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Self-Regulation of Legal Professions in State-Socialism

Poland and Russia Compared

Abstract

The paper analyzes how the self-regulatory institutions of two legal professions – attorneys-at-law and in-house lawyers – developed in Poland and Russia from the second half of the 19th century until the collapse of state socialism at the beginning of the 1990s. These two countries constitute the most contrasting cases of socialist transformation in the region in terms of legal traditions and of the broader socio-political context. To adequately grasp the case differences it is necessary to include the formative period of the modern legal profession in the region. The comparative analysis uses the conceptual framework of the sociology of professions. It shows that (1) attorneys-at-law were able to preserve a certain degree of collective autonomy and self-regulation during most of the time; (2) institutional path dependencies reaching back into the pre-socialist past determine the degree of autonomy and self-regulation; (3) the discrepancy between both countries is particularly pronounced in the case of the occupational group of in-house lawyers; (4) the state-socialist regimes were, therefore, not as unifying and homogenizing as it is sometimes assumed.

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1 Introduction

Self-regulation is one of the key issues in the analysis of occupational groups which are traditionally called »professions« in English. [1] It means, speaking in the very general terms of a working definition, that organized practitioners autonomously promulgate and enforce norms which regulate their professional activities. It is a peculiar way of bringing order into a system of the division of labor. Possible ideal-type alternatives are regulation either by the state (i.e. by the legislative and by specialized executive agencies) or by private organizations (e.g. business enterprises) which decide whom to hire as direct providers of particular services. All these forms of regulation are alternatives to a situation when everybody who feels competent offers his or her services to anyone willing to pay for them – the ideal type of »free market«. [2] In reality, all abstractly described forms of regulation do exist in deferent spheres of a system of the division of labor and can be combined with each other in any particular sphere of it.

Despite the autonomous character of professional self-regulation, both of its key aspects – the promulgation of norms and their enforcement – depend on a broader framework of normative regulation provided by the state. [3] Self-regulating professions develop their norms only for their specific fields of activity, as defined by state legislation. Autonomous sanctioning practices of professional organizations are also limited, exclusion being the most severe of them. More serious (additional) sanctions for professional misconduct are imposed directly by state institutions. However, the most important contribution of state enforcement to professional self-regulation is the elimination of attempts to practice outside self-regulatory institutions. [4]

The peculiarity of self-regulation consists in the fact that some of the crucial regulatory prerogatives are allocated to an organization of those who perform activities which are to be regulated. On the one hand, this situation can be perceived as problematic because it can result in a fundamental conflict of interests. On the other hand, there are two arguments in favor of professional self-regulation: (1) in many spheres of labor activities, outsiders lack sufficient expertise to judge whether the conduct of practitioners is proper or improper; (2) norms promulgated by bodies staffed with fellow professionals are more easily accepted than regulations introduced by external powers. These two arguments constitute the main justification for granting self-regulation to some occupational groups. [5]

The term »state socialism« is used in this paper to refer to a political and socio-economic system which was established first in Russia after the October Revolution of 1917 and then, after WWII in several Eastern European countries. As regards the issue of professional self-regulation, the socio-economic aspect seems to be of primary interest. State-socialist regimes attempted to comprehensively regulate all economic activities by means of »central planning«. Despite ideological claims which suggested that supreme power was in the hands of »toiling masses«, »central planning« in the countries of the Soviet Block meant de facto that all economic activities were, at least officially, controlled by an extensive party-state administration. There was no place for self-regulating professions in the ideological blueprint of state socialism, only for façade organizations which performed the role of »transmission belts« that implement official

1 See: Hughes (1984) 376; Burrage (2006) 32.
2 See: Freidson (2001) 12.
3 See: Krause (1991) 3; Evetts (2003b) 410; Durkheim (2008) 162.
4 An occupational group which autonomously enforces its claim to exclusivity in a particular sphere of activities is more adequately characterized as »mafia«.
5 See: Bayles (1986) 34–42; DeMarzo/Fishman/Hagerty (2005) 687–688; Klimczak (2010) 33–34.

policies. In reality, there was, however, at least one occupational group which displayed some key characteristics of a self-regulating organized profession: lawyers. [6] Seen against the background of a far-reaching politicization of the administration of justice under state socialism, it may appear paradoxical.

In this paper, I will compare how regulatory institutions of two legal occupations – »attorneys-at-law« (pol.: *adwokaci* / rus.: *advokaty*) and »legal counselors« (pol.: *radcy prawni*) or »jurisconsults« (rus.: *iuriskonsul'ty*) [7] – have developed in two Eastern European countries: Poland and Russia. On the one hand, these two countries share the recent state-socialist past which was crucial, even if in an ambiguous way, for their industrial modernization and for the corresponding societal change. On the other hand, this political and economic system was implemented differently in each case due to distinct socio-political contexts. Consequently, Poland and Russia present the most contrastive cases for an investigation of professional self-regulation in an institutional environment which, by definition, was particularly inhospitable for this mode of regulation. The analysis will focus on the pre-socialist and state-socialist periods. It is difficult to adequately grasp the specific situation of legal professions in state-socialist countries without discussing their history since the late 19th century.

The theoretical framework for the comparative analysis is inspired by the sociology of professions. This academic sub-discipline is characterized by long-lasting controversies over fundamental issues. The only statement which most researchers in this field would probably agree upon is that professions are a distinct and rather privileged category of occupational groups. [8] Beyond this point, a theoretical battleground begins.

Structural functionalists explain the privileged position of professions by their crucial roles within the division of labor in industrial and post-industrial societies. According to Parsons, professional self-regulation provides for a responsible, public-good oriented application of scientific knowledge and of corresponding practical skills in those spheres of societal life which are considered to be most important by the majority of citizens. [9] Some other authors who cannot be counted among structural functionalists also emphasize this aspect. [10]

The structural-functionalist position was severely criticized by authors who focused on power wielded by organized professions and by their individual members. In this perspective, professions appear as occupational groups which have been particularly successful in practicing »social closure« – mainly by using educational and training credentials as access barriers [11] – and in persuading political decision makers to grant them »monopolistic control« over their sphere of work activities. [12] According to Larson, »professional projects« had a double purpose: they aimed at the creation of a monopoly over a particular market of services (e.g. medical treatment of health problems or handling of legal conflicts) secured by the profession's exclusive control over the »production of producers«, i. e. over the specialized training of future practitioners, [13] and at the »collective upward mobility« meaning a status enhancement of an entire professional group. [14] This criticism of the structural-functionalist perspective has contrib-

6 See: Krause (1991) 17; Shelley (1991) 68–71; Kurczewski (1994) 269.

7 While the term denoting the first professional group is easily understood by English-speaking readers, the latter may require a preliminary clarification. It refers to lawyers who are employed by a private organization or by a state bureaucracy. They are usually called »in-house lawyers« in English. However, this definition has become partly too narrow in the case of Polish »legal counselors«, many of whom started to practice on their own or in specialized law firms after the collapse of the state-socialist regime. Soviet in-house lawyers were frequently called »jurisconsults« in the English-language literature. See: Barry/Berman (1968); Giddings (1975); Luryi (1979); McCain (1983); Burrage (1990); Henderson (1992). Kurczewski used the term »legal counsel« in his article on Polish legal professions, see: Kurczewski (1994).

8 See: Larson (1977) 48; Saks (1999) 136; Freidson (2001) 106, 198; Evetts (2003a) 51, 56; Evetts (2003b) 410; Burrage (2006) 9, 29; Dewe (2006) 26; Weeden (2008) 176. Those who would disagree also would be likely to deny that there is anything special about occupational groups which are traditionally called »professions«. This position implies that the sociology of professions should be dissolved in the much broader research field of the sociology of work and occupations.

