



**5th LCSR International Annual Conference
«Cultural and Economic Changes under Cross-national Perspective»**

Community of Attorneys and the Quality of Law Enforcement in Russian Regions

Anton Kazun & Andrei Yakovlev

The International Center for the Study of Institutions and Development,
National Research University Higher School of Economics

Motivation

- Traditional focus in the literature on **independent judiciary** as key issue for introduction of rule of law
- But independent court can provide equal opportunities for litigants only if both parties has access to comparable resources. That is not only about money but also about legal expertise and competence → Independent court can not operate in the absence of strong and independent lawyers community. They are two sides of one coin.
- The reason for our interest to attorneys' professional corporation in Russia
- Main questions:
 - The role of attorneys in legal system?
 - Evolution of attorneys corporation?
 - Opportunities for attorneys to influence on development of legal system?

Lawyers as «gatekeepers» of social changes [Silbey, 2005; Marshall, Hale 2014]:

Legal mobilization – lawyers as intermediaries between the authorities and part of the population: migrants [Kawar, 2011], convicts [Ratner, 2007], people suffering from serious diseases [Arrington, 2014], etc.

Mobilization of lawyers - lawyers as a professional group actively participate in political change:

- **Case of Taiwan:** «lawyering against the repressive state» - cooperation of private lawyers with political opposition and business [Winn & Yeh, 1995].
- **Case of Pakistan:** lawyers protests in Pakistan in 2007 after the decision of President Musharraf to fire for political reasons chairman and several judges of Supreme court [Faqir, Islam & Rizvi, 2013].

Russian historical context

Soviet time: absence of rule of law and marginal role of legal profession. However – elite needed for competent defense of their interests in some special fields (criminal law and family law) → High autonomy of attorneys: small well-paid professional corporation with high entry barriers and high ethical standards

1990s – contradictory trends:

- Privatization and marketization → more complicated regulation and high demand for legal services
- Weak state capacity → ‘state capture’ and increase of corruption
- Lack of formal regulation of legal profession → thousands of new people came to the profession (first of all fired from law enforcement agencies) → decline in professional standards, attorneys serving as ‘intermediaries’ between clients and investigators, prosecutors or judges

Russian context of 2000s

Legal system:

- Power vertical' and Improvement of state capacity in early 2000s. Attempts to create 'order' after 'chaos' of 1990s with huge development of regulation
- Reform of court system (since mid 2000s) → independence from other actors but subordination to the state. Close links of courts to law enforcement agencies and **“accusatory bias” (less than 1% of acquittals)**. However: differences between arbitration (commercial) courts and courts of general jurisdiction (criminal courts). Higher transparency and better quality of decisions in first case – as response to demand for conflict resolutions from private business
- Limitation of political competition (especially after Yukos affair in 2003-2004), control on mass media, weak civil society and additional restrictions on activity of NGOs → law enforcement system started to work for private interests (corporate raiders – Firestone 2010, Gans-Morse 2012, Rochlitz 2014 etc) or simply for itself with **huge violation of human rights** (Gerber & Mendelson 2008, Paneyakh 2014 etc).

Attorneys community:

- The process of self-organization: associations and guilds (since late 1990s)
- May 2002 – Federal law No.63-FL: Federal and regional chambers of attorneys, mandatory membership, qualification exams, high level of autonomy and self-governance.
- **Independent but not influential professional corporation?**

The comparison of attorney's corporation of Russia and European countries

№	Country	Total number of attorneys	Attorneys per 100,000 citizens
1	Luxembourg	1903	372
2	Greece	41794	370
3	Italy	211962	350
4	Great Britain	165128	299
5	Cyprus	2400	298
...			
10	Germany	155679	190
11	Bulgaria	11825	161
12	Belgium	16517	152
13	Hungary	12099	121
...			
16	Czech Republic	10158	97
...			
20	France	51758	80
21	Poland	29469	77
...			
24	Estonia	788	59
...			
27	Russia (only attorneys) *	70232	48,1
28	Finland	1893	35

Approximately 70, 000 attorneys in Russia - relatively small corporation in comparison with Europe

but

hundreds of thousands of private lawyers (without the status of attorneys) are working nowadays in Russia



The potential for association to improve the status of attorneys corporation?



