already having a positive reputation. One of the evidence of this is the very fruitful acknowledgement of newly published books on logic, which was widely developed in the departments of logic and in the departments of dialectical materialism.

The teaching of logic itself should be structured so that it is alien to scholasticism, so that it is closely connected with the life of Soviet people, so that, like the teaching of all other disciplines, it should proceed from the decisions of the Central Committee of the All-Union Communist Party (bolsheviks) on ideological issues. Unfortunately, some teachers of logic in higher educational institutions and authors of books and textbooks on the logic of the resolution of the Central Committee of the All-Union Communist Party of Bolsheviks (bolsheviks) on ideological work and the resolution of the Central Committee of the AKP (bolsheviks) on the introduction of teaching logic have not yet found a sufficiently complete reflection.

The teaching of logic and educational literature, which has recently appeared on logic, is often still built on materials from the distant past, in isolation from the achievements of Soviet science, in isolation from the practice of socialist construction. Meanwhile, logic, like any other science, cannot be apolitical, heeding good and evil with indifference.

However, some comrades working in the field of logic, and above all Comrade Asmus, they still do not understand this. After all, it is obvious that logic is a party, philosophical science, which must be expounded in the passionate language of a Bolshevik, and not in the dry, dry language of a pedant.

Unfortunately, the works of the classics of Marxism-Leninism are either not at all involved, or are involved to a very small extent, by some scientists and teachers of logic. On the other hand, as a serious gap, it

should be noted that the development of questions of Marxist dialectical logic in our country is almost completely absent, or is carried out to a very weak extent.”

The agenda of The All-Union Meeting of Teachers of Logic included the following issues:

1. Discussion of educational literature on logic.
2. The state of logic teaching in higher educational institutions.
3. Discussion of projects of syllabi and curricula for the course of logic.

In addition, the following theoretical reports were represented:

- The correlation between the scope and content of concepts (Prof. Bonifatii V. Kedrov).
- Logic and politics (Doctor of Philosophy Pyotr E. Vyshinsky).
- Against the idealistic interpretation of judgments (Doctor of Philosophy Pyotr V. Tavanets).
- The cognitive meaning of syllogism (Doctor of Philosophy Aleksey A. Chudov).

A large number of specialists spoke on the discussed issues and only 47 persons (Primakovskiy, 1955) (their names and opinions) were reflected in the Transcript of the Meeting. The most significant group of participants consisted of pre-revolutionary specialists. They all faced with various problems under the Soviet rule: Valentin F. Asmus (1894–1975), Pavel S. Popov (1892–1964) and Sergei N. Vinogradov (1881–1954). They all were specialists in logics, authors of textbooks on logics, teachers of Khimki courses, but most importantly, they were charged with formalism under the Order of the Ministry. Indeed, the key figure of the Meeting was Aleksey A. Chudov (born in 1898 and employed by the Institute of Philosophy of the Academy of Sciences of the USSR) who possessed all the features of a specialist developed during the pre-revolutionary period. Since March 1, 1946, to March 1, 1948, he headed the Sector of Logics of the Institute of Philosophy. Unfortunately, we failed to determine the year of his death.

Before the Meeting, there were two textbooks on logics. One textbook was written by Mikhail S. Strogovich, the second textbook was written by Valentin F. Asmus. The fates of these two books was different.

Mikhail S. Strogovich (1894–1984) is also one of the most outstanding logicians of that time. While writing his textbook, he taught logics at the Military University. He was not on the front line of fire. Moreover, he was a corresponding member of the Academy of Sciences and two textbooks on logic authored by him (1946 and 1948 editions) were even put as an example to Valentin F. Asmus. Among the pre-revolutionary logicians, one should name such specialists as Aleksey V. Savinov (1898–1956), Aleksandr S. Akhmanov (1893–1957), and Aleksandr O. Makovelsky (1884–1969).

Unlike most events that took place at that time, this Meeting did not end with anything. Valentin F. Asmus was never able to republish his textbook, and the collective textbook of 1956 did not become a significant event. The first generally valid textbook of the traditional type was “Logic” authored by Vyacheslav I. Kirillov and Anatoliy A. Starchenko that is still popular in our time. Many philologists still use books authored by Valentin F. Asmus. Incidentally, it was after this Meeting that Soviet logics for many years was drawn into a fruitless dispute over the relationship between dialectical and formal logic. The closure of the Department of Dialectical Logic at the Faculty of Philosophy of Moscow State University in 1968 that existed for only three years and did not create any notorious science became a symbol of its inglorious end. In addition, the leading figures of the Meeting managed to stop for a while the natural drift of traditional logic towards modern, mathematized logics. However, and this is the main thing, logics was still not acknowledged as a *bourgeois science*.

## **V. Logical Science and Logical Education at Kutafin Moscow State Law University**

In the 50s and 60s of the 20th century, logics became a discipline the teaching of which was restored in universities and pedagogical educational institutions. Teaching logics in law schools ceased to be exclusive, i.e., without proper reasoning, in nature. Since 1961, Doctor of Philosophy (Logic) Vyacheslav I. Kirillov became the leading professor of logic of the All-Union Correspondence Law Institute, and then he headed the department. Due to his work and under his supervision, the standard

of teaching logic for lawyers was formed. For this purpose, in 1963 Vyacheslav I. Kirillov and Anatoliy A. Starchenko (in the future, the long-term head of the Department of Logic of Moscow State University) wrote and published the textbook “Logic.” The text of this textbook has become a classic, it has been republished many times, and there is also a less known version of this textbook written by Vyacheslav I. Kirillov on his own without the participation of Anatoliy A. Starchenko. In parallel with the textbook, a widely known problem book (book of problems) “Exercises in Logic” was published. The department is an attractive for logicians due to its determination to write and publish new textbooks on logic, rhetoric and the theory of argumentation (Afanasyeva, 2011; Demina, 2014; Demina and Przhilenskiy, 2017; Abramova and Nikulina, 2020a; Malyukova, 2018, 2021). The textbook “Logic” edited by Olga V. Malyukova is the most recent to be published (2021).

Over the years of its existence, the Department of Philosophy and Sociology has made a significant contribution to the development of the domestic science of logic. On July 15, 2013, the author of this paper discovered the Transcript of the All-Union Conference on Logic of 1948, the materials of which were used in writing the third section of this paper. Events unfolded as follows: on July 15, 2013, in the process of disassembling a bookcase in the office of the head of the department, the main contents of which involved numerous textbooks on logic once donated to Vyacheslav I. Kirillov by the authors and various editions of the textbook by Vyacheslav I. Kirillov, in the farthest corner of the bookcase on the very top shelf the author (Olga V. Malyukova) found a thick brown bound volume that looked like a doctoral dissertation. It was covered in dust, and the pages were covered with dried leaves of trees, as if someone had used this book to make a herbarium. Next to this volume was another rather valuable book — the well-known logical dictionary by Nikolay I. Kondakov. Naturally, I opened the first page of the most curious document I found. It turned out to be a typewritten text of the Transcript of the All-Union Conference on Logic held in 1948, the volume consisting of 450 pages. It was the fourth, or even the fifth copy, typed on special and very thin paper, at least with two typewriters with different fonts. At first glance, the text was easy to read. However, what kind of the Meeting are we talking about? No one

has ever referred to the proceedings of the Meeting. The Meeting has never been mentioned by anyone as if that Meeting never took place. The Meeting was not generally known among logicians. The found text belonged to Vyacheslav I. Kirillov who worked for many years at the Ministry of Higher Education, but he could hardly have participated in the Meeting due to his age.

Working with the text of the Transcript took a few years. In 2018, the Transcript was published in the monograph authored by Prof. Aleksandr M. Anisov and Prof. Olga V. Malyukova “The Formation of Domestic Logic: Discourses and Destinies.” During the research work, the following conclusions were made:

1. The exact foundation date of the Sector of Logic of the Institute of Philosophy of the Academy of Sciences of the USSR and the name of the first head of the Sector were established. In accordance with the Decision of the Presidium of the USSR Academy of Sciences of December 23, 1947, a Sector of Logic was created at the Institute of Philosophy. On April 27, 1948, Aleksey A. Chudov, whose personality and identity still remain a mystery, was appointed as the head of the Sector from March.

2. It was determined that the opportunity to teach logic was assigned to teachers of the Russian language and literature, and not mathematics, as previously thought. In other words, logic was perceived as part of Russian/foreign literature, which corresponded to the ancient tradition.

3. The All-Union Conference on Logic was an important event in Russian history; the text of the Conference Transcript constitutes a precedent document of the era of the formation of Russian science and national education during the Soviet period; the preservation, discovery and publication of the text of this precedent document is the merit of the Department of Philosophy and Sociology of Kutafin Moscow State Law University (MSAL).

In 2023, we will celebrate 75 years since the Conference on Logic was held, which is a good reason for further research into the history of logic of the Soviet period.

## VI. Conclusion

In conclusion, the following circumstances should be noted: by the 90th Anniversary of Kutafin Moscow State Law University, the Department of Philosophy and Sociology has preserved the traditions of teaching logic laid down in Soviet times, and raised them to a new, modern level of teaching, i.e., using new textbooks and new digital techniques. Logic is taught in all institutes of Kutafin Moscow State Law University (MSAL) and it always encourages interest in studying logic among students. The disciplines taught by the department have expanded due to the widespread introduction of a new discipline of the logical cycle, namely, rhetoric. A detailed account of rhetoric is beyond the scope of this paper, but the inclusion of rhetoric in the educational process has raised the status of logic. And finally, scientific and educational activities of the Department of Philosophy and Sociology once again confirmed the importance of the concept of “legal logic,” once formulated by Vyacheslav I. Kirillov. Legal logic has become essential in the field of methodology for the interpretation of legal norms. It is in this area that the logical methods of transforming normative legal judgments, deriving judgements by the methods of deduction, induction and analogy, proving by means of methods from the opposite and bringing to the absurd are applicable. Logic is a reliable toolkit for any humanist; it is especially significant for a lawyer in situations of rule of law, law enforcement and interpretation of legal norms.

## References

1. Abramova, N.A. and Nikulina, I.A., (2020a). *Rhetoric for Lawyers*. Moscow: Prospekt (In Russ.).
2. Abramova, N.A. and Nikulina, I.A., (2020b). *Rhetoric. A Study Guide for Specialitate*. Moscow: Prospekt (In Russ.).
3. Afanasyeva, O.V., (2011). *Logics*. Moscow: Prospekt (In Russ.).
4. Anisov, A.M. and Malyukova, O.V., (2019). *Formation of Domestic Logics: Discourses and Destinies: Monograph*. Moscow: RG-Press (In Russ.).
5. Anisov, A.M., (2002). *Modern Logics*. Moscow: IFRAN Publ (In Russ.).

6. Bazhanov, V.A., (2007). *History of Logics in Russia and the USSR. Conceptual Context of University Philosophy*. Moscow: Kanon+ (In Russ.).

7. Demina, L.A. and Przhilenskiy, V.I., (2017). *Logics, Methodology, Argumentation in Scientific Research. Textbook for Graduate Students*. Moscow: Prospect Publ (In Russ.).

8. Demina, L.A., (2014). *Theory and Practice of Argumentation: Textbook*. Moscow: Norma, INFRA-M (In Russ.).

9. Korsakov, S.N., (2016). From the History of the Revival of Logic in the USSR in 1941–46. Part II. *Logical Investigations*, 2, pp. 157–158 (In Russ.).

10. Livshits, V., (2009). *Defense of Livshits: Lawyer's Stories*. Moscow–St. Petersburg: AST, Astrel (In Russ.).

11. Malyukova, O.V., ed., (2018). *Logics and Law: Monograph*. Moscow: Prospekt (In Russ.).

12. Malyukova, O.V., ed., (2021). *Logics: Textbook*. Moscow: Prospekt (In Russ.).

13. Primakovskiy, A.P., (1955). *Bibliography on Logic. Chronological Index of Works on Logics Issues Published in Russian in the USSR in the 18th–20th Centuries*. Moscow: Publishing house of the Academy of Sciences of the USSR (In Russ.).

14. Slinin, Ya.A. and Fedorov, B.I., (2001). *Logics: Bio and Bibliographic Reference (Russia – USSR – Russia)*. St. Petersburg: Nauka Publ (In Russ.).

15. Uemov, A.I., (2000). I was Asmus's graduate student. "The Man" *Online Journal*. Available at: <http://vivovoco.astronet.ru/VV/PAPERS/BIO/ASMUS.HTM> [Accessed 09.11.2021] (In Russ.).

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## **Clinical Legal Education in Belarus: Practice-Oriented Pedagogy for Socially Engaged Law Students**

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**Abstract:** The paper analyzes the evolution and changes involving clinical legal education (CLE) in Belarus. The author tends to create a historical overview of the 22 years' experience of clinical legal education in Belarus. It will be possible to answer some questions mostly based on the inside view and 12 years of clinical experience with goals to bring some inspiration in a global context and to leave a mark on history. It focused on the new role embraced by legal clinics in Belarus and contribution to the creation of a new formation of legal practitioners. Additionally, the author shares the technological insights about clinical legal education. Thinking about the future it is important to make an overview of achievements and opportunities of going forwards. There is a great number of opportunities to implement clinical methodology to both academic studies and professional training. The research problem addressed in this paper is to substantiate the most effective forms and methods of teaching law disciplines both in Russian and in English in a law school in the context of introduction of digital forms of learning into traditional educational environment of a law school. The author carries out an analytical review of law clinics in historical perspective and how the work of law clinics is implemented in both academic curricula and professional training in Belarus.

**Keywords:** Belarus; law clinics; education; student; clinical methodology; professional training

**Cite as:** Khvatsik, Yu.A., (2021). Clinical Legal Education in Belarus: Practice-Oriented Pedagogy for Socially Engaged Law Students. *Kutafin Law Review*, 8(4), pp. 668–689, doi: 10.17803/2313-5395.2021.4.18.668-689.

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## Contents

I. Introduction .....	669
II. Methodology .....	670
III. Clinical Legal Education as a Powerful Pedagogical Model (Clinical Education Methodology) .....	671
III.1. Foundation of Clinical Movement and its Historical Evolution in Belarus. . .	672
III.2. Types of Legal Clinics in Belarus. ....	677
IV. The Role of International Cooperation in Belarusian Clinical Model .....	678
V. Networking in Belarusian Clinical Legal Education .....	680
VI. Trends Describing Next Developments for Legal Education in Belarus. ....	682
VII. Digitalization of Clinical Legal Education in Belarus. ....	685
VIII. Conclusion. ....	688
References. ....	689

## I. Introduction

Legal education has a long history all over the world. In some points this history is common for different jurisdictions, but in others it is completely different. One of the most common issues is a lack of practical skills among young lawyers. This problem started being discussed at the end of 19th century, but it is still actual. An answer to this problem and challenge was suggested by Clinical Legal Education (CLE) that was based on the clinical medical education model, where medical students took care of real patients under the supervision of certified doctors.

Nowadays CLE is a form of legal education that is still rapidly growing across the world. Easter Europe in general, and Belarus in particular, is not an exception. Belarus is as a country in the middle of Europe with a Soviet Union past in academic and educational traditions that is still in a controversial political situation, which had a non-visible, but direct impact on the clinics and CLE (the ability to work with certain areas and cases, categories of clients, cooperation with foreign partners, *etc.*). Belarusian CLE has a lot in common with other Russian speaking countries. However, it has a lot of differences and very specific features. It has its own unique history since 1998.

