

**The Russian Constitutional Court's Interpretation of Federalism:  
Building Center-Regional Relations**

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## I. INTRODUCTION

In June 1997, just after the completion of his first term as Chairman of the Russian Constitutional Court, Marat Baglai conducted a press conference in which he outlined the Court's current priorities. According to Baglai, one of the Court's major responsibilities is to promote the principle of federalism.<sup>1</sup> Ever since its reinstatement in 1995,<sup>2</sup> the Constitutional Court has played a quiet but increasingly active role in the evolution of Russian federalism. The 1993 Constitution only contained a broad outline of the country's new federal structures. As a result, the Court has been frequently asked to fill in the legal gaps and clarify the changing relationship between the center and the regions

This article examines how the Russian Constitutional Court has influenced the development of Russian federalism. Such a discussion naturally concentrates on a series of important decisions, issued by the Court. Before analyzing these rulings, however, one must first discuss the competing trends that exist within Russian federalism. The Russian Federation currently consists of 89 subjects of the Federation (including Chechnia). These 89 regions are themselves divided into six classifications (republics, districts, territories, federal cities, autonomous regions and autonomous districts), with each category possessing slightly different rights and privileges. As a result of this complicated internal structure, two distinct perspectives have emerged among Russian federalists. Symmetrical federalism calls for equality between all subjects of the Federation, while asymmetrical federalism upholds the existing inequalities between the regions. The Constitutional Court has been reluctant to put itself into the middle of this complex debate, but, as this article will show, the Court has quietly promoted the principle

of symmetrical federalism in most of its major decisions.

The Constitutional Court, one must quickly add, is not the only institution currently influencing the development of Russian federalism. Through its staunch defense of regional interests, Russia's upper house, the Federation Council, has had a profound impact on center-periphery relations. Political and economic considerations also continue to intrude on this debate. Since 1991, President Yeltsin has attempted (with limited success) to restrict the power of regional officials by placing presidential representatives in certain districts and territories. These emissaries monitor federal spending in the regions and make sure that local federal officials do not become overly dependent on local politicians.<sup>3</sup> Such interference has naturally provoked a counter-response from the regions against these presidential representatives<sup>4</sup> and Moscow in general. Several regions, for example, have refused to send required tax revenues to the federal government,<sup>5</sup> and without such money, the long-term viability of the the center, and Russian federalism, remains uncertain.

Thus, the Constitutional Court is just one player in the complicated, ongoing debate on the future construction of the Russian state, and one must be careful not to overstate its power. One also must not separate the Russian Constitutional Court from the legal environment in which it operates. Russia's judicial system still suffers from a variety of well-documented problems, including: unclear laws, conflicting legislation, corruption, arbitrariness, and the inability to enforce decisions.<sup>6</sup> Such fundamental deficiencies do not disappear simply because the Constitutional Court issues a final opinion in a particular case. Finally, one should not directly link the development of federalism with democratization; even though a significant amount of power has been transferred away from Moscow, the regions have not necessarily

shown a strong inclination to introduce genuine local democracy.<sup>7</sup>

Yet despite this political uncertainty, Russia has continued to evolve as a federal state. Moreover, the Constitutional Court has issued several major opinions since 1995 (the Kaliningrad case, the Udmurtiia case, the *propiska* decisions) that have further propelled Russia down the road of federalism. By reviewing these important decisions, this article will show that the Russian Constitutional Court has had a significant impact on Russia's emerging concept of federalism and the relationship between the center and the regions.

## II. THE ORIGINS OF POST-SOVIET RUSSIAN FEDERALISM

The comparative study of federalism has grown dramatically over the last twenty years. Political scientists have contrasted various types of political systems--in North America, Western Europe, Asia--in order to identify the diversity within this concept. According to Professor Alain-G. Gagnon, federalism "can be conceived as a political devise for establishing viable institutions and flexible relationships capable of facilitating inter-state relations (e.g. division of powers between orders of government), intrastate linkages. . . and inter-community cooperation."<sup>8</sup> Any federal system, therefore, requires a basic level of cooperation and partnership between the national government and the specific members of the federation.<sup>9</sup> At the same time, federalism recognizes that there will be a permanent tension within the body politic. Authority is distributed among multiple national and regional bodies, and these institutions are engaged in a seemingly permanent debate over political power and economic resources. Federalism seeks to regulate these disputes by balancing central and regional interests, but this

relationship is never static and must adapt to the population's changing needs and demands.<sup>10</sup> Thus, federalism incorporates the principles of centralization and decentralization, with every nation finding its own equilibrium between these two forces.<sup>11</sup>

One of the most recent converts to federalism has been the Russian Federation, although in theory, one can argue that Russia's predecessor, the Soviet Union, was also built on federalist principles.<sup>12</sup> Lenin initially rejected the theory of federalism; instead, he envisioned a highly centralized, unified state.<sup>13</sup> After the 1917 Revolution, however, Lenin changed his tactics. For practical reasons, Lenin decided to accept a federalist state as a transitional phase in the creation of a unitary state.<sup>14</sup> Federalism was also the one theory that addressed the concerns of Russia's ethnic minority groups, who feared Russian domination within the new Soviet state.<sup>15</sup>

Thus, the Soviet federal structure was specifically designed to answer the nationality question. The country was divided along ethnic lines into fifteen union republics, with some union republics containing additional ethnic subdivisions (autonomous republics, autonomous regions) as well. The Khrushchev and Brezhnev periods saw the transfer of some power to the union republics, most notably in the areas of local affairs, language and culture.<sup>16</sup> This limited devolution, however, should not be confused with genuine federalism. In practice, the republics remained subordinate to the Communist Party and Moscow.<sup>17</sup>

Despite appearances to the contrary, therefore, the Soviet Union did not practice federalism; instead, it was a unitary state, with central control resting in Moscow.<sup>18</sup> When the Soviet Union finally collapsed in 1991, Russia's new leaders sought to introduce an alternative political system. The reintroduction of the unitary state was impossible. Yeltsin had closely aligned himself with the demands of the regions during his rise to power,<sup>19</sup> and it was politically

infeasible for him to call for the return of centralized control from Moscow.<sup>20</sup> Alternatively, a Russian confederation of independent states was seen as highly unstable, especially in light of the recent collapse of the USSR.<sup>21</sup> Finally, federalism was perceived as the one theory that was compatible with Yeltsin's call for democracy from below.<sup>22</sup>

Thus, almost by a process of elimination, Russia's reformers turned to the concept of federalism after the breakup of the Soviet Union.<sup>23</sup> This theory, however, quickly came into conflict with the country's existing internal borders. Under Soviet rule, the Russian Soviet Federative Socialist Republic (RSFSR) was divided into autonomous republics, districts (*oblast'*), territories (*krai*), and autonomous regions. The autonomous republics were based on national divisions and named after the predominant regional ethnic group, although paradoxically, the titular nation sometimes did not even compose the majority of the local population.<sup>24</sup> In contrast, the districts were divided along territorial lines and were named after a specific geographic region.