2 ways:

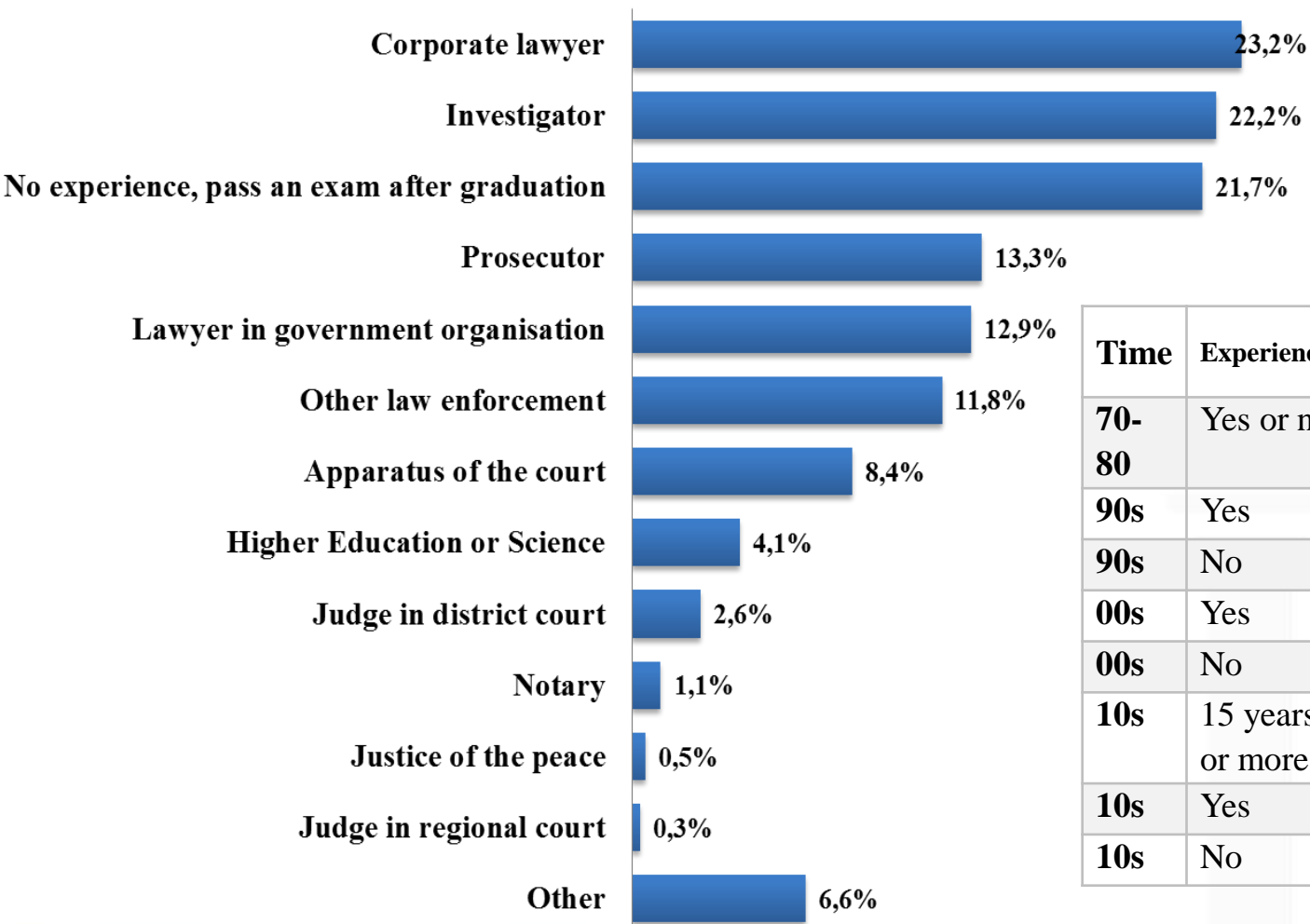
- 1) *Formal: «monopoly of attorneys»*
- 2) *«Internal»: to create selective incentives for members*

