

# LIFE IN RUSSIA'S "CLOSED CITY": MOSCOW'S MOVEMENT RESTRICTIONS AND THE RULE OF LAW

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*The City of Moscow continues to enforce a restrictive residence registration regime similar to the propiska system that prevailed in the Soviet era—despite constitutional guarantees of the freedom of movement, federal statutory provisions implementing that right, and Constitutional Court rulings that such restrictions are unconstitutional. In this Note, Damian Schaible argues that the continued restrictions represent more than simply an ongoing violation of the human rights of Moscow's illegal residents; they are also an indicator of Russia's imperfect transition to the rule of law and a practical obstacle to the success of that transition.*

## INTRODUCTION

In October 1999, while Moscow was gripped by terror in the wake of a series of apartment bombings, 20,000 people in the city were arrested and detained by police,<sup>1</sup> while another 15,000 were ordered to leave the city.<sup>2</sup> A family of three was told one morning that they had twenty-four hours to vacate the apartment where they had lived for seven years and to leave Moscow.<sup>3</sup> There may be as many as three million other people, still living in Moscow, who are effectively nonpersons in the eyes of local law.<sup>4</sup> They are unable to vote, marry

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<sup>1</sup> Sarah Karush, Chechens: City's Other Casualties, *Moscow Times*, Sept. 17, 1999, 1999 WL 6808975.

<sup>2</sup> Joan Beecher Eichrodt, Moscow's Scapegoats: The War on the Chechen Diaspora, *Wash. Times*, Sept. 23, 1999, at A21.

<sup>3</sup> Letter to Editor, More Than Bombs Wreck Homes After Blast, *Moscow Times*, Sept. 18, 1999, 1999 WL 6809021.

<sup>4</sup> Moscow Illegals/Human Rights in Moscow, An Open Letter of "Moscow Organization of Outlaws" [hereinafter Open Letter], at <http://www.nelegal.ru/letter.html> (last visited Dec. 20, 2000). While estimates vary wildly, the number of unregistered residents of Moscow appears to be between 100,000 and three million. See Fred Weir, Few Choices for Moscow's Homeless Children, *Christian Sci. Monitor*, Nov. 16, 1999, at 7 (estimating that number of unregistered people living in Moscow is "[m]ore than a million"); see also U.S. Comm. for Refugees, *World Refugee Survey 1998*, at 200 (1998) (stating that Moscow city authorities estimate number of unregistered people in city to be greater than one million, while some nongovernmental organizations place number between 100,000 and 300,000).

legally, send their children to school, receive aid from public assistance programs, or receive the free medical care offered to the other residents of the city.<sup>5</sup>

These stories and others like them are the direct result of Moscow's residence registration law. Originally instituted by Peter the Great early in the eighteenth century, residence permits were used to tie Russian serfs to the land.<sup>6</sup> Stalin reintroduced the system in 1925 as a means of controlling the movement of Soviet citizens to prepare the country for the rapid and painful industrialization that came to be called the "Great Terror."<sup>7</sup> Administered through the use of a residence permit stamp, or *propiska*, imprinted in an "internal passport" that all Soviet citizens were required to carry, the system severely restricted movement throughout much of the Soviet era.<sup>8</sup>

With the downfall of the Soviet Union and Russia's rebirth as a state committed to democracy and capitalism, all of this was supposed to change.<sup>9</sup> Today, nine years later, it is clear that the federal government of Russia recognizes its people's right to choose a place to live and to move freely about the country. The 1993 Russian Constitution acknowledges the right to freedom of movement.<sup>10</sup> The Russian legislature has enacted laws dealing with the right to freedom of movement.<sup>11</sup> The Russian President publicly has supported the right,<sup>12</sup> and

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<sup>5</sup> Open Letter, *supra* note 4.

<sup>6</sup> See Michael Specter, *Siberia's Underground Man Emerges as a Gadfly*, N.Y. Times, Jan. 21, 1998, at A4 ("The *propiska* is a pass . . . to insure that serfs stayed in the fields where they belonged.").

<sup>7</sup> Soviet System Alive and Kicking!, Moscow News, Mar. 17, 1999, Lexis, News Library, Mosnws file.

<sup>8</sup> See Yury Buida, *Passports Shackle Russia*, Moscow Times, Dec. 11, 1997, Lexis, News Library, Mostms file (describing personal experience with *propiska* system).

<sup>9</sup> See Noah Rubins, *Recent Development, The Demise and Resurrection of the Propiska: Freedom of Movement in the Russian Federation*, 39 Harv. Int'l L.J. 545, 545 (1998) ("The . . . dissolution of the Communist regime in Russia created widespread hope that the . . . *propiska* would be abandoned . . .").

<sup>10</sup> See Konst. RF [Constitution] art. 27, § 1 (Russ.) ("Everyone who is lawfully staying on the territory of the Russian Federation shall have the right to freedom of movement and to chose [sic] the place to stay and residence."), reprinted in *Constitutions of the Countries of the World: Russian Federation* 1, 7 (Albert P. Blaustein ed., 1994); see also *infra* Part II.B.1.

<sup>11</sup> Law of the Russian Federation No. 5242-1 of June 25, 1993 on the Right of Citizens of the Russian Federation to the Freedom of Movement, the Choice of a Place to Stay, and Residence Within the Russian Federation [hereinafter 1993 Law], Lexis, Garant 10002748; see also Rules of Registration or Striking Off the Register of Russian Citizens at the Place of Stay or Residence on the Territory of the Russian Federation, Federal Resolution 713, July 17, 1995 (Russ.) [hereinafter Federal Rules], <http://www.memo.ru/hr/refugees/s1e/chapter25.htm> (implementing 1993 Law).

<sup>12</sup> See Presidential Decree Confirms Russian Citizens' Right to Have a Passport for Foreign Travel, Even If They Have No *Propiska*, *Kommersant-Daily*, May 5, 1998, at 3

the Russian Constitutional Court repeatedly has declared the right.<sup>13</sup> Furthermore, international conventions signed by the Russian government have promised the right.<sup>14</sup> However, in many parts of the country, including the capital city of Moscow, the federal right to free movement is violated daily by local and regional governments that retain unconstitutional and inhumane *propiska*-like<sup>15</sup> systems of registration for both visitors and residents.<sup>16</sup>

In addition to the obvious and troubling human rights abuses inherent in these systems, the rift that exists between federal law and

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(describing decree), reprinted in What the Papers Say, May 7, 1998, Lexis, News Library, Wps file.

<sup>13</sup> See Po delu o proverke konstitutsionnosti punktov 10, 12 i 21 Pravil registratsii i sniatiya grazhdan Rossijskoj Federatsii . . . [In re the Constitutionality of Sections 10, 12, and 21 of the Rules of Registration and Removal of Citizens of the Russian Federation . . .], Sobr. Zakonod. RF, 1998, No. 6, Art. No. 7083, at 1538 [hereinafter 1998 Decision]; Po delu o proverke konstitutsionnosti . . . Zakona Moskovskoj oblasti . . . [In re the Constitutionality . . . of the Moscow Region Statute . . .], Sobr. Zakonod. RF, 1997, No. 27, Art. No. 3304, at 5421 [hereinafter 1997 Decision]; see also Po delu o proverke konstitutsionnosti ryada normativnykh aktov goroda Moskvy i Moskovskoj oblasti . . . [In re the Constitutionality of Normative Acts of the City of Moscow and the Moscow Region . . .], Sobr. Zakonod. RF, 1996, No. 16, Art. No. 1909, at 4195 [hereinafter 1996 Decision].

<sup>14</sup> Russia is a member of the United Nations and of the Council of Europe, both of which strongly assert the freedom of movement in resolutions and conventions. For the United Nations declaration, see Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 13.1, U.N. GAOR, 3d Sess., at 71, 74, U.N. Doc. A/810 (1948). For the Council of Europe declaration, see Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms Other Than Those Already Included in the Convention and in the First Protocol Thereto, Sept. 16, 1963, Europ. T.S. No. 46, as amended by Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Established Thereby, May 11, 1994, Europ. T.S. No. 155. Russia signed the protocol in 1998. [1998] 1 Y.B. Eur. Conv. on H.R. 4.

<sup>15</sup> Though the term is still used by Russians today, use of the word "*propiska*" (or registration stamp) is technically inaccurate, as the *propiska* system was officially abandoned by federal regulations issued in 1995 and Moscow regulations issued in 1996. Both sets of regulations replaced the *propiska* system with a "registration" system, which in Moscow has the same practical effects of the former *propiska* system. For the federal regulation, see *infra* Part II.B.1; for the Moscow regulation, see *infra* Part I.B.1.

<sup>16</sup> In 1998, the last year for which accurate nationwide information is available, nearly one-third of Russia's eighty-nine regions restricted migration through the use of registration regimes. See U.S. Comm. for Refugees, *supra* note 4, at 200. Moscow, St. Petersburg, Krasnodar, and Stavropol are known as the cities with the strictest registration requirements. See U.S. Comm. for Refugees, World Refugee Survey 2000, at 269 (2000). For a detailed description of the hardships faced by Meskhetian Turks as a result of a restrictive registration regime in the Krasnodar region of Russia, see Mark Whitehouse, Politics of Persecution, *Moscow Times*, Jan. 24, 1998, Lexis, News Library, Mostms file. For a description of the hardships faced by the estimated 54,000 nonregistered people in Russia's second largest city of St. Petersburg, where unregistered homeless are reportedly trucked outside city borders by local authorities, see John Varoli, Police "Deport" St. Pete Homeless, *Moscow Times*, Nov. 28, 1998, at 1, 1998 WL 11691660.

local reality speaks to Russia's difficult transition to the rule of law.<sup>17</sup> The rift can be understood in two related ways. First, it provides an index, showing how far Russia is from its goal. In addition, it creates a vicious cycle in which illegal restrictions on movement persist because Russia remains far from the rule of law, while the continued restrictions in turn make the problem worse. This does further damage to Russia's prospects for attaining the rule of law. This Note recognizes that the government is not likely to remove the restrictions in the near future. However, this Note argues that ultimately they must be removed if Russia is to have a genuine chance at achieving the rule of law.<sup>18</sup>

Part I focuses on the ongoing problem of movement restrictions in Russia, examining the discarded Soviet *propiska* system, Moscow's current restrictive residence registration system, and the human rights implications of Moscow's registration regime. Part II then examines how the split between federal law and local reality with respect to Moscow's restrictions on movement speaks to Russia's prospects for becoming a nation governed by the rule of law. It explains that the rift provides an indicator of how far Russia is from the rule of law, while at the same time worsening Russia's prospects for ever attaining the rule of law. The Note concludes by arguing that, despite the difficulties involved, if the nation is to attain the rule of law, Russia's leaders must act to enforce the federal right to free movement.

## I

### MOVEMENT RESTRICTION IN RUSSIA— AN ONGOING PROBLEM

#### A. *The Propiska: A History of Movement Restrictions in Russia*

The roots of the *propiska* (translated as either "registration" or "registration permit")<sup>19</sup> system run deep in Russia.<sup>20</sup> Russia's practice of restricting its citizens' movement dates back to the "permit of pas-

<sup>17</sup> While a specific definition of the rule of law can be elusive, its essence demands at least that the law be clear, equally applied, and supreme. See *infra* Part II.A.