9 Parsons (1968) 536; Parsons (1973) 372.

10 See: Hughes (1984) 397; Oevermann (1996); Dewe (2006) 24.

11 See: Parkin (2008) 146–148; Weber (1972) 23–25.

12 See: Larson (1977); Johnson (1977).

13 Larson (1977) 50.

14 Larson (1977) 79.

uted to a more differentiated view of the history of professions. The »rise of professionalism« cannot be seen as merely a quasi-natural result of the transformation to industrial capitalism, but rather as an outcome of more or less successful strategies to acquire a privileged status in competition with other occupational groups. [15] Consequently, historically varying processes of »professionalization« have become one of the main focuses of the sociology of professions.

In the 1980s, another two critical discourses gained momentum. On the one hand, some theorists of Marxist provenance started to question the causal link between the rise of capitalism and that of professions. They argued that the »capitalist mode of production,« as it penetrates the spheres of labor activities traditionally controlled by professions, causes a »de-professionalization« and even a »proletarization« of practitioners who increasingly work in hierarchic organizations and hence become subjected to managerial authority as manual workers have been ever since. [16] On the other hand, social historians who focused on nascent middle classes in Continental Europe, and especially in Germany, of the late 19th and early 20th centuries, voiced skepticism as regarding the universal claim made at this time by theories of professionalization which originated in the USA or in the UK and presented organized occupational groups as the main actors in these processes. They argued that there have been other ways of how organized professions emerged in some industrial countries – in particular in Continental Europe. They coined the term »professionalization from above« to denote a process in which the state, rather than professional associations, played the decisive role especially at the initial stage of their development. Only later on did members of different professions who had already been organized in »chambers« begin to seek more autonomy from state authorities. [17]

Both threads of the professionalization debate are particularly interesting for the analysis of occupational groups in Eastern European countries during the state-socialist period. A glance at the official institutional setting of state socialism can prompt a conclusion that highly educated occupational groups were »proletarized« within this system since their members appeared to be mere cogwheels in an all-encompassing apparatus of the party-state. [18] If any collective autonomy was granted to any occupational group then it had to come »from above«, from the party-state.

In the last two decades, there has been a further diversification of research interests within the sociology of professions. Newly professionalizing occupations, especially in health-care-related services and social work, have become important research foci. [19] This current provides for some continuity in the research field, since it investigates professionalization strategies of occupational groups under changing societal circumstances. Many researchers, however, have turned their interests to practices of individual members of different professions leaving aside the question regarding collective-status aspirations, issues of market monopoly and self-regulation. Other authors proposed to analyze the possible meanings and functions of discursive references to »professionalism« in different work settings – especially in hierarchic organizations. [20] Furthermore, the very idea of professional privilege has been subjected to critical scrutiny by researchers who point to the fact that professional systems are increasingly exposed to external target-setting procedures and control mechanisms implemented by policy makers, organized clients or funding organizations. Consequently, audits, performance indicators and malpractice lawsuits replace more and more collegial referrals and disciplinary proceedings. [21] However, these authors do not go as far as to fundamentally question the very existence of professions. In contrast to some Marxist researchers, they do not advance the argument that professions entirely lose their status and their members become »proletarians«. What is rather questioned is the key role of

15 On the issue of competition over professional »jurisdictions« see also: Abbott (1988).

16 See: Derber (1982a); Derber (1982b); Derber (1982c); Spangler/Lehman (1982).

17 See: McClelland (1985); McClelland (1991); Siegrist (1990); Siegrist (1995).

18 In his analysis of the medical profession in the USSR, Field did not go as far as to characterize Soviet physicians as »proletarians«, but he used expressions »medical workers« and »an employee-group rather than profession«. See: Field (1991) 49–50.

19 See: Elzinga (1990); Dewe/Ferchhoff/Scherr (2001); Pundt (ed.) (2006).

20 Fournier (1999).

21 Evetts (2003b) 408.

professional organizations which perform self-regulatory functions. [22]

Facing this diversity of approaches and discourses, I have selected those aspects of the sociological theorizing on professions which appear to be most promising for a first attempt to compare legal professions in two post-socialist countries. First of all, I will focus on institutional aspects since the distinctiveness of professions within the much broader category of occupations seems to be justified by their specific formal status: According to Freidson, professions control their work situations to a large extent while other occupations are subjected to either market forces or hierarchic administration (or both) without any »shelter«. [23] The former maintain this specific status mainly by controlling the admission to practice at the beginning of every individual career and the conduct of practitioners after their initial admission. This idea corresponds with the concept of self-regulation discussed at the beginning of the paper. In other words, professionalism is »the third logic« (Freidson) of regulation.

2 The formative period of organized legal professions in Poland and Russia

In both countries compared in this paper, the initial formation of organized legal professions took place in the second half of the 19th century. There are some parallels between the constitution of the Russian bar and the analogous processes which occurred on the territories of the former »Polish-Lithuanian Commonwealth« despite the fact that the general political framing was significantly different.

2.1 »Sworn attorneys« in the late Imperial Russia

In the first half of the 1860s, Tsar Alexander II fundamentally transformed the legal system of the Russian Empire by initiating reforms which, inter alia, introduced »sworn attorneys« (*prisiazhnye poverennye*) whose mission was to represent defendants or parties in court. [24] The new regulation also included a provision that members of this occupation could establish their autonomous organizations, which in fact emerged soon after – first in the capital city of St. Petersburg, in Moscow and in Kharkov, and later in several provincial centers. [25] They were called »councils of attorneys-at-law« and aspired to strong self-regulation. They autonomously defined their admission requirements [26] and enforced stipulations of their codes of professional ethics. [27] The initial »professionalization from above« had created a social space within which aspirations to professional autonomy could develop further. According to Baberowski, the »advokatura« – as the bar has been called in Russian since then – was the only occupational group which claimed independence vis-à-vis the tsarist autocracy despite the fact that its institutional foundations had been initially laid by the very same monarchy during a period of institutional »modernization«. The organized bar could even be seen as a nuclear substitute for the bourgeois civil society which was still lacking in the late-tsarist empire. [28]

The nascent legal profession faced, however, serious setbacks since the mid-1870s, when the foundation of new »councils« was stopped by the tsarist authorities and a new occupational group of »private solicitors« (*chastnye poverennye*), directly controlled by the apparatus of the administration of justice, was introduced. Neither a university degree in law nor an apprenticeship with an experienced practitioner was required from those seeking to become a »private solicitor«. Both were necessary prerequisites for the admission to the profession of »sworn attorneys«. [29]

On the one hand, the bar of the tsarist Russia was able to establish itself as a self-regulated profession. It also tended to practice »social closure« which was justified by the necessity to keep moral standards high in a politically inhospitable environment. On the other hand, its real influence remained restricted to the central cities of the Empire and to some regional centers. Its cohesion was weakened by internal divisions along ethnic lines. A significant part of bar members was Jewish. An increasing competition among »sworn attorneys« prompted some of them – including several prominent bar members – to call for an »ethnically pure« Russian bar or at least for a »numerus clausus« restricting the number of new

22 See: Krause (1996).
23 Freidson (2001) 127–128.
24 Jordan (2005) 19.
25 Jordan (2005) 21.
26 Baberowski (1995) 29–59, 36–41.
27 Burbank (1995) 44–64, 53–54, 58–60.
28 Baberowski (1995) 31, 45.
29 Baberowski (1995) 34.

entrants with a Jewish background.[30] Ethnocentrism, and especially anti-Semitism, is an important factor which one has to account for when analyzing professionalization in Central and Eastern Europe.[31]

The Bolshevik revolution of 1917 initially discontinued the existence of the Russian »advokatura« altogether. The partial reconstruction of the institutional autonomy of lawyers in the early Soviet Union will be discussed below.