Great number of people, projects, students, and human rights cases were integrated into CLE history. However, there is a need to summarize achievements and failures to be able to find new horizons for 2021–2030. The paper sets up and answers the following issues: 1. what has happened to the clinical movement development and what are the key players in its historical evolution; 2. what types of legal clinics have been developed in Belarus and due to what reasons; 3. what role international cooperation plays in the Belarusian law clinics model; 4. what trends are describing the further development for legal education in Belarus.

## **II. Methodology**

The author has reviewed and analyzed stages in the CLE historical development, elucidated the impact of international cooperation, international partners and international organizations on the Belarusian clinical model, suggested her understanding of further perspectives the CLE digitalization in Belarus in the context of the COVID-19 pandemic. In her research, the author relies on data analysis of the law clinics' clients in Belarus, which substantiates author's suggestions concerning the future law clinics' functioning.

The paper will endeavor to answer the questions posed in the introduction on the ground of an inside view and 12 years of clinical experience in order to bring some inspiration in a global context and to leave a mark on CLE history. To this end, the author would like to share the technological insights about the CLE the author gained at the conference dedicated to clinical digital future and COVID-19 reality held in December 2020 (in cooperation with Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) and at the online Global Alliance of Justice Education (GAJE) 2021 held in June 2021. The paper will also use material from the report "The Experience of Legal Clinics in Belarus," (Khvatsik, Salei and Savitskaya, 2020) based on the online research where the author of the paper took a leading part.

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### **III. Clinical Legal Education as a Powerful Pedagogical Model (Clinical Education Methodology)**

It is our deep conviction that Clinical Legal Education is a powerful pedagogical model (methodology) which engages students and universities in the life of the community and gives students real practical skills. Also, I agree with Maxim Tomoszek (Tomoszek, 2014, p. 93) that it could be “just a belief of clinical teachers and clinical students,” because of lack of any rigorous empirical evidence-based study.

The edge of clinical teaching methods is based on experiential learning which fosters the growth of knowledge, personal skills and values as well as promotes social justice and human rights by legal means. Clinical work involves an endless variety and freedom of a clinical supervisor training activities, approval and support from the clinical community around the world, inspiration coming from social engagement and positive consequences for professional and everyday life. All these effects create rather strong loyalty and substantive contribution to the advancement of clinical legal education. Finally, they necessitate the need for this type of education activity.

As any other education, the CLE comprises equally important elements:

- knowledge and skills, which includes learning about the legal advocate business model, client typology and methodology of legal advising, legal drafting, legal ethics, *etc.*;
- values, attitudes and behavior, which incorporates developing values and reinforcing attitudes and socially responsible behavior in legal procedures, legal institutions, human rights protection.

Additionally, the CLE keeps a super power — a capacity for action — that is concerned with developing the capacity to defend and promote human rights, civil society values, *etc.* In a broader meaning, in different parts of the world the CLE is presented by “varieties of formal, non-formal and informal educational programs and projects that use practical-oriented, student-centered, problem-based, interactive learning methods, including, but not limited to, the practical

work of students on real cases and social issues supervised by academics and professionals.”<sup>1</sup>

In our opinion, diversity is a great CLE advantage. Every clinical teacher or clinical students could find what he/she needs in a basically different form, suitable for a certain legal system, field of law, personal or professional goals of the participants.

International experience of the CLE demonstrates potential for human rights protection, for legal initiative and public advocacy in government bodies, interdisciplinary implementation of clinical models, research activity and collecting legal information, creation of (digital) legal design, *etc.* Furthermore, the CLE is very adaptive and has a great potential for developing a uniform legal curriculum for higher legal education in Belarus and other countries.

### **III.1. Foundation of Clinical Movement and its Historical Evolution in Belarus**

Historically, the CLE in Belarus can be divided into two periods: before 2002 and after 2002. Before 2002, four legal clinics were established in Belarus: law clinic in European Humanities University (EHU) (1998), *Street Law* Legal Clinic in Grodno State University (1999), law clinics in Belarusian State University (2000) and in Belarus Institute of Law (2001). Since 2002, ten more clinics have been created on the basis of all State Law Schools.

For the first time in Belarus the idea of creating a *classical* legal clinic was implemented at the European Humanities University (EHU) in 1998 within the framework of the Legal Consulting for Women project when the Legal Aid Center – Legal Clinic – was created. At that time, Alla Sokolova, Dean of the Faculty of Law of EHU, got acquainted and was imbued with the idea of creating a legal clinic at the university during a working trip to the United States. “She really liked the idea of teaching law students practical skills through working with live clients. However, for a long time the creation of the first law firm was alien to

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<sup>1</sup> For more information link to “What is a Legal clinic?” at Palermo University website. Available at: <https://www.unipa.it/What-is-a-legal-clinic/> [Accessed 04.11.2021].

the country's legal community, many professional lawyers disapproved the idea." (Khvatsik and Krasnitskaya, 2012). Nevertheless, the project "EHU Legal Clinic" was implemented. Fourth-year students studied and worked at EHU LC under the guidance of lawyers advising low-income citizens. The work of this clinic was terminated in 2004 due to the closure of the EHU in Minsk. After EHU moved to Vilnius, from 2004 till 2020 there was not any information concerning the clinical program. And only in 2020 the clinical program was revived.

The situation when it is personal inspiration that promotes legal clinics is well known to the members of the clinical community who demonstrate openness and desire to help both their colleagues and potential socially vulnerable clients of clinics around the world. This also was a real leitmotif for the development of the clinical movement in Belarus.

The first *Street Law* clinic was set up at Grodno University in 1998. But the first meeting of Belarusians (NGO "VIT") with *Street Law* Corporation (USA) and its civic education training materials took place in June 1997.<sup>2</sup>

In November 1998, "VIT," NGO, hosted the conference "Law for Every Day: New Approaches to Legal Education in Belarus" in Grodno in cooperation with ABA/CEELI, State Law Corporation (USA) and the Polish Association of Legal Education. It was a great impulse, because almost in two months *Street Law* project – *Law for Every Day* program – was launched for law students and law professors at the Law School of Grodno State University (Jan. 1999–2013). The same year in cooperation with the Polish Association of Legal Education a manual on *Street Law* was published for students of secondary schools. Next year (2000) the first in Belarus manual on *Street Law* program (*Law for Every Day*) for school teachers was published. Ihar Kuszminich, a co-founder of "VIT," NGO, worked for the Law School of Grodno State University (GRSU) almost till 2013. On his behalf the clinic was

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<sup>2</sup> Acquaintance with *Street Law* Corporation (USA) and their training materials on civic law education. Available at: <https://vitngo.by/vit-gistoryia/timeline-1997/40-znaemstva-z-karparacyyay-styt-lo-zsha-h-navuchalnym-materyyalam-programadzyanskay-adukacy-sfery-prava.html> [Accessed 29.11.2021] (In Belarus.).

oriented to *Street Law* program, it had interesting teaching results and professional publications.

Grodno Clinic resumed its work in autumn 2016 under the supervision of a new clinical director, Natalia Ramult. It is logical that the clinical model complies with its leader's personal interests and specialization. For that reason, a new clinic provided legal consulting with active participation in scientific, educational and social events. GRSU Legal Clinic played an active local community role, posting announcements about their major activities in social media (e.g., VKontakte).<sup>3</sup> It also implemented a fascinating project of cooperation with the patients of a hospice in Grodno.<sup>4</sup> The first steps to integrate legal aspects into the process of providing a comprehensive palliative care for patients and their families is being carried out in cooperation of Legal Clinic of the Law Faculty of Grodno State Yanka Kupala University with a social and charitable institution "Life Assistance Center" (the Center). This cooperation was initially developed as part of volunteer work. Later, that cooperation grew into a permanent project that involved training of clinical students to conduct interviews with clients, to resolve psychological and ethical issues (the course organized by the Center), as well as organizing of students' consulting visits to patients and their relatives in health care institutions (hospices). Based on still limited practice of working in this direction it can be noted that the majority of hospice patients and their families legal concerns and inquiries include: succession and inheritance of real estate; rendering social assistance; social benefits and allowances (in particular, benefits for buying medicines, school meals, equipment for social rehabilitation); establishment, registration and re-registration of the disability group; legal grounds for dismissing an employee due to health conditions; procedure for appealing decisions related to refusal in the provision of social benefits, *etc.* Additionally, there is a list of legal issues that patients face in the process of provision of medical assistance, for example, issues related to violation of the rights of a citizen to the timely

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<sup>3</sup> Legal Clinic GrSU im. I. Kupala. Common information. Available at: <https://vk.com/jurklinik>. [Accessed 28.11.2021] (In Russ.).

<sup>4</sup> Hospice legal advice website. Available at: <https://hospicegrodno.by/yuridicheskaya-konsultaciya-v-hospise.html> [Accessed 28.11.2021] (In Russ.).

provision of medical care, proper performance the duties of medical staff, carrying out of diagnostic tests, providing free medical research, correct diagnosis, *etc.*

It is important to note that the Center is the first place in Belarus (a specialized social and charitable institution) whose staff understands the legal needs of their patients, the importance and necessity of providing equal access to legal aid in association with other types of palliative care. Describing the evolution of GRSU Legal Clinic we could pay attention to the role of the head of the clinic who creates a team, attracts alumni, plays the role of a leader or a representative and determines the clinic's agenda, who is interested in new projects and widening key areas of Clinic's activity.

The Legal Clinic of the Belarusian State University (BSU LC) was established in December 2000 within the framework of the United Nations Development Program in the Republic of Belarus. The UN DP was called "Legal Clinic at the Belarusian State University." The project was financially supported by the Office of the United Nations High Commissioner for Refugees in the Republic of Belarus. Active roles at the first stages of establishing a legal clinic at BSU had been plaid by motivated students, namely: Aleksandr Pivovarov and others. Basically, BSU LC has been playing the role of Belarus clinical center due to its location and the leading role of the BSU Law School. The other reason is that it was only the BSU law school that was able to participate in international grant projects. For that reason, numerous seminars, workshops and conferences were held in the BSU. On the one hand, it was comfortable for both grantees and regional participants who liked the idea to spend some spare time in the capital, without any obligations. On the other hand, this had a negative effect – the passive role of regional clinics did not let them develop and establish regional clinics, as well as law school.

BSU LC management could be characterized as a continuity and consistency of women's representation: Liubov Krasnitskaya (2006–2010), Elena Mikhasieva, Yuliya Savkina (2011–2018), Anna Shalima (2014–2015), Ekaterina Sinyuk, Viktoriya Shilko (2015–2018). Gender questions are interesting in the national clinical community. Women constitute almost 90 percent of clinical instructors, and 80 percent

of clinical students. As to the statistics of clinical clients, 30 percent of clients are men and 70 percent are women (Khvatsik, Salei and Savitskaya, 2020). Why does the situation look like this? Education is almost a women's area of professional activity, because of a low-income rate. Working with students takes a lot of time, it lacks prestige and does not have any short term benefits — this could be the reason for the statistical number of clinical students.

The Legal Clinic foundation at the Belarusian Institute of Jurisprudence (BIJ) was initiated directly by the students back in September 2000. Since February 2001, the BIJ Legal Clinic has been included in the organizational structure of the Institute. This was a successful project of student initiative and power. During the whole Belarus history, this happened only in the BIJ and at Polotsk State University. Engaging students in clinical movement is important not just for the reason of developing students' initiative, but for involving them in the process of teaching and mentoring younger students, involving them in the educational process, initiating the introduction of technical and other innovations.<sup>5</sup> Since 2002, another ten clinics have been created on the basis of all State Law Schools. Clinical education was still optional and based and developed solely on the personal initiative and support of foreign partners.

Almost all legal clinics had their unique history of creation. They were focused on a personality of clinical activists and proponents. The founders laid down the standards for the clinic's work, passing on the spirit and key focuses of the work. This can be observed up to the present time despite the change of people and school administration. The CLE is an adaptive tool, but as any education it needs some basic assistance and facilities. As Belarus is a country with very modest economical facilities, having a separate office with furniture and computer for clinic was a real luxury at the beginning.

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<sup>5</sup> A brief history of the development of legal clinics. Available at: <https://law.bsu.by/novosti/novosti-yuridicheskikh-klinik-belarusi/1552-2007-07-05%2013-28-28.html> [Accessed 28.11.2021] (In Russ.).

### III.2. Types of Legal Clinics in Belarus

In countries like Belarus with a strong state control on all areas of life the legislation plays an important role. It either gives you opportunities or takes them away. The legal regulation of legal clinics in Belarus was initiated by the letter of the Ministry of Education of the Republic of Belarus No 11-04/68 of February 7, 2002, “On the creation of a public reception at the law faculty of the university.” It was not bad, because the formal basis for legal clinics were legalized, and state law schools were given the right to establish legal clinics.

Between 2002 and 2010, the term “community counselling office” was used to refer to legal clinics. On November 19, 2010, the Regulation of the Ministry of Justice of the Republic of Belarus No 98 “On some issues of legal education of the population” was adopted. This Regulation defines the status of legal clinics created on the basis of higher educational institutions. Legal information and advice to citizens, which is not a professional activity of providing legal assistance, should be carried out in legal clinics under the guidance of law professors of the educational institution by means of advising on legal issues as well as providing assistance aimed at preventing offences (Khvatsik, Salei and Savitskaya, 2020). Legal clinics were formally added to a “system of free legal aid.” Since in reality there is no such a system despite the access to free advocates, the clients are entitled to meetings with advocates once a year, *etc.* Legal clinics that have been working with “real clients” became rather independent and professional and people trust them.

Under the Resolution of the Council of Ministers of the Republic of Belarus No 1771 of December 3, 2010, the organization of the work of legal clinics, free law consulting offices based at higher educational institutions as law disciplines to provide legal assistance to citizens, was included in the Action Plan for legal education of citizens for 2011–2015. In the new Action Plan for Legal Education of Citizens for 2016–2020 (approved by the Decree of the Council of Ministers of the Republic of Belarus No 37 of January 20, 2016), this area of work was also included and expanded with the task of carrying out legal education for citizens on the basis of higher educational institutions.

In 2017, the “Concept for the Development of Legal Education in the Republic of Belarus for the Period until 2025” was adopted. Its provisions concerning legal clinics indicate the increased State’s interest in their activities. The Concept defines clinical legal education as practice-oriented training aimed at developing students’ professional competencies in providing legal information and advice. The document notes that “the presence of legal clinics at the law faculties of higher education institutions provides an integrated practice-oriented approach to the training of legal personnel.” According to the Concept, legal clinics were designed to help improve the legal culture and legal awareness of the population, to provide access to legal assistance to low-income and socially vulnerable groups of the population (Khvatsik, Salei and Savitskaya, 2020). It was a period of *Street Law* clinical program. For example, legal clinics from Brest and Novopolotsk (Polotsk State University is based in Novopolotsk city) founded sustainable clinics, with strong *Street Law* methodologies and fascinating results (numbers of clinical students, quantity of classes and topics, publications).

#### **IV. The Role of International Cooperation in Belarusian Clinical Model**

International cooperation plays a significant role in the Belarusian clinical model. The first initial training of supervisors for legal clinics (1998–2006) was carried out as part of international cooperation with such organizations as Street Law (USA), the Polish Association of Legal Education (Poland), St. Petersburg Institute of Law (Russia) and the Representative Office of the American Bar Association (USA) with the participation of international experts in the field of legal clinical education.

