

Legal Education in Post-Soviet Countries: Problems and Principles of Reform

ALLA SOKOLOVA*

I would like to start with two rhetorical questions:

- How can the constitutional violations in political trials in Belarus after the President Elections 2011 be best explained?
- What possible reasons can be offered for the violation of not just principles of law, but also rules of morality and simple rules of ethics, by law enforcement authorities while carrying out their investigations?

In my opinion, these issues are not just consequences of political problems, but also because of problems in the structure of legal education in Belarus. In the Republic of Belarus there are seventeen institutions of higher education (i.e., academies, universities, and institutes) that train lawyers, but the majority of these do not provide a quality professional education.¹ In an environment where state political ideology dominates, academic communities are unable to create in future lawyers professionally meaningful personal qualities—a valuable attitude—and a commitment to the Constitution, law, international standards, and human rights. University administrations do not encourage academic freedoms for students and lecturers. Finding themselves in state-controlled law structures, timid shoots of normal legal consciousness (in the words of the outstanding Russian lawyer I. Illin)² are unable to compete with the established foundations of obedience to an authoritarian system. From here, we can see a growing tendency toward a decline of the general professional level of legal culture and consciousness with each graduating class of lawyers.

A second reason, in my opinion, for the low level of graduates can be explained in terms of the content of legal education provided by the educational institutions in Belarus. In spite of certain achievements in the period following 1991, both legal science and education underwent a rather serious crisis. Paradoxical as it may seem, the growing number of law schools is one indicator of such a crisis. In many ways, a well-prepared lawyer presents more of a social danger than, say, a surgeon. Attempts to reform the system of

* Alla Sokolova is a Ph.D. Dean of Graduate Studies of European Humanities University in Vilnius, Lithuania.

1. *Legal Education in Belarus*, UNIVER.BY (June 8, 2010, 7:38 PM), <http://www.univer.by/yuridicheskoe-obrazovanie-v-belarusi/4641> (Belr.).

2. Ильин И.А. О сущности правосознания. М.: «Рапогъ», 1993, 21-22.

education by adopting the Statute of the Republic of Belarus on Education in 2011 is insufficient to systematically complete the task of improving higher education in an authoritarian state. Students must be motivated to receive a complex of current knowledge, skills, and competencies that will allow them to be competitive in the labor market.

The reform of legal education is ongoing in many European countries.³ Issues such as models of legal education, structure, duration of studies, and content are being discussed.⁴ Legal education at the university level in the signatory countries of the Bologna Declaration has many different models.⁵ In my opinion, common reform of legal education should be directed towards achieving an overall convergence and uniformity of educational systems of different countries to create a global labor market of highly professional lawyers. One of the most important ways of building the world community through legal education is to create a certificate program in international, comparative or foreign law at the universities.

First, convergence requires a meaningful context for legal education as defined, in my opinion, by the following principles. These principles particularly apply in regard to post-Soviet countries.

In post-Soviet countries, the methodological basis that defines the concept of legal education is still legal positivism, which results in a fundamental legal culture of not lawyer-intellectuals, but lawyer-engineers.⁶ Positivism as the dominant paradigm of learning does not develop skills for analyzing political and legal realities. It cannot assist in identifying ways to streamline and improve existing legislation, in the adoption of creative, non-standard solutions in the practice of law, or in modern methods of interpreting legal documents. This methodology has the potential to transfer knowledge to students, to have them memorize the rules of legal acts and their strict application. For countries in a state of transition, these goals are insufficient.