The autonomous republics within the RSFSR (and other Soviet republics) were significantly weaker than the fifteen union republics that comprised the USSR. The inferior status of autonomous republics was confirmed in the 1936 Soviet Constitution, which stipulated that a region could only be promoted to a union republic if it bordered on a foreign state.<sup>25</sup> The position of autonomous republics within the RSFSR only began to change during the *perestroika* period, when the autonomous republic of Tatarstan adopted a declaration of sovereignty and demanded union republic status.<sup>26</sup>

By the time that the Soviet Union collapsed in 1991, therefore, the internal construction of the RSFSR was already in a dramatic state of flux. The regions were demanding increased

recognition and autonomy, while the center was struggling to hold the country together. At the same time, the interests of the individual regions themselves were radically different. The republics wanted to protect the rights of Russia's ethnic minorities and maintain the national divisions within the country, while the districts and territories wanted to see these national distinctions abolished and the country divided into territorial units with equal rights.

This internal debate has led to the development of two alternative approaches to post-Soviet Russian federalism. Symmetrical federalism seeks to promote equality between the members of the Russian Federation *vis-a-vis* the central government without transforming the country into a unitary state. Alternatively, asymmetrical federalism preserves the old unequal Soviet distinctions between republics, districts, and autonomous regions, yet it does not go so far as to assert that Russia is a confederation of independent states. The Constitutional Court has increasingly been asked to somehow reconcile these two competing theories.<sup>27</sup> This has proven to be quite difficult, for as we will now see, both symmetrical and asymmetrical federalism can find support in the 1993 Russian Constitution.

### III. SYMMETRICAL FEDERALISM

The principle of symmetrical federalism is embodied in Article 5(1) of the 1993 Russian Constitution. This clause states that the Russian Federation consists of six different subdivisions (republics, territories (*krai*), districts (*oblast'*), cities with federal status, autonomous areas and autonomous regions), all of which are considered "equal members of the Russian Federation." This clause is broadly interpreted as establishing an equal relationship between Russia's

component parts,<sup>28</sup> although the Constitution goes on to recognize subtle differences between the regions as well; for example, Article 5(2) grants republics the right to have their own constitutions, while all other geographic regions are restricted to their own founding laws (*ustav*) and statutes.<sup>29</sup> Article 68(1) also gives republics the right to establish their own state languages.<sup>30</sup>

Nevertheless, despite these internal inconsistencies, the Russian Constitution stands for the equality of all members within the Russian Federation. Chapter III goes on to describe Russia's federal structure and the relationship between the center and the regions. Article 71 assigns certain subject matters to federal jurisdiction to protect the sovereignty of the Russian Federation and guarantee the inviolability of the country's borders.<sup>31</sup> These specific areas include: the organization of the federation, the protection of human rights, the federal budget, foreign policy, defense and security, civil and criminal legislation, customs policies, and the organization of the Russian court system. Article 72 then lists several topics that are under joint federal-regional jurisdiction, such as: ensuring the conformity of state constitutions and statutes to the federal constitution, the protection of human rights, environmental protection, family issues, taxation, public health, and the demarcation of state property.

All other subject matters, not specifically mentioned in Article(s) 71 and 72, are transferred to regional jurisdiction under Article 73. Article 76(1) upholds the supremacy of federal laws and maintains that they shall have "direct effect throughout the entire territory of the Russian Federation." Finally, Article 78 allows the federal government to delegate certain powers to the regions as long as such actions do not violate either the Russian Constitution or existing federal laws.

Commentators have noted the poor construction of Article 72 and its failure to articulate the division of powers between the center and the regions.<sup>32</sup> The delineation between Article(s) 71 and 72 is also not very clear. For example, the Constitution assigns the protection of human rights both to the specific jurisdiction of the Russian Federation and to the joint jurisdiction of the Federation and the regions. This confusion has not been cleared up by existing legislation,<sup>33</sup> and not surprisingly, Article 72 was one of the first provisions that the Constitutional Court reviewed.<sup>34</sup>

Therefore, an imprecise and, at times, contradictory Constitution serves as the primary legal foundation for symmetrical federalism.<sup>35</sup> Yet far from perceiving equality amongst all regions as the ultimate objective, many Russian commentators have viewed such enforced unity with suspicion and distrust. Professor V.E. Chirkin, the author of a major comparative work between Russian and Western federal systems, argues that symmetrical federalism does not take into account the economic, historical, and ethnic characteristics of a particular region. Chirkin also believes that even though symmetrical federalism may be the ideal system, it is not necessarily appropriate for every country.<sup>36</sup> Thus, an alternative approach to center/periphery relations has developed in Russia: asymmetrical federalism.<sup>37</sup>

#### IV. ASYMMETRICAL FEDERALISM

Asymmetrical federalism can trace its evolution through a series of treaties that began with the very creation of the USSR. In 1922, four republics (Russia, Ukraine, Belarus, the Transcaucasus) signed a treaty that formally created the Soviet Union.<sup>38</sup> This treaty served as

one of the main foundations of the Soviet Union until 1991, when Mikhail Gorbachev sought to revitalize the USSR through the adoption of a new Union treaty.<sup>39</sup> On the very eve of the Union treaty's actual signing, however, the August 1991 putsch occurred, and the agreement was quickly abandoned. Instead, it was Boris Yeltsin who turned to the original treaties, not to save the USSR but to abolish it. In December, 1991, in the so-called Belovezhskii accords, Russia, Ukraine, and Belarus used their status as original signers to dissolve the USSR.<sup>40</sup>