In the early 2000s, the first legal clinics (Grodno State University and Belarusian State University) began to train clinical supervisors independently, by transferring their experience and local circumstances as well as engaging graduates of legal clinics as clinical supervisors.

At the same time, international cooperation has remained an important factor in the introduction of innovations and for further training of supervisors of legal clinics. This included training and

internships organized by the New Eurasia Establishment, the Polish Foundation of Legal Clinics, the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and other organizations bringing the CLE leaders to Belarus, setting up workshops and pedagogical sessions. Thus, in 2006, representatives of legal clinics underwent a week-long internship at the legal clinic in St. Petersburg due to the support of the Eurasia Foundation. The author of the paper was one of the participants of the internship and gained lot of impressions and ideas on how to implement Russian experience to Belarusian CLE. The colleagues informed us about the need of CLE social promotion, local clinical and NGO cooperation, setting up conferences and other important activities.

It is important to mention that significant impact to the style and types of clinics was made by the American Bar Association in Belarus. During 2002–2006 representatives of the American Bar Association were the first who organized in Belarus a number of seminars and conferences for future clinical staff and law students. Thanks to the invitation for that event with many key clinical figures (e.g., Arkadiy Gutnikov, Ekaterina Shugrina, and some American law clinicians) Belarusian law clinicians formed clear understanding and basic knowledge of clinical methodology, created a classical vision of two clinical programs: Legal Aid Clinic (Consulting) and Legal Literacy (“Street Law Program”). It was a common desire to try both of them. Basically, many clinics had two programs for a long period of time.

Further professional development was mostly individual, i.e., through attending international educational events (in Russia, Ukraine, Turkey, USA, Poland and other EU countries). Representatives of Belarusian legal clinic movement visited legal clinics in Poland (Warsaw, Lublin, Poznan, and Lodz) on November 22–27, 2011, to familiarize with the rules for organizing the activities of clinics and communicating with clinical supervisors and students. Also, Belarusian experts undertook educational training for the clinical supervisors “Program of legal clinical education based on the concept of human rights: recommendations for implementation” organized in Lund by the RWI in 2018. Additionally, training clinical supervisors acquired crucial importance for the newly created legal clinics in Belarus. Beside the inter-university legal clinic in Minsk (2015), trainings for supervisors

of legal clinics by the Public Association “VIT” and “Vitebsk State University named after P.M. Masherov” were implemented in 2016 and 2017 within the framework of program “Strengthening the potential of joint initiatives” under the auspices of the Eurasia Foundation. Trainings covered various topics. For example, on March 14–15, 2014, the training course co-organized with the Belarusian Union of Lawyers “Belarusian lawyers improve their mediation skills” aimed to popularize the mediation procedure, dissemination of knowledge and integration into the resolution of civil disputes. Subsequently this procedure was adopted by several legal clinics (e.g., Belarus State Economic University, Grodno) in their services to citizens. Another example represents “Academy of Human Rights” organized in 2015 in St. Petersburg provided training for students and supervisors of legal clinics. Finally, under the inter-university legal clinic (December 2014 – May 2016), clinical supervisors of all law faculties in Minsk developed their capacities at Summer School, methodological seminars and other training. Basically, CLE events focused on clinical supervisors (teachers) as a most sustainable group. Another key point was students. For them they organized summer schools (Lund, 2018), workshops on mediation, human rights courses, gender study, *etc.*

## **V. Networking in Belarusian Clinical Legal Education**

In 2011, Belarusian clinical supervisors attended the conference of Global Alliance of persons committed to achieving Justice through Education (GAJE), had presentations there and became active participants of the Conference. This participation gave a great impulse for the participants. It is an absolute truth that during the promotion and the exchange of information and experience among persons involved in Justice Education around the World, the GAJE members working to advance other forms of socially relevant legal education involving practicing lawyers, judges, non-governmental organizations, and the lay public.<sup>6</sup> The GAJE materials contain reviews on different aspects of CLE, diverse experience and reflection of CLE components

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<sup>6</sup> Welcome to GAJE. Available at: <https://www.gaje.org> [Accessed 26.11.2021].

from different angles and in different publications (e.g., the book “The Global Clinical Movement: Educating Lawyers for Social Justice” (Bloch, 2011)). Due to international support Belarusians were able to visit the latest conferences that were held at Valencia, Spain (July 2011); New Delhi, India (December 2013); in Eskişehir, Turkey (July 2015); in Puebla, Mexico (December 2017); and in Bandung, Indonesia (December 2019).<sup>7</sup>

Belarus is not a participant of European Union. However, geographically we are Eastern Europeans and representatives of the Belarusian clinical community were engaged in the process of creation of European Network of persons committed to achieving justice through education (ENCLE)<sup>8</sup> at the end of 2012.

It is clear that CLE was created and has been developed by many enthusiastic people from all over the world. Eastern European legal clinics have always been close to the top of progressing teaching despite ambiguous and special political and social conditions. That was done just because of international cooperation and comprehensive support on behalf of the CLE community.

Participation in international CLE events needs financial support. From 2002 till 2006, American Bar Association in Belarus had provided strong institutional support for the clinics. Since 2007, the Eurasia Foundation (Belarusian office of the New Eurasia Institution) has been supporting and coordinating legal clinical education in Belarus. With the support of the Eurasia Foundation at the expense of funds provided by the United States Agency for International Development (USAID) and the Ministry of Foreign Affairs of the Kingdom of the Netherlands, several projects were implemented during this period: 1. “Development of the idea of legal clinical education in Belarus” (2003); 2. “Coordination and development of regional legal clinics in Belarus” (2007); 3. “Creation of a new direction ‘Social Security Law’ and ‘Environmental Law’ in the Legal Clinic of BSU and improving the program of the legal clinic in the Republic of Belarus” (2010–2011).

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<sup>7</sup> Conferences for GAJE members. Available at: <https://www.gaje.org/conferences> [Accessed 26.11.2021].

<sup>8</sup> European Network for Clinical Legal Education. Available at: <http://encle.org> [Accessed 24.11.2021].

All these projects were aimed at the qualitative development of legal clinical education in Belarus, dissemination and implementation of the ideas of practice-oriented education in the system of higher legal education in the Republic of Belarus. The website of BSU LC a page “Belarusian Legal Clinics” was created where it was possible for a long time to collect information about the Belarusian national clinical community. One was able to find publications about the entire period of existence of legal clinics in the Republic of Belarus, their leaders had the opportunity to study the international experience of clinical training of lawyers, visit legal clinics in such countries as USA (New York, DC, Seattle, Ithaca); Russia (Moscow, St. Petersburg); Poland (Warsaw, Lublin, Krakow, Lodz, Bialystok); Sweden (Lund); Ukraine (Kiev, Donetsk); Spain (Valencia). International cooperation has opened new horizons for Belarusian specialists in effective teaching of students’ practical skills.

Raoul Wallenberg Institute started cooperation with Belarusian universities in 2012. Legal clinics constituted a part of the projects from 2013 till 2020. As a result, Belarusian clinical community got another important partner from Sweden. Thus, seeing advantages and disadvantages of our work and prospects of proficiency, understanding community relationships, teaching clinicians to be competitive in the global academic community (research in Russian and in English, interdisciplinary research approach, *etc.*), being collaborative (team research skills, team organizing events (summer school for clinical students)), thinking broadly and in more long term were carried out to support sustainable responsibility. Financial support had extremely important goals to provide attendance of important international clinical events (conferences, workshops, summer schools, *etc.*), to participate in events’ activities, to feel more self-assured and independent.

## **VI. Trends Describing Next Developments for Legal Education in Belarus**

Until 2016, aspects of human rights and gender equality were not in the focus of attention of Belarusian legal clinics. Cases dealt with by legal clinics were not looked at through human rights approach. Within

sessions on legal awareness only a few of the sessions dealt with human rights issues.

At the same time, training and work of students in legal clinics was initially based on the fundamental principles of human rights (respect for human dignity, equality, non-discrimination), but at the same time it was not directly correlated and analyzed in connection with human rights. Moreover, the study of human rights is not a compulsory course at the majority of law faculties of Belarusian universities.

Integration of human rights and gender equality aspects into the clinical legal education system has taken place over the past five years with the institutional support of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law.

Among the key developments, we can highlight the following:

1. Blended Learning Course for Legal Clinics 2016.<sup>9</sup> The course is aimed at teaching theoretical concepts of human rights, a human rights-based approach and gender equality to legal clinic participants (mentors and teachers). The mixed course format combines online and face-to-face training, meetings with experts, discussions.

2. Joint development of the Model Curriculum “Legal Clinic (Professional skills of a lawyer)” (2017). This has allowed all faculties to use a unified curriculum to integrate clinical education into the legal education curriculum. A typical program for law faculties is adapted for the educational process, it meets the requirements for the design of the corresponding programs, includes two clinical areas (legal consulting and legal education). The purpose of teaching this academic discipline is to form professional legal competencies of a student that meet the requirements of the labor market and the role of a lawyer in the society, taking into account the principles of human rights and gender equality. This program is innovative, based on understanding, integration and development of understanding of human rights, the importance of gender equality.

3. Manual for curators of legal clinics (2019–2020).

This is a unique textbook that contains the pedagogical experience of the teachers of legal clinics in Belarus. The methodology for this

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<sup>9</sup> Blended learning course on “Human rights and educational activities of legal clinics.” Available at: <http://blendedlearning.rwi.lu.se/flow/module-i---international-human-rights-standards.aspx?FlowCategoryID=896> [Accessed 24.11.2021].

toolkit is based on a human rights-based approach that aims to educate for human rights and is now recognized as one of the most promising and effective ways to train lawyers. The introduction of human rights in the direction of legal education is one of the ways to present the content of such a special discipline from a different angle, to find special aspects that directly affect a person.

The material presented in the manual is designed to focus students' attention on understanding human rights, develop their skills of critical and independent thinking, the skills of analyzing and interpreting legal norms taking into account human rights.

Teaching methods presented in the manual are adapted to specific pedagogical attitudes. The structure of the lessons is based on the elements of human rights education (education “for,” “about,” and “through” human rights), they represent a clear expected outcome. The implementation involves the joint activities of teachers and students on a contractual basis with due regard to the principles of differentiation and individualization, as well as the optimal use of human and technical potential. The use of interactive teaching methods allowing all students to engage in work equally and avoid discrimination, to develop critical thinking that will help them learn to be more accountable and cooperative. Released in early 2021, this guide is authored by representatives of the legal clinics from multiple regions of Belarus.

Additionally, a legal clinic at the Belarusian State University founded “Internet Center for Legal Issues of Gender Equality.”<sup>10</sup> The Center was created under the project “Legal guarantees and implementation of the principles of gender equality in the Republic of Belarus,” with the support of the United Nations Educational, Scientific and Cultural Organization UNESCO (2016–2017). However, there are no publicly available details of the implementation of this project and information about its work after the completion of the project.

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<sup>10</sup> Internet Center for Legal Issues of Gender Equality. Available at: [https://law.bsu.by/index.php?option=com\\_content&view=article&id=10684&catid=23](https://law.bsu.by/index.php?option=com_content&view=article&id=10684&catid=23) [Accessed 04.11.2021] (In Russ.).

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## **VII. Digitalization of Clinical Legal Education in Belarus**

The problems of applying innovative technologies and methods in modern education are extremely relevant – modern universities are becoming digital educational platforms to create and develop new practice for integrating classical types of educational interaction and self-educational activity of students. Confirmation of this fact is the increasing number of conferences, seminars, and round tables devoted to this topic in the field of clinical legal education.

On December 16, 2020, an online conference “Digital transformation of Belarusian legal clinics: Innovation. Inspiration. Interaction” organized by the Raoul Wallenberg Institute for Human Rights and Humanitarian Law was held. The conference was attended by 50 participants from Belarus and abroad and featured polls and assessments conducted by participants. A few conclusions can be drawn based on the Conference:

Digitalization affects many aspects of the activities of legal clinics: from organizing training to receiving citizens, conferences and technical support (opportunities).

The clinics expressed their readiness for digitalization. However, the starting conditions (technical and human) for this are different for clinics. Regional clinics are in a more vulnerable position compared to those in the capital.

More than 60 percent of respondents expressed their interest and readiness to learn how to use digital tools for organizing training and work of clinics, more than 70 percent consider the online format of clinics to be acceptable and effective, and more than 66 % believe that digitalization is expanding the boundaries of legal clinics.

At the same time, answering the question of how the COVID-19 and distance learning affected the format of the clinics’ work, some refrained from answering, others replied that it did not affect (but the number of clients decreased significantly), if the clinics that were able to offer clients an online service, and to student clinicians online or blended.

Obviously, the direction of “Legal Consulting” is more adaptive for the online format. At the same time, the section “Legal Education” of Polotsk State University demonstrates innovative formats of work

and education: remote organization of students' work on collection of information and legal materials, online lessons for schoolchildren, the creation of educational courses in prison (2020).

The legal clinic at Belarusian State University constitutes a good example of innovations. In 2019, a section of legal education "Technological Entrepreneurship" was organized where 3rd-year students studying Commercial Law developed a series of interactive presentations of the course "Technological Entrepreneurship" (on the possibilities and prospects of doing business in the field of information technology) for students of the Faculty of Radio-physics. For example, during the first meeting, students discussed the possibilities of starting their own business, the peculiarities of the High-Tech Park environment and the possibilities of using a freelance exchange.<sup>11</sup> Since September 2020, the legal clinic has broadened its activities beyond legal advice and responses to letters. They conducted thematic workshops and practical seminars with the participation of practicing lawyers; trainings on the development of soft skills; interactive lectures and seminars of law faculty teachers on issues not included in the main curriculum of the course. Subsequently, the legal clinic was transformed into a Center for Practical Training of Lawyers.

The innovative training for Belarusian legal clinics, in our opinion, presupposes a timely implementation and development of the pedagogical model of blended learning and the training of curators in new digital competencies.

First, a curator of a legal clinic is to act as a *student management specialist*. There is an active introduction of technical interactive teaching methods, elements of blended learning (e-learning). Now a curator organizes various forms of their educational work, the change of activities, the distribution of groups and subgroups depending on

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<sup>11</sup> Technological entrepreneurship "is a new direction of legal education conducted by the Legal Clinic of BSU in cooperation with the EU" APPLE Program (FMO BSU) (October 19, 2018). Available at: <https://law.bsu.by/novosti/novosti-yuridicheskoy-kliniki/11270-tekhnologicheskoe-predprinimatelstvo-novoe-napravlenie-pravovogo-prosveshcheniya-provodimogo-yuridicheskoy-klinikoy-bgu-v-ramkakh-sotrudnichestva-s-eu-apple-program-fmo-bgu-19-oktyabrya-2018-g.html> [Accessed 04.11.2021] (In Russ.).

various parameters, the recording of students' achievements and their monitoring. The need for managerial competencies is obvious.

Secondly, it is the role of a *pedagogical designer* who collects or designs his own curriculum, distributes and links the types of students' work with a particular piece of educational material (for example, using the LMS MOODLE). Now the curator searches for and adapts the necessary information and communication technologies for classes, the course dealing with their gamification (for example, using the KAHOOT resource).

Thirdly, this is a *specialist in the analysis and development of educational activities* of students, an expert in analyzing the field of individual and group training, capable of using software products (including those based on the possibilities of attracting Big Data and Data Mining methods) to analyze and predict the features of training and development of a specific teaching, identifying difficulties in his educational activities on the basis of an evidence-based approach. The success and adaptability of the graduate of the Law Code to modern professional realities will depend on how much the curator is trained in digital skills.

