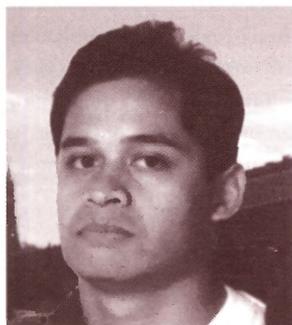


Russia

Curriculum reforms in Russian legal education and practice

by Timur Sinuraya



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The usual jokes about the proliferation of lawyers are not so common in Russia: in fact, more lawyers will do Russia just fine. The services of qualified jurists who contribute to the orderly pace of economic development during the transition period have been in great demand in the former Soviet Union over the last decade. In this regard much depends on the ability of the law schools' curriculum to reflect the needs of the market. The transition to an open market economy has required the adoption of completely new rules and procedures and, accordingly, as the reform of the legal system has forged forward the legal training curriculum has followed suit, while private practice has also excelled in development.

GENERAL AND SPECIALIST TRAINING

Formal legal education commenced in 1755 at Moscow State University and is one of the oldest university teaching subjects in Russia. On a general level, Russian university education followed the continental European pattern of teaching broad academic subjects augmented by specialist courses towards the end of the period of study. It has been acknowledged that the Soviet legacy resulted in an overload of the curriculum with constitutional and administrative law disciplines, with training of legal specialists for practice largely confined to in-house lawyers for government organizations and enterprises in the state-owned economy, and certain trial practice, which was dominated by the criminal cases. In the last nine years the Russian legal system has been radically changed following the reforms of privatisation, trade liberalization and dismantling of the command economy. The new Constitution was adopted in 1993, the Customs Code in 1993, the Civil Code in 1994, the Code of Arbitrage Procedure in 1995, the Criminal Code in 1996, the Tax Code in 1999 and so on. Many important new federal laws have been adopted, for example on joint stock companies, taxation, securities, property, banking and accounting. The Codes of Civil and Criminal Procedure have been heavily amended and other multiple decrees and regulations introduced.

GOSSTANDART 0.2.11.00

The underlying ideology in the training of lawyers stems from art. 48 of the Constitution of the Russian Federation, which states that: 'Everyone shall be guaranteed the right to qualified legal assistance ...'. Accordingly, the law schools' curriculum has had to be revised and adapted to the changing system. The Federal Law on Education of 1992 (as amended) establishes that a state or private educational institution has to meet certain

requirements and standards in order to obtain accreditation and a licence. To this end, the Government Decree No. 940 of 1994 establishes standards for higher professional education, introducing the bachelor's degree level of liberal arts education and master's degree level of specialized professional training. The State Educational Standard *Gosstandart* 0.2.11.00 for the studies of jurisprudence establishes the goals and curriculum for legal training (see the Order of the State Committee of Higher Education No. 180 of 1994).

The legal training which leads to a law degree is a fixed five-year term for full-time study. On successfully passing two final state exams on theory of law and legal specialisation, and defending a final thesis, the students obtain the qualification of *jurist* and the academic title of *magister* or master's degree in the arts of law. The goal of the training is to prepare the students for: rising to the bench, independent practice, in-house lawyer positions as well as lecture and research work in academia. *Gosstandart* establishes a detailed study course program. In all there are 167 weeks of instruction based on lectures and seminars. The first, second and third years are dedicated to the teaching of general, theoretical and historical subjects. The courses occupy 6426 hours and include twenty disciplines covering theory of law, constitutional law, history of law, history of legal thought, history of foreign law, criminal law and procedure, civil law and procedure, Roman law, public and private international law. The main avenues of training are public law, private law and criminal justice. The fourth and fifth year courses are dedicated to the specialisation chosen by the student and occupy 2304 hours. The number of specialisations depends on the number of departments at each law faculty (for example, Moscow State University law faculty offers thirteen specialisations), but mostly include civil law and procedure, criminal law and procedure, municipal law, fiscal systems, environmental law and international law. The specialisation culminates in the writing of a final thesis for which 17 weeks are allowed. Obligatory internship at the courts, prosecutors' and other law offices is for 21 weeks. Despite the elements of specialisation envisaged in *Gosstandart*, it remains an homogenous program which aims to train an expert in all the main areas of Russian law.

CHANGES AND CRITICISM

The main change introduced by *Gosstandart* is the introduction of optional courses (over 250 hours) which increase the flexibility of teaching. A number of special courses and seminars have been introduced, including notarial duties, bankruptcy, securities, banking and so on. There are two new general courses on commercial law and international private law. However, the law curriculum reform primarily concerned the totally new content of courses resulting from the radical legal reform in Russia. For example, the general course on civil law now includes new aspects of contracts, property, securities, loans, corporations, arbitration and so on.

The general criticism regarding the *Gosstandart* curriculum is that it regulates instruction in every detail, does not address the teaching of concrete aspects of law practice such as contract interpretation and negotiation, and includes subjects which are too abstract and theoretical (see G Ajani, *Legal Education in Russia: Present and Future* in Rev. Cntr. & East Eur. L., No. 3/4, (1997)). However, the reform of the legal training system is a complex endeavor, one which aims to strike a balance between the teaching of concrete aspects of practical law and the teaching of principles, reasoning and methodology in critical understanding of the role of law in social development. The latter becomes especially important during the transition to an open market economy in Russia, which has no precedents in history. There is no option teaching based on case law: the instructors cannot rely on precedent when they lack experience in some areas of the law, such as securities regulation or disputes between shareholders and creditors. In this respect the private law which is practised in Russia loses to the common law, which generally offers better protection of the rights of shareholders and creditors as well as clearer contract interpretation. On a general level, insufficient time has elapsed as yet for the fundamental capitalist concepts such as reputation-based sanctioning system to be used in settling disputes.