Yet no sooner had Boris Yeltsin abandoned the original Soviet treaty than he discovered that the newly independent Russian Federation required its own internal treaty to hold the country together. Thus, after a series of complicated negotiations, the March 31, 1992 Federation Treaty (*dogovor*) was signed. The Federation Treaty was in fact a series of three agreements, one for republics; one for districts, territories, and the cities of Moscow and St. Petersburg; and one for autonomous districts and regions. The Federation Treaty was considered to be a part of the 1978 Russian Constitution and was published as an appendix to that document.<sup>41</sup> The agreements themselves sought to define the jurisdiction and powers of the federal government and the particular regions. Significantly, two republics--Tatarstan and Chechnia--chose not to sign the Federation Treaty.<sup>42</sup>

The Federation Treaty has been recognized as a crucial step in Russia's transition from a unitary to a federal state.<sup>43</sup> Moreover, at the time of its approval, commentators pointed to the many advantages of the agreements. They strengthened the position of the Russian Federation as an independent state while clarifying the division of powers between the center and the regions. The agreements also established firm links between all of Russia's constituent subjects (republics, districts, territories, etc.) , not just, as had existed under the Soviet Union, between all

of the RSFSR's autonomous republics.<sup>44</sup> Finally, from a political standpoint, the Federation Treaty proved to be a major political success;<sup>45</sup> the agreements held the country together when many predicted that Russia would follow the USSR's example and collapse from within.<sup>46</sup>

The Federation Treaty, therefore, can be seen as one of the founding documents of post-Soviet Russian federalism. Within two years of its actual signing, however, the Treaty had been largely supplanted by the new Russian Constitution.<sup>47</sup> The Treaty's diminished importance was confirmed by the fact that it was not included with the Constitution when the latter was approved during the December 1993 national referendum.<sup>48</sup> Instead, the Federation Treaty was relegated to Part I of the Concluding and Transitional Provisions of the Russian Constitution. This appendix simply stated that in any conflict between the Federation Treaty and the Constitution, the Constitution remained supreme. As a result of this provision, several Russian legal scholars assign the Federation Treaty to a secondary position in Russia's legal hierarchy; it does not act parallel with the 1993 Constitution, nor does it supplement the Constitution. Instead, the Federation Treaty is only operative as long as it does not contradict the Constitution.<sup>49</sup>

The Constitutional Court recently confirmed the subordinate position of the Federation Treaty.<sup>50</sup> Despite this apparent demotion, however, it must be emphasized that the principles behind the Federation Treaty remain highly influential and have been largely incorporated into the Constitution. Most importantly, Article 11(3) of the Constitution upholds the right of state bodies of the Russian Federation to transfer powers via treaty to state bodies of members of the Russian Federation.<sup>51</sup> Thus, the treaty-making principle, which runs all the way from the founding of the Soviet Union through the Federation Treaty, was incorporated into the 1993 Constitution. This inclusion has led to the signing of numerous bilateral agreements between

Moscow and individual subjects of the Federation. At first, treaties were only signed between Moscow and the republics, but this process was later expanded in 1996 to include agreements between Moscow and other regions as well.<sup>52</sup>

These treaties were largely designed to overcome the inadequacies of Article(s) 71 and 72 and further define the division of powers between the center and the regions. Yet far from clarifying the situation, these treaties have caused further confusion, most notably because the agreements themselves often contradict the 1993 Constitution. In several cases, powers assigned specifically to federal jurisdiction have been placed under joint federal and regional jurisdiction. The Tatarstan, Bashkortostan, North Ossetia, and Kabardino-Balkaria treaties, for example, place the defense of Russia's state and territorial integrity under joint, not federal control.<sup>53</sup> Other agreements transfer federal powers directly to the regions. The Tatarstan and Bashkortostan agreements, for instance, permit the creation of national banks even though Article 71 specifically calls for the establishment of a single market and federal banks.<sup>54</sup> Finally, several treaties assign powers to the regions that were originally placed under joint federal-regional jurisdiction.<sup>55</sup>

Despite broad opposition to these agreements, Russia's major political parties have been unable to slow down the treaty-making process.<sup>56</sup> As a result, these bilateral treaties have spurred the development of asymmetrical federalism in the Russian Federation.<sup>57</sup> The clearest example of this phenomenon is the 1994 Russian--Tatarstan treaty, the first bilateral pact to be negotiated by Moscow. This agreement was of special importance, since Tatarstan never approved the Federation Treaty, and many Russians feared that the republic would follow the path of Chechnia and attempt to secede from the federation.<sup>58</sup> This threat receded with the

signing of the Russian--Tatarstan bilateral treaty. The pact itself, however, makes no reference to Tatarstan's status as a subject of the Russian Federation.<sup>59</sup> Instead, the treaty appears to be an agreement between two sovereign states.<sup>60</sup> Since its adoption, the republic has used this treaty to assert its independence; for example, Tatarstan considers itself to be subject to international law and has even signed its own treaties with other countries.<sup>61</sup>

The Constitutional Court was not in a position to immediately comment on the Tatarstan treaty, since it was still under suspension at the time of the treaty's signing in 1994. Nevertheless, the constitutionality of the Tatarstan agreement remains a topic of heated public debate. The Constitution may permit the drafting of treaties between state bodies, but it does not allow individual republics to sign such treaties as sovereign nations.<sup>62</sup> The Tatarstan treaty also undermines one of the fundamental principles of the Russian Constitution, namely that all federation subjects should be treated equally. Yet despite this criticism, one can still argue that the Tatarstan treaty has played a positive role in the evolution of the Russian Federation. To begin with, the agreement can be seen as a political necessity that could not be avoided in 1994. Moreover, despite the treaty's contradictory language, Tatarstan de-facto has accepted its inclusion in the Russian Federation in this bilateral agreement and has never tried to secede from Russia or transform the country into a confederation.<sup>63</sup>

Thus, advocates of asymmetrical federalism view these bilateral treaties as a source of strength, not weakness, for the Russian Federation. They respond to the needs of the regions, protect Russia's ethnic minorities, further clarify the center/periphery relationship, and represent real democracy from below. These treaties also provide a crucial element to Russian federalism, namely the idea of political compact. According to Professor Gagnon, federalism "implies a

commitment to a contractual arrangement between political units that decide to create a new political space.”<sup>64</sup> Russia acquired its empire by conquest, however, not through mutual consent. Therefore, even though the bilateral treaties are clearly after-the-fact, they represent an attempt to establish a contractual basis to Russian federalism.

