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Guidelines for Clinical Education in Russian Law Schools

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1. Purpose of this Paper

This paper focuses on only one critical aspect of legal education: how to prepare students for practicing law after graduation by providing them with the opportunity of participation in the legal clinic, i.e., a special program of practical training which includes providing legal services to real clients with real legal problems. This paper reflects the author's personal experience in participating in developing a program of clinical education and establishing a legal clinic at the St. Petersburg Institute of Law while teaching civil law and several practice oriented courses, as well as some observations of what is going on in clinical education in Russia and how, in author's view, it should be structured. The emphasis will be placed on the clinical education rather than on the organization of a legal clinic. Most of the author's ideas are currently being implemented in the clinical programs of the St. Petersburg Institute of Law. However, the author considers her ideas as only one alternative approach to clinical programs.

2. The purpose of clinical education

The purpose of clinical (practice) education is to provide students with the practical knowledge, skills and experience which are necessary for practicing lawyers during the course of legal education through specialized courses and by serving the real (and needy) clients under the supervision of clinical professors. It should also provide students with help in choosing a specialization.

3. Some problems in Russian legal education

Following the continental legal tradition, Russian law schools provide their students with a very thorough but mostly theoretical legal education. The main purpose of legal education is viewed as transmitting, from a professor to a student, information about legal norms or rules existing in a particular legal system and demonstrating how these rules can be applied in abstract legal situations ("If a buyer did this, the seller may do that"). The major emphasis is made on the first task (studying the legal rules) and, secondly, is concerned only that students are taught how to find the elements of a legal rule in particular situations and what legal mechanism should be employed in such a case. At the same time, students get almost no knowledge or experience in certain professional activities such as interviewing a client, negotiations, legal writing, trial advocacy, and many others. The approach of the legal education is rather direct: all problems must be solved almost exclusively by legal means. Under such conditions, few graduates are ready to start their professional life on their own immediately after their university graduation. Almost all of them require some kind of practical training before they can handle most cases.

Not long ago, any lawyer in Russia was expected to handle any case, criminal as well as civil. The situation is changing dramatically as Russia is now entering legal specialization. More and more often we now see lawyers who only practice, for example, housing law, or securities, or bankruptcy law, or litigate certain kinds of disputes to the exclusion of all other kinds. Specialization requires more specific knowledge and greater practical experience in a particular area of law. The very general approach that is provided in law schools does not respond adequately to the current trends in legal practice. The earlier a law graduate chooses his/her area of specialization and starts practical training in that particular area, the better his chances are for the successful start of his legal career. It should be remembered that the major Russian cities

where several law schools, both state and private, usually exist, are now facing the "overproduction" of lawyers. This makes the task of a successful entry into the legal profession for the recent graduate even more complicated.

Until now, Russia was lacking standards for the conduct of the legal profession. The rules of advocate's ethics apply only to members of advocate collegia. Judges and prosecutors have their own disciplinary rules. However, the rest of lawyers (actually the majority) is left with no code of professional conduct at all. It is mainly because there is no all-Russian legal professional association which would be able to regulate admittance to the legal profession and establish the all-inclusive rules of professional conduct as well as punish for a violation thereof. Therefore, law school graduates do not receive any information as to the lawyer's "do's" and "don't's." The facts of professional misconduct are extremely common and cases of lawyers being held responsible to their clients for wrongdoings are extremely rare.

4. Possible solution: clinical education

One way of resolving the above mentioned problems is developing a strategy for introducing and implementing clinical education in Russian law schools.

5. Legal clinics in Russia

Clinical education, well known and well developed in Anglo-American law schools, is taking its first steps in Russia. Legal clinics involving only a small proportion of students, have been established in Moscow, St. Petersburg, Petrozavodsk, Tver, Krasnoyarsk and some other cities. They are considered an important part of the legal education which provides students with practical experience by helping clients - mostly people whose income does not allow them to get a professional legal advice - in solving their legal problems. Most cases in legal clinics concern housing law, labor law, social security, some aspects of civil law such as torts, simple contracts, etc. Some clinics also include cases related to business law, taxation and litigation.