<sup>18</sup> Much has been written about the numerous difficult problems that Russia faces in its quest to become a nation grounded in law. See, e.g., Jane M. Picker & Sidney Picker, Jr., *Educating Russia's Future Lawyers—Any Role for the United States?*, 33 *Vand. J. Transnat'l L.* 17, 76 (2000) (arguing that better training for Russian lawyers is prerequisite to successful development of rule of law in Russia); Louise Shelley, *Post-Soviet Organized Crime and the Rule of Law*, 28 *J. Marshall L. Rev.* 827, 827 (1995) (arguing that organized crime is one of greatest threats to development of rule of law in Russia). The resolution of the situation discussed in this Note would not remove all other obstacles in Russia's path; however, the conflict between federal law and Moscow's actions in this realm are emblematic of Russia's situation as a whole, and therefore worthy of study.

<sup>19</sup> *Soviet System Alive and Kicking!*, *supra* note 7.

sage” edict issued by Czar Peter I in 1719.<sup>21</sup> The edict allowed for the issuance of two separate passports to Russian citizens: the “external” passport, which was used for foreign travel, and the “internal” passport, which bore a stamp identifying the holder’s place of residence.<sup>22</sup> For more than 200 years, the system served to tie Russian serfs to the land on which they were assigned to work.<sup>23</sup>

Not even the overthrow of the Russian Czars in the October Revolution of 1917 and the sweeping changes that followed signaled the immediate end of the *propiska* system. The Bolsheviks, who seized control of Russia, continued to use the system until it gradually succumbed to the increased labor demands of the New Economic Plan of 1921 to 1924.<sup>24</sup> This freedom was short-lived, however, as Stalin reintroduced the *propiska* system in 1925 as part of his drive to collectivize Soviet agriculture.<sup>25</sup> By 1932, the law again required all rural dwellers to have *propiska* stamps in their internal passports to signify where they lived; the peasants of Russia were completely “unemancipated,” tied to a collective farm for life.<sup>26</sup> Except for small revisions in the registration rules in 1964 and 1974, this system operated to restrict the movement of the Russian people throughout the Soviet period.<sup>27</sup>

One elderly Russian man summed it up best: “The *propiska* was both a dream and nightmare for Soviet people.”<sup>28</sup> It was a dream in that millions of people longed for the coveted Moscow *propiska* that would allow them to live in the wealthiest and most privileged city in

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<sup>20</sup> This is particularly difficult for Americans, most of whom have grown up taking the freedom of movement for granted, to understand. For Americans, moving to a new city entails little more than finding a place to live and moving. In contrast, many Russians unaccustomed to the American system marvel at the idea that in the United States people need not get permission from, or even inform, the local authorities before moving into a new area.

<sup>21</sup> Rubins, *supra* note 9, at 546 n.4 (detailing history of *propiska* system).

<sup>22</sup> *Id.*

<sup>23</sup> See Specter, *supra* note 6, at A4.

<sup>24</sup> Rubins, *supra* note 9, at 546 n.4. This was a period of free market activity, when growing industries required the labor of the former serfs. For a good, concise history of movement restrictions throughout the Soviet period, see Vladimir A. Kartashkin, *Human Rights and the Emergence of the State of the Rule of Law in the USSR*, 40 *Emory L.J.* 889, 898-902 (1991).

<sup>25</sup> See Rubins, *supra* note 9, at 546 n.4; *Soviet System Alive and Kicking!*, *supra* note 7. Between 1925 and 1927, Stalin implemented the *propiska* system for permanent residency and temporary stays: If a citizen visited a city for more than three days, he or she first had to get a temporary *propiska* for the area. As the Soviet state was liberalized in the 1950s, the use of temporary registrations disappeared, but the permanent *propiska* system continued. See Rubins, *supra* note 9, at 546 n.4; *Soviet System Alive and Kicking!*, *supra* note 7.

<sup>26</sup> Rubins, *supra* note 9, at 546 n.4.

<sup>27</sup> See Kartashkin, *supra* note 24, at 898-902; Rubins, *supra* note 9, at 546 n.4.

<sup>28</sup> Buida, *supra* note 8.

the Soviet Union.<sup>29</sup> It was a nightmare in that it completely pervaded the Soviet citizen's life from the age of sixteen, when each person was issued his or her internal passport.<sup>30</sup>

*B. Residence Registration: Ongoing Movement Restrictions  
in Russia's Capital City*

I was robbed two days ago, I was robbed yesterday, I was robbed today. The situation is stabilizing.

—Russian Proverb<sup>31</sup>

The attack on Russian movement restrictions began well before the fall of the Soviet Union.<sup>32</sup> It was not until 1993, however, that the federal government decisively established the right to free movement within the Russian Federation.<sup>33</sup> Then, in decisions handed down in

<sup>29</sup> See *id.* (describing how “millions still long to receive a Moscow *propiska*”).

<sup>30</sup> See *id.* (“Without a passport, you don’t exist . . .”). The internal passport bearing the *propiska* was vitally important to the Soviet government, providing the means for achieving “desirable population dispersion and ethnic concentration, labor and job allocation, housing allocation, and internal security.” Simona Pipko & Albert J. Pucciarelli, *The Soviet Internal Passport System*, 19 *Int'l Law* 915, 915 (1985). As such, almost nothing could be done in the Soviet Union without first showing a passport, from booking a room in a hotel to getting married. See Buida, *supra* note 8. And moving to a new place was extremely difficult: One had to apply at the office of the local militia in the area in which one wanted to move, and the militias—especially those in more desirable places, such as cities and large towns—only would issue a *propiska* to someone born in the jurisdiction, the incoming spouse of a resident, someone who secured an apartment in the jurisdiction, or someone who moved to take a job and had an employer to intercede on his or her behalf. Jeffrey Tayler, *Thin Walls, Bad Neighbors: In the New Russia Making Yourself at Home Is Still No Easy Task*, *Atlantic Monthly*, Nov. 1997, at 54, 56; see also Pipko & Pucciarelli, *supra*, at 918 (detailing difficulties of obtaining *propiska*).

<sup>31</sup> E-mail from Serge, Co-Founder, Moscow Illegals/Human Rights in Moscow, to Damian Schaible (Mar. 31, 2000) (on file with author). Out of fear of reprisals, Serge has requested that his surname not be used in this Note.

<sup>32</sup> Some restrictions on movement were lifted in 1988; then in 1990, one of the Soviet Union's ruling bodies, the Council of Ministers, officially relaxed the requirements of the *propiska* system. Rubins, *supra* note 9, at 546 n.4. Just before the fall of the Union, in October 1991, the U.S.S.R. Committee for Constitutional Supervision spoke out decisively against the system, finding that it violated, among other laws and covenants, the U.S.S.R. Constitution, the U.S.S.R. Declaration of the Rights and Duties of Man, and the Universal Declaration of Human Rights. Peter B. Maggs, *The Russian Constitutional Court's Decisions on Residence Permits and Housing*, 2 *Parker Sch. J. E. Eur. L.* 561, 569 (1995). The Committee ordered that residence permit provisions be abandoned as of January 1, 1992. See *id.* However, the Soviet Union was dissolved before that date, and the Committee's decision was relegated to a legal limbo. See *id.* at 570 (“This course of events created an open legal issue as to whether Soviet residence permit law would indeed be considered abrogated . . .”).

<sup>33</sup> See *supra* notes 10-14 and accompanying text. For a more detailed discussion of the Russian Federation laws, constitutional provisions, and judicial holdings that set up the right to free movement and denounce the *propiska*, see generally Konstantin Katanian, *The Propiska and the Constitutional Court*, 7 *E. Eur. Const. Rev.* 52 (1998); Maggs, *supra* note 32; Rubins, *supra* note 9.

1996, 1997, and 1998, the country's Constitutional Court clearly denounced any permit or registration system that might be used to restrict that right.<sup>34</sup> Today, federal law permits a registration regime,<sup>35</sup> but it envisions a notification-based system similar to those that exist in many Western European countries.<sup>36</sup> In other words, citizens still would register with local officials upon moving into a new area, but the officials no longer should have discretion to accept or reject applications. Rather, the citizens simply would notify the government that they are moving to an area, and the government should register them accordingly.<sup>37</sup>

While the federal laws and the Constitutional Court's holdings seem clear, no real change has occurred in Russia's capital city. It is difficult to pinpoint a reason for Moscow's continued movement restrictions. Certainly, there is strong public support for a restrictive registration regime.<sup>38</sup> Some of this support can be tied to racism.<sup>39</sup> It

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<sup>34</sup> See *infra* text accompanying notes 109-27. The 1996 and 1997 decisions attacked the registration fees that Moscow charged. The 1998 decision, in the course of holding aspects of the federal rules on registration unconstitutional, held that local governments such as Moscow's could not place additional restrictions on registration. See *id.* The Constitutional Court's 1998 decision explains that the only type of registration system allowed by the Russian Constitution is one that simply seeks to "certify the act of free will of a citizen to choose a place to stay and live." 1998 Decision, *Sobr. Zakonod. RF*, 1998, No. 6, Art. No. 7083, at 1538, 1539.

<sup>35</sup> 1993 Law, *supra* note 11, art. 3 (assigning responsibility to federal government to formulate registration regime).

<sup>36</sup> Rubins, *supra* note 9, at 549-50.

<sup>37</sup> This type of notification-based registration is used in Western European countries for tax, draft, census, and emergency management purposes. *Id.*

<sup>38</sup> For instance, the Moscow city government vigorously enforced Mayor Luzhkov's September 13, 1999 decree. See *infra* note 60 (discussing decree). The entire city reserve police force, numbering 20,000, was immediately called for duty. In total, they inspected 14,000 premises, searching for and arresting those in violation of the city's registration regime. Alisa Nikolina, *Lawlessness Made Up Like Mourning*, *Express Chron.*, Sept. 20, 1999, <http://www.online.ru/sp/chronicle-eng/20-Sep-99/104-eng.html>. At the same time, the Moscow television station TVC conducted a public opinion poll that asked, "Do you agree with the regime of registration becoming more strict?" More than ninety percent of the respondents answered "Yes." O.I. Cherepova, *Moscow After Explosions: Ethical Purges, Moscow Illegals/Human Rights in Moscow*, at <http://www.nelegal.ru/purges.html> (last visited Dec. 20, 2000). Though this number was almost certainly inflated by the deadly apartment bombings that had just taken place and the fact that they were being blamed on non-Muscovites, it is nonetheless a telling figure that may explain why such systems have not been relinquished.

<sup>39</sup> Referring to the dark-skinned people of the Caucasus region, some ethnic Russian Muscovites express the view that "[i]f you abolish the *propiska*, Moscow . . . will be bought out by 'blacks.'" Buida, *supra* note 8. In addition, the Moscow police force allegedly targets darker-skinned visitors for passport checks and arrests. See Mikhail A. Alexseev, *Russia's Troubles, From Rubles to U-Hauls*, *Seattle Times*, Nov. 8, 1998, at B9 (explaining that Moscow registration regime targets Moscow's ethnic minorities so extensively that one observer described its operation as "quiet ethnic cleansing . . . going on in the streets of Moscow"); *Residence Permits Stay, Mayor Says*, *Moscow Times*, Mar. 11, 1998, Lexis,

appears, however, that the majority of support for a restrictive registration system in Moscow—among both local leaders and the public—comes from a perceived need to protect against the flood of migrants many fear would occur as a result of a removal of the restrictions.<sup>40</sup> The argument has been made time and again by Moscow's leadership in defense of the city's restrictive registration regime.<sup>41</sup>

It is open to debate whether a flood of migrants actually would occur as a result of the removal of the registration restrictions,<sup>42</sup> whether the migrants would overwhelm the city's infrastructure,<sup>43</sup> and

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News Library, Mostms file (arguing that local officials use residence permits to exclude "non-Russian ethnic groups"). Human rights groups argue that the Moscow police force's focus on ethnic non-Russians often serves as a pretext for soliciting bribes from the unregistered, which in turn makes many ethnic non-Russians living in Moscow fearful of leaving their homes lest they be forced to pay a bribe. See Human Rights Watch, *Russian Federation: Ethnic Discrimination in Southern Russia* (1998) (arguing that "the system serves as a mechanism for eliciting government revenue and bribes"), <http://www.hrw.org/hrw/reports98/russia>.