The importance of these bilateral treaties may well diminish as Russia continues to develop as a federal state.<sup>65</sup> Professor V.E. Chirkin also believes that such spontaneous, creative approaches to resolving Russia’s internal construction may prove to be more lasting than other, more formal approaches.<sup>66</sup> Yet for opponents of asymmetrical federalism, these treaties represent a fundamental threat to the Russian Federation. They promote inequalities between the subjects of the Federation and could eventually lead to separatism and the very collapse of the country itself.<sup>67</sup>

It is interesting to note that the Russian Constitutional Court has only once, with disastrous results, thrust itself into the middle of the Tatarstan debate. In March 1992, the first Constitutional Court under Chairman Zorkin found that both Tatarstan’s declaration of sovereignty and proposed referendum on independence were unconstitutional.<sup>68</sup> The Court ruled that a republic could not change its borders without the approval of the Russian Federation itself. The Court’s decision, however, was basically ignored. Tatarstan proceeded with the referendum as planned and it was only the 1994 bilateral treaty between Russia and Tatarstan that finally stabilized the situation. The Court was left to ponder the consequences of its actions. Should it have become so directly involved in such a difficult, political issue? What would have happened if the verdict had, in fact, been enforced? Could it had led to a second Chechnia?

To a certain degree, one can argue that the Constitutional Court continues to be

influenced by the political fallout surrounding the 1992 Tatarstan decision. Ever since its reinstatement in 1995, the Court has not impeded the treaty-making process even though its jurisdiction over these agreements is unquestioned.<sup>69</sup> The law on this matter is also very straightforward; in any conflict between the treaties and the Constitution, the Constitution remains supreme.<sup>70</sup> The Court recently confirmed this legal hierarchy in the Karelia decision,<sup>71</sup> but it has yet to review the major jurisdictional questions raised by these bilateral treaties. There are several reasons for the Court's reticence in this matter. As mentioned above, the Court seems hesitant, from a political standpoint, to meddle in the sensitive negotiating process between the center and the regions. It also must be emphasized that even though the Court has jurisdiction over these treaties, it cannot examine these agreements on its own initiative; instead, the treaties must be examined as part of a live dispute.<sup>72</sup> Finally, the Russian government has deliberately kept some treaties secret, thereby preventing the Court from reviewing their contents.<sup>73</sup>

The signing of these bilateral agreements could possibly lead to Russia's transformation from a Constitution-based federation to a treaty-based federation (or confederation). At the same time, however, one should not construe the Court's apparent restraint in this matter as an endorsement of asymmetrical federalism. On the contrary, when asked to resolve disputes concerning Russia's emerging federal structures, the Court has, in most instances, come down firmly on the side of symmetrical federalism. The Court has granted concrete powers to the regions, but as we shall now see, it has done so without promoting unequal rights among the regions or fatally undermining the authority of the center.

## V. THE CONSTITUTIONAL COURT'S INTERPRETATION OF FEDERALISM

### A. Joint Jurisdiction under Article 72

As previously noted, one of the most ambiguous aspects of Russian federalism can be found in the vague construction of Article(s) 71 and 72 of the Russian Constitution. Article 71 provides a list of topics that come under federal control, while Article 72 describes certain functions that are under joint federal and regional jurisdiction. What remains uncertain, however, is who is responsible for actually drafting legislation under Article 72. Do the regions have to wait for the passage of federal legislation before they can act on issues under joint jurisdiction, or can individual regions take the initiative themselves and pass laws on joint jurisdictional matters prior to the approval of federal legislation?

This problem was addressed by the Constitutional Court in its Kaliningrad decision, which was released in November 1995.<sup>74</sup> The Kaliningrad case revolved around an attempt by local deputies to grant themselves immunity for any violation of Russian criminal or administrative law. In its decision, the Court quickly disposed of the Kaliningrad Duma's attempt to protect its members from any criminal indictment. Article 71(o) placed questions concerning criminal law, criminal procedure, amnesties, and pardons under federal control. Moreover, according to Article 76(1), the federal government had the power to regulate these matters throughout the entire Russian Federation. Based on these provisions, the Court concluded that the Kaliningrad Duma did not have the right to independently declare its members immune from criminal prosecution.<sup>75</sup>

A different set of facts surrounded the Kaliningrad Duma's interpretation of administrative law. According to Article 72(1)(k), administrative law was one of the areas that was under joint federal-regional jurisdiction. Article 76(2) goes on to require that federal legislation be passed in all such areas of joint jurisdiction, and that subsequent local legislation conform with these federal standards. Since Russian administrative law was regulated by existing legislation, the Court rejected the Kaliningrad Duma's grant of administrative law immunity as well.<sup>76</sup> The Court noted in passing, however, that in the absence of a federal law, the Kaliningrad Duma could independently pass a law on a particular topic that came under Article 72's joint jurisdiction.<sup>77</sup> Such a law still had to agree with Chapter 1 of the Russian Constitution as well as with other relevant constitutional provisions.<sup>78</sup> Nevertheless, the Court recognized that when no federal law exists, individual subjects of the Federation reserve the right to pass regional legislation on matters involving joint jurisdiction.<sup>79</sup>

The Court's declaration in the Kaliningrad case clarifies one of the most ambiguous aspects of Russian federalism. Not surprisingly, the regions have frequently tried to increase the number of topics that come under joint jurisdiction in order to expand their regulatory powers.<sup>80</sup> The Court's interpretation of Article 72 has also opened the door to major pieces of regional legislation. In November 1997, for example, the Saratov Duma passed its own land law before the approval of a national land code.<sup>81</sup> This law could have profound consequences for center-periphery relations; according to one Duma deputy, it may just be the regions, and not Moscow, that decides the issue of private property in Russia.<sup>82</sup> Of course, under Article 72, the Saratov legislation could still be superseded by the passage of a subsequent federal law.<sup>83</sup> Nevertheless, the Constitutional Court has begun to define what joint jurisdiction actually means in practice,

and its interpretation will have profound consequences for the future evolution of Russian federalism.

## B. Regional Autonomy and the Creation of State Institutions of Power

The fundamental question of any federal system concerns how much authority has been delegated to the regions, and how much has been reserved by the center. The Russian Constitutional Court has wrestled with this difficult problem on numerous occasions, most notably in conjunction with the creation of regional state institutions of power. In several regions, one branch of government has tried to usurp the responsibilities of another branch, and it has been left to the Court to identify what specific powers have been transferred to the regions.