2.2 *The formation of legal professions in Polish-populated territories*

The formation of the Polish legal profession also started in the second half of the 19th century. However, no independent Polish state did exist at this time. The territory of the »Polish-Lithuanian Commonwealth« had been partitioned between Austria, Prussia and Russia by the end of the 18th century. The »professionalization from above« which gave birth to the nuclear structures of what later became the Polish bar (*adwokatura*) had been initiated by the occupying powers in the course of their judicial reforms.

The first bar organizations were founded in the Austrian-controlled province of »Galicia and Lodomeria« after two imperial decrees (1849 and 1867) introduced an initially restricted and later full-fledged self-regulation of attorneys-at-law in the entire Habsburg monarchy.[32] Bar chambers (*Rechtsanwaltskammern*) were formed in the major cities of Lemberg (today Lviv in the Ukraine) and Cracow as well as in several provincial centres of Austrian Galicia.[33] The capital city of Lemberg was also the hometown of the voluntary »Association of Polish Attorneys-at-law« (*Związek Adwokatów Polskich*), which was founded at a convention of the local bar chamber in 1911. This organization reached out to Polish-speaking colleagues in two other partition territories.[34]

In the German Empire, professional autonomy was granted to attorneys-at-law in 1878. One of the *Rechtsanwaltskammern* was established in the city of Posen (today Poznań), which belonged to the Polish crown until the partitions. However, the policy of the *Kulturkampf* made it very difficult for ethnic Poles to enrol in universities and even more difficult to enter the state-organized training program for judges and high-ranking state officials (the »Referendariat«) which had become the mandatory precondition for the admission to any form of legal practice including that of an attorney-at-law.[35] As a result, there were only very few Polish-speaking *Rechtsanwälte*, even in those parts of the German Empire with a majority of Polish population.[36]

The Russian-controlled territory (the so-called Congress Kingdom) was a specific case. Despite the fact that self-regulated bar organizations emerged in the Russian Empire after the judicial reforms of the 1860s, attorneys-at-law who practiced in the city of Warsaw were not permitted to create their chamber by the tsarist authorities. The Russian government feared, not without good reasons, that such an organisation would have very likely become a hotbed of Polish separatism.[37] A similar exception was made in the Georgian city of Tbilissi.[38] Consequently, there was no official organization of Polish »sworn attorneys« in the Russian partition territory until after WWI when Poland re-emerged as an independent state. Nevertheless, informal, semi-secret and, of course, voluntary associations did exist. They tried to maintain con-

30 Baberowski (1995) 53–57.
31 On ethnocentrism and anti-Semitism in the Polish bar see: Kotliński (2008).
32 Redzik (2007) 31–33.
33 Kmieciak (2010a) 62.
34 Redzik (2007) 57–58.
35 Until today, German attorneys-at-law (Rechtsanwälte) are required to be »qualified to sit as a judge under the German Judge Act« (BRAO § 4, the official English translation). This stipulation implies that they have to pass the »First State Examination« at their graduation from a department of law of a university and to pass the »Second State Examination« after two (formerly three) years of practical training called »Referendariat.« Only at this point can young jurists decide whether they want to become a judge, a prosecutor, an attorney or a higher-ranking public servant (a »Beamter«). Examination grades strongly determine their career opportunities wherever the number of positions is restricted. The only profession with no further admission barriers after successfully passing the »Second State Examination« is that of a solo-practicing attorney. Law firms, especially bigger ones, usually handpick their associates from top sections of examination rankings.
36 Redzik (2007) 33–34.
37 Redzik (2007) 29–30.
38 It is worth noting in this context that the tsarist regime stopped allowing the foundation of new bar councils in 1874 i.e. only a decade after this possibility had been introduced by the judicial reforms. Officials quickly realized that the organized bar was becoming a thorn in the side of the monarchy and its state bureaucracy. See: Baberowski (1995) 41–43.

tacts with their Polish-speaking colleagues in other partition territories, especially with the most autonomous Polish-speaking bar in the Austrian-ruled Galicia. [39]

2.3 Interim conclusion: Legal professions in the late 19th century

Some structural similarities in the professionalization of Polish and Russian attorneys-at-law in the late 19th century and at the very beginning of the 20th century can be identified. In both cases, the foundation of professional organizations which performed some self-regulatory functions was initiated by an autocratic state which often granted a quite unique sphere of autonomy to lawyers in private practice. Hence, the initial professionalization came »from above«. Very soon, however, some members of these bar »chambers« or »councils« became outspoken critics of the political status quo. Pleadings delivered in courtrooms by the most famous Russian »sworn attorneys« who defended revolutionaries in political trials were disseminated like political manifestos among anti-monarchically minded segments of the Russian »intelligentsia«. Polish attorneys-at-law in all three partition territories were at the forefront of the struggle for a »resurrection« of the Polish statehood. They perceived the states in which they lived and practiced as occupying powers. In both cases, the reference to the law promulgated by autocratic states had often a politically instrumental character: it was used to demonstrate that the executive powers did not even respect their own legal regulations and violated the very same rights which they granted to their subjects. A major difference during this period resulted from the fact that Polish lawyers, in contrast to their Russian counterparts, were exposed to three different legal traditions and three different institutional settings of professional (self-) regulation.

2.4 The organized bar in Poland during the inter-war period

A major difference in the development of the legal professions emerged during the inter-war period. The existence of the autonomous Russian bar was discontinued immediately after the October revolution. [40] Its partial reconstruction and its further evolution under the Soviet regime will be discussed below. In contrast, the Polish profession of attorneys-at-law experienced a period of about two decades of further development before its self-regulation was severely curbed by the Stalinist regime after WWII. These two inter-war decades saw the consolidation of Polish bar institutions and social identity, so much that after 1945 the Polish bar managed to keep alive and later even extend its autonomy significantly in a political environment which was, by and large, extremely inhospitable for self-regulating professions.

After Poland had re-emerged as an independent modern state in late 1918, the Austrian and the German statutes on legal professions remained in force on each of the former partition territories as long as until 1932, when a unified act on the bar was passed by the Polish parliament (*Sejm*). [41] The coexistence of different legal orders inherited from the occupying powers was a general phenomenon which characterized the entire legal and judicial system of the nascent Republic of Poland. [42]

The part of the country formerly controlled by the Russian Empire, where no organization of attorneys-at-law had been officially allowed, became a »laboratory« for new institutions regulating the legal profession. On 24 Dec. 1918, the interim Head of the State, Field Marshall Józef Piłsudski, signed a decree on the organized bar which introduced a highly autonomous but vertically integrated self-regulating organization of attorneys-at-law. [43] According to this act, all lawyers practicing in a particular court district became mandatory members of a regional bar chamber which elected its bar council and its »dean« (*dziekan*). These institutions enjoyed a far-reaching autonomy in organizing post-academic training of apprentices, including the bar examination itself, and in policing the professional conduct of their members. Such regional bar chambers, however, were not the core of the innovation. The Austrian and the German bar statutes also provided for analogous bodies. In the Austrian case, chambers were also in charge of apprentice training. The real novelty was

39 See: Redzik (2007) 29–30.
40 Burbank (1995) 64.
41 See: Redzik (2007) 38; Kmieciak (2010a) 63.
42 See: Kraft (2002) 75–116.
43 »Dekret w przedmiocie statutu tymczasowego Palestry Państwa Polskiego«, Dziennik Praw Państwa Polskiego no. 22 (Dec. 30th, 1918), poz. 75.

the Supreme Council of the Bar (*Naczelna Rada Adwokacka*), which consisted of elected representatives from all regional bar chambers and was meant to provide for a nation-wide coherence of professional self-regulation.[44] Initially, this »central« institution functioned only in the former »Congress Kingdom«. The 1932 Presidential Decree on the Regulation of the Bar[45] extended the two-level organizational structure to the entire territory of the Polish state. Bar chambers which had existed in accordance with the Austrian or the German law were transformed into regional bar chambers and included under the umbrella of the Supreme Council located in the capital city of Warsaw. The same act, however, subjected the self-governance of the Polish legal profession to a more extensive supervision by the Ministry of Justice.