<sup>40</sup> In addition to racism and the desire to protect against migrants, simple institutional inertia likely plays some role in the local support for Moscow's restrictive regime. As explained above, internal passports and movement restrictions have existed in one form or another for the better part of three hundred years. Certainly institutional memory can be overcome, but it is important to recognize that the practice of restricting movement is an entrenched one in Russia.

<sup>41</sup> In arguments before the Russian Constitutional Court on March 12, 1996, Moscow city representatives, along with representatives of another region, explained that city residents were deeply worried "about the damaging effects of sudden population growth in their regions" if restrictions were abandoned. Katanian, *supra* note 33, at 54-55. When Moscow Mayor Yuri Luzhkov made his famous statement in March 1998 that the city would continue its restrictions in the face of the decisive Constitutional Court decision declaring that local restrictions on registration could not stand, he cited concern over huge numbers of people seeking permission to live in the capital, thus draining the city's social service funds. Residence Permits Stay, Mayor Says, *supra* note 39; see also U.S. Comm. for Refugees, *supra* note 4, at 201 (authorities claim "immigrants are overrunning the city"); Sergei Blagov, Security Sweep Hits Displaced People, *Inter Press Serv.*, Sept. 27, 1999, Lexis, News Library, Inpres file (expressing concern that without registration system "capital would be swamped").

<sup>42</sup> It is beyond the scope of this Note to examine whether or not the removal of restrictions on registration would actually result in the expected deluge of migrants. However, it would be interesting to examine whether, given the huge price disparities that exist between rural and urban areas in Russia and the crippling housing shortage that exists in Moscow, removal of registration restrictions actually would lead to tremendous numbers of additional migrants.

<sup>43</sup> Those studying rural to urban migration in other nations have discussed at length the short-term effects of mass migration and the tendency of political leaders to believe that such migration poses insurmountable problems, including high unemployment, overcrowding, and breakdowns in city services. See, e.g., Ellen M. Bussey, *The Flight From Rural Poverty—How Nations Cope* 2-12 (1973) (discussing debate over urbanization). However, the consensus is that those short-term difficulties can be overcome and that in the long term, the effects of restraining labor mobility are much worse than the short-term growing pains of allowing free movement. See *id.* at 12 (noting that "vast majority" of countries take voluntary approach to problems of internal migration).

whether Moscow's population is justified in seeking to avoid the influx.<sup>44</sup> Nevertheless, it seems that Moscow's population and its leadership perceive these dangers and accept registration restrictions as a way to avoid them. The matter may be as simple as Muscovites wishing to preserve their prosperity in the face of the huge disparity between Moscow's "boom-town flair and emerging middle class" and the economic situation in the provinces, "which suffer from the equivalent of the Great Depression of the 1930s."<sup>45</sup> However, while the reasons behind it are not completely discernible, the fact that Moscow uses its registration system to restrict movement to the city is all too clear.

### C. *Moscow Continues to Use Its Local Residence Registration Regime to Restrict Movement*

It appeared in the first months of 1996 that Moscow would comply with the federal government's mandate of free movement. On February 1, 1996, the city officially dismantled its *propiska* system, replacing it with a mandatory registration system that was to conform with the federally granted right of free movement.<sup>46</sup> However, it quickly became apparent that the complex set of administrative requirements established by the new system were just as restrictive as the old *propiska* system.<sup>47</sup> In 1999, Moscow issued a new set of registration rules, which explicitly state that they obey the Constitutional Court decisions calling for notice-based registration.<sup>48</sup> Nevertheless,

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<sup>44</sup> Another aspect of the question of registration restrictions that is beyond the scope of this Note is the extent to which it is fair for city dwellers to want to protect their preferable city lifestyle by excluding those who were not lucky enough to be born or otherwise registered in the city.

<sup>45</sup> David Hoffman, *Moscow Mayor Defies Court on Residence Rights*, Wash. Post, Mar. 13, 1998, at A19. Moscow wields eighty percent of Russia's financial resources, and Muscovites' mean income is four times the national average. Tim Obojski, *Russia's Richest City Stingy with Residence Permits*, AAP Newsfeed, Jan. 18, 1998, Lexis, News Library, Aapnew file.

<sup>46</sup> Stephanie Simon, *For Many Russians, the Key to the City May Be a Marriage Certificate*, L.A. Times, Jan. 14, 1996, at A33. Unveiling the new system, Yuri I. Sharagorov, Deputy Director of Moscow's passport department, declared: "We're moving away from the Middle Ages and we're joining the civilized world." *Id.*

<sup>47</sup> See *id.* (criticizing proposed system); see also Rubins, *supra* note 9, at 556 (discussing restrictive requirements). For a description of the administrative requirements, see *infra* notes 49-54 and accompanying text.

<sup>48</sup> *Pravila registratsii i snyatiya grazhdan Rossijskoj Federatsii s registratsionnogo ucheta po mestu prebyvaniya i po mestu zhitel'stva v Moskve i Moskovskoj Oblasti* [Rules on the Registration of Citizens of the Russian Federation and Their Removal from the Roster According to Place of Sojourn and Residence Within Moscow and Moscow Oblast] art. 3 (1999) [hereinafter *Moscow Rules*], <http://spros.ru/answer/otv1417.htm>.

in practice the requirements listed therein continue to restrict severely who can register in Moscow.

When a non-Muscovite arrives in Moscow, he or she must register with the City Department of the Interior within three days.<sup>49</sup> The rules allow for two types of registration: “temporary” and “permanent,” depending on whether one is visiting or planning to live in the city.<sup>50</sup> Registering temporarily in Moscow requires payment of a small fee and proof of residence.<sup>51</sup> Proof of residence may be in the form of a lease, if one is renting a place in Moscow, or written permission from the owner and everyone registered at the residence, if one is staying with relatives.<sup>52</sup> There is also a space requirement, whereby the registrant must prove that there is a certain amount of space available for each person in the residence.<sup>53</sup> The requirements for permanent registration are similar, except that one must show either a lease or deed, proving that he or she either rents or has purchased an apartment.<sup>54</sup>

Facially, the requirements may not appear overly cumbersome. In practice, however, they serve to restrict severely who can register in the city. One reason is that it is virtually impossible for a would-be tenant to find a landlord willing to sign a lease agreement. If the lease is in writing, the landlord must register with the city and pay taxes on the income.<sup>55</sup> In order to avoid the draconian Russian tax system, which would consume a sizable portion of the lease income, most Muscovite landlords only will rent apartments informally, without the use of a legal lease.<sup>56</sup>

With leases largely unattainable, unless a person is one of the fortunate few who can afford to spend the equivalent of thousands of American dollars to purchase an apartment, the only registration option available is to register at the home of a relative. This, too, often

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<sup>49</sup> Id. art. 1, § 8.

<sup>50</sup> Id. art. 1. A more direct translation is “registration for the place one is and registration for the place where one lives.”

<sup>51</sup> Id. art. 2.

<sup>52</sup> Id.

<sup>53</sup> Simon, *supra* note 46, at A33. In 1996, the space requirement in Moscow was fifty-four square feet of living space per person. Id.

<sup>54</sup> Moscow Rules, *supra* note 48, art. 2.

<sup>55</sup> Tayler, *supra* note 30, at 56 (documenting rarity of written leases in Russia).

<sup>56</sup> See E-mail from Serge, Co-Founder, Moscow Illegals/Human Rights in Moscow, to Damian Schaible (Jan. 21, 2000) (on file with author) (“NOBODY wants to pay taxes in Russia. Taxes take away almost all money from the rent.”); see also Tayler, *supra* note 30, at 56 (stating:

[Russian landlords] need to rent apartments—but leases are almost unheard of. By law the lessors—possessors of *propiski*—must register leases with the Tax Inspectorate and pay tax on the rent received, but, ever wary of contact with the state and reluctant to pay taxes, they usually do neither.).

proves to be a difficult hurdle as it requires written permission from all those registered at the residence.<sup>57</sup> Even if all of the necessary signatures are attained, the registration will be denied if the statutory space requirements for the dwelling are not met. For a culture accustomed to living together—sometimes several generations—in cramped quarters, the space requirement often presents a serious obstacle.<sup>58</sup>

In addition to the explicit restrictions on registration created by the system, actions taken by Moscow's leadership, especially the city's powerful Mayor Yuri Luzhkov, have restricted people's right to move around freely even further.<sup>59</sup> One such action occurred in September 1999, when, in the wake of a series of apartment building bombings in Moscow that were widely thought to have been perpetrated by terrorists in retaliation for Russian action in the breakaway Republic of Chechnya, Luzhkov twice tightened Moscow's registration requirements. On September 13, 1999, Luzhkov, ostensibly to unmask the perpetrators of the apartment bombings, issued a decree that all people with temporary registrations in Moscow had to reregister within three days.<sup>60</sup> When it became obvious that local authorities could not

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<sup>57</sup> See *supra* note 52 and accompanying text. This poses a serious problem if one of the registered inhabitants is out of town, has left home permanently, is wary of signing a document that will go to a distrusted government, or simply does not like his or her relative.

<sup>58</sup> Simon, *supra* note 46, at A33.

<sup>59</sup> Mayor Luzhkov's unconstitutional actions restricting free movement through Moscow's registration regime have not gone unnoticed in the international community. For example, a February 2000 State Department report singled out Luzhkov for his continued use of a restrictive registration system clearly at odds with Russian Constitutional Court decisions. See 2 U.S. Dep't of State, *Country Reports on Human Rights Practices for 1999, at 1775 (2000)* [hereinafter *State Department Report*] (describing Luzhkov's response to decisions).