The first major controversy concerning this issue occurred in the *Altai krai*, where the territory's legislative assembly assigned itself broad powers over the regional administration (the executive branch). These powers included the right to elect the head of the administration, review the structure of the administrative council, and remove members of the administration through a vote of no confidence. The Altai administration appealed to the Constitutional Court, claiming that the Altai legislative assembly had violated the separation of powers.

The Constitutional Court issued its opinion on January 18, 1996. It began its decision by emphasizing that Article 77(1) permits subjects of the Russian Federation to establish their own system of regional state power.<sup>84</sup> The Court noted, however, that Article 77 also requires that these regional institutions be in accord with the Russian Constitution and its principle of separation of powers.<sup>85</sup> With this consideration in mind, the Constitutional Court turned to the

specific *Ustav* (Founding Laws) of the Altai region. According to the Court, the *Ustav* did not create the proper system of checks and balances between the Altai executive and legislative branches. The *Ustav*, for example, gave the chairman of the legislative assembly the right to sign laws into being. According to the Court, this authority violated the separation of powers, since one branch of government could not both approve and promulgate a law into existence.<sup>86</sup> Moreover, several of the executive's other designated powers, such as the right to veto laws, were rendered meaningless if the legislature alone could pronounce a law.<sup>87</sup>

The Court objected to other provisions within the Altai *Ustav* as well. Although the Constitution did not include specific rules as to how to elect regional officials, Article 3(2) stipulated that the Russian people must exercise this power directly.<sup>88</sup> As a result, indirect elections for the head of the executive branch were unconstitutional, since they were not a clear expression of the people's will. Such elections were also in conflict with Article 95, which called for two representatives--the respective head of the executive and legislative branches--from every region to the Federation Council. Such a requirement was irrelevant if both representatives were elected by the same institution, namely the Altai legislative assembly.<sup>89</sup>

The Altai decision represents one of the first attempts by the newly reinstated Constitutional Court to analyze the division of powers under the 1993 Russian Constitution. In its ruling, the Court recognized that certain prerogatives had been transferred to the regions, most notably the right to establish their own institutions of state government. At the same time, the Court concluded that this authority was not absolute; the Russian Constitution still demanded a genuine separation of powers in all state institutions. As a result, the Court ruled that the Altai legislature's attempt to subordinate the executive to the legislative branch was unconstitutional.

The Udmurtiia controversy also involved an attempt by one branch of government to expand its authority. In this case, the Udmurtiia State Council attempted to abolish the institutions of local self-government.<sup>90</sup> The republic of Udmurtiia was one of the first regions in the Russian Federation to hold local government elections. These elections occurred in April 1994, after which local self-government was introduced in 25 regions and 5 cities.<sup>91</sup> The Udmurtiia State Council, however, quickly grew disillusioned with these new, independent bodies.<sup>92</sup> Apparently, the Council was unhappy with its own reduced power, especially in republic's capital city of Izhevsk. Half of Udmurtiia's population lives in Izhevsk, and by introducing local self-government--including an independently elected mayor--the city had grown increasingly independent of the republic's state government.<sup>93</sup>

The Udmurtiia State Council responded to its loss of influence by passing a new law on state power for the republic of Udmurtiia. Local assemblies were abolished and their authority was transferred to a new regional legislative body, the Council of Deputies, for an unspecified period of time. These new councils consisted of old assembly deputies, appointed by the Udmurtiia State Council, and the actual members of the State Council from the given territory.<sup>94</sup> The Udmurtiia State Council also assumed the right to select the head of the local administration. Twenty-nine out of the thirty former heads of administration were subsequently re-appointed by the State Council. Only the former mayor of Izhevsk, Anatolii Saltykov, objected, claiming that the Council's abolishment of local self-government was unconstitutional.<sup>95</sup>

The State Council was very much aware of the constitutional guarantees for local self-government. In order to preempt such a challenge, the State Council chose to redraw the map of

Udmurtiia. Cities and regions were re-classified as administrative-territorial units and placed under direct state control, without the right to introduce local self-government.<sup>96</sup> Villages and towns, in turn, were re-classified as territorial municipalities. According to the law, only these smaller municipalities retained the right to establish institutions of local self-government.<sup>97</sup>

The Russian president, the State Duma,<sup>98</sup> and a group of citizens from Izhevsk protested the State Council's actions and appealed to the Constitutional Court. The petitions objected to the attempt by the State Council to create subdivisions of state power in localities where theoretically, independent, non-state institutions were supposed to operate.<sup>99</sup> The petitions also argued that the Udmurtiia State Council had breached the inviolability of local self-government, which is protected by Article(s) 130, 131, 132, and 133 of the Russian Constitution.<sup>100</sup>

The Court issued its judgement on January 24, 1997. In its majority opinion, the Court closely followed its previous rulings in the Altai and Kaliningrad cases. The Court reaffirmed that under Article 77(1), subjects of the Federation can independently decide the structure of state bodies, as long as such institutions observe the constitutional principle of separation of powers.<sup>101</sup> The Court also recognized that under Article 72(1)(n), the organization of state power came under joint federal and regional jurisdiction. As a result, in the absence of a federal law, the regions could pass their own legislation on this matter, provided that the statutes did not violate the Constitution.<sup>102</sup> Thus, the Court upheld the right of Udmurtiia to reorganize its system of state power, even at the expense of local self-government.

Udmurtiia state officials would later claim that they won the case based on this particular section of the ruling.<sup>103</sup> In its decision, however, the Constitutional Court imposed several conditions on Udmurtiia's expansion of regional state power. The Court specifically referred to

Article 32(2), which upholds the right of Russian citizens to elect, and be elected to institutions of local self-government.<sup>104</sup> Based on this provision, the Court concluded that the Udmurtia State Council could change (or revoke) the existing institutions of local self-government only after some form of consultation with the residents of the specific district.<sup>105</sup> Article 131(2) also required a similar sort of public consultation if the State Council wanted to change the internal borders of a region.<sup>106</sup> Therefore, the Court restored the power of local self-government in Udmurtia until such time that such consultations had occurred.<sup>107</sup>

The Court tried to limit the impact of the Udmurtia decision in other ways as well. According to the Court, only those individual cities and regions named in the law as administrative-territorial units could be placed under regional state supervision. The other territorial divisions within these larger administrative units, including smaller cities, towns, and villages, retained their right to local self-government, since they had not been specifically designated as subjects of state power.<sup>108</sup> The Court also concluded that despite their new status, these administrative-territorial units still had to observe the constitutional principle of separation of powers. In other words, the executive and legislative branches of the Udmurt republic could not directly interfere with the rights of local councils, even if the councils were considered an organ of state power. The disputed Udmurt law, however, did not observe this distinction. For example, the law permitted republican organs of state power to overturn a decision by a local council if they believed that the council lacked the financial resources to implement the law. Thus, the Court struck down several sections of the Udmurt law because they violated the constitutional principle of separation of powers.<sup>109</sup>