Despite the extended possibilities of ministerial interference into the bar's »internal affairs«, Polish attorneys-at-law enjoyed a very significant degree of collective autonomy and self-regulation during the entire inter-war period. Their institutions became the model for the transformation of four other occupational groups into self-regulated professions. In 1933, notaries were the first to follow attorneys-at-law in founding a system of chambers. A year later, medical doctors also established their professional self-regulation. Shortly before WWII, dentists and pharmacists joined the exclusive club of Polish organized professions.[46] The development of professional self-regulation in Poland was severely discontinued by the outbreak of WWII and the following inclusion of the country into the Soviet Block.

3 Legal professions in state socialism

3.1 The genesis of the »socialist advokatura« in the USSR

Law was seen by the Marxist-Leninist doctrine as one of the major ideological instruments of class domination. Consequently, there was a general idea held by the Bolsheviks during the initial period after the overthrow of the bourgeois government that law should be abandoned altogether.[47] This attitude affected, of course, the future perspectives of those who earned their living by practicing law. The existing »councils of sworn attorneys« were disbanded in December 1917.[48] This move was certainly facilitated by the fact that most norm enforcement during the civil war operated outside courtrooms and without any reference to law. The main enforcement agents were the »Extraordinary Commission for Combating Counter-Revolution and Sabotage« (known as the »Cheka«) and firing squads of the »Red Army«. But soon after the end of the civil war, the backpedaling started and »colleges of court defenders« (*kollegii zashchitnikov*) were established in 1922. The All-Russian Central Executive Committee which issued the corresponding decree deliberately avoided the terms »attorney« (*poverennyi*) and »advokatura«. Nevertheless, officials of the »People's Commissariat of Justice« used to complain during the 1920s that late-imperial »colleges of sworn attorneys« de-facto re-emerged under the guise of new organizational structures. Only at the end of the first Soviet decade, when the »New Economic Policy« was abandoned and massive collectivization and industrialization campaigns started to fundamentally transform the predominantly rural society, were more radical changes in the regulation of the Soviet legal profession introduced.[49]

In the 1930s, the institutional foundations of the »socialist advokatura« were created. The result of this process was the 1939 Statute on the Bar of the USSR which provided for regional »colleges of attorneys-at-law« (*kollegii advokatov*) as formally »voluntary« associations of practicing lawyers. In fact, it was illegal to practice without being a »college« member, which meant that the Soviet bar was de facto »integrated«. »Legal consultation offices« (*iuridicheskie konsul'tatsii*) became additional organizational units of the »socialist bar«. They can be characterized as »collectives« of legal professionals that operated under the supervision of regional »colleges«. Steering committees (*prezidium*) of »colleges« appointed directors of all »collectives« within their territorial jurisdiction. The

44 Redzik (2007) 47.

45 »Rozporządzenie Prezydenta Rzeczypospolitej z dn. 7 października 1932 r. Prawo o ustroju adwokatury«, Dziennik Ustaw, 1932, poz. 733.

46 Kmieciak (2010b) 25–26.

47 See: Berman (1985) 16; Westen (1988) 240–241.

48 Huskey (1986) 34–79; Jordan (2005) 28.

49 Barry/Berman (1968) 12–13; Huskey (1986) 80–142; Lazareva-Patskaia (2011) 115–119.

practice of law outside »consultation offices« was not permitted. [50]

A client was represented by an individual lawyer but he or she signed contracts with lawyer's »office« represented by its director. If a client had no preference for a particular attorney or the practitioner of his or her choice could not handle the case for any reason (lack of time, conflict of interests etc.), the director had the power to allocate such a case to any other member of the »collective«. Fees were strictly regulated by instructions issued by the Ministry of Justice, which also supervised all »colleges«. A client paid at the cashpoint of a »legal consultation office« and a large fraction of the fee was withheld by the organization. Accepting money or remuneration in kind directly from a client was strictly prohibited. Violators of this rule faced severe sanctions including disbarment. Despite this fact, there is plenty of anecdotic evidence which suggests that under-the-table payments and/or »gift-giving« to Soviet lawyers were a wide-spread practice. [51]

The position of attorneys-at-law in the Soviet system after Stalin's »great break-through« was still unique as compared to all other occupational groups. On the one hand, a certain degree of collegial organization and collective autonomy was allowed despite the extensive supervisory prerogatives of the Ministry of Justice and its local bodies. The individualized client-attorney relationship also continued to exist. [52] On the other hand, members of the profession were partly »collectivized« in »legal consultation offices«. But the individualized character of client-attorney relations still left space for informal practices which could further increase the autonomy of legal professionals vis-à-vis the officially all-encompassing system of »centralized administration«. [53]

The regulatory framework of the Soviet legal profession which had been established with the 1939 Statute on the Bar was only gradually modified in the course of the Soviet history. Changes that were introduced first by the new statute passed in 1962 went in the direction of a modest extension of the formal professional autonomy. Ministerial supervision over regional »colleges« continued. [54] Article 161 of the new 1977 Constitution of the USSR included an explicit stipulation that »colleges« were in charge of granting every citizen the right to »skilled« legal representation. This regulation was interpreted as a further increase in the role of the legal profession within the Soviet system of the »socialist legality« (*sotsialisticheskaia zakonnost'*). However, the basic institutional setting within which attorneys-at-law practiced in the USSR remained unchanged after the new union framework statute on the bar and the more specific acts on the bar in individual Soviet republics were passed in the late 1970s and the early 1980s. The bar statute of the Russian Socialist Federative Soviet Republic was signed into law in 1980. Consecutively, it became the model for analogous regulations in other parts of the USSR. In her recent analysis of this legal document, Lazareva-Patskaia concluded that »colleges« remained under state control although »there were also some elements of independence and self-governance.« [55]

A significant aspect of professional autonomy was the degree of discretion in practicing the admission control which had been delegated by the party-state to the »colleges«. Law graduates of Soviet universities had to apprentice (*stazhirovat'*-

50 Huskey (1986) 215–222; Jordan (2005) 29–30.

51 Rand reports that even a special term was coined to denote these informal fees: MIKST, as they were called, was the Russian abbreviation for the »maximal utilization of the client above the statutory fee.« See: Rand (1991) 12.

52 According to initial evidence gathered by the author of this paper in form of biographic interviews with attorneys-at-law practicing in the city of Moscow, Soviet lawyers tended to develop a »private practice« (*chastnaia praktika*) within a few years after their bar admission. It means they were working mainly for clients who had deliberately chosen them. They also used to keep their case files at home and not in their »legal consultation offices«.

53 In this context, it can be hypothesized that the autonomy informally gained by individual lawyers vis-à-vis the party-state apparatus was mediated by their social »embeddedness« within the »legal consultation office«. This hypothesis is based on the results of my previous research which indicated that informal socioeconomic activities and the pursuit of particularistic goals in the Soviet society was only possible in the long run with the support of local collectives. Members of these collectives were mutually protecting each other from official sanctions for their »anti-socialist behavior«. See: Mrowczynski (2005); Mrowczynski (2010) 174–186. This is possibly a very important dimension of the individual professionalization of lawyers in all state-socialist countries. It requires further detailed research.