<sup>60</sup> See *Moskva mer rasporyazheniye N. 1007-RM, O neotlozhnykh merakh po obespecheniyu poryadka registratsii grazhdan, vremenno prebyvayuschikh v g[orode] Moskve* [Moscow Mayor's Order No. 1007-RM, On Urgent Measures for Assuring the Proper Registration of Citizens Temporarily Residing in the City of Moscow] (Sept. 13, 1999) [hereinafter *September 13 Decree*], [http://www.mos.ru/cgi-bin/alpha/con\\_law?6,31,8407](http://www.mos.ru/cgi-bin/alpha/con_law?6,31,8407). Though it is outside the scope of this Note to discuss at length, many commentators argue that the issuance of the decree was itself violative of the Russian Constitution. Article 15 of the Constitution states that no normative legal act affecting individual "rights, liberties or duties" can be enforced unless it is first officially published. *Konst. RF art. 15, § 3 (Russ.)*, reprinted in *Constitutions of the Countries of the World: Russian Federation 1, 5* (Albert P. Blaustein ed., 1994). Mayor Luzhkov's September 13 decree was issued and began to be enforced without any prior publication. See Cherepova, *supra* note 38 (arguing that because decree was unpublished, "there were no legitimate grounds for its execution"). Many also argue that another decree on Moscow's registration system issued by Mayor Luzhkov shortly after the September 13 decree is similarly contrary to Russia's Constitution. See Svetlana Sukhova, *Registration Is Illegitimate Child of Constitution, Segodnya*, Sept. 29, 1999, at 1, partially reprinted in *Russian Press Digest*, Sept. 29, 1999, Lexis, News Library, Spd file (citing and discussing *Ob utverzhdenii vremennogo poryadka peremeschenniya lits, zlostno narushayuschikh pravila registratsion-*

possibly process the reregistration applications of the 121,000 people who had temporary registrations in Moscow, the Mayor extended the period to September 21.<sup>61</sup>

There are several aspects of Mayor Luzhkov's September 13 decree that show that registration—and therefore movement—continues to be restricted in Moscow. The mere fact that people legally registered were forced, with little notice, to stand in long lines for up to a week to reregister,<sup>62</sup> can be seen as a restriction. More significantly, many of those who previously held temporary registrations were denied reregistration. In the week after Luzhkov's decree, 15,000 previously registered visitors were refused reregistration and told to leave the city within three days.<sup>63</sup> Even more troubling, one human rights monitor in Moscow reported that the Moscow police were operating under unpublished, yet explicit, orders to refuse to register any ethnic Chechens residing in the city.<sup>64</sup>

Finally, the September 13 decree added to the requirements for temporary registration in Moscow. Item 1.2 of the decree required those seeking reregistration to substantiate their purpose for being in Moscow.<sup>65</sup> One advocate for the unregistered in Moscow explained that though there are no rules to define acceptable purposes, a letter from an employer usually is required.<sup>66</sup> According to a statement made by the head of Moscow's passport department, those refused

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novo ucheta, za predely goroda Moskvyy k mekhu ikh postoyannogo prozhivaniya [Provisional Regulation for Moving Persons Outside the Moscow City Boundary for a Gross Violation of the Registration Regime] (Sept. 21, 1999) [hereinafter September 21 Decree], [http://www.mos.ru/cgi-bin/alpha/con\\_law?6,38,8620](http://www.mos.ru/cgi-bin/alpha/con_law?6,38,8620)). The September 21 decree permanently tightened Moscow's registration system for visitors, imposing "administrative fines" on visitors who fail to register with authorities within three days of arrival in the city. *Id.* If after paying the fine a visitor still does not register, he or she can be detained and deported from the city. *Id.* Commentators argue that this decree is unconstitutional because it imposes punishment for registration violations in excess of that provided in Kodeks R.S.F.S.R. ob Administrativnykh Pravonarusheniyakh [R.S.F.S.R. Code of Administrative Violations] art. 178 (2000), <http://black.inforis.nnov.su/infobase/www.exe/a/90.new/?docid=9309264@KWX>, which lists a fine or a warning as the permissible punishment. See Cherepova, *supra* note 38 (arguing that decree is invalid).

<sup>61</sup> Zoya Oryakhova, *Terror Against Russians*, *Express Chron. Hum. Rts. Wkly.*, Sept. 27, 1999, <http://www.online.ru/sp/chronicle-eng/27-Sept-99/103-eng.html>.

<sup>62</sup> Cherepova, *supra* note 38.

<sup>63</sup> Eichrodt, *supra* note 2, at A21 (stating that "some 15,000 people had been refused registration and ordered out of the city" only days after Mayor Luzhkov signed September 13 Decree); see also Cherepova, *supra* note 38 (describing reregistration ordeal).

<sup>64</sup> Press Release, Radio Free Europe/Radio Liberty, *Moscow Prepares for Final Expulsion of Chechens* (Oct. 6, 1999) (discussing alleged orders), <http://www.rferl.org/welcome/english/releases/russia991006.html>.

<sup>65</sup> September 13 Decree, *supra* note 60 ("[I]t is necessary to establish the purpose of temporarily staying in the city.").

<sup>66</sup> E-mail from Serge to Damian Schaible, *supra* note 56.

reregistration in the wake of the September 13 decree were rejected because “[t]hey were unable to explain the purpose of their presence, their place of residency and, well, a number of other reasons.”<sup>67</sup> Calling for reregistration arguably is restrictive of free movement; however, the number of people refused reregistration and the suspect reasons for refusal make it clear that movement continues to be restricted in Russia’s capital city.<sup>68</sup>

In sum, it is clear that Russia’s capital city continues to prevent free movement by the use of a registration system that operates in various ways to restrict severely who can register in the city.<sup>69</sup>

#### D. *The Human Rights Implications of Moscow’s Continued Restrictions on Movement*

Moscow’s registration system, by restricting who can register in the city, significantly violates the human rights<sup>70</sup> of the unregistered.<sup>71</sup>

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<sup>67</sup> Oryakhova, *supra* note 61.

<sup>68</sup> Both the text of the Moscow registration rules and the decrees and actions of the city’s mayor severely restrict who can register to live in Moscow. However, even if one can comply with all of the official requirements imposed by both the rules and the mayor, she is still not guaranteed registration in Moscow. Registration seekers report having to stand in line for days at various offices, enduring insults and abuse from officials, and often having to bribe authorities to get registered. Rubins, *supra* note 9, at 556. Officials are said to demand additional documents and the payment of high fees not required by the Moscow rules. Karush, *supra* note 1. Though the text of the Moscow rules provides for a completely nondiscretionary registration, commentators explain that the reality in Russia’s capital city is that authorities often deny registration. See Alex Grigorievs, *A Letter from Moscow: Caucasians and the Capital, Forced Migration Monitor* (Open Soc’y Inst., New York, N.Y.), Mar. 1999 (“The authorities . . . have the right to either grant or deny registration.”), <http://www.soros.org/fmp2/html/march99.html>. From a practical perspective, unofficial restrictions imposed by city authorities are said to limit registrations to those with the financial means either to buy property or to pay large bribes. David Hoffman, *A State of Lawlessness: Corruption, Coercion Reign in Russia*, *Wash. Post*, Sept. 9, 1999, at A18. Ethnic minorities in Russia, especially dark-skinned people from the Caucasus region, fare the worst, with authorities regularly discriminating against them in refusing their applications for registration. See Jon Wright, *Criticism of Police Crackdown Was Media’s Right, Duty*, *Russ. J.*, Oct. 4, 1999 (“[Police] officers have been known to demand bribes and refuse registration on ethnic grounds.”), <http://www.russiajournal.ru/weekly/article.shtml?ad=1452>; see also Alexseev, *supra* note 39, at B9 (detailing hardships faced by Caucasians under Moscow system).

<sup>69</sup> Among those kept out was Grigory Yavlinsky, the leader of the liberal Yabloko party that opposes Mayor Luzhkov’s party. Mr. Yavlinsky was denied a *propiska* in December 1998 in the Moscow district of Odintsovo amid speculation that he was denied registration in order to block him from running for governor of the region. Yavlinsky Is Denied the *Propiska*, *Parlamentskaya Gazeta*, Dec. 3, 1998, at 4, Lexis, News Library, Wps file.

<sup>70</sup> One might argue about what constitutes the set of “human rights” and whether the right to free movement should be included. However, under Russian law the argument is moot, because the 1993 Constitution includes the right to free movement in a chapter entitled “Rights and Liberties of Man and Citizen.” *Konst. RF ch. 2* (Russ.), reprinted in

Life for the unregistered, commonly labeled “*bomzhi*” (an acronym for one without an address and a colloquialism for “scum”),<sup>72</sup> is extremely difficult. They cannot enroll their children in kindergarten, they are denied the free medical care available to other Muscovites, and they are not even allowed to buy a gravesite.<sup>73</sup> They are unable to get a job legally or receive a pension.<sup>74</sup> They are stopped frequently and questioned by police and are forced to pay bribes to avoid being taken into custody for not being registered.<sup>75</sup> When they are taken into custody, they face beatings at police stations and are held in special deportation centers while they await deportation from the city.<sup>76</sup>

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Constitutions of the Countries of the World: Russian Federation 1, 5 (Albert P. Blaustein ed., 1994).

<sup>71</sup> In addition to violating the human rights of the unregistered, Moscow’s restrictive registration system also presents more general problems that affect the registered and unregistered alike. For example, it opens Russia to international criticism, since the nation is a signatory to several conventions upholding the right to free movement. See *supra* note 14. For examples of criticism by groups such as Human Rights Watch, the Soros Foundation, the U.S. Committee for Refugees, Moscow Illegals/Human Rights in Moscow (a grassroots organization founded by a group of unregistered Muscovites), and the U.S. Department of State, see Human Rights Watch, *supra* note 39 (arguing that *propiska* is illegal); see also 2 State Department Report, *supra* note 59, at 1774 (condemning discriminatory use of registration system); Human Rights Watch, *Confessions at Any Cost: Police Torture in Russia* (1999) (same), [http://www.hrw.org/reports/1999/russia/Russ990-10.htm#P1307\\_259151](http://www.hrw.org/reports/1999/russia/Russ990-10.htm#P1307_259151); U.S. Comm. for Refugees, *supra* note 4, at 200 (describing “enormous” registration barriers); Grigorievs, *supra* note 68 (detailing plight of unregistered); Moscow Illegals/Human Rights in Moscow, at <http://www.nelegal.net>. Also, restricting labor mobility can have dire effects on Russia’s economy, as it did on the Soviet Union’s. See Nicholas Daniloff, *In Russia, Shortage of Workers Is the Problem*, U.S. News & World Rep., July 18, 1983, at 68 (explaining that economy of Soviet Union was severely impaired by labor mobility restrictions, as some businesses experienced massive labor shortages while others remained overstaffed); see also Amy J. Bliss, *Comment, Proletariat to Perestroika: A Comparison of Labor Law in the Soviet Union and the Russian Federation*, 18 Comp. Lab. L.J. 264, 268-69 (1997) (arguing that restricted labor mobility tying was constant and severe problem under highly regulated economy of Soviet Union).

<sup>72</sup> Specter, *supra* note 6, at A4.

<sup>73</sup> See Simon, *supra* note 46, at 6 (describing entitlements of *propiska*).

<sup>74</sup> Obojski, *supra* note 45.

<sup>75</sup> See Matthew Fisher, *An Entire Nation on the Take: Russia, Especially in Moscow, Must Replace Rule of Thuggery with the Rule of Law*, Toronto Sun, Dec. 28, 1998, at 16 (describing common practice of bribing police).

<sup>76</sup> See Open Letter, *supra* note 4 (describing process of removal). There is evidence that even with the widespread practice of bribing police to avoid detention, unregistered Muscovites are often taken into custody. For instance, during September 1999 alone, Moscow police took 20,000 people into custody for violations of the city’s registration rules. Karush, *supra* note 1; Fred Weir, *Return of Babushki and Pogroms*, Christian Sci. Monitor, Sept. 23, 1999, at 6.

In short, the restrictions result in a class of Moscow inhabitants who effectively are treated as noncitizens.<sup>77</sup> This class of people whose human rights are violated by the registration regime is not a small one;<sup>78</sup> as mentioned, widely varying estimates place the number of unregistered in Moscow somewhere between 100,000 and three million.<sup>79</sup>

## II

### CONTINUED RESTRICTIONS ON MOVEMENT AND THE RULE OF LAW

The continued use of registration systems that restrict freedom of movement in localities such as Moscow leads to tremendous human suffering. Alone, this creates a big enough problem to warrant immediate attention. However, in addition to the negative direct consequences of the regime, the fact that Moscow continues to restrict movement in the face of contrary federal law reflects poorly on Russia's ongoing transition to the rule of law. The situation serves as an index of the country's progress, illustrating how far Russia is from the rule of law, while at the same time aggravating the problem of Russia's transition to becoming a rule-of-law nation.