Empirical data

- **Representative survey of 3317 attorneys in 35 regions** of Russia organized in autumn 2014 by the HSE Institute for Industrial and Market Studies and the Institute for the Rule of Law of the European University in St. Petersburg with support of the Federal Chamber of Attorneys.
- The sample was formed on the basis of three models:
 - random sampling of lawyer organizations in Moscow and the Leningrad Region
 - full survey of the organized part of the lawyer community in 8 regions of Russia with particularly strong chambers of attorneys (with average return of questionnaires at the level of 20–25%)
 - random sampling of 25 regions from the remaining regions of Russia with the questioning of at least 40 lawyers in each of them

Internal heterogeneity of professional community

Attorneys had diverse experience before the advocacy:



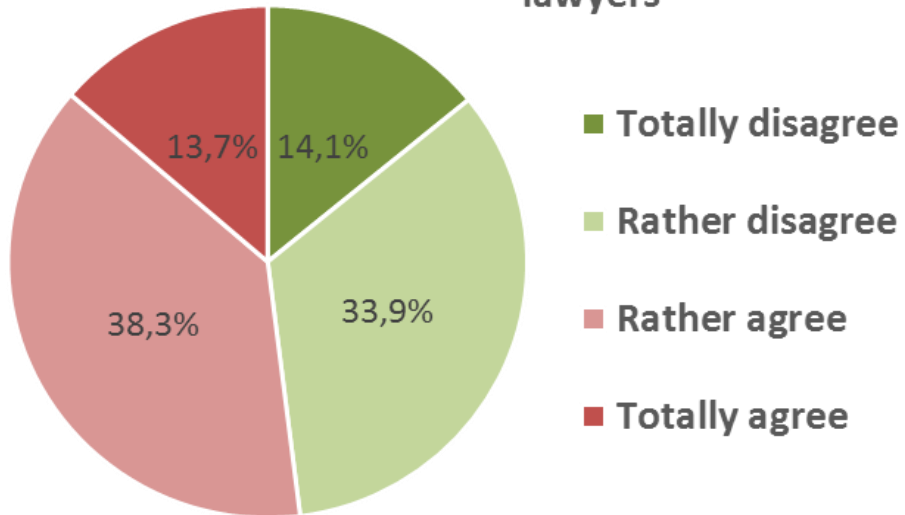
They come to the profession in different time and with different experience

Time	Experience	Cohort name	Share of male (%)	Age	Share in sample (%)
70-80	Yes or no	"Veterans" (started in UdSSR)	38	60	8,4
90s	Yes	Experienced in 90s	73	59	5,6
90s	No	Novice in 90s	59	49	13,5
00s	Yes	Experienced in 00s	64	47	20
00s	No	Novice in 00s	52	38	22,9
10s	15 years or more	Super-Experienced in 10s	61	45	6,5
10s	Yes	Experienced in 10s	60	34	16,3
10s	No	Novice in 10s	44	30	6,8

Weak public support of attorneys

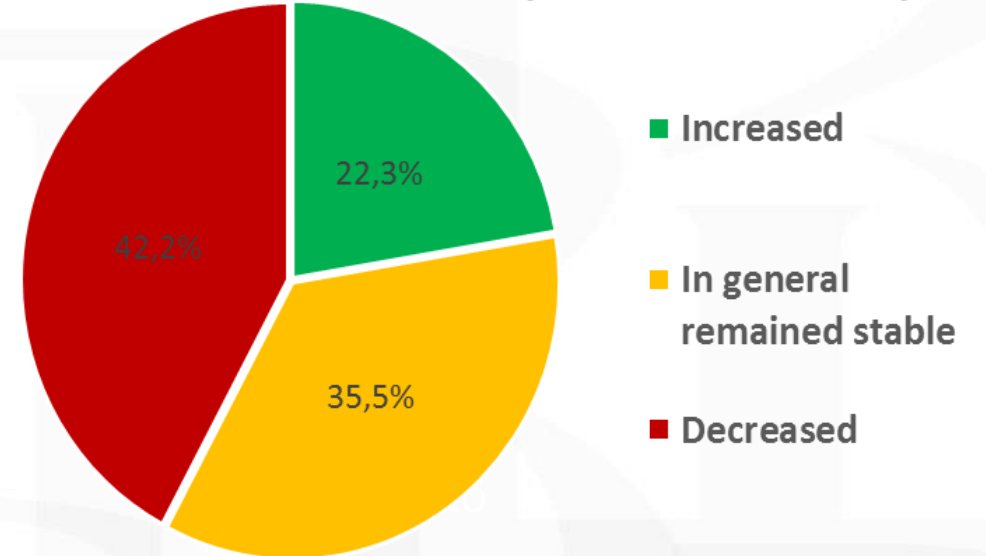
50,5% of attorneys (in our sample) didn't had any acquittal in the whole carrier