PRACTICAL SPECIALISATION

On-the-job training and apprenticeship have also undergone some changes. Now, in order to be admitted to one of 125 local collegiums of advocates (in order to be able to practice as an advocate (trial lawyer) who can represent a client in court in criminal and civil cases), a Russian law graduate (a citizen of the

Russian Federation) has to have two years of legal practice instead of one and pass a formal interview with the presidium of the collegium, followed by three months of probation. If a law graduate has less than two years' experience he or she has to undergo a period of training, which can range from six months to one year, with the collegium. In order to obtain a licence for independent private practice a Russian law graduate has to have at least three years of legal practice. The legal person (for example, a foreign law firm) can receive such a licence provided it employs Russian law graduates who meet the three year requirement (see Regulation on licencing of paid legal services on the territory of the Russian Federation, No. 334 of 1995). In order to obtain a notary's licence a Russian law graduate has to undergo one year of training with a notary's office or six months of training provided they has at least three years of legal practice (see Regulation on undergoing training with the state notary office or notary engaged in private practice, Ministry of Justice and Federal Notary Chamber, 1994, with additions of 1995). The candidate has to pass a qualifying exam before the examination commission, consisting of representatives of the local department of justice and local notary's chamber (see Regulation on qualification commission which examines persons who wish to engage in notarial activity, Ministry of Justice and Federal Notary Chamber, 1994).

PRACTICE CURRICULUM

Because of the demand for legal services during the last decade, many law students in Russia have found themselves practising at foreign and domestic law firms. The mainstream of domestic law firms typically engage in the following areas: real

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estate; contracts and arbitration; privatisation; banks, loans, securities; customs, foreign investments and trade; criminal cases; registration, reorganization and liquidation of legal persons; family, inheritance and other general civil cases; and taxation. It should be noted that the practice of business law in Russia is largely international in nature due to the independent economies of the Commonwealth of Independent States (CIS). Accordingly, the CIS countries are covered by multiple conventions and treaties and the Russian language dominates the legal recourse in corporate and other contractual relationships within the CIS. In addition, the fundamentally important Civil and Criminal Codes of the CIS countries are based on so-called Model Codes. In practice, this situation gives rise to CIS *jus commune* which has become a part of legal practice in Russia.

TRANSNATIONAL PRACTICE

The legal services cater for the needs of crucially important foreign investments in Russia. In 1989 there were only two foreign law firms in Moscow. Nine years later there were already over 60 Western law firms in the city, which some firms used as a base to extend their operations into other CIS capitals such as Kiev, Almaty, Baku, Bishkek and Tashkent. In the big firms like Clifford Chance, Allen & Overy, Freshfields Deringer, Linklaters & Paines, Baker & McKenzie and Salans Hertzfeld & Heilbronn, which are able to undertake almost any area of commercial practice, up to two thirds of the associates are Russian and CIS lawyers. All Western firms, including more specialized international legal operations such as Frere Cholmeley, PricewaterhouseCoopers CIS, McDermott, Will & Emery, Allen & Overy, Akin, Gump, Strauss, Hauer & Feld LLP and Pepper, Hamilton & Scheetz, employ local lawyers. In spite of downsizing following the August 1998 collapse of capital markets, none of the sizeable law firms has pulled out of Moscow. In fact they actively participated in the re-negotiation of foreign debt and helped in the issue of new bonds, which will be market-setters in Russia.

Often Russian firms handle domestic commercial cases while Western firms handle international transactions; for example, Russian firms handle litigation referrals from their Western

counterparts, although the law does not preclude foreign legal counsel from representing a client in a civil case in the Russian court, by virtue of power of attorney (see Chap. 4 of the Code of Criminal Procedure).

SPECIALIST KNOWLEDGE

It could be said that the skills of the practitioner ultimately determine the value of his or her law degree. Market development has exposed Russian lawyers to transnational corporate practice, recognizing de facto the practice curriculum of local lawyers, i.e. command of specialist information or skills to acquire such information, particularly in the following areas:

- compliance with frequently-changing legislation, taxation and administrative regulations for business practice;
- unconventional accounting procedures and practices;
- the local investment environment, which is characterized by the lack of experience and understanding on the part of many of basic market forces, marketing, pricing techniques, goodwill, etc.;
- the attitude of regional officials towards the market economy, augmented by personal connections in the regulatory and law enforcement agencies;
- reputation of potential business partners and background of potential employees;
- direct and indirect pressure exerted by organized crime and the irregularities of the informal or shadow economy (including illicit practices of potential business partners);
- transparency of local corporations and firms;
- assessment of market values of real estate and other capital stock with regard to possible acquisition bids;
- due diligence in mergers and acquisitions or any regular business transaction.

It should be confirmed that practice and the market demands are the best legal training. In this respect the Russian legal diplomas easily match those of the Western law schools. 

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Amicus Curiae

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