Legal clinics are currently established either as sub-divisions of law schools or as separate entities which enjoy the rights of full legal personality. Clinical programs are either a part of the law school curricula or they exist almost independently from the law school and operate largely on their own, being linked to the school only by professors and the students who work there.

6. Problems of the Russian legal clinics

Each university that has attempted to offer its students a clinical experience, does so mainly on its own and uses its own programs (if any) and methods. All of the existing clinics, no doubt, have a positive effect. At the same time, as both students and professors indicate, they are often not ready to handle all aspects of clinical education. Major problems include a lack of clinical professors, shortage in facilities and the necessary equipment (computers, copiers, etc.), as well as students' lack of experience in working with "real" clients. Students often are allowed to participate in clinical cases with little, if any preparatory work and, especially, without any instructions as to professional ethics and responsibility. A student receives a case or meets with a client and usually is only advised by clinical staff on the legal issues of the matter which is clearly not enough for a person lacking experience.

7. Stages of clinical education

Clinical education is not viewed by the author as a one-step process. Before students can be admitted to serve clients in the legal clinic, significant work needs to be undertaken. This can be done in the form of teaching various courses, shorter but more intense than traditional (semester long) courses. In the author's view, these courses should be offered at two levels after which the actual clinical work follows. All together, they constitute the following three stages, or levels, of clinical education:

1. Introductory courses
2. Legal practice courses
3. Clinical work

Clinical programs should be voluntarily and/or based on selection so that only students who wish to enhance their legal education, spend extra time and do extra work may participate as the resources are available to provide the opportunity. The other prerequisite should be the successful completion of certain basic law school courses. Students should not move to the next stage of clinical education without completing the courses required for the previous one. Selection of participants in clinical programs should be done by clinical professors in view of the applicant's academic achievements, his interest in a specific area of law practice, and his personal qualities such as the ability to work in a team or independently, communication skills, etc. The group or groups selected should be rather small in number (not more than 15 students) so as to provide more individual training.

The clinical courses, or parts thereof, can be included in the curriculum and graded. The official, state approved curriculum for legal education provides law schools with discretionary power to introduce new courses as long as the state-required minimum remains intact.

Naturally, the content of clinical education can vary significantly depending on availability and willingness of professors to develop new courses, the basic curriculum adopted in a particular school, funds available (as clinical education time is far more costly than the traditional class time), space-related problems, etc.

8. Introductory courses

Clinical education starts with some basic courses intended to introduce students to the legal profession and legal practice. These may include:

Informative courses

History of legal profession and legal professional education

Professional ethics and responsibility

 Practical training

Lawyer's communicative skills

 Legal research (legal publications and electronic data bases)

 Legal writing (I)

These courses can be taught by law professors and/or practitioners to students who have completed their first year or year and a half in law school. In addition, participation of professional psychologist(s) may be desirable for the course on lawyer's communicative skills,

and a PC specialist for teaching PC research. All of the above courses take little extra space, with the exception of PC research which requires a PC laboratory. All other courses can be taught in a regular classroom.

In addition to taking courses, students in the first stage of their clinical education should visit the court and attend hearings on civil and criminal cases (with the emphasis on the civil trials) and provide their adviser(s) with a report on the matter(s) considered by the court, decisions rendered and any material and/or procedural irregularities they noticed.

The results of student's participating at this stage can be credit/fail for all informative courses, lawyer's communicative skills, legal research and the court visits, and grades for legal writing.

9. Legal practice courses

After the students have completed the first level courses of the clinical program, several new courses should be introduced in the second stage. They link the theoretical knowledge of several major disciplines students now possess to their practical application. Studying the second level courses, students get their first experience and skills in conflict management, interviewing and counseling, writing various legal documents, and preparation for the litigation. These may include:

- Mediation
- Interviewing and counseling
- Negotiations

Briefing and summarizing legal information

- Contract drafting
- Advanced legal writing

- Organization of legal practice
- Written submissions in civil procedure
- Trial advocacy

The second level courses are oriented to preparing students for independent work within the legal clinic.