The Center for the Development of Legal Clinics of Russia has recently announced the launch of an online course platform for students of legal clinics. The authors of the courses are the curators of the clinics who are specially trained to do this. It is also an important factor in the development of educational content and forms of education in legal clinics, as well as increasing the competitiveness of teachers at legal clinics in the academic environment.

To summarize, there is an innovative and technological component of legal clinics, there is also the potential for the development of blended and online learning, the provision of information and legal services in a distance format. All this requires motivation and material support from law faculties and partners.

Digitalization affects the work of legal clinics in many ways: organizing training, receiving citizens, or facilitating opportunities for their development through conferences and technical assistance. The legal clinics in Belarus are keen on expanding their work with digital opportunities. However, preconditions (technical and human) for doing

so differ from clinic to clinic. Regional clinics are in a more vulnerable position compared to those in Minsk. Application of innovative technologies and methods in modern education is becoming extremely relevant with modern universities turning into digital educational platforms to create and develop new practices for innovating traditional ways of educational interaction and self-educational activities. While many clinics mentioned that the number of clients decreased significantly, some were able to offer clients an online service, and online or blended options to students. Although the area of free legal advice is more adaptive for the online format, there are also some promising examples in the area of public legal education, i.e., street law.

A conservative nature of the education system as a whole in Belarus is the USSR heritage that has not transformed in the last 25 years. Until the education system is transformed, it approaches the Bologna process, until market mechanisms in higher education begin to work, it is difficult to talk about the development and strengthening of practical and clinical components in the legal education system of Belarus.

### **VIII. Conclusion**

Summarizing all points, the Belarusian clinical movement challenges additional options:

- special legislation of legal representation and advocacy (no court representation, just consulting);

- a weak professional support (small and undeveloped local legal market) needs to be adopted;

- a legal Pro Bono movement is just setting up in Belarus;

- a lack of cooperation among stakeholders (government, law schools, NGO, civil and professional society, representative target groups).

Considering the perspective of legal clinics in Belarus, further innovation presupposes the use of blended learning and teaching of clinical supervisors new digital competencies. This reflects increased demands for supervisors. We see the development agenda of Belarusian CLE in capacity building, networking, international cooperation and technological capacity.

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## References

1. Bloch, F.S., ed., (2011). *The Global Clinical Movement: Educating Lawyers for Social Justice*. Oxford.
2. Khvatsik, Yu.A. and Krasnitskaya, L.N., (2012). A Brief History of the Development of Legal Clinics. Belarusian State University, Law Faculty. Available at: <https://law.bsu.by/novosti/novosti-yuridicheskikh-klinik-belarusi/1552-2007-07-05%2013-28-28.html> [Accessed 22.11.2021] (In Russ.).
3. Khvatsik, Yu., Salei, S., and Savitskaya, K., (2020). *The Experience of Legal Clinics in Belarus*. Report supported by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law. Raoul Wallenberg Institute. Available at: <https://rwi.lu.se/wp-content/uploads/2021/06/Legal-Clinics-in-Belarus-Report-2020.pdf> [Accessed 17.11.2021].
4. Ramult, N.A., (2018). Problems and features of providing palliative legal aid on the example of the activities of the legal clinic of Yanka Kupala State University of Grodno. *Journal of Y. Kupala State University. Vol. 4 Jurisprudence*. 8(6), pp. 88–94.
5. Tomoszek, M., (2014). The Growth of Legal Clinics in Europe — Faith and Hope, or Evidence and Hard Work? *International Journal of Clinical Legal Education*. 21(1), pp. 93–114, doi: 10.19164/ijcle.v21i1.13.

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## **Methodology of Teaching Law Disciplines in Russian and English to Law Students: A Digital Form and Traditional Content**

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**Abstract:** The research problem addressed in this paper is to substantiate the most optimal forms and methods of teaching the law disciplines both in Russian and in English in a law school in the context of the introduction of digital forms of learning into traditional educational environment of a law school. The research applies the methods of the concept of professional training in advocacy. Professional training in advocacy is one of the practice-oriented areas of advocacy that includes the methodology of training students in a law school covering the statistical method, systematic method, historical and legal method, method of participatory observation, method of analysis and synthesis. The paper describes new areas of work and new opportunities that have become available to students in 2020–2021, including new master’s programs and additional in-person and online courses of students’ practice-oriented training. The paper examines how students of Kutafin Moscow State Law University (MSAL) can acquire necessary knowledge and practice skills in order to pass the qualification examination for the status of an advocate and be able to practice law in the Russian Federation and abroad. The authors of the paper believe that the development of digital technologies has made it possible to move to a qualitatively new level of teaching. Along with classical teaching methods, the faculty have started implementing digital technologies in the learning process, focusing on practice-oriented types of work, including practice-oriented projects. A partial transition to distance learning has contributed to creation and development of the common educational environment

that will enable international cooperation in student education and development of other digital environments, such as an integrated information system for the Russian Advocacy as well.

**Keywords:** legal education; distance learning; law clinic; learning in English; advocacy; Bar qualification examination; Russian legal education; statistical data

**Acknowledgements:** The reported study was funded by the Russian Foundation for Basic Research according to the research project № 18-29-16170mk.

**Cite as:** Marcheva (Korotkova), P.E. and Kholina, E.A., (2021). Methodology of Teaching Law Disciplines in Russian and English to Law Students: A Digital Form and Traditional Content. *Kutafin Law Review*, 8(4), pp. 690–712, doi: 10.17803/2313-5395.2021.4.18.690-712.

## Contents

I. Introduction .....	691
II. Methodology .....	693
III. Methods of Teaching .....	695
IV. Using Webinars in a Teaching Process: Pros and Cons .....	697
V. Peculiarities of Practice-Oriented Training and Teaching Aids' Preparation in Digital Era .....	699
V.1. Interdisciplinary Approach to Training and Teaching Aids' Preparation. . .	699
V.2. Digital Educational Environment and Opportunities for Students. . . . .	701
VI. Teaching Professional Skills in a Law Clinic. ....	703
VII. Using a Courtroom for Additional Purposes. ....	706
VIII. Conclusion. ....	709
References. ....	709

## I. Introduction

One of the most popular fields in higher education is law. University graduates with a law degree are able to carry out professional activities in different fields. Having gained necessary work experience in a legal field and complying with all other requirements established by law,

lawyers take a qualification examination to acquire the status of an advocate<sup>1</sup> and start practicing law.

According to the statistical data provided by the Russian Federal Bar Association, in 2017 the number of applicants for the status of an advocate was 5,604. 5,376 candidates were admitted to take the Bar examination. 3,630 candidates (67.5 percent) were granted the advocate's status. In 2018, 5,345 candidates applied to acquire the status of an advocate. 5,113 candidates were admitted to take the Bar examination. 3,607 candidates (70.5 percent) acquired the status of an advocate. In 2019, the number of applicants to acquire the status of an advocate was 5,001. 4,839 of candidates were admitted to take the Bar examination, 3,336 candidates (68.9 percent) acquired the status of an advocate. In 2020, the number of applicants to acquire the status of an advocate decreased considerably and counted 4,173 candidates. 3,929 candidates were admitted to take the Bar examination, 2,585 candidates (65.8 percent) passed the examination successfully.

The data show that the number of candidates to take the Bar examination remained at approximately the same level. It is more likely that the decrease in the number of candidates who applied for the Bar examination in 2020 was caused by a total change in the society due to the influence of digital innovations introduced, among other reasons, due to the necessity to fight with the spread of new COVID-19 pandemic.

It is important to mention that, according to the data of the Public Registry of the Ministry of Justice of the Russian Federation as of November 2021, the number of advocates with the active status had not changed dramatically and amounted to 74,693 advocates.<sup>2</sup> The Federal Chamber of Advocates of the Russian Federation publicized data according to which as of 31 December 2019 the number of practicing

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<sup>1</sup> An advocate in the Russian Federation is a person having a degree in law who has received advocate's status and the right to practice law under the Federal Law No 63 dated 31.05.2002 "On Advocate's Activity and the Bar in the Russian Federation."

<sup>2</sup> On Advocacy in the Russian Federation: Information Portal of the Ministry of Justice of the Russian Federation. Available at: <http://lawyers.minjust.ru/lawyers?fullName=&registerNumber=&identityCard=&status=1&orgForm=&reg> [Accessed 04.11.2021] (In Russ.).

advocates with the active status was 74,818 people.<sup>3</sup> According to the data of the Public Registry of the Ministry of Justice of the Russian Federation, as of December 2020, the number of advocates with the active status has not changed dramatically and amounts to 74,661 people.<sup>4</sup> According to the data of the Public Registry of the Ministry of Justice of the Russian Federation, as of September 2021, there are 226 foreign advocates who are engaged in professional activity in the Russian Federation; a big number of advocates provide professional help not only within the Russian Federation, but in other countries as well.

All of the above justify that the profession of an advocate is still in demand. Thus, any higher education institution, including Kutafin Moscow State Law University (MSAL), pursues two main goals. First, it is important to help law students to acquire necessary legal knowledge, to prepare for the qualification examination for the status of an advocate and to form professional skills necessary in a new digital reality. Second, universities have to let students acquire knowledge in a foreign language to enable them to practice law not only in the Russian Federation, but also abroad as “Modern society requires competitive professionals who can communicate in a professional foreign language in their specialty” (Demchenko, Gulieva, Larina and Simaeva, 2021, pp. 297–307).

## **II. Methodology**

The methodology is two-fold. On the one hand, the authors refer to actual statistical data concerning advocates and their operation in the Russian law system. On the other hand, the authors rely on the methodological foundations developed by outstanding scholars.

Thus, advocacy studies were initiated at the Department of Advocacy, Kutafin Moscow State Law University (MSAL), and Prof.

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<sup>3</sup> The Russian Federation Bar Association. Information on the composition of the advocates’ community in the Russian Federation for 2019. Available at: <https://fparf.ru/practical-information/statistics/svedeniya-o-sostave-advokatskogo-soobshchestva-v-rossiyskoy-federatsii-za-2019-god/> [Accessed 13.11.2021] (In Russ.).

<sup>4</sup> On Advocacy in the Russian Federation: Information Portal of the Ministry of Justice of the Russian Federation. Available at: <http://lawyers.minjust.ru/lawyers?fullName=&registerNumber=&identityCard=&status=1&orgForm=&reg> [Accessed 04.11.2021] (In Russ.).

Yuriy F. Lyubshev, a holder of habilitation degree in Law, Professor of the Department of Advocacy, wrote the first textbook on advocacy law “The Course of Advocacy Law” (Lyubshev, 2003). In his textbook, Prof. Yuriy F. Lyubshev defined the subject matter of advocacy as a science in the system of other branches of legal knowledge, outlined the social and legal necessity to study advocacy and research further the subject matter under consideration, defined the importance of methodology in the study of advocacy, listed the key methods for the advocacy studies. He also determined the legal fundamentals of the Bar as an organization, legal status of advocacy and advocates. His methodological foundations are employed by the authors of this paper.

One of the directions of the scientific school of advocacy studies involved participation of the faculty of the Department of Advocacy in the formation and functioning of the inter-university scientific school that explored advocacy as an institution of a civil society. Another direction covered the legal theory of the attorney-client privilege developed by Prof. Yuriy S. Pilipenko, a holder of habilitation degree in Law. A practice-oriented direction of the scientific school of advocacy implemented by the Department of Advocacy provided for the concept of professional training of students encouraging them to pass the Bar examination to acquire the status of an advocate and to perform their professional activities. The concept includes scientific foundations of the methodology of professional training of students, advocates’ assistants and trainees developed by the teaching staff of the Department of Advocacy.

Over the years under the supervision of the Department of Advocacy 36 PhD theses (33) and doctoral dissertations (3) on advocacy have been prepared and successfully defended. All academic research papers were prepared within the framework of legal scientific specialty 12.00.11 “The Judicial Power, Prosecutor’s Supervision, Organization of Law Enforcement Activities,” the title that up to 2009 determined advocacy as a subject area of research. Currently, advocacy remains in the passport of the specialty, which allows considering the legal under consideration phenomena from the position of the corresponding scientific specialty.

### **III. Methods of Teaching**

Currently, law schools' faculties, including Kutafin Moscow State Law University (MSAL), continue to use classical teaching methods that are classified by researchers on various grounds. Thus, Alexander F. Kolotov and Ivan V. Skuratov offer the teaching methods classification based on the holistic approach to the learning process and divide all methods into three large groups: 1. methods of organization and implementation of learning and cognitive activity; 2. methods of stimulation and motivation of learning and cognitive activity; 3. methods of control and self-control of learning and cognitive activity (Kolotov and Skuratov, 2014). Alternatively, Olga I. Shevchenko, Mikhail A. Volkov and Anastasia S. Prystavka focus on verbal methods, visual methods, practical methods and problem-based learning methods (Shevchenko, Volkov and Prystavka, 2018).

The totality of methods constitutes teaching methodology that in the present conditions should not only be practice-oriented and aimed at students' independent work and self-studying, but also it should also correspond to the requirements applied at the international level, since one of the main goals of developing international activities in education is to integrate Russia into the world educational community as an equal partner (Egorova and Minbaleev, 2021).

To this end, students are now offered, in addition to compulsory and variable subjects, additional disciplines, including subjects taught in English. By choosing these additional disciplines, students can acquire professional knowledge based on the principle of "internationalization of professional training of a specialist" (Yarotskaya and Moiseenko, 2021). This "principle has an integrative character and fixes an essential role of the 'foreign language' as an academic discipline in the formation of professional consciousness and worldview of an individual as a tool of his/her full professional self-realization" (Yarotskaya, 2013).

It is necessary to pay attention to the fact that "American professors note that training of lawyers from other legal systems (in particular, countries of civil law) faces serious methodological problems, and good knowledge of English does not guarantee students' success in their learning" (Abernathy, 2006). Therefore, in our opinion, there is a need

to shift to a qualitatively new level of teaching, where classical teaching methods will be combined with new methods in order to internationalize the professional training of highly qualified professionals.

By now a methodological aspect of internationalization (for each of the curriculum disciplines), according to Lyudmila V. Yarotskaya and Lilia V. Moiseenko, is still not properly provided, and this applies to both content and procedural components of training (Yarotskaya and Moiseenko, 2021). Thus, there is a lot of work to be done, which will consist of unifying curricula and teaching aids, standardizing the system of requirements, improving teachers' skills before a uniform educational environment is created.

At Kutafin Moscow State Law University (MSAL) training future legal professionals starts during the first year at university. The faculty of the Department of the State and Law teach students such disciplines as *The Theory of the State and Law*, *The Legal System of the Russian Federation*, etc. The Department of Practical Jurisprudence helps students choose a profession within the framework of the discipline *Introduction to the Legal Profession*.

Training of future advocates is mainly carried out by the faculty of the Department of Advocacy — both academics and practicing advocates — who use a variety of teaching methods to cope with the task entrusted to them in the context of distance learning due to the restrictive measures taken to combat the spread of the new coronavirus infection, on the one hand, and due to the digitalization of many processes in the higher education, on the other hand.