54 Barry/Berman (1968) 14; Lazareva-Patskaia (2011) 125–128.

55 Lazareva-Patskaia (2011) 132–133.

sia) for about half a year under the supervision of an experienced attorney-at-law (called »patron«) before they could become a full-fledged member of a »college« and started to practice independently in a »legal consultation office«.[56] Additionally they wrote a thesis on a practical legal topic which was supervised by another bar member and defended by its author at a session of the steering committee of the »bar college«. In the 1980s, the period of apprenticeship was extended to nine months.[57] As a result, »high rates of self-recruitment« could be observed and »fathers and grandfathers were often mentioned« in interviews which Burrage conducted with Moscow and Leningrad lawyers in the late 1980s.[58] This phenomenon is a frequently observed characteristic of an autonomous self-regulating profession.

3.2 *Legal practitioners in the Soviet economy*

Another important development in the history of legal professions under the Soviet regime was the jurisdictional[59] division between attorneys-at-law and »jurisconsults«, i.e. in-house lawyers employed by state organizations, meaning both state »enterprises« and organizational units of the party-state apparatus. This division started to emerge during the formative period of the »centrally planned« economy. Although the proclaimed goal of centralized economic planning was a comprehensively harmonious regulation of the entire national economy, conflicts between different units of the »centrally planned« economy in fact regularly occurred. Special »state arbitration commissions« were established to resolve these inner-bureaucratic disputes. In contrast to »arbitration« in a market economy, the proceedings of the Soviet »state arbitration« had a mandatory character. Hence, »state arbitration commissions« resembled specialized courts although the overarching principle of their adjudication was not »justice« or »legality« but the »benefit of the national economy«. It implied that legitimate claims of a party could be dismissed if the interests of an opposing organization were considered to be »more vital« for the development of the national economy.[60] Nevertheless, there was an adversarial aspect in the Soviet »state arbitration« and representing his or her employing organization was a key aspect of the job of a »jurisconsult«.[61]

In the 1920s and 1930s, Soviet state organizations often used services of individual attorneys-at-law or signed cooperation agreements with »legal consultation offices«. Hence, there was still some sort of competition between in-house lawyers and bar members. The 1939 statute formally barred members of »colleges« from representation in »state arbitration« proceedings.[62] The jurisdiction of the bar was restricted to legal representation of individuals. However, the shortage of adequately trained personnel in state organizations caused that exceptions to this general rule were allowed in »particular cases«.[63] At the same time, Soviet in-house lawyers were often asked by rank-and-file employees of their organizations for consultations on private matters.[64] More problematic were cases when such individual legal problems resulted from employment disputes in the workplace. »Jurisconsults« faced then serious conflicts of interests.[65] The jurisdictional division, although formally institutionalized, was far from perfect.

3.3 *Interim conclusion: Legal practitioners in the USSR*

In the 1930s, the state-socialist »model« of legal professions was established in the Soviet Union. Its cornerstones were: (1) the formal distinction between legal services for individuals provided by attorneys-at-law and legal services for organizations provided by »jurisconsults«, (2) extensive supervision by the Ministry of Justice, an integral part of the party-state regime, over the bar organized in semi-autonomous »colleges of attorneys-at-law«, and (3) the partial »collectivization« of the legal practice of »attorneys-at-law« in »legal consultation offices«. Each of these principles is to be taken with a grain of salt, as it was mentioned before.

Beginning in the late 1940s, the basic stipulations of this »model« were introduced into those

56 See: Pospelov (2006) 135.
57 According to evidence from interviews conducted so far in the city of Moscow by the author of this paper.
58 Burrage (1990) 441.
59 On the concept of professional »jurisdictions« see: Abbott (1988).
60 Shelley (1984) 93.
61 Barry/Berman (1968) 40; Giddings (1975) 199; Shelley (1981–82) 452; Westen (1988) 374–375.
62 Luryi (1979) 173–174.
63 Burrage (1990) 449.
64 Shelley (1984) 116.
65 Shelley (1984) 34.

countries of Central-Eastern Europe which came under the USSR control as a result of the Soviet victory over the Nazi Germany. However, some national specifics in the sphere of regulated legal professions managed to prevail as the following discussion of the Polish case will show.

3.4 The organized bar in the »People's Republic of Poland«

The Polish bar was very severely affected by WWII. According to rough estimates, more than half of all the attorneys-at-law who had practiced in the country in 1939 did not survive until 1945. The death toll was particularly high among the significant fraction of the profession classified as Jews by the Nazi regime, and among the youth (apprentices) who were directly involved in the armed resistance. Nevertheless, even under the extremely hostile conditions of the German occupation, the bar maintained, as far as it was possible, its corporative institutions within the broader framework of the Polish »underground state« (*państwo podziemne*). [66] The advancing Soviet troops posed, however, a new threat to these institutions since Stalin planned to install a servile »communist« regime in Warsaw. In the years directly following the end of WWII, thousands of non-communist members of the Polish resistance to the German occupation were persecuted by the new rulers. Later, in the first half of the 1950s, even those communists who were active in Poland during the German occupation became victims of the »Ministry of Public Security« – the Polish equivalent to the Soviet »People's Commissariat of Internal Affairs« (NKVD).

Professional organizations, including the bar, started to emerge from the underground during the first volatile years after the war. But soon they faced a repressive policy of the consolidating Stalinist regime which, in its all-encompassing centralization drive, foresaw virtually no space for occupational autonomy. Four out of five self-regulating organizations of professionals which existed in Poland before the war were formally outlawed. It is remarkable that the only occupational group which retained its formal collegial status was the bar. However, its self-regulation was reduced in the early 1950s to little more than a mere façade. Leaders of regional bar councils and of the Supreme Council were appointed by the party-state regime. Two »verification« campaigns resulted in the disbarment of many attorneys considered »politically unreliable« by the rulers. [67] At the same time, individuals who never completed the post-academic training program of the bar (an extensive apprenticeship called »*aplikacja*« in Polish) or who, in some cases, had not even studied law at all were admitted. The professional organization was de facto stripped of its prerogative to license legal practitioners.

Most Polish attorneys disapproved of these administrative measures and often described them in their private conversations literally as »littering« (*zaśmiecanie*) of the profession. [68] The apprentice program was, however, still operating and provided an alternative path to professional socialization besides politically motivated appointments. Hence, these severe attacks on the institutions of professional self-governance had initially changed little in the way law was practiced by the majority of attorneys who were not involved in politicized trials.

The 1950 statute on the bar which replaced the amended pre-war statute introduced a »higher« (because socialist) form of »collective practice« in »teams of attorneys« (*zespoły adwokackie*). [69] They were intended to become the Polish version of the Soviet »legal consultation offices«. However, this organizational form was not declared mandatory at this time. Consequently, most attorneys continued to practice on their own. Most of the »teams« which emerged at this time were either little more than conglomerates of individual legal offices or de facto law firms. The latter phenomenon was particularly annoying for ministerial officials who frequently criticized the »exploitation« and »proletarization« of young lawyers and apprentices by their older colleagues and »patrons«.

66 Redzik (2007) 78–88.

67 Zaborski who analyzed the formative period of the socialist bar in nascent »People's Poland« argues that the first verification conducted shortly after the end of WWII was in part legitimate, even if its criteria also included a backdoor which allowed for the disbarment of political dissenters. It was mainly the second verification in the early 1950s which resulted in a Stalinist purge of the Polish legal profession. See: Zaborski (2008) 430, 439.

68 Redzik (2007) 92–95; Zaborski (2008), S. 441–443.

69 Zaborski (2008) 436–437.

3.5 *Diversification of legal practice in socialist Poland*

During the 1950s, the economy of »People's Poland« was rapidly industrialized. At the same time, it was subordinated to a system of »central planning« which emulated the Soviet »model«. One of the consequences of this transformation was a rapidly growing sector of state organizations which also required a procedure for dispute settlement. The Soviet »state arbitration« provided an institutional template here. However, many state organizations still relied on attorneys-at-law until the early 1960s.[70] For many members of the Polish bar, a part-time employment as a »legal counselor« (*radca prawny*) was a very convenient opportunity to stabilize their incomes by adding a fixed salary component to fluctuating fees. The criticism of these practices came from higher ranks of the economic administration. The main objection was that attorneys who simultaneously practiced as part-time legal counselors were less devoted to their client organizations. A jurisdictional division between attorneys-at-law and legal counselors was presented as a solution of this alleged problem.[71] It also corresponded with the Soviet model.