Russians without legal education distrust lawyers



Many attorneys feel that people didn't trust them

Demand for lawyer's services in last 5 years



And say that the demand for legal services decreases

Puzzles of attorneys community in Russia

- Attorneys play marginal role in Russian legal system – they can not defend in proper way the rights of their clients in criminal courts.
- This community is very heterogeneous – there is a number of attorneys serving as ‘informal intermediaries’ between clients and investigators or judges; there are a lot of attorneys serving for the courts and investigators, but not for clients (article 51).
- As result they as community are not respected by judges and not trusted in the society. There is decline of demand for their services.
- It is large professional community with high level of autonomy and clear legal base for the collective action. There is ‘healthy core’ of profession composed mostly by experienced attorneys with high share of commercial disputes. They are damaged from unfair competition and they are talking about improvement of professional standards. **What can they do?**
- They are lobbying now for ‘attorneys monopoly’. That is about their private interests. But **what about public goods** (promoting the need for attorneys among elite and citizens)?

Evaluation of quality of law enforcement as public good

Very centralized law enforcement and court system not under control from the society – it is managed from the top on the base of reports received from lower level units. They collect relevant information and they know that they will be evaluated on the base of this information → ***strong incentives to manipulate with data***. Lack of mechanisms reducing risks of manipulation – due to the absence of political competition, control on mass media, weak NGO sector. ***Poor overall performance*** and very ***unpleasant public consequences*** for political elite:

- the shooting at a Moscow supermarket by high ranking police officer Yevsyukov in 2009,
- bloody massacre of 12 people in Kushevskaya village in 2010,
- mass-scale torture at the police department of “Dalny” district in Kazan in 2012...

Deep dissatisfaction in the society and attempts to reform the police since 2009 – without any clear success → Demand for ‘non-political’ tools of external evaluation of law enforcement

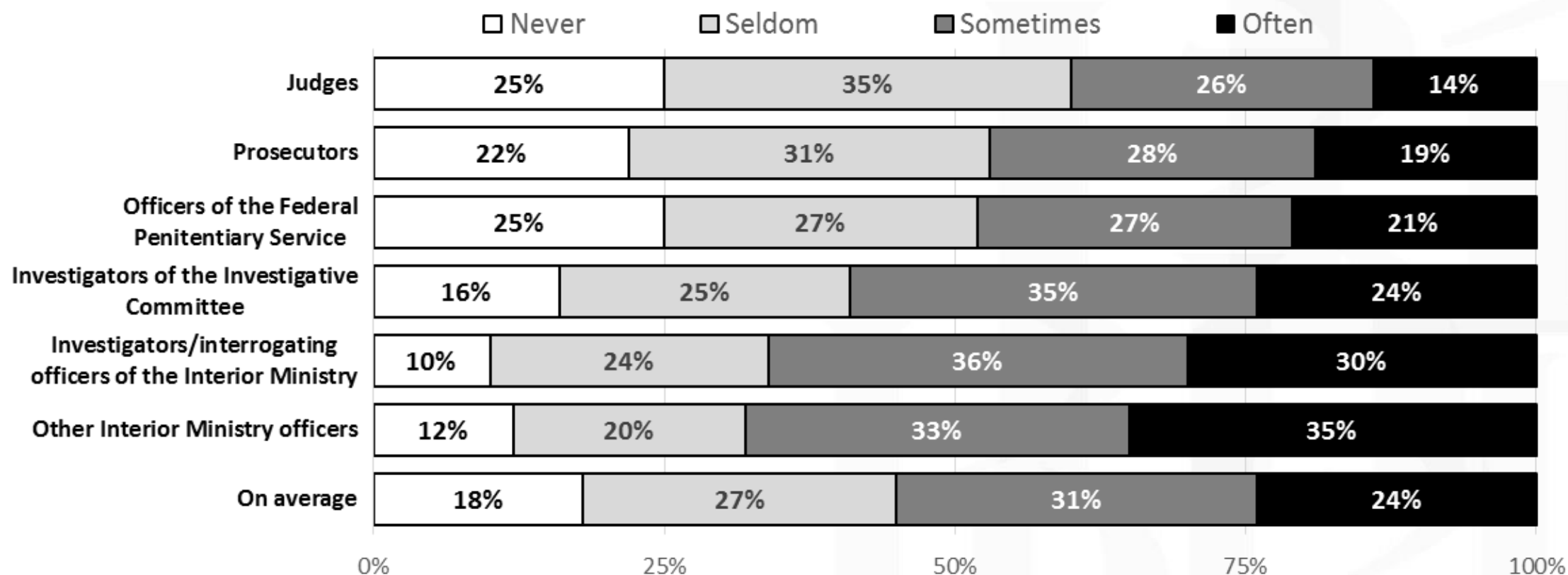
Attorneys community – as potential source of relevant information.