Taking into account that “advocacy is characterized by hundreds of subtleties, nuances, ‘secrets’, various techniques, methods, and technologies that come to a professional over the years” (Belova, 2005) and that “in contemporary conditions of the pressing need of the society to provide everybody with truly qualified legal assistance, advocates can no longer remain a custom-made product of prestigious education building up professionalism through years of experience” (Belova, 2005). The faculty of the Department of Advocacy are facing a rather complex task, namely, the task to train qualified future professionals who will be able to provide qualified legal assistance to all the people who need it. Therefore, in the context of modernization of educational

process, the faculty of the Department of Advocacy are making every effort to ensure that “the precious experience gained over the years is perfectly integrated into new teaching methods” (Isayev, 2016) with due regard to the fact that “the biggest advantage of virtual reality technology in vocational education and practice teaching is that it can let participants experience the atmosphere and environment without going to the scene, and can have interactive experience” (Chen, 2021).

Indeed, each professor chooses his or her own method of teaching, based on the students’ general level of training, the aims and objectives of the particular study course and the specifics of the legal resources. A partial transition to distance learning has also led to the following changes:

- the prevalence of active and interactive technologies in conducting class sessions (Andronova and Tarasenko, 2016) and the use of digital technologies in teaching and learning processes;
- the emphasis on practice-oriented types of independent extracurricular activities of students;
- the use of electronic resources in interim certification;
- the shift towards implementable practice-oriented projects in preparing Master’s theses (e.g., a start-up as a Master’s Thesis) (Blazheev and Egorova, 2020).

It is important to take into account all the changes mentioned above, as “in the context of global informatization of the state and society, in particular, the legal sphere, one of the main tasks of the Russian legal profession is to form a unified and integrated information environment” (Volodina and Gavrilov, 2020).

All of the above contributes to the creation and development of a common educational environment, which will allow, as mentioned above, to establish international cooperation in training students, develop other digital environments, including the creation of an integrated Russian information system of Advocacy.

#### **IV. Using Webinars in a Teaching Process: Pros and Cons**

The year 2020 has fundamentally changed everyone’s life. Both learners and the teaching staff had to adapt to distance learning as soon

as possible. Professor of the Department of Philosophy and Sociology of Kutafin Moscow State Law University (MSAL) Aleksandr Yu. Ogorodnikov (Dr. Sci.) studied positive and negative experience of transition to distance learning in 2020 (Ogorodnikov, 2020). The analysis shows that most students consider video lectures that they can listen to at any time to be the most convenient form of lectures, while the faculty prefer webinars. Regarding practical classes, the vast majority of the students prefer to engage in a group project work, while the faculty again prefer webinars.

Despite the fact that webinars for the majority of the teaching staff were the most acceptable form of distance training, as the main drawback most of the respondents highlighted the impossibility to see and monitor all the participants connected to the webinar, as well as the inability to assess the involvement of each webinar participant.

The analysis conducted by Aleksandr Yu. Ogorodnikov also showed that most of the webinars at Kutafin Moscow State Law University (MSAL) in 2020 were held using the *Zoom* conference platform.

Thus, today students are getting used to training through distance learning technologies. Consequently, one of the objectives set before the faculty of the Department of Advocacy of Kutafin Moscow State Law University (MSAL), namely, to help students prepare for the qualification examination for the status of an advocate, has been achieved through the use of online webinars as a form of distance learning.

In spring 2020, Svetlana I. Volodina, Head of the Department of Advocacy of Kutafin Moscow State Law University (MSAL), invited the students of our university to join the webinars organized by the Russian Federal Bar Association. According to the statistics of the Russian Federal Bar Association, about 6,800 advocates join each regular broadcasting. In spring 2020, the majority of our country's population had to stay indoors following the lockdown restrictions, and this format of studying proved to be particularly in demand. The number of connections during this period was 9,000 advocates per day. These high rates indicate that webinars are in demand among advocates.

Having realized this demand, the Russian Federal Bar Association organized a course of webinars "Introduction to the Legal Profession" for trainees as well. The course consists of 10 days of webinars. According to

statistics provided by the Russian Federal Bar Association, from 4,570 to 2,794 participants (3,500 on average) participated in the webinars daily.

The course of webinars “Introduction to the Legal Profession” was organized using distance learning technologies. Students had the opportunity not only to listen to lectures given by practicing lawyers, advocates and academics, including professors from the Department of Advocacy of Kutafin Moscow State Law University (MSAL), but also to ask questions and take tests devoted to the topics dealt with during the webinars. Initially, the webinar course was organized for advocates’ trainees who were planning to take the qualification examination for the status of an advocate and the course was also offered to the students of Kutafin Moscow State Law University (MSAL) who willingly completed the tasks offered by the lecturers.

Despite the fact that “distance technologies are ideal for professional development, that is, just for such a form of learning as the presentation of new knowledge with a formed system of professional consciousness of a lawyer” (Zaitsev and Kravchenko, 2020), the study conducted by Aleksandr Yu. Ogorodnikov and analysis of statistical data of the Russian Federal Bar Association showed that webinars remain in demand for advocates’ trainees and university students.

## **V. Peculiarities of Practice-Oriented Training and Teaching Aids’ Preparation in Digital Era**

### **V.1. Interdisciplinary Approach to Training and Teaching Aids’ Preparation**

Such disciplines as “Advocacy” and “Practical Skills of an Advocate” have been introduced into the curriculum of Kutafin Moscow State Law University (MSAL) for students. These disciplines include both lectures and practical classes. During the classes, the faculty of the Department of Advocacy familiarize students with the legislation on advocacy, practice and corporate acts of advocacy, assisting students in developing skills and abilities necessary to carry out their professional activities

in the future. During the classes, the faculty members offer students to study real life cases, work with procedural documents and then they invite them to court hearings, so that the students have the opportunity to learn the basics of the legal profession.

In order to help students to acquire the knowledge and practice, as well as necessary skills by studying disciplines mentioned above, in 2018 the Department of Advocacy of Kutafin Moscow State Law University (MSAL) prepared a textbook “Practical Skills of an Advocate” (Korotkova, 2018). The manual proved to be in demand, and in the same 2018 the author of the study guide Polina E. Korotkova, Associate Professor of the Department of Advocacy, was awarded at the 3rd All-Russian Competition for the Best Scientific and Educational Publication “Akademus” in the category “Legal Literature.” Due to the importance of such work, in 2019 based on the Department of Advocacy a case study guide was prepared for publication (Korotkova, 2019).

When studying the discipline “Advocacy,” students are guided by the textbook “Advocacy” under the general editorship of the President of the Russian Federal Bar Association Yuriy S. Pilipenko (Pilipenko, 2018) as well as by the textbook “Advocacy in Russia” under the general editorship of Sergey S. Yuriev, a practicing advocate and holder of habilitation degree in Law. The textbook was prepared by a group of advocates and scholars, professors of the Department of Advocacy Polina E. Korotkova and Larisa A. Skabelina. The textbook was published in 2011 (Yuriev, 2011) and received the highest award as the most culturally significant project at the national award ceremony “Best Books and Publishers of the Year 2011” in 2012. Having received recognition among students as well, the textbook has been reprinted several times and it is now adapted for students of undergraduate and postgraduate studies.

As of academic year 2021/2022, applicants are being enrolled to a new master’s program “Advocacy and Representation in Court” where students can also acquire the knowledge and skills they need for further professional activity. Among the disciplines taught, students can study the following courses: *Professional Skills of an Advocate*, *Handling Civil Cases in Courts of First Instance and Courts of Controlling Authorities*,

*Participation of an Advocate in Criminal Cases, Participation of an Advocate in the ECtHR.*

Students also have an opportunity to master a foreign language as well. In order to cope with this task, students have at their disposal a rich collection of educational, methodological and scientific publications prepared by the faculties of Kutafin University and other higher education institutions. Thus, students interested in family law may be interested in the publication prepared on the basis of the All-Russian State University of Justice (RPA of the Ministry of Justice of Russia) by Sergei V. Agapov “Family Law: Textbook and Workshop for Universities.” Students interested in such a category of cases as protection of intellectual property can resort to the textbook “Translation in Intellectual Property” by Viktoria V. Pikalova and Elena I. Rozanova (Pikalova and Rozanova, 2010).

At the same time, it should be borne in mind that not every student will be able to self-study the theory given in a textbook or a teaching aid. Students need clarifications of the provisions given in textbooks, their interpretation, and their correlation with the materials from other sources. As a result, both importance and responsibility of the practice-oriented departments, such as, for example, the Department of Advocacy and the Department of Legal Translation, are increasing, since the academic disciplines taught at such departments are initially focused on preparing students for a specific professional activity, e.g., to practice law in a foreign language.

## **V.2. Digital Educational Environment and Opportunities for Students**

Further perspectives for the faculty research and publication work appear due to the introduction of Master’s Programs taught in English. Such programs are aimed at both Russian-speaking students interested in high-quality professional education that gives them an opportunity to work internationally and foreign students interested in studying within the framework of the Russian legal system. Thus, in 2021, the Master’s Program “Master of International Business” taught in English commenced in Kutafin Moscow State Law University (MSAL).

In general, “the past few decades brought a number of significant changes into higher education, with some of the changes being driven by market forces such as globalization and technological advances making higher education a global and knowledge driven industry” (Tully and Avramenko, 2015, p. 152).

Much attention is now paid to international cooperation in the field of students’ education, namely, to the development of network interaction between Kutafin Moscow State Law University (MSAL) and foreign partner universities, which makes it possible to run dual-degree programs. In particular, Kutafin University students currently have a unique opportunity to study International Law and Comparative Law within a dual-degree program. Theoretical and practical courses are taught in Moscow and in Switzerland at the Swiss Academy for International Law (the course is based on the Geneva educational module). Students completing this program are able to specialize in three languages in the following disciplines: Russian Federation law, European Union law, English law, intellectual property law, nuclear law, sports law and others.<sup>5</sup>

In addition to the opportunity to undertake an internship abroad, students are offered additional opportunities to master special disciplines in foreign languages within the walls of their *Alma Mater* as well. For this purpose, the Department of Legal Translation and the Department of English Language have been established at Kutafin Moscow State Law University (MSAL). The faculties of these departments train students for further law practice and academic activities, for work in international organizations and their representative offices operating on the territory of the Russian Federation, in various law firms where English language skills are required. These departments help students master legal disciplines in English by offering the following courses: “Practical Course of Legal Translation,” “Practical Course of a Legal Foreign Language,” “Translation of Legal Documents,” *etc.*, which is, of course, essential for a future lawyer and professional legal adviser. The pandemic concerns, however, encouraged the faculty to develop

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<sup>5</sup> For more information about Master’s programs taught in English (in Geneva, Switzerland) see: <https://www.msal.ru/content/obrazovanie/magistratura/>.

digitalized resources for the study courses in order not to distort the study process.

Moreover, students, interested in developing their foreign language skills can join different optional extracurricular activities that proved to be easily performed online, e.g., the Speaking Club where students guided by the faculty members can discuss various topics. The Speaking Club has been founded in order to boost students' communicative skills. Discussions devoted to the most urgent topics have already taken place within the framework of the Speaking Club: "Bioethics: Modern Challenges," "Three Approaches to Environmentalism. What are They?", *etc.*

Since 2018, MSAL students can choose optional courses offered by the Moot Courts Department. The Department was founded in 2018 on the basis of the Center for International Legal Competitions of Kutafin Moscow State Law University (MSAL). The Moot Courts Department became the first in the Russian Federation whose activities are associated with the introduction of various mock trials and moot courts projects in a foreign language into the educational process.

This is a new form of learning that has been called *mooting*. Pandemic concerns forced moot teams participate in moot courts online. Moot courts organizers, teams and coaches had to unite their efforts to develop transparent and reliable mechanisms for online competitions.

Thus, a partial transition to distance learning facilitated creation and development of a common digital educational environment that allows us to widen international cooperation in the field of legal education.

## **VI. Teaching Professional Skills in a Law Clinic**

Law clinics are of great importance in the training of advocates. A significant contribution to the development of clinics in Russia was made by Professor Dmitriy I. Meyer (Kazan University, Russian Empire), who noted back in the 1860s that "it is especially important in studying the dogma of law to acquaint students with the practical application of laws" (Shershenevich, 2003).

A law clinic is “a structural subdivision of an educational organization [...] where practice-oriented programs for teaching professional skills are implemented, primarily by involving students in providing free legal aid to socially disadvantaged categories of citizens” (Markova and Samsonova, 2016).

The main objectives of the law clinic organization and operation can be divided into two groups. The first group includes educational objectives, such as:

- a) educating students;
- b) providing students with professional skills necessary to strengthen the practice-oriented component in the training of future lawyers;
- c) professional orientation, adaptation and specialization of students;
- d) forming professionally significant personal qualities in students;
- e) developing students’ high legal consciousness and understanding of social significance of jurisprudence and the role of lawyers in the society;
- f) educating students in the spirit of respect for the rule of law, justice and human dignity.

The second group includes social objectives, such as:

- a) creating conditions for the exercise of the right of citizens to legal assistance established under the Constitution of the Russian Federation;
- b) developing a non-State system of free legal aid;
- c) creating conditions for the exercise of the rights and freedoms of citizens, protection of their legitimate interests and enhancement of their social protection;
- d) educating the population in law (Markova and Samsonova, 2016).

The main purpose of training at a law clinic is to prepare students for professional activity. The *PRO BONO* law clinic has also been established and operates at Kutafin Moscow State Law University (MSAL). MSAL students practicing in the clinic also have the opportunity to acquire knowledge and practice the skills necessary for their future professional activity, including the professional activity of an advocate.

The *PRO BONO* law clinic that operates at Kutafin Moscow State Law University (MSAL) allows to “immerse students in professional legal activities long before they graduate” (Abrosimova, Voskobitova, Gutnikov, Lukyanova, et al., 2015, p. 17) involves the faculty of the Department of Practical Jurisprudence who can combine their professional activities working both in other departments of the University and for external organizations.

In January 2021, the Department of Practical Jurisprudence prepared and implemented the *Young Professionals Project* that consists of 22 unique courses drafted by practicing lawyers, including practicing advocates. “The Trial Lawyer” course, for example, aims at developing practical skills of a lawyer working in court in various categories of cases so that students could implement the theoretical knowledge already acquired during the studies. “The Trial Lawyer” program is designed in such a way that it allows students to gain skills in criminal, civil, commercial (arbitrazh) and administrative cases through direct interaction with lawyers. The course is supervised by advocates and professors of the Departments of Advocacy and Practical Jurisprudence of Kutafin Moscow State Law University (MSAL).

Another course run by advocates and the faculty of the Departments of Advocacy and Practical Jurisprudence of Kutafin Moscow State Law University (MSAL) is called “Law clinic: Basic Skills.” This course consists of 12 sessions where students practiced skills needed to interview a principal, analyze a case and develop a case theory, give final advice to a principal, and subsequent sessions where students work with real principals. Work with the principals in Kutafin Moscow State Law University (MSAL) Law clinic proceeds as follows: having collected initial information, students prepare oral and written consultation under the guidance and supervision of the University’s internship supervisor that is then sent for approval to a mentor in the relevant department. “The main task of a mentor is to check the quality of the student-lawyer’s work beforehand, but not to interfere in the student-visitor contact...” (Abrosimova, Voskobitova, Gutnikov, Lukyanova, et al., 2015).

It is noteworthy that reception of principals and subsequent handling of the case of the principal and counselling of the principal can take place either remotely or in person, which is of particular

importance in the current difficult circumstances. The form of interaction between a principal and law clinic trainees and a supervisor may vary according to the wishes of the participants and, among other things, the epidemiological situation.

Of course, not all students can join the law clinic, but only those who have been selected and have shown their knowledge of substantive and procedural law as well as their motivation and interest in this kind of work.