Yet despite the Court's best efforts to defend the integrity of local democracy, the

Udmurtiia decision clearly weakened Russia's fledgling system of local self-government.<sup>110</sup>

Justice Gadzhiev provided a much stronger defense of this institution in his special opinion. He argued that the Udmurt legislators could not ignore the constitutional guarantees for local self-government and unilaterally decide what regions could establish such bodies.<sup>111</sup> Gadzhiev also insisted that a federal law actually existed on this subject, namely the law on local self-government. Therefore, the regions did not have any discretionary power to resolve the issue of local autonomy. Instead, Justice Gadzhiev argued that under the joint jurisdiction requirement of Article 72, the regions were responsible for bringing their legislation into accordance with law on self government.<sup>112</sup>

It must be noted that the majority opinion based its decision on the absence of a national law on state power, not local self-government.<sup>113</sup> In the final analysis, the Udmurtiia decision can only be understood in light of the Court's previous rulings. The Court had already recognized in the Altai opinion that under Article 77, the subjects of the Federation have significant discretion over the establishment of state institutions within their borders. At the same time, however, the Altai decision also included certain restrictions on these state bodies, namely that they must observe the constitutional requirement of separation of powers. Finally, the Kaliningrad decision granted the regions the authority to act first in those areas that are under joint federal-regional jurisdiction, with the important proviso that they bring regional laws into agreement with any subsequent national legislation.

Therefore, although the Udmurtiia decision has been sharply criticized for its limited defense of local self-government,<sup>114</sup> it must be emphasized that the ruling itself was consistent with the Court's previous interpretation of the Russian Constitution. Moreover, in addition to

reinforcing existing precedents, the Udmurtiia decision also further clarified the division of powers within Russia's emerging federal system. Specifically, the Court found that in the absence of a federal law, individual subjects of the Federation can not only construct their own internal state organs, they can also place specific cities and regions under institutions of state--as opposed to local--power. Although the Court imposed several constitutional constraints on these state bodies, it still respected Russia's prevailing federal structure and confirmed that a significant amount of authority had been transferred to the regions.

Therefore, despite its nuanced presentation, the Udmurtiia decision supported the broader principles of Russian federalism. In fact, the Udmurtiia ruling, when reviewed together with the Altai decision, can be seen as an important statement in support of symmetrical federalism. Although Udmurtiia is a republic and Altai is a *krai*, the Court makes no attempt to distinguish between these two different categories. On the contrary, the Court assigns the same rights to both regions while imposing identical constitutional obligations. In the final analysis, the Court found that Udmurtiia's status as a republic did not confer any special legal privileges on the region. Thus, in addition to clarifying certain division of powers issues, the Udmurtiia decision also promoted the principle of symmetrical federalism.

It must be noted that the implementation of the Udmurtiia ruling was not without its controversy. At first, Udmurtiia authorities refused to comply with the decision,<sup>115</sup> and it ultimately took a special decree by President Yeltsin some two months after the actual decision before the Court's judgement was finally enforced.<sup>116</sup> Thus, the Court's ability to interpret Russian federalism remains absolutely dependent on the political will to enforce its decisions, and one must be careful not to exaggerate the Court's overall power to influence the

development of Russian federalism.

### C. A Common Economic Space

One of the objectives of any federal system is to maintain a unified domestic market. Without such unity, internal trade will inevitably be disrupted and a federation will most likely be transformed into a confederation. The Constitutional Court has confronted this issue on several occasions, and in each instance it has stressed the need to preserve Russia's common economic space.

The first case that dealt with this problem involved the federal law on advertising. This statute regulated the economic and business side of advertising.<sup>117</sup> Two regions objected to federal oversight in this area and appealed to the Constitutional Court. The Moscow City Duma noted that advertising was not mentioned in either Article(s) 71 or 72. Therefore, since the federal government lacked jurisdiction in this matter, the Moscow City Duma claimed that it was up to the regions themselves to regulate advertising.<sup>118</sup> The Omsk Legislative Assembly took a different approach. It argued that advertising should be classified as a cultural activity, which meant that it was included under Article 72(1)(e) as an area for joint federal-regional legislation. As a result, the Omsk Legislative Assembly maintained that it had a right to take its own legislative action on this subject, as long as it did not violate the law on advertising.<sup>119</sup>

In its decision, released on March 4, 1997, the Court rejected the attempts by Moscow and Omsk to assert jurisdiction over this subject matter. According to the Court, the law on advertising was a piece of civil legislation that specifically regulated the business side of this

activity. As a result, the statute came under the direct purview of Article 71(o) and federal jurisdiction.<sup>120</sup> In order to further bolster federal control, the Court referred to Article 8 of the Russian Constitution. This provision requires the creation of a single economic space and the free movement of goods and services within the county.<sup>121</sup> According to the Court, the legislative history of the law on advertising indicated that it was written to promote the exchange of goods and services. Therefore, as long as the law had a bearing on domestic trade, it was constitutional, since it assisted in the formation of a single economic space.<sup>122</sup> A different result occurred, however, if a question arose on the subject of advertising that did not concern the issue of a single market. The Court concluded that in such instances, individual regions were permitted to pass their own legislation on advertising.<sup>123</sup>

Thus, the Court relied on the need to promote interstate commerce in order to justify federal regulation of advertising. Three weeks after the decision in the advertising case, the Court returned to the issue of a single market. Five regions (the Komi republic, the Altai territory, and the Irkutsk, Vladimir, and Volgograd districts) objected to the government's interpretation of the 1991 law on the Russian tax system.<sup>124</sup> According to the newspaper *Segodnia*, the regions were primarily concerned about protecting certain tax privileges that had been assigned to them via a 1993 presidential decree. President Yeltsin revoked this decree, however, in 1997, meaning that the 1991 tax law, which included a specific list of permissible regional taxes, was about to be reinstated.<sup>125</sup> Obviously, the regions did not want to lose these tax benefits (and one of their most important sources of revenue), so they challenged the existing tax law as unconstitutional. Specifically, the regions argued that since the 1991 tax law had been passed prior to the approval of the Russian Constitution, the statute could not foresee

that the designation of taxes came under Article 72 and joint federal-regional jurisdiction.<sup>126</sup> As a result, the regions asserted the right to set their own local taxes until such time that a new, up-to-date tax law was approved.<sup>127</sup>