Our approach to evaluate the quality of law enforcement

- Main question: How often did you encounter violation of rights of your clients from following law enforcement bodies?
- Data aggregated on regional level: “**balance evaluations**” - difference between the share of attorneys positively and negatively evaluating some phenomenon («+» shell be interpreted as «better quality», low number of violations, higher demand etc.; «-» on the opposite).
- Additional information:
 - corporate raiding in Russian regions (for 2011–2013): number of applications to Center of Public Procedures «Business against Corruption» per GRP (previous project - Yakovlev, Sobolev, Kazun 2014; Kazun 2015).
 - crime detection rate and other statistical data (www.gks.ru, www.openpolice.ru and crimestat.ru).

Public product: External performance evaluations of law enforcement bodies in Russia

How often did you encounter violations of the rights of your defendants in your region by the following representatives of government authorities during the past 3 years?



Three groups of regions by the frequency of violations of defendants' rights

Type of the region (according to the aggregated responses of attorneys)	Frequency of violations of defendants' rights by the following agencies (balance evaluation)					
	Court	Prosecution office	Investigative Committee	Interior Ministry (investigators and interrogating officers)	Interior Ministry (others)	Federal Penitentiary Service
Higher scale of violations of defendants' rights both at the stage of investigation and in court	-10	-12	-25	-34	-36	-8
Higher scale of violations of defendants' rights at the stage of investigation	14	3	-10	-24	-27,5	-2
Lower scale of violations of defendants' rights at the stage of investigation and in court	21	20	9	-5	-9,3	16

Three groups of regions by the frequency of violations of defendants' rights

Lawyers mention **more often** than in other regions the violations of defendants' rights **both at the stage of investigation and in court**

Republic of Chuvashia
Novosibirsk Region
Republic of Udmurtia
Republic of Buryatia
Astrakhan Region
Krasnodar Territory
Tyumen Region
Omsk Region
Leningrad Region
Moscow

Lawyers mention **more often** than in other regions the violations of defendants' rights **at the stage of investigation**

Samara Region
Republic of Tatarstan
Kurgan Region
Sverdlovsk Region
Krasnoyarsk Territory
Stavropol Territory
Tver Region
Chelyabinsk Region
Khanty-Mansi Autonomous District
Ryazan Region
Kaliningrad Region
Moscow Region
Khabarovsk Territory

Lawyers mention **more seldom** than in other regions the violations of defendants' rights at the stage of investigation and/or in court

Republic of Mari El
Kirov Region
Yaroslavl Region
Republic of Mordovia
Kemerovo Region
Republic of Karelia
Ulyanovsk Region
Ivanovo Region
Republic of Adygea
Vologda Region
Nizhny Novgorod Region
Perm Territory

Assessment of the frequency of violations of defendants' rights and the level of corporate raiding in the region