This problem is closely connected to the question of methodological priority in preparing students for the legal profession. Should it be primarily an intellectual or a practical profession? Years of teaching experience at European Humanities University (EHU) leads me to believe that the benefits of creating and shaping a lawyer-intellectual can be felt not only in the field of law, but also in the public arena. It is precisely the lawyer-intellectual who is the future reformer of the politico-legal system of an authoritarian state. Intellectual training is based on the principles of interdisciplinarity, learning the basics of socio-humanity sciences (for a narrow legal specialization it is appropriate to introduce the fundamentals of science into the curricula) and the use of foreign languages in teaching as a tool for professional communication. In connection with this, it is appropriate to mention the discussion in European university circles that focuses on a two-level legal training: Bachelor (three to four years) plus the Masters (one and a half to two years). On the one hand, it is difficult to imagine a highly qualified lawyer-intellectual, trained for three to four years, applying for a judgeship or for a position as a court lawyer. On the other hand,

3. Ильин И.А. [Ильин I.A.] О сущности правосознания. [ON THE ESSENCE OF JUSTICE] 21-22 (M.: М.: Рапогъ [M. Rapog] 1993).

4. Richard J. Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Education*, 7 GERMAN L.J. 823, 828-46 (2009).

5. *Id.*

6. See generally Leslie Green, *Legal Positivism*, STAN. ENCYCLOPEDIA PHIL. (Edward N. Zalta ed., Fall 2009 ed.), available at <http://plato.stanford.edu/archives/fall2009/entries/legal-positivism/>.

the legal sphere represents technical and legal work connected with the registration of legal documentation, the selection of a regulatory framework, and uncomplicated requests of a legal nature. This kind of function (e.g., paralegal, assistant judge, notary, inspector, clerk of the court, or an employee of a human resources department, etc.) is carried out in several European countries with a Bachelor of Law degree. Another option proposed by the Republic of Lithuania is for educational programs in law to be conducted within a college of first-stage university education (three and a half to four years) and university continuing education (five years).⁷ This approach—the use of various models of legal training with a wide range of qualifications and specializations of posts at various levels—can also be applied in Belarus. The main task of educational institutions is to train highly skilled specialists to serve all parts of the legal sector (from assistant counsel to judges of the Constitutional Court).

My experience from 2005 to the present in the organization of legal education at EHU, which has a two-tier system that includes a bachelor's program in International Law (four years) and a Master's program in International Law and European Law (two years), has revealed to me the significant disadvantages of this form. The most important of these has been the difficulty of forming professional legal skills and a legal culture within the framework of the bachelor program in such a short period of time concurrent with studies in a vast array of humanities, sciences, and the study two European languages. A preferred form is provided for through the most recent Lithuanian legislation that institutes a Master of Law degree.⁸ The Masters level would deepen theoretical training, strengthen the area of specialization, and assist in the formation of additional competencies aimed at developing skills to plan, design, organize, and implement research activities.

The professional aspect of legal education requires a mandatory addition to the training program in the form of clinical training (legal clinics), forming a practical component for the future lawyer, while having distinctive features in comparison with the traditional institution of student internships.⁹ Promising in this respect is the idea of launching international clinical legal education at EHU in a distance format that would allow for legal assistance, especially on human rights law, to the citizens of the Republic of Belarus and other countries through information and communication technologies. The countries of the former Soviet Union have experienced a long transition period to their own legal system.¹⁰ Most constitutions of these countries declare the rule of law principle and human rights as main objectivities, but, in reality, state authorities of the region demon-

7. *Structure of Education System of Lithuania*, TCHRS. PRAC. & PROCESS, <http://www.teachers-ipp.eu/Lithuania.html> (last visited July 4, 2012) (Lith.).

8. See Dr. Tomas Berkmanas, *Questionnaire TASK FORCE 2 Regarding Graduate Programmes*, LIFELONG LEARNING PROGRAMME, http://www.google.com/url?sa=t&rct=j&q=%22questionnaire%20task%20force%202%20regarding%20graduate%20programmes%20%20lithuania%20dr.%20tomas%20berkmanas%22&source=web&cd=1&ved=0CEoQFjAA&url=https%3A%2F%2Fwww.academic-projects.eu%2Fmenuforjustice%2FIntranet%2FWP2%2FWPDocuments%2FLITHUANIA_Graduate_TF2_Section1.doc&ei=rib2T6zRGYqe8gSlrszkBg&usg=AFQjCNFQ9vBnKbdLUjq8q8N5MTOUojTbUA&cad=rja (last visited July 4, 2012).