#### A. *The Rule of Law in Russia*

Lenin summed up Russian law during the Soviet period when he said, "law is policy."<sup>80</sup> Law, like all else in the Soviet Union, was sub-

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<sup>77</sup> As one commentator put it: "The *propiska* amounts to a municipal citizenship of sorts—those caught without the indigo blotch in their internal passports risk jail, fines, or expulsion beyond city limits." Tayler, *supra* note 30, at 56. However, the unregistered in Moscow are treated much worse than noncitizens in many places of the world. As Amnesty International observed, they "do not enjoy regular access to medical care, education and social services and are often subjected to arbitrary arrest and forcible expulsion by the law enforcement officials." Amnesty Int'l, Russian Federation: Chechnya: For the Motherland (Report No. EUR 46/46/99, 1999), <http://www.amnesty.org/ailib/aipub/1999/EUR/44604699.htm>.

<sup>78</sup> Indeed, the existence of this class is itself compelling evidence that Moscow is a "closed" city for many potential registrants. When one looks at the tremendous hardships and persecutions faced by unregistered Muscovites, it becomes obvious that few would choose the situation in which they find themselves.

<sup>79</sup> See *supra* note 4.

<sup>80</sup> Dana Dallas Atchison, Notes on Constitutionalism for a 21st-Century Russian President, 6 *Cardozo J. Int'l & Comp. L.* 239, 336 (1998); William E. Butler, The Rule of Law and the Legal System, in *Developments in Soviet and Post-Soviet Politics* 104 (Stephen White et al. eds., 1992). Atchison argues that in the Soviet period, all law came out of present political expediency, instead of some concept of fundamental ideals. Atchison, *supra*, at 289. She argues that this muddying of the line between politics (based on short-term interests) and law (based on long-term principles) remains a problem in Russia today. See *id.* at 243 ("[W]hen the distinction between politics and [law] is obscured, the constitutional order is threatened.").

ordinated to the Communist Party.<sup>81</sup> Devoid of independent legitimacy, law was twisted and changed to serve the needs and purposes of the Party.<sup>82</sup>

The Russian Constitution of 1993 sought to change this, organizing Russia as a constitution-based, rule-of-law state.<sup>83</sup> Specifically defining the term “rule of law” is difficult; one definition is that a nation under the rule of law is one where the law is public knowledge, clear in meaning, and applies to everyone equally.<sup>84</sup> Whereas in the Soviet Union the Communist Party was supreme, in a rule-of-law nation the law is supreme, with both the state and its people subordinate to it.<sup>85</sup> Among other things, scholars agree that a rule-of-law nation exhibits certain characteristics, including “judicial review, a fair legal order . . . and no person being above the law.”<sup>86</sup>

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<sup>81</sup> See Christopher T. Ruder, Comment, Individual Economic Rights Under the New Russian Constitution: A Practical Framework for Competitive Capitalism or Mere Theoretical Exercise?, 39 St. Louis U. L.J. 1429, 1435 (1995) (arguing that dictatorship of proletariat, or in Russia, dictatorship of Communist Party, alone was to define boundaries of political and economic activities in socialist system). Lenin defined this dictatorship as “nothing more nor less than authority untrammelled by any laws, absolutely unrestricted by any rules whatever, and based directly on force.” V.I. Lenin, A Contribution to the History of Dictatorship (1920), reprinted in 31 Collected Works 340, 353 (Julius Katzer ed., 1966).

<sup>82</sup> See Scott P. Boylan, The Status of Judicial Reform in Russia, 13 Am. U. Int'l L. Rev. 1327, 1339 (1998) (describing Soviet Union as nation where “[l]aws, rules, and sentences to labor camps could all be changed at the whim of a Communist official”). For a good general history of the role of law in Russia and how legality was strongly rejected in favor of unlimited power for the state under both Czarism and pre-Gorbachev Soviet rule, see Molly Warner Lien, Red Star Trek: Seeking a Role for Constitutional Law in Soviet Disunion, 30 Stan. J. Int'l L. 41, 48-83 (1994).

<sup>83</sup> See Konst. RF art. 4, § 2 (Russ.) (“The Constitution of the Russian Federation and federal laws shall have supremacy throughout the entire territory of the Russian Federation.”), reprinted in Constitutions of the Countries of the World: Russian Federation 1, 2 (Albert P. Blaustein ed., 1994); see also id. at art. 1, § 1 (“Russia shall be a democratic federal rule-of-law state with the republican form of government.”), reprinted in Constitutions of the Countries of the World: Russian Federation 1, 1 (Albert P. Blaustein ed., 1994).

<sup>84</sup> Thomas Carothers, The Rule of Law Revival, Foreign Aff., Mar.-Apr. 1998, at 95, 96.

<sup>85</sup> See Atchison, *supra* note 80, at 250 (arguing that “no one should stand above the law”); see also Carothers, *supra* note 84, at 96 (explaining that in rule-of-law nation, government and government officials accept that law applies to them and seek to be law-abiding).

<sup>86</sup> Vasily A. Vlashin, Toward a Rule of Law and a Bill of Rights for Russia, in Law and Democracy in the New Russia 43, 43 (Bruce L.R. Smith & Gennady M. Danilenko eds., 1993); see also Harold J. Berman, The Rule of Law and the Law-Based State (*Rechtsstaat*): With Special Reference to the Soviet Union, in Toward the “Rule of Law” in Russia? 43, 47 (Donald D. Barry ed., 1992) (arguing that in addition to other elements, rule of law includes rule of laws, whereby state rules by law rather than fiat, and is bound by its own laws, which it must enforce fairly); Kathryn Hendley, The Spillover Effects of Privatization on Russian Legal Culture, 5 Transnat'l L. & Contemp. Probs. 39, 41 (1995) (“The core element of the rule of law is that law applies in equal measure to the powerful and the non-

To some scholars, the rule of law contains a natural law element, demanding that the law be just and have a source higher than the legislature. Under this theory, a nation's laws must conform to some higher standard of justice in addition to being supreme.<sup>87</sup> The debate about how to define precisely the rule of law is complex and has filled volumes. However, for the purposes of this Note, it is not necessary to choose a particular definition because the right to free movement, which natural law scholars might argue must be protected in a rule-of-law country, also is supported by acts of the Russian legislature.<sup>88</sup> Therefore, for the purposes of this Note, the rule of law toward which Russia strives can be limited to the ideas summed up by one Soviet scholar writing before the fall of the Soviet Union:

[T]he essence of the state of the rule of law lies in creating a system such that state and social relations are all subordinate to law and are subject to regulation by law. Law must rule in all spheres of life, and the supremacy of the law must be indisputable.<sup>89</sup>

### *B. Unenforcement of Federal Law as an Index of Progress Toward the Rule of Law in Russia*

Giving substance to “the supremacy of the law” in a particular nation requires consideration of how that nation's legal system is organized. The Russian Constitution creates a federation, with federal law supreme and controlling over local law.<sup>90</sup> Therefore, if Russia is

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powerful and that legal institutions have sufficient authority and independence to make the remedies imposed against the powerful meaningful.”)

<sup>87</sup> See Berman, *supra* note 86, at 45 (explaining that idea of rule of law, as currently used, includes concept of natural law); see also Carothers, *supra* note 84, at 96 (explaining that laws of rule-of-law state protect civil liberties and universal human rights); Kartashkin, *supra* note 24, at 893 (arguing that in rule-of-law state, “legislation must . . . be democratic as well as supreme, protecting human rights and freedoms directly or indirectly, and serving the interests of society as a whole”). These scholars use different terms, such as “law-based state” to discuss nations in which law is supreme, but whose laws may or may not be just. See Berman, *supra* note 86, at 47 (explaining that in law-based state, nation's lawmaker—rather than higher conception of justice—is ultimate source of law, but state is still bound by law it creates).

<sup>88</sup> See *infra* notes 94-106 and accompanying text (discussing legislature's declarations of freedom of movement in Russia).

<sup>89</sup> Kartashkin, *supra* note 24, at 893.

<sup>90</sup> See Konst. RF art. 4, § 2 (Russ.) (“The Constitution of the Russian Federation and federal laws shall have supremacy throughout the entire territory of the Russian Federation.”), reprinted in *Constitutions of the Countries of the World: Russian Federation* 1, 2 (Albert P. Blaustein ed., 1994). The Russian Constitution, approved by national referendum on December 12, 1993, created a federal structure with a central government and various “subjects of the Russian Federation.” *Id.* at art. 5, reprinted in *Constitutions of the Countries of the World: Russian Federation* 1, 2 (Albert P. Blaustein ed., 1994). There are currently eighty-nine such “subjects,” divided into republics, territories (*krais*), regions (*oblasts*), federal cities, and autonomous areas (*okrugs*), each with different rights and re-

operating under the rule of law, one could expect that federal law, within its sphere of influence, would override inconsistent local actions.

Further, the Russian Constitution provides for judicial review of the law, in order to ensure that it accords with the Constitution.<sup>91</sup> This authority is granted to the Russian Constitutional Court, which first was established in October 1991, but was disbanded by President Yeltsin in 1993 and reestablished in March 1995.<sup>92</sup> Therefore, if Russia is operating under the rule of law, one would expect that when its Constitutional Court holds a local practice unconstitutional, the practice would cease.

Accordingly, in situations within the realm of federal power,<sup>93</sup> the extent to which federal law—embodied in both legislative acts and judicial decisions—is enforced is a measure of Russia's success in insti-

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sponsibilities under the Constitution. *Id.* at art. 5, § 1, reprinted in *Constitutions of the Countries of the World: Russian Federation 1, 2* (Albert P. Blaustein ed., 1994). For a general discussion of the Russian federal system and the types of subjects it includes, see Todd Alan Frommeyer, *Power Sharing Treaties in Russia's Federal System*, 21 *Loy. L.A. Int'l & Comp. L.J.* 1, 4-10 (1999).

<sup>91</sup> Judicial review of the nation's laws is considered by many scholars to be vital to a constitution-based, rule-of-law state. See Atchison, *supra* note 80, at 255 (arguing that judicial review is important component of rule-of-law state). Some commentators argue for alternatives to judicial review in nations where it does not operate effectively, especially in the context of enforcing the rights of individuals against attack by unconstitutional government action. See Justice Robert F. Utter & David C. Lundsgaard, *Judicial Review in the New Nations of Central and Eastern Europe: Some Thoughts from a Comparative Perspective*, 54 *Ohio St. L.J.* 559, 587-89 (1993) (arguing for use of ombudsman or procurator—*independent agent or agent of State, respectively*—to challenge unconstitutional government actions on individuals' behalf). However, this Note will limit its discussion to traditional judicial review, because the Russian Constitution allows for it, see *Konst. RF art. 125, §§ 4-6* (Russ.), reprinted in *Constitutions of the Countries of the World: Russian Federation 1*, 37 (Albert P. Blaustein ed., 1994), and the Russian Constitutional Court has engaged in it, see *infra* Part II.B.1.

<sup>92</sup> See Maggs, *supra* note 32, at 564-65 (noting Court's turbulent beginnings). The Russian Constitution establishes the Constitutional Court as, among other things, the protector of constitutional rights, both hearing cases brought by individual citizens and deciding on constitutional questions certified by ordinary courts. Herbert Hausmaninger, *Towards a "New" Russian Constitutional Court*, 28 *Cornell Int'l L.J.* 349, 367 n.120 (1995). For a description of the Russian Constitutional Court, see *id.* at 366-78.