Thus, at present the law clinic is available for citizens outside Moscow by means of modern digital technologies. It should be noted that receiving and advising clients through digital technology has long been used in foreign countries, for example, in the Netherlands, where “the system of internet consultation is widely implemented in the practice of free legal advice” (Kilmyashkina, Mamonkina and Nemechkin, 2015). Of course, this is an additional opportunity both for citizens who, for whatever reason, do not have the opportunity to come to the law clinic and for trainees as they have the opportunity to advise a principal who is located abroad, including advising in a foreign language. In order to assist such trainees and other students who need English in their professional activity, the Institute of Legal Translation offers a unique program of further education: “Foreign Language for Professional Communication.”

## **VII. Using a Courtroom for Additional Purposes**

Para 4.3 of the Order of the Ministry of Education and Science of the Russian Federation of August 13, 2020, No 1011 “On Approval of the Federal State Educational Standard of Higher Education — Bachelor’s Degree in the Field of Training 40.03.01 Jurisprudence” establishes requirements for substantive, technical, educational and methodological support of the Bachelor’s program. In particular, the minimum list of logistical and methodological support of the Bachelor’s program includes practicing mock trials and court-related activities in a courtroom. Such a courtroom is certainly available at Kutafin Moscow State Law University (MSAL). The main objectives of such a courtroom are:

- to develop students’ skills in working with procedural documents;
- to study the peculiarities of consideration and resolution of certain categories of court cases;
- to study the specifics of particular stages of court proceedings;
- to organize role-playing procedural games (mock trials);
- to develop judicial rhetorical skills (trial advocacy skills);
- to improve knowledge on substantive branches of Russian and foreign legislation.

Students take the opportunity to practice their persuasion skills by means of mock trials with great interest. For example, on April 21, 2018, the students of the Institute of Advocacy of Kutafin Moscow State Law University (MSAL) studied the case materials, including materials in a foreign language, and were able to play a mock trial with a jury. The mock trial relied on the US jurisdiction (the Manson Family Case). Gleb Glinka, an attorney and managing partner of *IAB Glinka, Rubinstein & Partners*, who had been practicing in the United States for many years, acted as judge.

On 20 April 2019, students of the Institute of Advocacy and the Moscow Region Bar Association presented the second Model of American Trial (based on Truman Capote’s “In Cold Blood”). Gleb Glinka, an attorney and managing partner of *IAB Glinka, Rubinstein & Partners*, once again acted as the chief expert and the judge.

During the first semester this academic year, the final seminar in the form of a mock trial was held by Elena N. Kalacheva, an advocate and lecturer of the Department of Advocacy and the Department of Practical Jurisprudence. The class was held in the training courtroom. The mock trial was based on the novel “The Brothers Karamazov” by Fyodor M. Dostoevsky.<sup>6</sup> Undoubtedly, it is a good experience for students, but it is not sufficient to fully immerse students into reality, to give students the opportunity to experience the legal profession from within.

Therefore, in our opinion, there is now a need to set up at Kutafin Moscow State Law University (MSAL), along with the mock trial courtroom, a specially equipped courtroom for real trials to help students

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<sup>6</sup> For more information see: Introduction to the Profession: a Mock Trial. Available at: [https://msal.ru/news/vvedenie-v-professiyu-igrovoy-sudebnyy-protsess-/](https://msal.ru/news/vvedenie-v-professiyu-igrovoy-sudebnyy-protsess/) [Accessed 07.11.2021] (In Russ.).

get accustomed to the process so that they can feel like participants of a court session.

The need for such a courtroom is driven by the fact that, as Prof. Lidiya A. Voskobitova said in her report made at the Scientific Conference “Modern Legal Education,” “until we put a student in conditions of real practice, professional activity, he or she will not feel a need for skills. Until we create a situation where a student is aware of what knowledge and skills he or she lacks to solve a practical problem, to perform a professional action, he or she will not have a need for self-education” (Voskobitova, 2008, p. 31).

The setting up of a real courtroom will help “to adapt innovative tools for widespread use in Russian higher education practice” (Komarova, 2017). This would allow students intending to practice law to be present during court hearings as often as possible, to study the work of judges and court clerks, and to listen to the parties and their representatives acquiring the knowledge and practicing the skills necessary for their future profession.

There is already some experience in setting up such courtrooms. For example, Saratov State Law Academy’s new training courtroom that was opened as early as 1 September 2015 hosted a visiting session of the 12th Arbitrazh Court of Appeal of Saratov Region.<sup>7</sup>

Students in such courtrooms will be able to witness work of a judge, an assistant judge, secretary of the court session and will be able to assess speeches of the parties’ representatives. The very atmosphere in the courtroom, where real cases are heard, will encourage students to think not only about solving a case, but also to learn about a dress code for formal meetings and the rules of professional etiquette.

Such a courtroom should meet all the requirements for conducting trials, namely it should be equipped with modern computer equipment with audio-visual recording function, a deliberation room, as well as a room for visitors and other participants.

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<sup>7</sup> Court hearings were held in Saratov State Law Academy. Available at: <http://www.croa.pf.ru/info/news/item/4314-v-sgyua-proshli-sudebnye-zasedaniya> [Accessed 07.11.2021] (In Russ.).

## VIII. Conclusion

Nowadays the Department of Advocacy, the Faculty of Legal Translation, the Department of English Language as well as other Departments of Kutafin Moscow State Law University (MSAL) have successfully incorporated elements of practice-oriented methods into the process of teaching including digital forms of teaching. Nevertheless, there are things to be done to provide stable functioning of the training system of preparing students for the qualification examination for the status of an advocate and subsequent legal practice in conditions of advocacy digitalization.

“An effective means of achieving the mass training of highly qualified advocates is to provide them with specialized professional training” (Belova, 2005), to teach students necessary knowledge and train necessary skills, in English as well. This training is available for students at Kutafin Moscow State Law University (MSAL) where the students intending to practice law in the future are familiarized with the legislation on advocacy and advocate’s activity and the corporate acts of advocacy, and are prepared to take the qualification examination for the status of an advocate and to practice law.

Thus, the management of the University and the faculty of Kutafin Moscow State Law University (MSAL) have always done and continue to do their best to organize the training of highly professional, competitive specialists capable of working either in person or online both in the Russian Federation or abroad.

## References

1. Abernathy, C.F., (2006). *Law in the United States*. American Casebook Series. USA: Thomson West.
2. Abrosimova, E.A., et al. (2015). *Legal Clinic – Education Based on Practical Experience: Teaching Aid. Part I*. Moscow: Legal Clinics Development Center (In Russ.).
3. Agapov, S.V., (2021). *Family Law: Textbook and Workshop for Universities*. Moscow: Yurait Publ (In Russ.).

4. Andronova, T.A. and Tarasenko, O.A., (2013). Active and Interactive Forms of Classes for Bachelors and Masters. *Juridical Education and Science*, 2, pp. 33–37 (In Russ.).
5. Belova, N.M., (2005). *Pedagogy of Training of Professional Advocates*. Cand. Sci. (Pedagogy) Thesis. Moscow: Academy of Management of MIA of the Russian Federation (In Russ.).
6. Blazheev, V.V. and Egorova, M.A., (2020). *Digital Law: Textbook*. Moscow: Prospect (In Russ.).
7. Chen, S., (2021). Legal Practice Mode Based on Computer Technology. *Journal of Physics: Conference Series*, 1852(4), doi: 10.1088/1742-6596/1852/4/042014.
8. Demchenko, M.V., Gulieva, M.E., Larina, T.V., and Simaeva, E.P., (2021). Digital Transformation of Legal Education: Problems, Risks and Prospects. *European Journal of Contemporary Education*, 10(2), pp. 297–307, doi: 10.13187/ejced.2021.2.297 (In Russ.).
9. Egorova, M.A. and Minbaleev, A.V., (2021). The Main Features of the Introduction of Digital Innovative Methods in Educational Activities and the Significance of their Application for Teaching Foreign Students. *Courier of Kutafin Moscow State Law University (MSAL)*, 1(77), pp. 27–38, doi: 10.17803/2311-5998.2021.77.1.027-038 (In Russ.).
10. Gladkikh, I.Y. and Yakushin, A.V., (2016). Systems of Automated Programming Testing in Educational Environment. *Modern Problems of Science and Education*, 3, pp. 326–336 (In Russ.).
11. Isayev, I.A., (2016). Stages of Establishment: All-USSR Correspondence Institute of Law – Moscow Law Institute – MSAL – Kutafin Moscow State Law University (MSAL). *Courier of Kutafin Moscow State Law University (MSAL)*, 9(25), pp. 8–23 (In Russ.).
12. Kilmyashkina, D.V., Mamonkina, A.A., and Nemechkin, V.N., (2015). International Experience of Organizing Clinical Legal Education. *Ogaryov-Online*, 5(46), p. 7 (In Russ.).
13. Kolotov, A.F. and Skuratov, I.V., (2014). *Methodology of Teaching Law: Textbook for Master's Students studying "Jurisprudence"*. Orenburg: Universitet Publ (In Russ.).
14. Komarova, V.V., (2017). The Legal Education Reform. In: *Issues of Legal Education: collected volume of scientific papers*. Vol. 1. Moscow: Original-maket Publ (In Russ.).

15. Korotkova, P.E., (2018). *Practical Skills of an Advocate: Study Guide for Bachelor Students*. Moscow: Norma: INFRA-M Publ (In Russ.).
16. Korotkova, P.E., (2019). *Practical Skills of an Advocate: Textbook for Bachelor Degree Students*. Moscow: Norma INFRA-M (In Russ.).
17. Lyubshev, Yu.F., (2003). *The Course of Advocacy Law*. Moscow: Profobrazovanie Publ (In Russ.).
18. Markova, T.Yu. and Samsonova, M.V., eds., (2016). *Professional Skills of a Lawyer: Textbook for Academic Bachelor Students*. Moscow: Yuright Publ (In Russ.).
19. Ogorodnikov, A., (2020). Institutionalization of Distance Learning Technologies in a Law School. *Kutafin University Law Review*, 7(2), pp. 214–244, doi: 10.17803/2313-5395.2020.2.14.214-244.
20. Pikalova, V.V. and Rozanova, E.I., (2010). *Translation in Intellectual Property. Textbook for Students of Higher Education Institutions*. Moscow: Akademiya Publ (In Russ.).
21. Pilipenko, Yu.S., ed., (2018). *Advocacy: Textbook for Undergraduate Students*. 2nd ed. Moscow: Prospekt (In Russ.).
22. Shershenevich, G.F., (2003). *Science of Civil Law in Russia (Classics of Russian Civilistics)*. Moscow: Statut Publ (In Russ.).
23. Shevchenko, O.I., Volkov, M.A., and Prystavka, A.S., (2018). Methods and Forms of Students' Education. *International Journal of Humanities and Natural Sciences*, 5(1), pp. 106–112 (In Russ.).
24. Tully, N. and Avramenko, A., (2015). Au fait law placements: An emerged reality or a popular trend in contemporary education? *Higher Education, Skills and Work-based Learning*. 5(2), pp. 152–167, doi: 10.1108/HESWBL-05-2014-0016.
25. Volodina, S.I. and Gavrilov, S.N., (2020). Digital Transformation of the Russian Legal Profession. *Revista Inclusiones*, 7, pp. 2–10. Available at: <https://revistainclusiones.org/index.php/inclu/article/view/1494> [Accessed 07.11.2021].
26. Voskobitova, L.A., (2008). Proceedings of the Scientific Conference [October 17, 2006] “Modern Legal Education.” Moscow: Gubkin University (In Russ.).
27. Yarotskaya, L.V. and Moiseenko, L.V., (2021). Training of an International Lawyer to Work in the International Legal Environment:

A Linguo-Didactic Aspect. *Public International and Private International Law*, 1, pp. 41–44, doi: 10.18572/1812-3910-2021-1-41-44 (In Russ.).

28. Yarotskaya, L.V., (2013). Lingvo-didactic Bases of Internationalization of Professional Training (Foreign Language, Non-linguistic Higher Education Institution). Cand. Sci. (Pedagogy) Thesis. Moscow: Moscow State Linguistic University (In Russ.).

29. Yuriev, S.S., ed., (2011). *Advocacy in Russia*. Moscow: Yuright Publ (In Russ.).

30. Zaitsev, O.V. and Kravchenko, A.A. (2020). Professor D.I. Meyer's Heritage in Modern Law Education (Experience of the School of Law IPACS RANEPa). *Herald of Civil Procedure*, 10(1), pp. 22–38 (In Russ.).

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## Some Remarks on Legal Education in Bulgaria

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**Abstract:** This paper aims to provide in-depth analysis of legal education in Bulgaria since it is of paramount significance for the creation of well-trained lawyers for the state, local authorities, as well as the judicial system. The historical method was used to examine the system of the Bulgarian legal education that has been developing for about 130 years and has gone through numerous difficulties.

The comparative and juxtaposition approach were utilised in the research to help in making inferences about the present situation regarding legal education in Bulgaria. Now there are nine law schools that deepen international co-operation and adapt their curricula to respond to the changes in national and European legislation.

It takes five years to receive a legal education in Bulgaria and the process ends with a Master's degree in Law (LLM). There is no Bachelor degree in Law (LLB in other European countries) in our country.

All in all, the main objective of this article is to look at the Bulgarian legal education in the past and nowadays. The paper attempts to show that legal education in Bulgaria is faced with diverse challenges of the new millennium. The process of globalization as well as the recent situation with COVID-19 make it necessary to add information technologies and distant learning forms to legal education.

**Keywords:** Bulgaria; legal education; Bologna process; learning forms

**Cite as:** Belova, G. and Georgieva, G., (2021). Some Remarks on Legal Education in Bulgaria. *Kutafin Law Review*, 8(4), pp. 713–730, doi: 10.17803/2313-5395.2021.4.18.713-730.

## Contents

I. Introduction .....	714
II. Early Legal Education in Bulgaria .....	715
III. Bulgarian Legal Education after 1989 and Nowadays .....	722
IV. Challenges of Legal Education in Bulgaria .....	726
V. Conclusion .....	727
References .....	728

### I. Introduction

Legal education in Bulgaria began about 130 years ago. Four years after the establishment of Sofia University “St. Kliment Ohridski” (then Higher School in Sofia) the first Faculty of Law was founded and it was the third one after the Historical-Philological and Physics and Mathematics faculties. First lectures were held on November 2, 1892, in front of 22 students, but by the end of the academic year, the number of the students became 94, which was almost half of the students in the whole University. The educational process started with 14 legal subjects for a three-year period, but soon the duration was extended to four years and the number of courses was increased (Paev, 2009, p. 203). The first dean of the Faculty was the great Bulgarian public statesman and one of the first jurists Marko Balabanov.<sup>1</sup> It is important to note that the beginning of legal education occurred when the Tarnovo Constitution had already been adopted, which reflected the ideas and opinions of the Bulgarian Renaissance society. As a first Minister of Justice in Bulgaria’s first government of the newly-liberated country was appointed Dimitar Grekov — a prominent lawyer and a politician from a Conservative party, who completed the first Bulgarian Secondary School in the town of Bolgrad, Bessarabia and later graduated in Law and became a Doctor of Law at the University of Aix-en-Provence, France.

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<sup>1</sup> 130 Years Ministry of Justice 1879–2009, Jubilee Almanac, Sibi publishing house, p. 31 (In Bulgarian).