9. See Tatiana Selezneva, *Innovative Legal Education and Its Role in Developing the State Based on the Rule of Law: Analysis of the U.S. Law Schools Academic Experience and the Prospects of Its Implementation in the Republic of Belarus*, 58 J. LEGAL EDUC. 122, 130 (2008).

10. See *id.* at 122.

strate an unfavorable attitude towards international human rights standards and judicial and quasi-judicial international bodies.¹¹

Meanwhile, the legitimacy of, and the respect for, international and especially the European human rights protection system are high among the populations of those countries. Human rights lawyers have become a new force for democratic development by bringing cases on human rights violations. If these lawyers apply human rights legal provisions in a professional way, they can evolve legal systems from inside of the countries. But there is a lack of proper and available legal expertise for those who are willing to bring human rights provisions to the domestic court trials.¹² International experts, teachers, and national human rights experts from the Western countries can share their knowledge and skills with those lawyers who are interested and eager to get the support. Together with their colleagues from Eastern Europe, human rights lawyers from bar associations and universities can channel the human rights legal assistance directly to those lawyers who mostly need the expertise.

The distance (online) legal clinic might be seen as an ideal tool that could help to bring the best practices and advice from legal experts to lawyers of former Soviet Union countries.

Reinforcing the knowledge of the nature of legal phenomena in the comparative approach has great potential. Introduction to legal values and achievements of other legal systems, how they evolved and developed, allows us to understand the essence of foreign legal institutions and the appropriateness of borrowing from them. In addition, knowledge of foreign law and legal traditions helps soften the adaptation of young legal professionals to the realities of the European Union and other countries.

In the process of globalization, the convergence of regional systems of law, student and teacher mobility, and the possibility of choosing choice employment in Europe in international and European law has particular significance. This, in my view, should become not only a necessary component of post-Soviet legal education, but also a tool of typical legal practice.

The modernization of the organization of legal education necessarily involves the use of modern information and communication technologies to integrate students and teachers from different countries within a single academic community and to expand the scope of the university for international cooperation.¹³ Use of web-based technologies and virtual learning environments, such as Moodle, in the learning process creates a comfortable educational information environment in which the operating system of communication between teachers and students contains a set of educational materials, educational electronic resources, and tasks for students' independent work.¹⁴ Particularly attractive, in my opinion, is the mixed form of learning (blended learning), which combines traditional and innovative forms, including training sessions in the classroom, online e-learning, and independent work of students in mastering the course material. This mixed form as a tool for modernization and internationalization of the master training was introduced in 2011

11. *See id.*

12. *See id.* at 124.

13. *About the European Humanities University*, MOODLE, <http://moodle.ehu.lt/mod/resource/view.php?id=36405> (last modified Feb. 15, 2012, 10:49 AM) (Belr.).

14. *Id.*

in the Graduate School of EHU.¹⁵ To ensure the effective teaching of graduate students, a series of preparatory activities were developed and conducted, including a set of teaching recommendations in which teachers master new competencies in developing modules of distance learning courses and in creating new digital learning resources. These activities were performed with the enthusiastic assistance of State University of New York (SUNY).¹⁶ The distance learning program in the graduate school seems very promising and attractive from the standpoint of efficiency and flexibility for young people of Belarus and other countries.

Legal education in any country is an indicator of many characteristics of the state and society because lawyers are the conductors of state legal policy and actors in the public sphere.¹⁷ Legal education can be represented in different models and configurations, but the process of reform should be based on a new paradigm. Are the post-transition states, in particular Belarus, up to the challenges of modernity? I think not. This is why lawsuits like the current one underway continue to be based not on law but on arbitrariness.

15. *Id.*

16. *Id.*

17. See A.A. Sokolova, *Legal Policy in the Public Dimension: The Direction of Privacy Policy Under Modernization*, in PROCEEDINGS OF THE ALL-RUSSIAN CONFERENCE ON LEGAL POLICY IN THE MODERNIZATION 167, 167-76 (2011).