Corporate raiding indicators

	<u>Higher scale of violations at the stage of investigation and in court</u>	<u>Higher scale of violations of defendants' rights at the stage of investigation</u>	<u>Lower scale of violations at the stage of investigation and in court</u>
Average number of raider attacks in 2011–2013 (per 100 billion rubles of the gross regional product)	<u>3.04</u>	1.60	1.34
Average number of entrepreneurs' applications to CPP BAC	<u>19.8</u>	9.6	3.9

	Frequency of violations of defendants' rights by the following agencies (balance valuation)					
	Court	Prosecution office	Investigative Committee	Interior Ministry (investigators and interrogating officers)	Interior Ministry (others)	Federal Penitentiary Service
Level of corporate raiding (number of complaints applications to CPP BAC/ 100 billion rubles GRP of the region)	-0.242	-0.228	-.348*	-0.178	-0.054	0.162

Quality of law enforcement and the economic environment

Balance evaluations of performance	Regional population (2013)	GRP (2013)	GRP per capita (2013)	Population's incomes 2013
Court	-.336*	-0.314	-0.127	-0.298
Prosecution office	-.453**	-.435**	-0.312'	-.474**
RF Investigative Committee	-.369*	-.350*	-0.227	-.382*
Interior Ministry (investigation and interrogation)	-.386*	-.400*	-0.342*	-.478**
Interior Ministry (others)	-0.27	-0.35*	-0.3'	-.347*
Federal Penitentiary Service	-.364*	-.390*	-.406*	-.484**

The quality of law enforcement bodies is strongly connected with the size and economic performance of the region



Two explanations:

- 1) theory of rent seeking
- 2) organizational difficulties

Conditions of attorney's work in "good" and "bad" regions

As compared to other regions...	Number of attorneys per 10 thousand residents	Citizen's trust to attorneys (balance evaluation)	Share of attorneys ready to leave the profession (% of the sample)	Assessments of the dynamics of demand for 5 years		
				Grew	Dropped	Balance
The court and investigators violate rights more frequently	4.6	-2.5%	14%	24.7%	42.5%	-17.8%
The court violates rights less frequently than the investigators	4.5	-6%	10%	22.3%	38.9%	-16.6%
Both the court and investigators violate rights less frequently	3.9	-9%	9%	20.4%	41.8%	-21.4%

In "bad" regions a comparatively greater number of attorneys are ready to leave their profession

But people in «bad» regions trust attorneys more and the demand is comparatively higher.

Preliminary empirical findings

- Decreasing of the demand on legal services and low level of trust to attorneys
- The relatively high degree of the reliability of the assessments the quality of law enforcement system through a survey of attorneys (data correlates with the level of raiding and some regional characteristics)
- The bigger and richer the region, the worse the quality of law enforcement (according to the assessment of the attorneys)
- The worse the quality of law enforcement system in the region, the higher the demand and trust to the attorneys, but the harder it is to continue work
- Not only attorneys community but also law enforcement system is non-homogeneous – we can observe different performance (with higher and lower level of violation of defendants' rights under the same institutions) → it can be important for reforming the system (with base on 'best practice' units)

Conclusion

- The external evaluation of the quality of law enforcement system by the survey of attorneys - is an useful tool that can contribute to the **finding of “problem areas”**, as well as the identification and dissemination of **“best practices”**.
- There are **several limitations** and possible distortions of such assessment – in part due to heterogeneity of the legal community in different regions
- Such product potentially can **increase the influence and independence of attorney’s corporation** both in eyes of government, civil society and bona fide private lawyers (who will have more stimulus to join the corporation)
- The heterogeneity of law enforcement and judicial systems in Russia could potentially allow the **evolutionary change** (in case of **cooperation between bona fide attorneys, public officials and law enforcers**)

This report was presented at the 5th LCSR International Annual Conference “Cultural and Economic Changes under Cross-national Perspective”.

November 16 – 20, 2015 – Higher School of Economics, Moscow, Russia.

<http://lcsr.hse.ru/en/conf2015>

Настоящий доклад был представлен на V ежегодной международной конференции ЛССИ «Культурные и экономические изменения в сравнительной перспективе».

16-20 ноября 2015 года – НИУ ВШЭ, Москва, Россия.

<http://lcsr.hse.ru/en/conf2015>