In its decision, the Constitutional Court upheld the constitutionality of the 1991 law on the Russian tax system.<sup>128</sup> Of equal interest, however, was the Court's interpretation of Article 72. In its opinion, the Court recognized that the establishment of the general principles for taxation was subject to joint jurisdiction. Nevertheless, even in the absence of a federal law, the Court ruled that individual subjects of the Federation could not arbitrarily establish their own taxes. The Court initially relied on the broad powers of Article 71(a) which makes the Russian Federation responsible for the implementation and enforcement of the Constitution and all federal laws.<sup>129</sup> The Court then noted that one of the Constitution's main requirements was the creation of a single finance policy and a single economic space.<sup>130</sup> In addition, Article 74(1) forbids the establishment of customs duties or fees that might hinder the free movement of goods and services.<sup>131</sup> Therefore, even though the Constitution placed tax collection under joint federal-regional control, the Court concluded that the regions could not introduce any local tax that violated Russia's single economic space.<sup>132</sup>

Thus, on two occasions, the Constitutional Court has emphasized the importance of an integrated domestic market. In so doing, the Court has granted broad federal control over interstate commerce; the individual subjects of the Federation may have some discretion over matters of local taxation and advertising, but the Court has rejected any attempt by the regions to disrupt domestic trade. Instead, the Court has demanded the end of such internal barriers and the creation of a common economic space. Significantly, the Constitutional Court makes no

reference in either of the above decisions to any existing bilateral treaties between Moscow and the regions. These agreements have bestowed certain concrete economic advantages on specific regions,<sup>133</sup> thereby undermining Russia's common economic space. By not reviewing these treaties, the Court leaves the door open to the further development of asymmetrical federalism. At the same time, the advertising and tax decisions can be seen as an attempt to move Russia in the opposite direction. By supporting Russia's nascent commerce clause and a unified domestic market, the Constitutional Court implicitly supports the principle of symmetrical federalism and the equal treatment of all subjects of the Russian Federation.

#### D. Freedom of Movement

One of the basic rights of a federal state is freedom of movement; a citizen can live in any region of the country that he/she so desires.<sup>134</sup> Such a privilege is a fundamental human right as well. From tsarist times, however, freedom of movement has been sharply curtailed within Russia. Before 1917, citizens were required to obtain an internal passport, which limited one's ability to move freely within the country.<sup>135</sup> The Soviet Union continued these constraints on domestic movement. A person could not legally live, work, study, or receive social benefits unless he/she possessed the proper *propiska* (residence permit) for that city. Although the *propiska* system was formally abolished in 1993,<sup>136</sup> several regions managed to retain the *propiska* as part of their residency requirements. The mayors of Russia's larger cities believed that without such restrictions, new residents would stream in, leading to an unmanageable demand for social services and housing.

In April, 1995, the Court examined the personal complaint of Ms. L.N. Sitalova from the Astrakhan *oblast'*. She had been denied a *propiska* even though she had lived in the same apartment for five years. The dispute focused on Article 54 of the RSFSR Housing Code, which states that a citizen must observe the *propiska* regulations when establishing a local residence. The Court found that this provision violated several constitutional provisions. For example, Article 27 states that every Russian citizen can move freely within the country's borders and choose his or her place of residence. Article 40(1) also declares that a person cannot be arbitrarily deprived of housing.<sup>137</sup>

Thus, the Court declared that the *propiska* system was unconstitutional. Yet despite this ruling, several regions proved unwilling to abandon this centuries-old tradition. Instead, they sought various means around this decision in order to preserve certain restrictive residency requirements. In April, 1996, the Constitutional Court reviewed a series of legislative acts that had been introduced in Moscow. Both the city and the *oblast'* demanded the payment of a special duty before one could be officially registered in the region. The fees were extremely high: approximately \$7,000 for city of Moscow and \$4,000 for the Moscow *oblast'*.<sup>138</sup> The Court ruled that the payment of such registration fees violated several constitutional principles, including the right to freely choose where one wanted to live, the right to participate in local politics, and the right to have access to basic social services.<sup>139</sup> At the same time, the Court ruled that Moscow still had the legal right to levy a special tariff on new residents. Such a tax, however, had to be reasonable and could not be directly linked with the registration process.<sup>140</sup>

The Court ultimately concluded that the given fees in Moscow were excessive and therefore unconstitutional. Even this decision, however, did not put an end to this long-running

controversy. As noted above, the Court's ruling still permitted individual regions to charge a reasonable registration fee. According to the newspaper *Kommersant-Daily*, this right actually emanated from President Yeltsin's 1993 tax decree, which granted the regions significant leeway over the collection of local taxes.<sup>141</sup> As previously mentioned, however, President Yeltsin's 1993 edict expired in January 1997. Therefore, when the Court reexamined Moscow's residency requirements yet again in July 1997, the issue was now governed by the Russian tax code. Since the code did not include a registration fee among its permissible taxes,<sup>142</sup> the Court concluded that Moscow *oblast'* residents no longer had to pay this duty as part of the registration process.<sup>143</sup>

The city of Moscow has not accepted the Court's decision quietly. Mayor Iurii Luzhkov announced in March 1998 that Moscow would not abide by the most recent *propiska* decision.<sup>144</sup> The Moscow government has also lobbied for federal legislation that would enable the city to preserve its registration requirements.<sup>145</sup> Yet in the face of this continued, and at times vociferous, opposition, the Constitutional Court has stood firm and upheld the fundamental right of freedom of movement within the Russian Federation.<sup>146</sup> In addition, the *propiska* rulings demonstrate the Constitutional Court's commitment to breaking down internal barriers within the Russian Federation, thereby pushing Russia further down the road of symmetrical federalism. Every citizen, as well as every region, is considered equal under the Russian Constitution, and although the Court has been forced to revisit this issue on several occasions, it has consistently held that any attempt to impose restrictive residency requirements is unconstitutional.