In December 1961, the Council of Ministers issued the Resolution No. 533, which regulated the provision of legal services to state economic organizations (»enterprises«) and effectively barred members of »chambers of attorneys-at-law« from employment as legal counselors. Because of a shortage of legally-trained personnel in state »enterprises«, a transitory period of two years – due to expire at the beginning of 1964 – was granted. The document also included rules for a post-academic training program (*aplikacja*) for future in-house lawyers. Since there was no self-regulating organization of in-house lawyers at this time and the Council of Ministers had no intention to create one, regional commissions of the state economic arbitration (*Państwowy Arbitraż Gospodarczy*) were charged with the task of apprentice training. According to the rules, graduates from law departments of universities were first to be hired as junior in-house lawyers by state companies and then included in the training program. The practical part of it took place within the organization itself. A full-fledged legal counselor of an organization acted as a »patron« of an apprentice. The theoretical part was organized by the regional arbitration commission which also examined the adepts after two years of training. Only those who passed this examination could become »legal counselors«.[72]

These detailed stipulations regarding the training of future in-house lawyers in state-socialist organizations constituted a very important difference which distinguished Polish »legal counselors« from their Soviet counterparts: »jurisconsults«.[73] In the USSR, the access to in-house lawyer positions was not strictly regulated. »Jurisconsults« started their careers immediately after graduation. This occupation was often the least chosen by law graduates since it was poorly paid (especially at the beginning) and commanded a rather low social prestige. Many »jurisconsults« started their careers as a result of the mandatory job allocation called »raspredelenie« in Russian. It was not their conscious choice to become a »jurisconsult«[74] but rather the consequence that all other options were closed to them. Furthermore, it was not uncommon that legal problems of Soviet factories were handled by individuals with no legal training at all. They were either subaltern clerks in the case of petty problems, or top managers – most of them engineers by training – if the dispute was serious or involved higher ranks of the economic administration. Already at this stage, one can discern a significant difference in the professionalization potential of in-house lawyers in both countries compared.

This potential was additionally increased in the Polish case by closer links of many legal counselors to the organized bar. A new statute on the bar was passed by the Polish Parliament in December 1963.[75] It additionally cemented »from the other

70 Kwiatkowska-Falęcka (2010) 28.

71 See: »Problem adwokatury w organizacji aparatu obsługi prawnej gospodarki uspołecznionej« – an unpublished report prepared by the Supreme Arbitration Commission and sent to the Ministry of Justice in October 1963, Archiwum Akt Nowych in Warsaw, zesp. 285, 1/396, pp. 23–39.

72 See: Kwiatkowska-Falęcka (2010) 28–30.

73 This difference and other differences which will be discussed below make it necessary in my eyes to denote these occupational groups by using two different words.

74 Shelley (1984) 23–25, 45–46.

75 Although in the second half of the 1950s, during the post-Stalinist »thaw«, there were some amendments to the previous statute which introduced significant elements of genuine self-regulation, the 1963 law was disappointing for most Polish attorneys-at-law.

side« the separation of the jurisdictions which had already been outlined by the government Resolution No. 533. According to the new statute, all attorneys-at-law were obligated to practice in »teams« modeled after Soviet »legal consultation offices«. They were barred from signing employment contracts. This meant in effect that they could not practice as attorneys and remain employed as »legal counselors« at the same time; they had to choose one of these options. At this time, a significant fraction of attorneys-at-law was in simultaneous part-time employment. Some of them decided either to sign for a fulltime position with an employer-organization or to work part-time simultaneously for several state »enterprises«.[76] Bar members who decided to become »legal counselors« after 1963 were, however, not disbarred. They only quit their membership in their »attorneys' teams« if they had already joined one and their professional-activity status was »put on hold« (*zawieszenie wykonywania zawodu*). Within the organized bar, semi-formal »circles« of »legal counselors« existed. These connections proved to be important for the further professionalization of Polish in-house lawyers during the next three decades.

3.6 The Polish bar struggling for more autonomy

The extension of ministerial supervision over the profession after a short period of reduced administrative pressure was the main reason why the 1963 statute on the bar was perceived by Polish attorneys-at-law as a big disappointment. The new legal act did not provide for the institution of the Congress of the Bar which had been introduced only in 1956. The first Congress gathered in Warsaw in October 1959 and elected Franciszek Sadurski, a highly respected attorney-at-law, as the president of the Supreme Council of the Bar. The next Congress had been scheduled for 1962 when the term of the elected bar leadership was due to expire, but its organization was postponed under ministerial pressure until the new statute which provided for no such institution came into force. Sadurski resigned from the presidency of the Supreme Council in protest against the new statute which reduced professional self-regulation as compared to the 1956 bar reforms.[77] He was replaced by Stanisław Godlewski, a member of the »Polish United Workers' Party« who presided over the Polish *adwokatura* during the rest of the 1960s. Then a reform-minded member of the ruling party, Zdzisław Czeszejko-Sochacki, took over for the next decade.

Despite an increased formal ministerial control, the Polish bar did not lose all of its autonomy after 1963. In the »thaw« year of 1956, the Supreme Council started to publish a periodical which one year later resumed the name of the pre-war bar journal *Palestra*. The editorial board was constituted mainly by attorneys who were known for their skepticism regarding the state-socialist regime.[78] *Palestra* has been published without interruptions since the mid-1950s until today. In the 1970s, it became an important forum for discussing fundamental reforms of the Polish legal profession. Furthermore, one of the autobiographic interviews with Polish legal professionals conducted by the author of this paper in 2010 indicates that at least the regional bar chamber in Warsaw was a center of cultural and intellectual activities which indirectly questioned the legitimacy of the state-socialist regime as early as in the 1960s.[79] These activities continued during the next decade and intensified in 1980–1981, when the oppositional mass-movement »Solidarność« emerged. Polish attorneys-at-law combined their involvement in political democratization with the postulate of full-fledged self-regulation for their profession. »Free bar« independent from state power was presented as one of the major pillars of a law-based political system that respected civic rights.

During the rebellious period of 1980-1981, the official institutions of the bar were not the only professional organizations which attempted to voice attorneys' visions in public. The voluntary

76 Resolution No. 533 stipulated that a »legal counselor« could cumulate part-time jobs up to one-and-a-half of a statutory full-time position and be paid accordingly. In reality, informal employment schemes which made it possible to circumvent this restriction were frequently developed, Kurczewski (2002) 13. There was a similar regulation in the USSR, Shelley (1984) 34.