<sup>93</sup> The right to free movement is granted in Chapter 2 of the Russian Constitution, entitled "The Rights and Liberties of Man and Citizen." *Konst. RF ch. 2* (Russ.), reprinted in *Constitutions of the Countries of the World: Russian Federation 1*, 5 (Albert P. Blaustein ed., 1994). Article 72 of the Constitution explains that human rights and freedoms are an area of joint jurisdiction, meaning that both subjects of the Federation and the federal government can legislate in the area. See Frommeyer, *supra* note 90, at 23, 27 (listing areas of joint jurisdiction). However, when the federal government legislates in an area of joint jurisdiction, federal law is controlling over local or regional law. See *id.* at 23 (requiring subjects to "pass laws in their own territory bringing into effect the federal law"). Therefore, under the Russian Constitution, regional and local governments must comply with federal law on the topic of movement restrictions.

tuting the rule of law. Unfortunately, in the case of local restrictions on the constitutional right to free movement, one can see a chasm between federal will and local reality that serves to illustrate just how far Russia is from the rule of law.

### 1. *Federal Law Regarding Movement Restrictions*

Russian federal law clearly denounces the *propiska* and any other local system that might be used to restrict the movement of people in Russia. In fact, the Soviet-era *propiska* system was explicitly renounced more than seven years ago. In June 1993, the Russian Supreme Soviet passed a law entitled “On the Right of Citizens of the Russian Federation to the Freedom of Movement, the Choice of a Place of Stay and Residence Within the Russian Federation” (1993 Law).<sup>94</sup> As its title suggests, in Article 1 the law grants Russians the right to free movement and the right to choose a place of temporary and permanent residence within the borders of the Russian Federation.<sup>95</sup> The 1993 Law allows only for a system of nondiscretionary, nondiscriminatory, notice-based registration, available to all people legally in Russia. The system envisioned by the law does nothing more than keep track of a person’s personal decision to visit or move to an area.<sup>96</sup>

Soon after the enactment of the 1993 Law, on December 12, 1993, a new Russian Constitution was adopted.<sup>97</sup> The 1993 Constitution is remarkable in its focus on securing human rights, and it accordingly constitutionalizes the right of free movement.<sup>98</sup> Article 27.1 of the new Constitution copied the language of Article 1 of the 1993 Law, declaring that “[e]veryone who is lawfully staying on the territory of the Russian Federation shall have the right to freedom of movement and to cho[o]se the place to stay and reside[ ].”<sup>99</sup>

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<sup>94</sup> 1993 Law, *supra* note 11.

<sup>95</sup> *Id.* art. 1.

<sup>96</sup> See Rubins, *supra* note 9, at 549 (analogizing registration system ideal to census or draft registration).

<sup>97</sup> *Id.*

<sup>98</sup> The 1993 Constitution’s focus on human rights led many commentators, upon its adoption, to be extremely optimistic about human and civil rights in Russia. See, e.g., Ronald C. Monticone, A Brief Comparative Analysis of the Russian Constitution, in *Constitution of the Russian Federation: With Commentaries and Interpretation by American and Russian Scholars* 7, 9 (Vladimir V. Belyakov & Walter J. Raymond eds., 1994) (comparing new Russian Constitution favorably to U.S. Constitution).

<sup>99</sup> Konst. RF art. 27, § 1 (Russ.), reprinted in *Constitutions of the Countries of the World: Russian Federation* 1, 7 (Albert P. Blaustein ed., 1994). Section 2 of Article 27 extends this right of free movement to non-Russian citizens legally in Russia. Rubins, *supra* note 9, at 552. Article 18 of the Constitution also takes the significant step of giving direct effect to “[t]he rights and liberties of man and citizen,” declaring that they be used to

The new Russian Civil Code, adopted on October 21, 1994, continued this focus on human rights with an entire chapter entitled "Origination of Civil Rights and Obligations, Exercise and Protection of Civil Rights."<sup>100</sup> Article 150.1 of the Civil Code grants Russians numerous rights, including the "right to free movement, [and] of the choice of the place of stay and residence," and declares these rights to be "inalienable," "non-material" (intangible) goods belonging to the citizen from birth or in virtue of the law.<sup>101</sup>

Together, the 1993 Law, the Constitution, and the Civil Code are decisive in that they clearly provide for the right to freedom of movement.<sup>102</sup> However, the 1993 Law charges the federal government with promulgating specific rules to govern this new registration regime, and it orders local authorities to implement new, notification-based systems in accordance with the rules.<sup>103</sup> Not until July 1995 did the federal government issue the long-awaited rules to govern local registration systems (Federal Rules).<sup>104</sup> The Federal Rules specifically called for separate notification-based systems for visitors and permanent settlers to replace the discretionary *propiska* systems, and they gave the Russian Ministries of Justice and the Interior three months to provide workable amendments to all existing Federation laws men-

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"determine the meaning, content[,] and application of the laws, and the activities of the legislative and executive branches and local self-government, and [ordering that they be] secured by the judiciary." Konst. RF art. 18 (Russ.), reprinted in *Constitutions of the Countries of the World: Russian Federation* 1, 5 (Albert P. Blaustein ed., 1994). The "rights and liberties" that should be used to give meaning to any other laws of the country clearly include the right to freedom of movement. See Rubins, *supra* note 9, at 552-53 (pointing out that Article 18 of Constitution effectively defines rights to be given special status as those "codified in treaties and conventions signed by the Russian Federation," and listing three such documents that establish freedom of movement as right: Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and Council of Europe Charter and Convention on Protection of Human Rights and Fundamental Freedoms).

<sup>100</sup> *Grazhdanskii Kodeks RF [Civil Code] ch. 2* (Russ.), translated in Lexis, Garant 10064072.

<sup>101</sup> *Id.* art. 150.1.

<sup>102</sup> It is important to note that the freedom of movement enunciated by the 1993 Law, the Constitution, and the Civil Code is not absolute. For instance, the 1993 Law provides for exceptions, when the right may be "restricted according to the laws of the Russian Federation." 1993 Law, *supra* note 11, art. 8. Neither the Constitution nor the Civil Code renounce these exceptions. Restrictions are permitted in border areas, closed military cities, closed territories, ecological disaster areas, quarantined cities, and "territories where a state of emergency or martial law has been introduced." *Id.* However, in a 1998 decision, the Constitutional Court held that only the federal government may invoke these exceptions. 1998 Decision, *Sobr. Zakonod. RF*, 1998, No. 6, Art. No. 7083, at 1538, 1539-40. Since the federal government has not included the city of Moscow in any of these categories, these exceptions are not important for the purposes of this Note.

<sup>103</sup> 1993 Law, *supra* note 11, art. 4.

<sup>104</sup> Federal Rules, *supra* note 11.

tioning registration to make them conform with the new systems.<sup>105</sup> Although imperfect,<sup>106</sup> the Federal Rules built upon the framework of the right to free movement enunciated in the 1993 Law, the Constitution, and the Civil Code to set up a structure for notification-based registration systems.

The decisions of the Russian Constitutional Court further clarified the federal government's position that any registration system that acts to restrict movement violates federal law.<sup>107</sup> Since first examining the *propiska* in 1996, the Russian Constitutional Court has handed down three decisions finding various aspects of both local and federal registration regimes unconstitutional.<sup>108</sup> In sum, the Court's decisions invalidate residence permit systems insofar as they interfere with the right to free movement by allowing any sort of government discretion to reject registrations.

The Court first attacked the *propiska* in a case decided on April 4, 1996.<sup>109</sup> The president of a former Soviet Republic and two private citizens challenged the constitutionality of various registration statutes, including the Moscow city registration statute of September 1994, which imposed a fee in excess of \$6000 (or 500 times the minimum monthly wage) on new residents.<sup>110</sup> Although the specifics of the various statutes differed, they all imposed some sort of fee on new residents, and they all represented efforts on the part of local or regional government to restrict movement.<sup>111</sup>

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<sup>105</sup> *Id.*

<sup>106</sup> See Rubins, *supra* note 9, at 551 (arguing that in some ways, Federal Rules missed their chance truly to support right to free movement, because they allowed for "limited circumstances" under which someone could be denied registration, which actually resulted in great deal of administrative discretion to reject registrations).

<sup>107</sup> See *supra* note 34 and accompanying text; see also *infra* note 126 and accompanying text.

<sup>108</sup> See *infra* notes 109, 117, 121. The Court actually touched upon the *propiska* system in a case decided on April 25, 1995, before the promulgation of the 1995 Federal Rules, but it is not discussed herein because it did not reach the constitutionality of the system. See Katanian, *supra* note 33, at 53 (describing litigation over housing code). The Court also addressed registration systems in a 1998 decision declaring that Russian citizens need not go to the city in which they are registered to apply for a passport to travel abroad. See *infra* note 120.

<sup>109</sup> See 1996 Decision, *Sobr. Zakonod. RF*, 1996, No. 16, Art. No. 1909, at 4195 (finding *propiska* unconstitutional).

<sup>110</sup> *Zakon goroda Moskvy, O sbore na kompensatsiyu zatrat gorodskogo byudzheta po razvitiyu infrastruktury goroda i obspecheniyu sotsial'no bytovymi usloviyami grazhdan, pribivayuschikh v g[orod] Moskvu na zhitelstvo* [City of Moscow Law on Fees to Compensate the City Budget for Expenses Incurred in Developing the City's Infrastructure and Guaranteeing Social and Living Conditions for Citizens Who Arrive in the City for Residency] (Sept. 14, 1994), <http://www.duma.mos.ru/cgi-bin/mgd/law1html?73,1>.

<sup>111</sup> See Rubins, *supra* note 9, at 559 n.88 ("All [statutes] provided for some substantial payment of registration tax or fee . . .").

The Court struck down all of the challenged statutes on the ground that they constituted efforts by regional and city government to restrict civil rights impermissibly in violation of federal law.<sup>112</sup> Specifically, the Court held that regions and cities could not use taxation to limit civil rights.<sup>113</sup> More generally, the Court—while acknowledging that Article 8 of the 1993 Law left certain loopholes in the people's right to free movement<sup>114</sup>—held that only the federal government could trigger the exceptions, and only in limited circumstances.<sup>115</sup>

After the decisive holding of the Constitutional Court in its 1996 decision, it seemed clear that regions and cities constitutionally could not limit migration to their areas by any means, including the use of exorbitant registration fees imposed on those seeking a *propiska*. The decision, however, had little practical impact on the status of those seeking registration in most regions of Russia; the regions whose statutes were struck down immediately reenacted nearly identical laws, and regions not addressed by the Court's decision made no substantive changes to their laws.<sup>116</sup>

In the face of continued restrictions on free movement by regions such as Moscow, the Russian Court handed down its second decision against *propiska* systems little more than one year later.<sup>117</sup> In this case, three new residents of Moscow, who could not afford the registration fees and were therefore denied registration in Moscow, challenged the region's registration system.<sup>118</sup> The Court, relying on a recent change in the federal taxation system, once again found Moscow's system unconstitutional, holding that regions only could impose

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<sup>112</sup> See *id.* at 560 (describing Court's findings).

<sup>113</sup> See Katanian, *supra* note 33, at 55 (“The imposition of a registration fee may not impair an individual in his free exercise of constitutionally guaranteed rights and freedoms.”). At the time of this decision, regions, pursuant to a presidential decree, had the power to impose taxes. This decree was repealed, so regions now may impose only taxes specifically envisaged by the federal government. *Id.* at 56.