Marko Dimitriev Balabanov was a Bulgarian lawyer and politician, the first Foreign Minister of Bulgaria (in 1879 and from 1883 to 1884) and chairman of the XI Ordinary National Assembly in 1901. He taught Roman, Byzantine and canonical law (1892–1902) at the newly established Higher School.

The first students graduated from the Faculty of Law in the summer of 1895 (Kitanov, 2020, p. 235). The support they received from the first Rector of the Sofia University Prof. Ivan Shishmanov should also be mentioned. His dedication to the academic idea was also evident in early 1907 when he resigned after the government's decision to close the University and to fire all lecturers following the student boeing of Prince Ferdinand Sax-Coburg-Gotta. Later on, in the 1920s, he became the founder and the first president of the Bulgarian Department of the Pan-European Union (Koneva, 2017, p. 645).

It could be said that the history of the Faculty of Law is closely linked to the history of the Bulgarian state. It is divided into several distinct periods — from the Liberation of Bulgaria during the Tarnovo Constitution to 1944, the next period is connected with the socialist/communist state and the subsequent period — from 1991 to this day. The main periods are divided into sub-periods that mostly followed the adoption of the different Bulgarian constitutions: Tarnovo Constitution, two main laws of the socialist period of 1947, 1971 and the last 1991 Constitution. It should be noted that until the unification between the Eastern Rumelia and the Kingdom of Bulgaria that happened in 1885, there was an Organic Statute that was functioning on the Eastern Rumelia's territories.

It is essential to use comparative and juxtaposition approaches later on in this research, which will help us make a distinction between the past and present situation in Bulgaria. Various challenges before legal education in Bulgaria have been discussed as a major goal of the paper along with the overall analysis of this type of education so that relevant conclusions could be drawn.

## **II. Early Legal Education in Bulgaria**

The impossibility to answer the needs of professionally educated jurists, administrators and judges, who at those early years of the newly-liberated Bulgarian state obtained their legal education in Russian and West European universities, provoked one of the first Ministers of Justice Petko Karavelov to propose the idea of opening a law school with a two-year period of study in Sofia “to answer the tremendous need of judges,

lawyers and administrators with university education.”<sup>2</sup> In answer to this idea Konstantin Irechek — Secretary of the Ministry of National Enlightenment made a note to the Art. 69 of the draft on the Basic Law on Schools in the Principality of Bulgaria,<sup>3</sup> which passed on the first reading on November 25, 1880. The note stipulated that a Bulgarian Higher School (University) should be opened and it would include legal sciences. Later on, he tabled the question for constituting a Bulgarian Higher School to Prince Alexander of Battenberg, emphasizing that “a faculty of Law is required to answer the country’s need for an adequate amount of legalists to engage in judicial and administrative service.”<sup>4</sup>

In the first decade after the opening of the Faculty of Law, its teaching staff included a number of prominent lawyers — Stefan Kirov, Stefan Bobchev, Georgi Danailov, Todor Kulev, Simeon Angelov, Venelin Ganev, establishing the academic image of the faculty permanently. The well-known Bulgarian writer Aleko Konstantinov, elected in 1897 as an associate professor in criminal proceedings, died tragically.<sup>5</sup>

At the same time in May 1885, the urgent need for professionally educated judges and lawyers in Eastern Rumelia provoked the publication of the Preliminary Public Administrative Statute for Constituting a Law School in “Maritsa” state newspaper. According to this project, which was elaborated by judges from the town of Plovdiv, by the Director of Justice Stefan S. Bobchev and the famous Bulgarian writer Konstantin Velichkov, the school had to start in the autumn of the same year, but due to a number of reasons, it did not happen.<sup>6</sup>

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<sup>2</sup> 130 Years Ministry of Justice 1879–2009, Jubilee Almanac, Sibi publishing house, pp. 29–30 (In Bulgarian).

<sup>3</sup> The Principality of Bulgaria (1878–1908) was a vassal state of the Ottoman Empire in the Balkans. The Ottoman province of Eastern Rumelia was governed with the principality, with the prince of Bulgaria as its governor, and both became parts of the Kingdom of Bulgaria in 1908.

<sup>4</sup> 130 Years Ministry of Justice 1879–2009, Jubilee Almanac, Sibi publishing house, pp. 30–31 (In Bulgarian).

<sup>5</sup> Almanac of the Faculty of Law at the Sofia University “St. Kliment Ohridski” 1892–2017, p. 8, ISBN 978-954-07-4413-1 (In Bulgarian).

<sup>6</sup> 130 Years Ministry of Justice 1879–2009, Jubilee Almanac, Sibi publishing house, p. 31 (In Bulgarian).

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The education in the faculty was then increased to four years and, as it was mentioned above, fourteen subjects were taught. On October 21, 1902, the Academic Council of the Higher School, at the suggestion of the Dean of the Faculty of Law, decided to establish 11 departments: Roman Law, History of Bulgarian and Slavic Law, State and Administrative Law, Political Economy, Financial Science, Public and Private International Law, Philosophy and Encyclopedia of Law, Civil Law and Civil Procedure, Commercial Law, Criminal Law and Criminal Procedure, and Statistics. The curriculum, along with the extended study of legal sciences, also includes courses of general educational importance such as philosophy, psychology, sociology, Bulgarian history, basic economical, financial knowledge and statistics, and university education. Subsequently, the number of departments increased to 15 all of which provided compulsory or optional courses. The largest number of students studied at Sofia University in the academic year of 1905–1906. The first women also graduated during this academic year which is an early date compared to other European countries. To facilitate the preparation of students in 1913 there began the publication of a special series entitled “University Library”. Until the end of the First World War, many intellectuals, famous Bulgarian writers, poets and journalists Yosif Herbst, Dimcho Debelyanov, Kiril Hristov, Stefan Runevski, Nikola Ginev, Yordan Yovkov, Elin Pelin, *etc.* stood out among the graduates of the faculty.<sup>7</sup>

As stated above, due to fast developments, in 1909 there were already fifteen departments in the Faculty. The new legislation and procedure for awarding academic titles and habilitation was established as well as the order for incorporating a new generation of scholars who received a sound education in prestigious European universities and who had a deep patriotic feeling and ambition to become a part of the young academic community. Among this group of scholars could be mentioned Petar Abrashev, Stefan Kirov, Mihail Popoviliev, Angel Angelov, Petar Danchov, Stefan Bobchev, Yosif Fadenheht.

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<sup>7</sup> Sofia University St. Kliment Ohridski, History. Available at: [https://www.uni-sofia.bg/index.php/bul/universitet\\_t/fakulteti/yuridicheski\\_fakultet/istoriya](https://www.uni-sofia.bg/index.php/bul/universitet_t/fakulteti/yuridicheski_fakultet/istoriya) [Accessed 18.10.2021] (In Bulgarian).

It is a curious fact that after the 1917 revolution representatives of the Russian intellectual elite came to Bulgaria as political emigrants. Among them, there were law professors who stayed and worked in our country, such as I.A. Bazanov and P.M. Bogaevskii (Starodubtsev, 2000, p. 44). Prof. Bogaevskii delivered lectures in Public International Law and had numerous publications in this field. Soon Prof. Petr Bogaevskii became the head of the Public and Private International Law Department at the Law Faculty of Sofia University. Prof. I.A. Bazanov's work in the field of Private International Law was also significant and his prediction for the unification of certain legal institutes subsequently came true. When in October 1920 the Free University (Balkan Middle East Institute) was founded as the second higher school and the first economic university, both Russian professors contributed a lot to the development of this second center of legal education in Bulgaria. Very significant is the fact that the idea of opening a Russian Higher School for Immigrants in Bulgaria was discussed and the initial project envisaged it to include two faculties — legal and philological, established in Bulgaria and Turkey, in which about 1200 students could be trained (Belova, 2007, p. 238). The Bulgarian Ministry of National Enlightenment approved its opening, but the lack of sufficient financial resources led to the failure of the project.

The time between the beginning of the First and the end of the Second World War can be considered as a second period in the development of the faculty. The severe economic situation after the Treaty of Neuilly affected the students and in the academic years 1920–1921 and 1921–1922 the number of graduates of the faculty was 479 and 489, respectively, or about 1/10 of the enrolled ones. The teaching staff of the Faculty of Law included Lyuben Dikov, Nikola Dolapchiev, Petko Staynov, Stefan Balamezov, Konstantin Katsarov, Petko Venedikov, Ivan Apostolov, Zhivko Stalev, Anastas Totev as well as the professors Ivan Bazanov and Konstantin Sokolov who emigrated to Bulgaria after the October Revolution in Russia. For the first 50 years of its existence, the Faculty of Law established itself as a center of full-blooded academic life. The teaching staff was expanded and renewed. During the period between the two world wars, graduates of the faculty were Yordan

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Stratiev, Dimitar Sprostranov, Asen Raztsvetnikov, Sergei Rummyantsev, Hristo Smirnenski.<sup>8</sup>

The academic Bulgarian tradition in the Middle Ages is associated with the first modern university and the School of voters. The university chapel of the University of Bologna and the square in front of it have been dedicated to the *Bulgarus de Bulgariis* since the 16th century, which revived the tradition of ancient orators and rhetoric and earned it the nickname “*golden mouth*” – “*Bulgarus os aureum*”. The legacy of *Bulgarus* was such that for four centuries until the beginning of modern times, the academic historical tradition of the oldest modern university was identified with his name. For this reason, in 1930, Tsar Boris III was awarded an honorary doctorate by the University of Bologna, and on June 11, 2002, his son Simeon Sax-Coburg-Gotta was awarded the title of “member of the Academy of Sciences of the University of Bologna,” i.e., with the highest honorary academic degree of the first modern university, which marked the beginning of the Bologna process with the European Higher Education Area.

After the Liberation of Bulgaria, it turned out that out of 627 people with higher education from the entire Bulgarian diaspora, the jurists are the second largest group. A total of 55 Bulgarians studied law, half of them in the Russian Empire; 11 in France; 7 in the German lands and the rest in other European and Balkan countries.

As it was revealed, the idea for a Bulgarian Higher School made its way at the end of 1880 with the above-mentioned Art. 69 of the unaccepted bill for the Basic Law for the schools in the Principality of Bulgaria. Among its biggest defenders was Petko Karavelov, who graduated in Law from Moscow University.

The need for codification of private laws was in the first generation Bulgarian lawyers’ range of vision and they had a significant contribution to the codification of the Bulgarian legislature. By Decree No 674 of August 8, 1881, a Commission comprised of competent persons was founded with the aim to amend, to add and to align and unify “issued over various periods until now and in different fields of judicature

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<sup>8</sup> Almanac of the Faculty of Law at the Sofia University “St. Kliment Ohridski” 1892–2017, p. 11, ISBN 978-954-07-4413-1 (In Bulgarian).

and judicial proceedings: rules, standing orders, statutes, acts and instructions.”<sup>9</sup>

It can be pointed out that during the several decades until World War II the legal education and research in Bulgaria were comparable with the European legal scientific achievements (Paev, 2009, p. 203).

Outside Sofia University, legal education was developed at the Free University thanks to the greatest merits of its founder and first Rector Stefan S. Bobchev – politician, statesman, publicist, a scientist with encyclopedic knowledge, who made significant contributions in various scientific fields. He was the author of many monographic works, textbooks, articles in various fields of law. Stefan Bobchev created a special series of articles in which he presented the first Bulgarian lawyers. The initial series was called “Faces of the First Bulgarian Lawyers” and consisted of twelve articles.<sup>10</sup> Another famous person at the Free University was Dr. Stoyan Danev, a law graduate from Zurich, Prime Minister in 1902–1903, professor at the Free University, chairman of the Bulgarian Red Cross, member of the Permanent Court of Arbitration in The Hague.

As early as 1938, a second department for state and economic sciences was established at the faculty. This department with the Faculty of Economics are the two structures produced at the Higher Institute of Economics in 1952 (HIE, today University of National and World Economy – UNWE).<sup>11</sup> Since 1954, legal education there has been established in the Department of Legal Sciences at the Faculty of International Economic Relations.

Regretfully, during the first decade after World War II, legal education in Bulgaria experienced dramatic changes: a lot of lecturers

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<sup>9</sup> 130 Years Ministry of Justice 1879–2009, Jubilee Almanac, Sibi publishing house, p. 56 (In Bulgarian).

<sup>10</sup> The texts were published in the Legal Review in 1930–1931. In them, the author presents biographies of the first Bulgarians with legal education. Then the scientist expands his articles and presents persons who, by coincidence, without having a special legal education, have worked in the Bulgarian judicial system and thus contribute to the formation of the Bulgarian justice.

<sup>11</sup> Almanac of the Faculty of Law at the Sofia University “St. Kliment Ohridski” 1892–2017, p. 11, ISBN 978-954-07-4413-1 (In Bulgarian).

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were fired,<sup>12</sup> academic autonomy was completely abolished, and legal education and legal science were dominated by Communist ideology. The country belonged to the sphere of influence of the former Soviet Union.

The period of the 1950s was especially difficult. In the early 1950s, the admission of students was limited, with sixty people admitted in the 1954–1955 academic year and only forty – two in the 1955–1956 academic year. The reasons were the ideological notions that offenses and crime automatically decrease with the change of the socio-economic system, as remnants of the bourgeois past, and that the state dies and the law is a remnant of the past. This was a time of legal nihilism.

In spite of these abovementioned changes in Bulgaria, during the 1960s the situation in the universities was normalized step-by-step and this made it possible for next generation scientists to give their contribution to the improvement of the legal education in the country. It was related to the broadened contacts with foreign universities as well as to the possibilities for some lecturers and assistants to have a legal specialization in foreign universities not only in Eastern but also in Western Europe (Penchev, 2012, p. 53).

In 1971, the Unified Center for the Sciences of the State and Law was established, which included the Faculty of Law and the Institute of State and Law at the Bulgarian Academy of Sciences. Despite the fact that for many scholars the established decision-making mechanism violated the academic principles and traditions and subordinated the faculty to an external body, nevertheless the Unified Center for the Sciences of the State and Law was an example of fruitful cooperation in the field of judicial science.

Despite these unfavorable conditions that remained until the 1970s and 1980s, the Faculty of Law retained much of its importance as a center of academic science and teaching, largely because of the

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<sup>12</sup> Contrary to the norms of academic life, a number of established and authoritative members of the academic community were removed from the Faculty of Law or were forced to leave it, including Nikola Saranov, Venelin Ganey, Svetoslav Luchnikov and many others. Academic autonomy was removed. Legal education and legal science were ideologized. The centralized validation of students and their political selection were introduced.

professors who graduated before 1944. Students at the Faculty of Law during this period were Ran Bosilek, Georgi Stamatov, Anton Donchev, Dimitar Mantov, Ana Kamenova, Radoy Ralin, Leda Mileva, Konstantin Pavlov, Dragan Tenev, Ivan Radoev, Konstantin Kisimov, Konstantin Kotsev, Boris Hristov, Kevork Kevorkyan, other public figures, cultural and artistic figures, statesmen and, in general, prominent figures from the whole spectrum of public life and government. However, until 1991, there was only one law faculty in Bulgaria – at Sofia University “Kliment Ohridski”.

### **III. Bulgarian Legal Education after 1989 and Nowadays**

After 1989 in Bulgaria a big change of political and economic system influenced by the similar changes in the rest East European countries was carried out. It was related to the transition to a free-market economy and the adoption of the principles of democracy and the rule of law. In 1991 the new (and the last one) Bulgarian Constitution was promulgated and it gave guidelines and a proper legal basis for the forthcoming significant changes in society and legislation. The principle of academic autonomy was restated and further development of juridical education in Bulgaria took place.