77 Redzik (2007) 112; Zaborski (2008) 446–447.

78 Zaborski (2008) 443–444.

79 Interview transcript ID code 03_RA_PL_M, lines 200–359, 1688–1691.

»Association of Attorneys-at-law and Apprentices« *(Stowarzyszenie Adwokatów i Aplikantów Adwokackich)* was founded in September 1980 in the industrial city of Łódź. Soon, lawyers from all over the country started to join this association which vocally supported the ideas advanced by the independent labor union »Solidarność«. In early January 1981, the All-Polish Congress of Attorneys-at-law took place in Poznań.[80] It hotly debated the rapid changes that took place in the country since the protesting workers of the »Lenin shipyard« in Gdańsk signed an agreement with the state power which, inter alia, provided for independent labor unions – something unseen in state-socialist countries until that time.[81] The bar realized that the socio-political environment was rapidly changing in favor of its longstanding interest in professional autonomy because »de-centralization« and »self-governance« *(samorządność)*[82] were among the key demands of the »Solidarność« movement. After the aforementioned Congress, which was not sanctioned by the 1963 statute on the bar but went unopposed by the state power, a special committee of the Supreme Council was charged with drafting a new legal act which should provide for far-reaching autonomy of the legal profession. A statute proposal was submitted to the national Parliament (Sejm). It was the third such document prepared by the organization of attorneys-at-law in a decade, but the previous two – both published in the 1970s – never made it that far. The first two drafts were dismissed by the government and never became subject to parliamentary deliberations. In the early 1980s, when the third draft entered the legislative procedure, several prominent attorneys-at-law were members of Parliament.[83] Zdzisław Czeszejko-Sochacki who was the president of the Supreme Council of the Bar in the 1970s, sat in the »Sejm« for the »Polish United Workers' Party«. Maria Budzanowska, his deputy since 1979, represented a small political party called »Democratic Faction« (*Stronnictwo Demokratyczne*).[84] Both were directly involved in the process of further inner-parliamentary deliberations which finally resulted in a new statute on the bar passed on 26 May 1982.[85] This legal act[86] granted far-reaching professional self-regulation to the organized bar. The catalogue of regulatory prerogatives delegated to regional chambers and their national umbrella organization, the Supreme Council of the Bar, would be impressive even in a Western European country. Regional organizations of attorneys-at-law controlled the admission process, because they were in charge of organizing an extensive four-year training (apprenticeship) that concluded with a bar exam taken by adepts before panels consisting of bar members.[87] Supervision by the Ministry of Justice was restricted. The prerogative of general supervision over the bar was shifted to the State Council – a rather representative body which performed the official function of »collective head of state«. This fundamental reform of the regulation of the legal profession was very surprising because the legislative process was concluded after the martial law had been imposed by the new leadership of the country on 13 December 1981. The military coup abruptly discontinued the radical political changes which had taken place since

80 See the special edition of the *Palestra* journal, no. 3-4 (1981) where the proceedings of the Congress were published.

81 In the second half of 1980, the Polish party-state regime was losing ground. Even within the »Polish United Workers' Party«, »horizontal« initiatives of rank-and-file members criticized the leadership.

82 This is the Polish word for self-regulation.

83 This is also an important difference between Poland and the Soviet Union, where lawyers were barely represented in the top party leadership and in the Supreme Soviet.

84 Officially, there was a multi-party political system in the People's Republic of Poland. Besides the dominant »Polish United Workers' Party« there was a group called »United Popular Faction« (*Zjednoczone Stronnictwo Ludowe*) which was meant to attract rural population and the aforementioned »Democratic Faction« – an electoral offer for the »socialist intelligentsia«. All three political groups constituted the »National Unity Front« which presented a joint list of candidates for national elections. Hence, the multi-party system was, by and large, a fiction. Nevertheless, there were some real differences in details. The »Democratic Faction« was the most reformist and liberal segment of the official party system.

85 Redzik (2007) 115–117.

86 Ustawa z dn. 26 maja 1982 r. Prawo o adwokaturze, Dziennik ustaw 1982, poz. 124.

87 Under the previous 1963 statute, a law school graduate had to apprentice first for two years at the judiciary and then for another three years with an attorney-at-law. The entire period of the apprenticeship was longer, but the bar controlled only part of the post-academic training. Under the new statute, the organized profession gained control over the entire process of admission. The period of required apprenticeship was the longest among all legal professions. Judges and prosecutors were trained within three years after graduation; legal counselors – within two years.

the summer of 1980. The independent labor union »Solidarność« was outlawed and many of its prominent members were detained without trial. A reform that substantially extended the autonomy of a professional group which even before was particularly critical of the party-state regime confronts researchers with a puzzle and still calls for a comprehensive explanation.[88] A prominent bar member interviewed by the author of this paper in June 2010 speculated that the highly unpopular leadership of the martial-law regime launched its own program of reforms aimed at a »rebirth of socialism«. In this context, granting extensive autonomy to the bar was possibly meant as a signal that not all screws were going to be tightened.[89]

The organized profession of Polish attorneys-at-law was not willing to express its »gratitude« to the new leadership of the party-state regime. It preferred to take seriously its role as a nucleus of the civil society in a repressive political environment. The first Congress of the Bar organized in accordance with the new 1982 statute in 1983 elected Budzanowska as the president of the Supreme Council. In 1980–81, she openly sympathized with the »Solidarność« movement. It also adopted two resolutions concerning the political situation in the country. One of the resolutions appealed to the state power to respect human and civil rights; the other condemned the persecution of former members of the outlawed labor union »Solidarność«. Such open criticism caused a bitter standoff between the government, represented by the Ministry of Justice and the organized bar which ended with the resignation of Budzanowska. The Ministry of Justice filed a lawsuit with the Supreme Court against the bar arguing that its Congress had overstepped its prerogatives by addressing general political questions in its resolutions.[90] According to an attorney who had been close to the Supreme Council leadership in the first half of the 1980s and who was interviewed in June 2010 by the author of this paper, a simultaneous blackmail action was taken by state authorities against the bar. Tax inspectors conducted massive investigations and accused numerous attorneys-at-law of accepting under-the-table payments from clients.[91] It was not difficult to organize such a »campaign« because these practices were apparently wide-spread. However, the goal was not to uproot »corruption« among lawyers but to exert pressure on their self-regulating organization. After Budzanowska resigned from the position of Supreme Council president in 1985, the cases investigated were simply dropped and none of the attorneys accused had to stand trial.

The last decade of state socialism in the People's Republic of Poland presents a very ambivalent picture as regards the situation of the organized bar. On the one hand, the profession was able to achieve a very high degree of collective autonomy and self-regulation granted by the 1982 statute.[92] Prominent bar members were directly involved in the legislative process. The new statute was passed during the martial law – a period when attorneys-at-law had the opportunity to establish a reputation in the eyes of the population, most of whom disapproved of the military coup at this time, as the solemn defenders of persecuted opposition activists and of the idea of the »Solidarność« movement. On the other hand, the autonomy of the bar was severely bruised by the massive administrative attack launched after the organized profession had voiced criticism of the political regime. Nevertheless, this autonomy was never formally discontinued. As the dawn of the real-existing socialism began in the second half of the 1980s, the profession of Polish attorneys-at-law was integrated in a relatively strong self-regulating organization which has proven to be a vital institutional »asset« in turbulent times of the post-socialist transformation.

3.7 The emergence of a second organized profession in state-socialist Poland

It has already been mentioned that Polish in-house lawyers employed by socialist organizations were granted a jurisdictional »shelter« in the first half of the 1960s, after Resolution No. 533 and the 1963 statute on the bar effectively excluded attorneys-at-law from the provision of legal services to »units of the nationalized economy«.[93] The access to this »shelter« and the conduct of practitioners within it were, however, regulated not by the

88 Redzik (2007) 101.
89 Interview transcript ID code: 03_RA_PL_M, lines 1692–1715.
90 Redzik (2007) 117–120.
91 Interview transcript ID code: 01_RA_PL_M, lines 466–487.
92 See: Kmieciak (2010a) 69.
93 Kurczewski (1994) 272.

occupational group itself, but by the »state arbitration« apparatus. During the following two decades, the foundations of a professional self-governance of »legal counselors« were created in a struggle against the state arbitration commission which supervised the profession. This struggle intensified in the late 1970s and during the »Solidarność« period, when voluntary associations of »legal counselors« emerged.[94] In 1981, several drafts of a statute which should regulate the nascent profession were submitted to the Parliament. Each of these drafts provided a different extent of collective professional autonomy, ranging from the petrification of the status quo – as preferred by the state arbitration commission – to full-fledged professional self-regulation proposed by the voluntary »Association of Legal Counselors in Poland« (*Stowarzyszenie Radców Prawnych w Polsce*).