<sup>114</sup> See *supra* note 102.

<sup>115</sup> See 1996 Decision, *Sobr. Zakonod. RF*, 1996, No. 16, Art. No. 1909, at 4195, 4199 (holding that limitations on right to free movement only can be imposed by federal law and even then only “to the degree necessary to defend the basis of constitutional governance, morality, health, the rights and legal interests of others; for the national defense and security of the state”).

<sup>116</sup> See Rubins, *supra* note 9, at 561 (describing generally reaction to 1996 decision). For instance, the Moscow region enacted a new registration law, lowering its registration fee from \$6000 (or 500 times the monthly minimum wage) to \$3900 (or 300 times the wage). *Id.* at 561 n.99; Moscow Oblast Law on Fees to Compensate for Budget Expenses Related to the Development of Municipal Infrastructure in Populated Areas of the Oblast and the Guarantee of Social and Living Conditions of Citizens Who Arrive in Moscow Oblast for Permanent Residence (July 5, 1996), cited in Katanian, *supra* note 33, at 56.

<sup>117</sup> 1997 Decision, *Sobr. Zakonod. RF*, 1997, No. 27, Art. No. 3304, at 5421.

<sup>118</sup> Katanian, *supra* note 33, at 56.

taxes envisioned by the federal government, and the fees imposed on new residents were not so envisioned.<sup>119</sup>

The final and most instructive decision of the Court<sup>120</sup> came in February 1998.<sup>121</sup> In relevant part,<sup>122</sup> the Court held unconstitutional points 12 and 21 of the Federal Rules, which provided for certain circumstances under which local authorities could refuse registration to a citizen.<sup>123</sup> The Court explained that a city cannot “grant[ ] permission” or limit where people may live; when a migrant seeks registration in a city, the local authorities may only “verify the citizen’s act of free choice” to reside there.<sup>124</sup> Accordingly, the Court ordered that all remaining local and regional restrictions on registration be abolished immediately.<sup>125</sup>

Together, the three Constitutional Court decisions unmistakably support the right to freedom of movement. The decisions denounce any action by regional or local government to restrict that right, and they seek to remove virtually all vestige of federal restriction. The decisions make clear that “[r]egistration authorities have only the power to verify the citizen’s act of free choice when he selects the place he will sojourn or live.”<sup>126</sup> Except for the circumstances listed in the 1993 Law,<sup>127</sup> where the federal government may impose limited restrictions on the basis of national interest, the Court’s holdings establish that the only role for government in the movement of Russian citizens is as record keeper.

<sup>119</sup> 1997 Decision, *Sobr. Zakonod. RF*, 1997, No. 27, Art. No. 3304, at 5423.

<sup>120</sup> There was another decision, handed down by the Court one month earlier, which also touched on the *propiska*. This Note, however, will not discuss this decision because it attacked the federal practice of requiring citizens to go to the city where they are registered in order to apply for a passport to travel abroad, rather than attacking the registration systems themselves. See Katanian, *supra* note 33, at 56-57 (describing case).

<sup>121</sup> 1998 Decision, *Sobr. Zakonod. RF*, 1998, No. 6, Art. No. 7083, at 1538. This decision differed from the first two discussed herein in that it focused not on regional or local registration regimes, but on an act of the federal government.

<sup>122</sup> In the 1998 decision, the Court found the 1995 Rules to be constitutionally defective. It also overturned Point 10 of the 1995 Rules, which limited temporary residence in an area to six months. Rubins, *supra* note 9, at 562. The Court held that by setting a limit on the amount of time a person can stay in a place away from home, the federal government unconstitutionally “intru[des] . . . into civil, housing and other legal relationships.” Andrei Zolotov, Jr., *Court Takes Step Towards Dismantling Propiskas*, *Moscow Times*, Feb. 4, 1998, 1998 WL 11689872 (quoting decision).

<sup>123</sup> See Rubins, *supra* note 9, at 562 (“[G]rounds for refusal provided in the Rules were deemed unacceptable.”).

<sup>124</sup> 1998 Decision, *Sobr. Zakonod. RF*, 1998, No. 6, Art. No. 7083, at 1538, 1539.

<sup>125</sup> *Id.* at 1542. Unfortunately, the Court failed to set a specific timeline for abolishment.

<sup>126</sup> *Id.* at 1539.

<sup>127</sup> See *supra* note 102 and accompanying text.

## 2. *The Continuing Rift Between Federal Law and Local Reality*

A month after the Constitutional Court's last ruling, it became evident that it would prove as ineffective at removing movement restrictions in Moscow as had all of the previous legislation and court rulings. In March 1998, Moscow Mayor Luzhkov announced that he would ignore the ruling.<sup>128</sup> Constitutional Court Justice Vladimir Yaroslavtsev rebuked Luzhkov in a public statement, exclaiming: "We would like to warn Luzhkov and other regional heads: There will be no closed cities!"<sup>129</sup> Yet commentators agree that this is exactly what Moscow remains to this day—an effectively closed city.<sup>130</sup>

Though clear in its holdings and requirements, federal law—in the form of both legislation and court rulings—has not been given effect in Moscow and other cities.<sup>131</sup> Part of the blame for the continuing rift lies with federal legislators, who fail to express a strong desire to enforce the people's right to free movement that is embodied in the laws they pass.<sup>132</sup> Though the Russian Constitution creates a federation, with federal law supreme,<sup>133</sup> as one writer reported, "the federal government has long turned a blind eye to Moscow's violation of federal rules, effectively allowing the city to become a state within the state."<sup>134</sup>

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<sup>128</sup> See Residence Permits Stay, Mayor Says, *supra* note 39 (reporting that Luzhkov vowed to preserve registration system).

<sup>129</sup> Hoffman, *supra* note 45, at A19.

<sup>130</sup> One noted commentator has written: "Moscow Mayor Yuri Luzhkov has always refused to honor the provision of the Russian Constitution guaranteeing freedom of movement, so the city still retains its Soviet era 'propiska' system." Eichrodt, *supra* note 2, at A21. Similarly, Georgy Pavlov, an analyst with the Russian-European Center for Economic Policy, has said that "[e]ven though the Constitutional Court ruled that Luzhkov's order to keep the *propiska* in Moscow is unconstitutional, it is still here." Yevgenia Borisova, City Says Firms Must Justify Western Staff, *Moscow Times*, Apr. 3, 1999, Lexis, News Library, Mostms file (quoting Pavlov).

<sup>131</sup> See *supra* Parts I.B, II.B.1.

<sup>132</sup> Though it is beyond the scope of this Note, one natural question might be: "Why do federal leaders not desire strongly to enforce federal will and laws in this area?" This question is extremely complicated and straightforward at the same time. On the one hand, as in many complex sociopolitical situations, there are innumerable potential reasons for the indifference of federal leaders and pointing to one or another is pure speculation. On the other hand, the answer is simply that Russia has not yet attained the rule of law, and therefore the leaders—as well as average Russians—do not live in a nation where enforcement of the law is assumed.

<sup>133</sup> See *supra* note 90 and accompanying text.

<sup>134</sup> Blagov, *supra* note 41. It is interesting to note that there is Russian precedent for this type of decentralization of state power. Throughout the Soviet period, power was centralized in the Union government. See G. Alan Tarr, *Creating Federalism in Russia*, 40 *S. Tex. L. Rev.* 689, 692 & n.10 (1999) (explaining that despite fact that Soviet Constitution set Union up as federal state, it was unitary state with strong center). However, the system of centralized power was challenged just before the collapse of the Soviet Union. In 1990, the Russian government—which at the time was just one republic of the Soviet Union—

For example, a draft resolution was introduced in the Russian State Duma shortly after Mayor Luzhkov issued the September 13, 1999 reregistration decree.<sup>135</sup> The resolution, which would have called on the Moscow government to bring its registration regime into line with the Russian Constitution, was defeated by a vote of 62 in favor and 136 against.<sup>136</sup>

In addition to failing to enforce legislation, federal leaders also have failed to enforce the decisions of the nation's judiciary. Judicial review of the law to ensure that those laws conform with the constitution is considered a vital element of the rule of law.<sup>137</sup> Yet, it is not enough that the judiciary be able to interpret what the law means; its interpretation must be enforceable.<sup>138</sup> Elected officials must respect the courts, and must uphold and enforce their decisions.<sup>139</sup> In fact, according to Russian Constitutional Court Justice Nikolai T. Vedernikov, by examining the amount of judicial power and the extent to which judicial decisions are enforced by other parts of government, "it is possible to determine to what degree a state . . . corresponds to the demands of the law."<sup>140</sup>

The ongoing disunion between the will of the federal government, as expressed by the Constitutional Court and the practice in cities such as Moscow, demonstrates that Russia's officials do not respect and uphold the decisions of the judiciary. This is particularly problematic because judicial departments generally do not have their own enforcement mechanisms.<sup>141</sup> Russia is no exception, for the Russian Constitution does not enable the judiciary to enforce its own rulings.<sup>142</sup> Therefore, the courts rely upon the nation's elected officials

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challenged the superiority of Soviet law by passing a declaration that proclaimed the "supremacy" of the Russian Constitution and Russian laws throughout the territory of Russia and declaring void all Soviet laws that ran counter to Russian law. O gosudarstvennom suverenitete Rossiiskoy Sovyetskoy Federativnoy Sotsialisticheskoy Respubliki [Declaration of State Sovereignty of the R.S.F.S.R.] (adopted June 12, 1990), <http://black.inforis.nnov.su/infobase/www.exe/a/90.new/?docid=9038679@KWX>.

<sup>135</sup> See Cherepova, *supra* note 38 (discussing draft resolution calling for strict observation of federal constitutional and statutory provisions in responding to terrorist acts).

<sup>136</sup> See *id.*

<sup>137</sup> See *supra* note 91 and accompanying text.

<sup>138</sup> See Boylan, *supra* note 82, at 1337 (arguing that attitude of Russian officials towards Constitutional Court must change).

<sup>139</sup> *Id.* at 1329, 1337.

<sup>140</sup> Nikolai T. Vedernikov & O.N. Vedernikova, Problems of Constitutional Jurisprudence and the Formulation of a "Rule of Law" State in Russia, 38 *St. Louis U. L.J.* 907, 912 (1994).

<sup>141</sup> See Boylan, *supra* note 82, at 1329 (explaining that in constitutional democracy, government officials must uphold decisions of judiciary, even if they disagree with them).

<sup>142</sup> See Konst. RF ch. 7 (Russ.) (providing for organization and operation of federal judiciary), reprinted in *Constitutions of the Countries of the World: Russian Federation 1*,

to enforce their decisions.<sup>143</sup> Unfortunately, Russia's elected leaders—from executive officials to members of parliament to local politicians—frequently ignore rulings by the courts. This runs counter to Russia's desire to create a rule-of-law state<sup>144</sup> and indicates how far removed Russia is from the rule of law.

Though federal leaders merit blame for failing to enforce federal law on the subject of free movement, they are only part of the problem. Since Russian federal law is supreme,<sup>145</sup> and federal law outlaws a system such as Moscow's,<sup>146</sup> local Moscow leadership should feel compelled to change its system simply because it runs contrary to controlling federal law. The fact that it does not further illustrates how much Russia yet has to accomplish in order to achieve the rule of law.