Now in Bulgaria, there are nine law schools. Along with the Faculty of Law at Sofia University, there are other eight faculties of law at, as follows: the University of National and World Economy – Sofia; the New Bulgarian University – Sofia (a private one); the South-West University – Blagoevgrad; the University of Plovdiv; the Free University – Burgas (a private one); the Free University – Varna (a private one); the University of Veliko Tarnovo; and the University of Ruse. All of them deepen international co-operation with partner universities in Europe and worldwide and adapt their curricula to respond to the dynamic national, European and international legislation.

With the democratic changes after 1989, the independence of the higher education institutions was restored and the principles of university academic autonomy were reaffirmed. Existing international contacts have been expanded and developed. With the introduction of new curricula, the teaching at all law faculties in the country meets

more fully the requirements of the changes in the Bulgarian legislation and the process of legal European integration. The optional courses and practical trainings of the students provided in it allow them to deepen their knowledge in those areas that are most important for their chosen field of professional realization. A specific form for connecting theoretical knowledge with practical experience are the Legal Clinics that have been introduced in the nine faculties in three areas – Civil law studies, Penal/Criminal law studies and Administrative law studies.<sup>13</sup> Students from all nine faculties participate in different European and international competitions and moot courts.

The result of more than a decade of international cooperation with the University of Hamburg, which began with joint scientific events in the 1980s and is largely credited to Prof. Peter Erlinghagen, was the establishment of the Institute of German and European Law at Sofia University “St. Kliment Ohridski” in 1991. The first directors of the institute were Prof. P. Erlinghagen and Prof. P. Popov. The institute offers students educational seminars in the field of German Law and European Law, organizes scientific and practice-oriented forums for researchers, students and legal practitioners from both countries, facilitates academic exchanges and short-term student stays at the University of Hamburg.<sup>14</sup>

Despite the beginning process of academic competition in legal education, it can be pointed that the main task of the Bulgarian legal educational system has been to react to a very important process of participating in the Council of Europe since 1992 and in the European Union (EU) since January 1, 2007. This was followed by the 2018 Bulgarian Presidency of the Council of the EU during which the importance of the integration of the Western Balkans was highlighted (Belova and Kochev, 2018, p. 267). In this context the jurisprudence of both courts – the Court of Justice of the European Union (CJEU) in Luxembourg and the European Court of Human Rights in Strasbourg – has become extremely important. This explains the inclusion of a special discipline –

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<sup>13</sup> Sofia University St. Kliment Ohridski, History. Available at: [https://www.uni-sofia.bg/index.php/bul/universitet\\_t/fakulteti/yuridicheski\\_fakultet/istoriya](https://www.uni-sofia.bg/index.php/bul/universitet_t/fakulteti/yuridicheski_fakultet/istoriya) [Accessed 18.10.2021] (In Bulgarian).

<sup>14</sup> Ibid.

EU Law — as a compulsory subject in the curricula of the abovementioned faculties. Some other subjects, such as Institutions of the EU, Internal Market and Fundamental Freedoms, EU Competition Law, Human Rights Protection, the European Court of Human Rights, *etc.* were added to the list of optional courses in all law faculties. Human rights and the activity of the national, regional and European ombudspersons are also observed and included within the content of legal disciplines (Marin and Kovacheva, 2019, p. 229).

It should be specified that the Bulgarian system of higher education in Law (and also in Architecture and Medicine, or so-called specialities regulated by the state) slightly differs from the Bologna model for higher education. There is no differentiation between Bachelor and Master's degrees in Law in Bulgaria. Legal education can be received in five years and is completed with a Master's degree in Law (LLM). There is no Bachelor degree in Law (LLB in other European countries) in our country.

It is important to note again that the training for acquiring a higher education in the Law specialty to the educational degree of *Master* has a duration of not less than 10 semesters in Bulgaria. Full-time and part-time education is possible. The part-time form usually lasts for 5 or 6 years. The training ends with three state exams (Public Law, Civil Law and Criminal Law Sciences) that consist of a written and an oral part, and obtaining a diploma for a completed higher legal education and a person becomes a *jurist*. Work capacity is acquired after an internship and passing a new exam. The additional exam after a 6-month practical training is organized and held before the Ministry of Justice. After successfully going through this step, a person obtains the capability to practice the legal profession. They then have the opportunity to decide what type of legal profession they would like to practise. All accredited higher education institutions in Bulgaria adhere to these rules, which makes the conditions for admission, application and training processes almost identical in all of them. In Bulgaria, a law degree from a foreign university is recognized by a national authority only as a period of education in case it is a Bachelor's degree and as a Master's degree if there is almost a complete coincidence of the studied disciplines and state exams. In other words, usually in the

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majority of cases after the recognition of a legal education obtained abroad by the Bulgarian national authority there are several semester exams and three state exams to be passed. A person is able to choose any law faculty to do this and to complete his/her education according to the Bulgarian legislation. For a number of younger Bulgarians who live and work in other EU states diplomas for legal education from two different EU Member States is an advantage, especially in multinational consulting law firms/companies.

In order to start practising as a lawyer in Bulgaria, one needs to be a part of a Bar Association. Each lawyer has to meet several requirements which are the same for everyone and what follows is passing the Bar Association's exams. That is significant since every Bulgarian lawyer who desires to practise this prestigious profession must be a member of a Bar Association. The examinations before the Bar Association to acquire legal capacity are very complicated and demand a high level of legal knowledge. There is a reason for doing so and it is aimed at restricting jurists that are not so well-prepared to do this type of job. A similar procedure is also applied for becoming a magistrate (judge or prosecutor) and for other legal professions. Thus, becoming a fully-fledged lawyer requires another one or two years.

The possible continuation of studying Law is either in a PhD program or in another specialized Master's program in a specific field of Law. Each faculty separately accredits its own PhD program and the quality control is carried out by the National Evaluation and Accreditation Agency along with the Ministry of Education and Science of Bulgaria, aiming at the enhancement of the institutions' teaching and research, including their development as scientific, cultural, and innovative organizations.

The other major innovation is the increased number of teaching hours for such disciplines as Public International Law and EU Law. This approach is connected with the debate whether EU Law, for example, should be treated only independently or should be included in all branches of national law that are recently taught in the law faculties. Another moment that has been discussed was whether or not the Human Rights course should be obligatory or optional. It is obvious that issues related to human rights overlap with some other courses

taught in the Law major – General Theory of Law, Constitutional Law, Public International Law, European Union Law, Criminal Procedure Law, *etc.* The situation is the same in other Bulgarian universities where legal protection of human rights is more or less represented when teaching Theory of Law, Constitutional or Public International Law. In some of the syllabuses, the emphasis is placed on the constitutional status of a person and a citizen of Bulgaria, while in others – on the international and regional protection of human rights and the focus of syllabuses covers mainly the history and the classification of human rights.

#### **IV. Challenges of Legal Education in Bulgaria**

An important task of Bulgarian education, in our view, has been to overcome conservatism and perception according to which law was viewed as strictly national and/or particularly local. We all live in an interconnected world and the process of internationalization encompasses every part of life and education, including the legal one. For example, nowadays the ecological issues have also become of great importance and need serious attention to be paid during the legal education process (Hristova and Chankova, 2020, p. 195).

It was absolutely necessary to include English and other foreign languages in the Bulgarian juridical education especially in the view of the multilingual European Union (Kostadinova, 2017, p. 207). Not only has the communication between lecturers become easier, but their publications have become more visible and reflected by respected international databases. There was a huge selection of specialized foreign language and translated literature (Kostadinova, 2019, p. 87).

Foreign language education has enabled students and lecturers to participate fully in the Erasmus and Erasmus+ programs realizing outgoing mobilities or to host incoming professors, students and PhD researchers. The Erasmus+ European Program for Education, Training, Youth and Sport was launched in 2014 and had a period of operation until 2020. It was based on an integrated approach that ensures effective interaction between all sectors in education, training, youth and sport.

Under the Erasmus+ program, our Faculty of Law co-operates with universities in Germany, France, Spain, Russian Federation, Austria, Poland, Greece, Romania, Cyprus, Turkey, Kirgizstan, Morocco, *etc.* Throughout the years the development has undoubtedly been an ascending one. There have been a number of successfully used tools under the same program such as the development of common study programs and intensive summer schools.

Nevertheless, it might be concluded that as a whole the Bologna model for higher education has helped a lot in the development of juridical education in Bulgaria. As a part of European education, it becomes more attractive for young people from non-EU countries, it makes degrees easily comparable, it encourages credit transfer, *etc.* Lastly, the Bologna process stimulates the diversity of PhD programs in Bulgaria. For example, ten years ago there were only strictly formulated according to the specific areas of knowledge PhD programs, identical in all law faculties. Now, we have more modern and diverse PhD programs in our University and in our country and they are more attractive for young researchers.

Due to the recent coronavirus situation, a lot of experts insist that strict standards introduced for obtaining a higher legal education and entering a legal profession should continue to be applied in order to keep its quality and prestige (Yanev, 2020).

## V. Conclusion

Legal education in Bulgaria needs to continue to meet the challenges of the new millennium. It is subject to further improvement and refinement to ensure its application in the national and European cultural space. The possible and necessary methods that are basic for this education and some of which are set out above are not difficult to apply.

The recognition of qualifications in the EU framework has a long history. The development in this area has involved not only the development of the EU secondary legislation but also the case-law of the Court of Justice of the European Union (for example, *Vlassopoulou*

case<sup>15</sup>). The Bologna Process can be seen as an instrument aimed at optimizing the basis for recognition considering that it tackles the structure of higher education degrees in Europe. The Bologna process is strongly related to the Lisbon Recognition Convention.<sup>16</sup> According to both instruments Member States' national authorities dealing with these recognition cases should be encouraged not to defend the nationally developed educational and professional standards jealously but to take into account the different knowledge acquired by the person in the educational system of another Member State as well as professional experience gained abroad including the qualifications and experiences acquired in non-EU countries. In the light of the Lisbon strategy and the urgent need for increased professional mobility, a positive attitude towards the recognition of qualifications is of vital importance in the general economic and societal interest of the European Union. The basic philosophy of the established CJEU case-law, the EU secondary legislation, mutual trust in the quality of education and training of all Member States should be the guideline for taking these decisions.

The process of globalization, the recent situation with COVID-19 and outsourcing of legal services implies further inclusion of new information technologies in legal education as well as distant learning forms. Bulgarian legal educational institutions need to adapt to new and diverse challenges (Georgieva, 2021, p. 102) through involving more case simulations, moot court competitions, legal clinics for the development of students' practical skills which they will need for their future work in the international environment.

### References

1. 130 Years Ministry of Justice 1879–2009, Jubilee Almanac, Sibi publishing house (In Bulgarian).
2. Belova, G. and Kochev, Y., (2018). Challenges Facing Bulgaria's EU Presidency within the Context of Other New Member States' Experience.

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<sup>15</sup> Case C-340/89 *Vlassopoulou v. Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg*, EU: C:1991:193.

<sup>16</sup> Convention on the Recognition of Qualifications concerning Higher Education in the European Region, 11.IV.1997, ETS no 165.

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*Balkanistic Forum Journal*, 1, South-West University “Neofit Rilski” – Blagoevgrad, pp. 267–275.

3. Hristova, A. and Chankova, D., (2020). Climate Diplomacy – a Growing Foreign Policy Challenge. *Tribuna Juridica-Juridical Tribune* 2020, pp. 194–206.

4. Koneva, R., (2017). Der Bulgarische Gelehrte und Politiker Professor Ivan Shishmanov (1862–1928) und die Paneuropäische Bewegung [The Bulgarian Scholar and Politician Professor Ivan Shishmanov (1862–1928) and the Paneuropean Union]. *Foreign Language Teaching*, 6, pp. 644–656 (In German).

5. Kostadinova, D., (2017). Global English in Bulgarian Context. *Foreign Language Teaching*, vol. 2, pp. 206–209.

6. Kostadinova, D., (2019). On Some Particular Cases of Translation and Self-translation. *Orbis Linguarum [Linguistic World]*, 17(2), pp. 86–92, doi: 10.37708/ezs.swu.v17.i2.9 [Accessed 01.10.2021].

7. Penchev, G., (2012). Bulgarian Legal Education – History and Nowadays. *Revista Juridica de Investigacion e Innovacion Educativa [Legal Journal of Educational Research and Innovation]*. Malaga, 6, Junio, pp. 47–54. Available at: <http://www.eumed.net/rev/rejie/06/gp.pdf> [Accessed 28.09. 2021].

8. Sofia University St. Kliment Ohridski, History. Available at: [https://www.uni-sofia.bg/index.php/bul/universitet\\_t/fakulteti/yuridicheski\\_fakultet/istoriya](https://www.uni-sofia.bg/index.php/bul/universitet_t/fakulteti/yuridicheski_fakultet/istoriya) [Accessed 18.10.2021] (In Bulgarian).

9. Almanac of the Faculty of Law at the Sofia University “St. Kliment Ohridski” 1892–2017. ISBN 978-954-07-4413-1 (In Bulgarian).

10. Belova, G., (2007). The Contribution of Russian emigration to the Development of International Law (1918–1939), Review in the *International Politics Journal*, 1, pp. 237–241 (In Bulgarian).

11. Georgieva, G., (2021). Challenges in editing politically oriented articles and abstracts in Bulgarian scientific periodicals. *Orbis Linguarum [Linguistic World]*, 19 (2), pp. 96–102, doi: <https://doi.org/10.37708/ezs.swu.bg.v19i2.12> [Accessed 14.10.2021] (In Bulgarian).

12. Kitanov, V., (2020). The establishing of the Tarnovo Constitution through the view of Prince Alexander Dondukov-Korsakov. *Balkanistic Forum Journal*, Issue 1, South-West University “Neofit Rilski” – Blagoevgrad, pp. 234–237 (In Bulgarian).

13. Marin, N. and Kovacheva, D., (2019). Legal Problems and Solutions in the Cooperation between the National Ombudspeople in Southeast Europe. *Balkanistic Forum Journal*, vol. 2, SWU “Neofit Rilski”, Blagoevgrad, pp. 228–246 (In Bulgarian).

14. Paev, K., (2009). History of Bulgarian State and Law, and Juridical education in Bulgaria. *Management and Education*, vol. V (3), pp. 202–203 (In Bulgarian).

15. Starodubtsev, G.S., (2000). The Contribution of Russian Emigration to the International Law and Science (1918–1939), Moscow, *Kniga i Biznes* (In Russ.).

16. Yanev, S., (2020). *Prof. Daniel Valchev: The problem of legal education is the way out*. Available at: <https://news.bg/education/prof-daniel-valchev-problemat-na-yuridicheskoto-obrazovanie-e-izhodat.html> [Accessed 20.10.2021] (In Bulgarian).

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# KUTAFIN LAW REVIEW

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Volume 8

Issue 4

2021

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Published and printed by  
Kutafin Moscow State Law University (MSAL)  
9 Sadovaya-Kudrinskaya ulitsa,  
Moscow 125993, Russia  
<http://msal.ru/en/>  
[msal@msal.ru](mailto:msal@msal.ru)  
+7 (499) 244-88-88

Printed in Russia  
Updated on 2021 December 23  
216 pp. – 24 × 17 cm  
Print ISSN is 2313-5395  
Online ISSN is 2410-2059



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