The legislative process lasted well into 1982, i.e. into the early phase of the martial law. It was paralleled by the aforementioned parliamentary debate on the fundamental reform of the bar statute. The outcome was a compromise between the aspirations of a majority of voluntarily organized »legal counselors« to self-regulation and the conservative position of the state arbitration apparatus. The statute passed in early July 1982[95] stipulated limited self-governance of legal counselors. Its institutional structure emulated the organization of the Polish bar. All legal counselors practicing in a particular region became mandatory members of a »Regional Chamber of Legal Counselors« which elected Regional Councils, a »dean« and his or her deputies. On the national level, all members of the profession constituted the »National Chamber of Legal Counselors« (*Krajowa Izba Radców Prawnych*) which elected a »National Council of Legal Counselors« with its president and a steering committee.[96] The main distinction between both organized legal professions was the extent of their control over professional training, admission and standards of practice.[97] As it was stated in the previous section, the 1982 statute on the bar delegated far-reaching control of these key aspects of the professional status to the organized profession itself.[98] In the case of »legal counselors«, all these functions were still performed by regional commissions of state arbitration. The self-governing bodies of the profession participated in these proceedings through representatives on panels and commissions which were headed by the arbitration personnel.

In the sphere of administrative supervision, there was a shift towards the Ministry of Justice. Until 1982, legal counselors were supervised mainly by state arbitration, which was part of the extensive apparatus of the »centrally planned« economy. After 1982, the sub-department (*wydział*) which supervised the bar extended its jurisdiction to the newly created professional organization of legal counselors.

Furthermore, the statute on legal counselors has substantially increased the individual autonomy of practitioners vis-à-vis their employer-organizations. It stipulates that a legal counselor can be dismissed from work only after a consultation with representatives of his or her regional chamber. Also reviews of legal counselor's professional performance require an opinion by a representative of the chamber.[99]

The 1982 statute was a historical watershed for the nascent profession of legal counselors in Poland. Although it did not provide for an organization of all practitioners with crucial prerogatives which would allow calling it full-fledged professional self-government, it created a foundation which has proven to be crucial for the further professionalization of legal counselors after the collapse of the state-socialist regime. It was not a pure »professionalization from above«, because grass-root initiatives of practitioners played an important role in this process.

The situation of »jurisconsults« in the USSR was very different. There was no formal requirement of

94 See: Zarys historii powstania samorządu radców prawnych, cz. I (2002) 129–145.

95 Ustawa z dn. 6 lipca 1982 r. o radcach prawnych, Dziennik Ustaw 1982, poz. 145.

96 Here, a certain difference as compared to the self-governance of attorneys-at law can be noticed: the latter profession had no nation-wide chamber. The Supreme Bar Council was an umbrella organization of regional chambers with their regional councils. This was, however, a minor difference.

97 Kwiatkowska-Falęcka (2010) 32–35.

98 Regional bar chambers were in charge of the extensive post-academic apprenticeship, bar examinations and disciplinary proceedings.

99 Ustawa z dn. 6 lipca 1982 r. o radcach prawnych, Dziennik Ustaw 1982, poz. 145, art. 19 ust. 1.

additional post-academic training. Graduates of law departments learned on the job by trial and error. The Soviet »arbitration« was more strongly integrated into the system of the »planned economy« as compared to the Polish case. Most disputes between state »enterprises« were decided by arbitration panels within a ministerial hierarchy (*vedomstvennyi arbitrazh*). Hence, most of the adjudication was not insulated in a peculiar organization staffed exclusively with personnel trained in law, as was the case in Poland. Supervision of the work of individual in-house lawyers in state organizations was mainly performed by legal departments at the higher level of the economic administration. [100] As a consequence, Soviet in-house lawyers remained atomized within the vast system of the »centrally planned« economy and never developed into an organized profession. Only during the »perestroika« period has there been a short-lived discussion about a professional association of »jurisconsults« in the journal *Khoziaistvo i pravo* (Economy and Law) [101] but it ended as the state-socialist economy began to crumble at the end of the 1980s.

4 Conclusions

Attorneys-at-law were the only self-regulated, at least partially, occupational group in both state-socialist countries. Bar organizations also performed a function of »bureaucracy shelters«, because they provided for some degree of collective and individual autonomy in a political system which aspired, however imperfectly, to total administrative control over all spheres of societal life. The degree of professional autonomy for lawyers varied in time: a general trend towards increased self-regulation of the legal profession can be observed in both countries especially during the late-socialist period. Administrative supervision over the self-regulated bar remained, nevertheless, very significant. Collective autonomy could be defended and extended mainly through bargaining processes between the bar leadership and representatives of the party-state regime.

Professional autonomy was significantly more extensive in Poland than in the USSR. In other words, the Polish bar was more successful in pursuing its »professional project« (Larson). The key actor was the Supreme Council of the Bar – a national organization which had emerged already in the pre-socialist period. Another important difference was the transformation of Polish in-house lawyers into a proto-profession during the 1980s. Their organization emulated the institutional structure of the Polish bar, but it initially lacked key self-regulatory prerogatives. It acquired these prerogatives only at the early stage of the post-socialist reforms which dismantled state arbitration together with the entire institutional setting of the »centrally planned« economy. [102]

The development of self-regulating institutions of legal professions in both countries has a significant path-dependent component which proved to be stronger than the revolutionary aspirations of the state-socialist regimes. After short initial periods when professional self-regulation was abandoned, bar organizations were soon re-introduced and pre-socialist institutions served as templates – although with significant modifications. Older practitioners who survived wars and revolutionary changes provided for an additional continuity as regards the habitual content of practices within the re-created institutions. For these reasons, it seems to be particularly important that the Polish bar had developed for two decades longer than its Russian counterpart before its autonomy was severely curbed following the introduction of the Stalinist regime in the second half of the 1940s. The twenty years between WWI and WWII appear as the formative period of the institutional (but also of the habitual) foundations of the Polish legal profession. During the inter-war period, Polish attorneys-at-law operated within a state order which was not perceived by them as entirely illegitimate and hostile, although there certainly were some serious democratic and rule-of-law deficits after the military coup of 1926. The Russian bar lacked such consolidation period in a bourgeois-liberal environment.

Legal professions in both countries entered the volatile period of post-socialist transformations following their different paths of development. In Poland, a very strong »bureaucracy shelter« provided by regional chambers operating under

100 Giddings (1975) 186–188.
101 Henderson (1992) 159.
102 Fatyga (2002); Żuławski (2002) 136; Kurczewski (2002) 14–15.

the national umbrella of the Supreme Council of the Bar could be transformed into an initially quite effective »labor market shelter« which allowed to maintain strict control over access to the profession during the first post-socialist decade. Legal counselors were able to extend the prerogatives of their initially imperfect self-regulatory institutions and to establish their own »labor market shelter«.

The situation in post-soviet Russia was very different. Attempts to found a union-wide organization of lawyers started only at the end of the 1980s when the entire state-socialist order entered a phase of increasingly chaotic dissolution. The »Union of the Attorneys-at-law of the USSR« was unable to prevent or to stop the process of mushrooming of »parallel colleges« which undermined professional self-regulation by established regional organizations of the bar. As a result, the number of individuals who started to call themselves »attorney-at-law« (*advokat*) during the first post-socialist decade in Russia grew fourfold or even fivefold according to different estimates. Russian in-house lawyers did not even attempt to establish themselves as an organized profession. However, many of them used the opportunity resulting from the de-facto collapse of professional self-regulation by the bar to practice independently.

The second post-socialist decade has brought further changes in both countries. These developments require an analysis which would focus on the impact of post-socialist transformations, including the fundamentally changing role of the state, on institutions of professional self-regulation. It is the next step in a comparative research on the development of legal professions in Central and Eastern Europe.

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