### C. *Unenforcement of Federal Law Exacerbates the Problem of Russia's Transition to the Rule of Law*

Thomas Jefferson once wrote that “[i]t is the will of the nation which makes the law obligatory.”<sup>147</sup> When the people of a nation are focused on the law, the law binds its leaders. They feel a pressure, exerted by societal norms and the threat of discovery by constituents, to subordinate themselves to the law. This popular focus on the law is called legal consciousness, and as one commentator put it, “[a] well developed legal consciousness . . . [is] an important pre-requisite to a law-based state. In its absence . . . institutions of the state . . . would [not] respect legal norms.”<sup>148</sup> Moscow's continued flouting of federal law further damages the prospects for such a legal consciousness in Russia, thereby hindering Russia's transition to the rule of law.

Historically, Russian society has placed less importance on what the law actually says than have many western societies.<sup>149</sup> For example, in the 1800s, a defendant in a Russian imperial court had the choice of being tried on the law (with the decision based on what the

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35-38 (Albert P. Blaustein ed., 1994); see also Vedernikov & Vedernikova, *supra* note 140, at 912 (explaining that Russian Constitutional Court has no enforcement power of its own and must rely on other branches of government to enforce its decisions).

<sup>143</sup> Cf. Boylan, *supra* note 82, at 1336 (arguing that unlike U.S. counterparts, Russian officials are unwilling to abide by Court decisions).

<sup>144</sup> See *id.* at 1336-37 (“If Russia is ever to create a true democracy, this [lack of respect for Russian Courts] must change.”).

<sup>145</sup> *Supra* note 90 and accompanying text.

<sup>146</sup> *Supra* Part II.B.1.

<sup>147</sup> Letter from Thomas Jefferson to Edmund Randolph (Aug. 18, 1779), in *The Portable Thomas Jefferson* 480 (Merrill D. Peterson ed., 1977).

<sup>148</sup> Louise I. Shelley, *Legal Consciousness and the Pravovoe Gosudarstvo*, in *Toward the “Rule of Law” in Russia?*, *supra* note 86, at 63, 68.

<sup>149</sup> See Atchison, *supra* note 80, at 258-61 (citing lack of respect for written law under Soviet system, because it was used to further state interests over those of individual).

law said) or on the conscience (with the result depending on what was deemed to be “right”).<sup>150</sup>

Commentators explain that though Russia did not have a well-developed legal consciousness before the Soviet period, whatever did exist was destroyed under the rule of the Communist Party.<sup>151</sup> During that period, the law was a “flexible tool” of the Party, used as an instrument for imposing State policy on the people.<sup>152</sup> The judicial system fared no better. In the Soviet period, Russian courts were controlled and manipulated by the Communist Party, which dictated decisions to suit its desires.<sup>153</sup> Though the Soviet Constitution provided for individual rights, the courts rarely invalidated governmental actions that threatened them.<sup>154</sup>

Though the Russian people now live in a nation striving for the rule of law,<sup>155</sup> with a judiciary that seeks to apply the Constitution fairly to their cases,<sup>156</sup> the Russian people remain suspicious of the law.<sup>157</sup> Both the legal system and the judiciary are saddled with a past that hinders their legitimacy in the minds of Russian citizens.<sup>158</sup> As one commentator put it, the Soviet period in Russia “was the antithesis of the rule of law and a period that established a strong and unfortunate legacy for the contemporary period.”<sup>159</sup>

It is clear both that building a legal consciousness in Russia is vital to the successful transition to the rule of law,<sup>160</sup> and that it will

<sup>150</sup> Interview with Alexander Domrin, Foundation for Legal Reform and Visiting Professor, New York University School of Law, in New York, N.Y. (Mar. 20, 2000).

<sup>151</sup> See Berman, *supra* note 86, at 43 (arguing that concept of law-based state conflicted with absolute supremacy of Communist Party and with Marxist-Leninist idea that law is only expression of ruling class will).

<sup>152</sup> Kathryn Hendley, *Trying to Make Law Matter: Legal Reform and Labor Law in the Soviet Union* 4 (1996).

<sup>153</sup> See Atchison, *supra* note 80, at 255 (describing Soviet judiciary’s complete dependence on Communist Party and “telephone justice,” whereby party leaders would call judges to dictate decisions); see also Utter & Lundsgaard, *supra* note 91, at 573 (explaining that independent judicial review was incompatible with socialist system in Soviet Union).

<sup>154</sup> Boylan, *supra* note 82, at 1339.

<sup>155</sup> See Konst. RF art. 1 (Russ.) (“Russia shall be a democratic federal rule-of-law state . . .”), reprinted in *Constitutions of the Countries of the World: Russian Federation* 1, 1 (Albert P. Blaustein ed., 1994).

<sup>156</sup> See Boylan, *supra* note 82, at 1340-41 (listing several cases since 1991 where Russian courts have declared practices unconstitutional, including holding that practice of charging foreigners extra for accommodations violates Equal Protection Clause of Russian Constitution, and declaring that prosecutors’ common practice of appealing criminal acquittals violates Double Jeopardy Clause).

<sup>157</sup> See *id.* at 1328 (explaining that as part of Soviet legacy, “Russians remain very suspicious of the judiciary”).

<sup>158</sup> See *id.* at 1328, 1344 (describing lack of confidence in legal and judicial system).

<sup>159</sup> Shelley, *supra* note 148, at 66.

<sup>160</sup> See *supra* note 148 and accompanying text.

take time.<sup>161</sup> However, Moscow's continued flouting of federal law and Constitutional Court decisions in the area of movement restrictions leads to a vicious cycle that only heightens the legal system's popular legitimacy problem and thereby further hinders the transition.

Both Thomas Jefferson and more contemporary commentators would agree that the burden of pressuring Russia's leaders to submit to the law and to decisions of the judiciary lies with the Russian people.<sup>162</sup> While this burden is likely well placed, Russian citizens' lingering suspicion of the law and the judiciary make it less likely that they will choose to carry it, thereby leaving their leaders free to ignore law and judicial decisions.<sup>163</sup> Continued refusal to submit to the law and judicial decisions on the part of Russia's leaders, in turn, will do further damage to the legitimacy of the legal system and the courts.<sup>164</sup> Actions that flout federal law, such as those by Moscow's leaders, work to lessen the influence of future laws and court rulings, thereby hindering the growth of the legal consciousness needed in the country for the rule of law to take hold.

#### CONCLUSION

Though one may not be able to pinpoint the exact reasons behind Moscow's desire to retain restrictions on movement,<sup>165</sup> one thing is certain: The restrictions can continue only because of Russia's failure fully to embrace the rule of law. In this way, the continued rift between federal law and local reality on the subject of free movement illustrates the difficulty Russia faces in instituting the rule of law. At the same time, the rift damages Russia's ability to attain the rule of law by creating a vicious cycle: Restrictions on movement and the attendant human rights violations can persist because Russia is far from the rule of law, which in turn worsens Russia's prospects for achieving the rule of law by further hindering growth of a legal consciousness.

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<sup>161</sup> See Shelley, *supra* note 148, at 69 ("Citizens . . . cannot immediately reorient their attitudes toward Soviet legal institutions. Long suppressed by the law, they cannot be expected to rapidly turn to the courts for the protection of their rights.").

<sup>162</sup> See *supra* note 147; see also Boylan, *supra* note 82, at 1337 ("The burden rests with the Russian voter.").

<sup>163</sup> See Boylan, *supra* note 82, at 1337, 1344 (describing lack of respect for rule of law).

<sup>164</sup> Commentators, drawing lessons from the early United States Supreme Court and Chief Justice John Marshall, argue that the Russian Constitutional Court must seek to establish itself as the final arbiter of the Russian Constitution, while carefully avoiding direct confrontation with political leaders, until the legal culture develops to provide it direct support. See Hausmaninger, *supra* note 92, at 386 (arguing for judicial restraint); Ruder, *supra* note 81, at 1461 (same).

<sup>165</sup> See *supra* notes 38-45 and accompanying text.

There are two ways out of this cycle. The federal government could resolve the conflict by bowing to local will and rescinding the right to free movement. However, this would only relegalize the human rights abuses and other problems inherent in the restrictive registration systems. Furthermore, respect for the rule of law would be damaged if local government leaders can have the law changed at will.<sup>166</sup> The alternative, of course, would be to enforce the right to free movement by dismantling Moscow's restrictive regime. Either federal or local leaders could effect this change.

Unfortunately, however, this second option seems as unlikely in the short run as does the first. Restrictions are popular in Moscow,<sup>167</sup> and the *bomzhi*<sup>168</sup> suffering under them are not. Further, as some commentators explain, Russia does not yet have the requisite legal consciousness that would encourage the people to make their leaders obey the law.<sup>169</sup> It is unlikely that the leaders will subordinate themselves to the law until the people compel them to do so.<sup>170</sup>

Maintaining the status quo is not an appropriate alternative. First, there are upwards of 100,000 people who suffer directly,<sup>171</sup> as well as untold numbers who are affected indirectly by the registration system.<sup>172</sup> Second, the maintenance of movement restrictions in the face of contrary federal law worsens Russia's ability to attain the rule of law. As one commentator has written, "[i]f Russia is to move toward a legal culture grounded in the rule of law, substantial numbers of people must be convinced to change their attitudes about the

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<sup>166</sup> This option, aside from its absurd results, is also highly unlikely to be adopted. First, the Soviet *propiska* system was on its way out even before the fall of the Soviet Union. See supra note 32. As one scholar has noted, the *propiska* system and its inherent restrictions on the freedom of movement so obviously violated human rights that it had become an "embarrassment" to the Soviet government. Maggs, supra note 32, at 567. If the prereform Soviet government was stepping away from restrictions on movement, it is unlikely that the postreform Russian government will choose to reembrace them. Second, as previously discussed, several international treaties, to which the federal government is a signatory, assert the freedom of movement. See supra note 14 and accompanying text. Though that freedom is not uniformly provided today, it is still unlikely that the federal government could renounce the right officially without incurring pressure from these organizations.

<sup>167</sup> See supra note 38 and accompanying text.

<sup>168</sup> See supra note 72 and accompanying text.

<sup>169</sup> See Berman, supra note 86, at 57-58 ("[I]n light of the lack of a sufficiently developed legal culture the time is not yet ripe . . . for . . . the rule of law."); Carothers, supra note 84, at 105 (arguing that overcoming problems Russia faces in attaining rule of law will take decades).

<sup>170</sup> See supra notes 147-48 and accompanying text.

<sup>171</sup> See supra note 4.

<sup>172</sup> See supra note 71.

law.”<sup>173</sup> This simply is not going to happen while the people watch local officials flout the law.

Enforcing federal law in the area of free movement will be a difficult road for Russia’s leaders. However, it is a road that must be taken if Russia’s leaders truly want to move toward the rule of law. There are myriad and serious hurdles standing in Russia’s way,<sup>174</sup> and enforcement in Russia’s capital city of the federal right to free movement is not going to solve many of these problems. However, it will remove one hindrance—one glaring example of law being ignored and violated. At the same time, it will do something to promote the growth of the prerequisite to the rule of law: a legal consciousness among the people,<sup>175</sup> which requires that the Russian populace begin to see the law as a tool both useful and available to all,<sup>176</sup> even to the *bomzhi*.<sup>177</sup>

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<sup>173</sup> Hendley, *supra* note 86, at 62.

<sup>174</sup> See *supra* note 18.

<sup>175</sup> Shelley, *supra* note 148, at 68.

<sup>176</sup> Hendley, *supra* note 86, at 62.

<sup>177</sup> See *supra* note 72 and accompanying text.