These courses are to be taught by professors who combine teaching with active legal practice and by a practicing or retired advocate for the course on trial advocacy. Such courses require creative syllabuses and new teaching materials (such as cases) as well as new methods of teaching.

As experience shows, using traditional methods such as deciding cases from a textbook on civil law will not be effective. This is why it is particularly important that professors would bring to such classes their own "real life" experience, canvas of cases in which they actually participated, specific requirements for drafting contracts, such as attaching them to the needs of a particular enterprise, specific cases, etc. For example, the course on briefing and summarizing legal information can be based on questions people ask in their letters to local newspapers. If a law school establishes cooperation with a newspaper, the legal clinic will receive such questions and use them for training students. In turn, the newspaper will have an ongoing legal aid

section at no cost. A group of 2-3 second level students shall receive a copy of a question from a professor and provide an answer containing a legal analysis of the situation and a possible solution thereof. The answers first tend to be too legalistic so it is a great opportunity for improving legal writing skills. A professor checks the provided answer and, after discussing mistakes, lacunas and style problems with the students and corrections thereof, the answer is sent to the newspaper. Concrete situations and real people beyond the questions stir discussions, independent legal research and reading of extra curriculum publications on the subject matter.

The course on contract drafting should also be based on practical materials. A professor may chose a specific enterprise (for example, a manufacturer, a publisher, or a trading company, etc.) and asks the students to draft various contracts serving the various activities of such an enterprise such as supply, storage, lease, agency, labor contracts and many others. This “transparent” theme, on one hand, makes the task of students easier because with each new contract, they “submerge” more and more into serving the needs of the particular enterprise and better understand the specificity of its business, and on the other hand, it shows the students the variety and complexity of a business or corporate lawyer’s work.

The course on interviewing and counseling and the course on trial advocacy can be taught by two professors, one of them to be an academic professor and the other one a practicing lawyer or, in the second case, a trial advocate. The same “transparent” principle may apply: the case starts with the initial consultation of a client and ends in the court. Role playing is essential here. The consultation provided by a student is then discussed by the whole group with the active participation of a professor. If the case is chosen for which students cannot readily provide an exhaustive consultation, the “case” continues in a conflict situation with the client, questions of professional ethics are raised, problems of communication skills discussed, and so on, plus deciding various questions related to the substantive and procedural law.

These kind of courses first of all require from professors a close knowledge of practice and an interesting and challenging case or cases to be “developed” by students. At the same time, they do not require such intensive preparation as, for example, lectures. However, different methods of teaching are necessary, including some elements of role play. By the way, the teaching aids based on particular cases which have been developed by the American Bar Association CEELI program, can be used for some of these courses. They can help professors unfamiliar with the new methods to start and to develop their own new courses in the future.

The results of studying the second level courses can be credit/fail or grades.

Fragments of legal practice courses may be included, as part of the general curriculum, into the seminars on basic courses such as civil law or civil procedure.

10. Legal clinic

After successful completion of the first and second level courses, spare motivated students may be selected to work in the legal clinic and, under a professor’s supervision, handle cases brought there by the clinic’s clients.

The clinical programs at the third level may include consulting clients, drafting various documents for them as well as legal representation in numerous state offices and in the court. In addition, the legal clinic may offer students some advanced courses such as advanced trial advocacy. The regular meetings of the students involved in the clinical programs with their

advisers are essential so that at no point do students deal with clients on their own and without supervision. This proves to be a complicated organizational task as the director of the legal clinic must be at all times aware of all the activities going on and cases involved. However, with a certain amount of organization, it is a manageable task.

Different legal clinics may have different specializations (which most probably will depend on the specialization of the professors involved in the clinical programs) being generally oriented towards civil law and related areas such as housing law, labor law, social security, with less frequent interest in criminal law and procedure. According to the specialization of the clinic, its director will attempt to attract potential clients. This can be done through local newspapers and other media, by information posted in certain state offices where people having specific problems frequently apply (such as the social security office) as well as in the courts which may be interested in establishing cooperation with legal clinics. Some practicing lawyers may also refer clients to clinics.

The most complicated problem in establishing a legal clinic for many law schools can be finding extra space, and remodeling and equipping it for housing the clinic. A clinic should have a place for meeting with clients, for doing some “homework” including legal research on PCs and writing, be equipped with at least one telephone line, fax and copier as well as several computers. For a state-financed or a private law school with a tough budget it can be a major task. The possible ways to overcome it is to look for sponsors or share an office with a business enterprise in return for providing legal services.

One of many problems a legal clinic may face is shortage of professors and practitioners who are willing and able to work in the clinical programs. As it was said earlier, clinical programs require developing new courses, checking written projects and discussing them with students and day-by-day supervision of their work in the clinic including actual cases. It means more time spent and thus, more money required for salaries. This is a problem that each law school must solve for itself depending on the resources available. Sometimes setting priorities in allocating various resources can make a difference.

The legal clinics may benefit greatly from cooperation with local mediation centers. These centers are emerging in Russia now under the name of conflict resolution centers. Because most of the mediators in such centers are not lawyers and because quite frequently questions of law arise in the course of mediation, the centers are generally interested in establishing a long-term partnership with law schools. Mediators may teach some important clinical courses such as communicative skills and mediation and participate in teaching other courses such as negotiation or interviewing and counseling. At the same time, students working in the legal clinic and interested in mediation skills can receive the appropriate training, participate in certain programs of the conflict resolution centers and be called upon when questions of law are concerned in mediation.

11. The possible questions

The possible question often arising out the above process can be as follows:

Why not add clinical courses to the basic curriculum?

Law schools have the right to offer students courses in addition to the basic, state approved minimum curriculum (“Standard of Legal Education”).

However, most Russian law schools prefer to stay with the basic curriculum. Adding more courses would require more professors to teach them (or more time spent by each professor already employed) and more space to occupy but not necessarily more funds to follow. It is necessary to remember that clinical courses can be best taught to smaller groups to provide for more individual training and participation of all students in discussions and role playing. Not all law schools can afford extra expense. Looking at the situation from another angle brings us to the fact that not all students are interested or motivated in getting an education beyond the basic curriculum. It is impossible to teach something to a person if he does not want to be taught.

However, some courses such as professional ethics and responsibility, legal research, legal writing, and trial advocacy should be taught to all students.

Why not exclude at least some of the “old” (traditional) courses and include clinical courses instead so that more students could take them?

Law schools are not allowed to exclude courses mandatory under the “Standard of legal education” which constitute the biggest part of the curricula in most law schools. The possible solution can be changing time allocation so as to shorten the time for some mandatory but not essential courses and at the same time, adding some clinical courses to the curriculum.

Is it possible to allow students to choose from the courses offered so that they might take clinical courses instead of other ones they do not consider essential?

This is an ideal solution. Actually, this is the way clinical programs operate in the American law schools. However, students in any case are requested to take all basic courses that constitute the “Standard of Legal Education.”

If clinical courses are so expensive that only a small group of students can be taught, why not require extra payment for taking it?

This should be left to law schools to decide. However, not very many students can afford the extra payment, especially if they already pay for education at private law schools or “paid” divisions of state universities. Those who can afford it may not necessarily be the best candidates for clinical programs.

12. Summary

Clinical education is a broader concept than merely serving clients in a legal clinic. Before this final stage can be reached, it requires intensive preparatory work. These include teaching students numerous practice-oriented courses which allow them to apply theoretical knowledge to various practical situations. These courses should be offered in such an order so as to provide students with an opportunity to develop professional as well as communicative and research skills. The goal of offering clinical education can only be achieved when new courses and new teaching methods are implemented which in turn require intensive preparatory work by professors. Practice oriented courses can be an excellent addition to the highly theoretical basic legal education and lead to students’ participation in serving the clinic’s clients. In turn, clinical experience allows students, after graduation from law school, to start their legal careers with much more confidence based on the practical experience acquired during the course of clinical

education. Better prepared students for an effective professional career is the prime goal of clinical education.