## E. The Relationship Between Subjects of the Federation

So far, this article has primarily focused on the Court's attempt to define the balance of power between the center and the regions. The Constitutional Court has also been asked to define the relationship among the subjects of the Federation themselves. Perhaps the most important case that the Court has examined on this topic has been the Tiumen case. The Tiumen *oblast'* actually includes two autonomous districts: the Khanty-Mansiiskii Autonomous District, and the Iamalo-Nenetskii Autonomous District. These two regions are extremely rich in natural resources. Khanty-Mansiiskii produces 75% of Russia's oil, while Iamalo-Nenetskii produces 90% of Russia's natural gas.<sup>147</sup> In addition, these two autonomous districts are also subjects of the Russian Federation, with their own independent governors, legislatures, and state institutions.

Not surprisingly, because of their legal status and wealth, Khanty Mansiiskii and Iamalo-Nenetskii proved unwilling to put themselves under the direct control of the Tiumen *oblast'*; instead, they viewed their inclusion in the *oblast'* as strictly symbolic.<sup>148</sup> The Constitutional Court was ultimately asked to clarify this uncertain relationship. The specific controversy concerned the participation of the autonomous districts in *oblast'* elections.<sup>149</sup> Khanty-Mansiiskii and Iamalo-Nenetskii argued that since autonomous districts were included under Article 5 as equal members of the Russian Federation, they had the same rights as all other republics and districts, including the Tiumen *oblast'* itself. Therefore, the autonomous districts did not have to participate in *oblast'* elections, and that the only way that the Tiumen *oblast'* could exercise any authority over these two regions was through a bilateral agreement.<sup>150</sup> The Tiumen *oblast'* rejected this reasoning. It maintained that according to Article 66(4), the

autonomous districts were automatically incorporated into the *oblast'* and required to participate in any district-wide event, such as an election.<sup>151</sup>

In a decision released on July 14, 1997, the Court found that residents of the autonomous districts were also members of the Tiumen *oblast'*. As a result, they were entitled to participate in the *oblast'* elections, and the autonomous districts were not permitted to interfere with this right.<sup>152</sup> Therefore, from a technical standpoint, the Tiumen *oblast'* emerged victorious in this dispute. The Court's final opinion, however, did little to clarify the overall relationship between the autonomous districts and the *oblast'*. Instead, the Court recognized that as fellow subjects of the Russian Federation, Khanty Mansiiskii and Iamalo-Nenetskii possessed the same rights as the Tiumen *oblast'* in several areas. For example, both an autonomous district and an *oblast'* could approve regional legislation, participate in the Federation Council, and vote on any amendment to Chapters III--VIII of the Russian Constitution.<sup>153</sup> The Court concluded that the best way to govern the relationship between these two entities was through a treaty (*dogovor*), as long as such an agreement did not infringe on the voting rights of any citizen.<sup>154</sup>

Thus, the Constitutional Court decided that it was up to regions themselves to regulate the relationship between the *oblast'* and the autonomous districts.<sup>155</sup> The Tiumen case demonstrates just how difficult it will be to introduce the principle of symmetrical federalism within the Russian Federation. After all, how can an autonomous district and an *oblast'* be equal to each other on one level, yet subordinate to each other on another level? Moreover, the Court's recommendation--that the dispute be resolved through some sort of mutual agreement between the regions themselves--will most likely lead to greater inequalities between Russia's subjects of the Federation. The Court has consistently supported the principle of symmetrical federalism,

yet by encouraging regions to negotiate such treaties, the Court upheld one of the major mechanisms that has led to the development of asymmetrical federalism.

## VI. CONCLUSION

Russia's experiment with federalism remains in its early stages. Although the Soviet Union was ostensibly built on federal principles, it did not practice federalism. Instead, it was a unitary state, with central control resting with the Communist Party of the Soviet Union. When the USSR finally collapsed in 1991, the newly created Russian Federation had to redefine both the theory and practice of Russian federalism. This has proven to be extremely difficult. Russia's internal borders, which were directly inherited from the Soviet Union, are not necessarily compatible with the introduction of federalism. Moreover, the country's non-Russian ethnic population remains very suspicious of Moscow and continues to advocate for increased regional autonomy. As a result, the relationship between the center and the regions remains highly unstable, with both sides struggling for greater political and economic power.

Russian federalism, therefore, can best be characterized as a work in progress. As new disputes arise, however, President Yeltsin, the Duma, the subjects of the Federation, and other interested parties are increasingly turning to the Constitutional Court to clarify the division of powers under Russia's new federal system. Some of the Court's most significant rulings on center-periphery relations have involved its interpretation of Article 72. According to the Court, individual regions can now pass statutes on topics of joint federal-regional jurisdiction before the passage of national legislation (except on matters of taxation). This interpretation clarifies one

of the most ambiguous articles in the Russian Constitution. It also represents a significant transfer of power to the regions, and individual subjects have already used this ruling to pass major pieces of legislation.

The Court has recognized other local rights as well, but it must be emphasized that the Court has not strictly linked Russian federalism with the process of decentralization. On the contrary, the Court has sought to balance regional interests with the needs of the center and the Russian Constitution. The Court's attempt to define this equilibrium can be seen in the Altai and Udmurtia cases; although the Court granted each region the right to create its own state institutions, the Court ultimately required that these bodies be in accord with the Constitution and its principle of separation of powers. The Constitutional Court has also increased central control through its enforcement of a common economic space and its demand for freedom of movement within the country's borders.

All of the above decisions help clarify Russia's emerging division of powers and, therefore, can be seen as promoting the development of Russian federalism. Critics may dismiss the Court as being overly sympathetic to President Yeltsin<sup>156</sup> and Moscow, but a viable center--as well as specific regional rights--is required in any federal system. In terms of Russia's own internal political debate, the Court has emerged as a quiet advocate of symmetrical federalism. It has encouraged greater national unity without granting any special rights or legal privileges to individual subjects of the Federation. The Court's overall support of symmetrical federalism, however, does not mean that the Court has rejected the principle of asymmetrical federalism. On the contrary, the Court has been relatively silent on this issue ever since its 1992 Tatarstan opinion, and when it has ruled, as in the Tiumen case, it has upheld the right of regions

to draft treaties amongst each other.

Any call for additional treaties contains substantial risks for Russian federalism. The existing bilateral agreements between Moscow and the regions include significant violations of the Russian Constitution. They also have fostered major inequalities among the individual subjects of the Russian Federation. Any new treaty, therefore, would most likely only exacerbate this problem.<sup>157</sup> At the same time, however, one cannot ignore the constructive role that these agreements have played. These treaties have facilitated an unprecedented transfer of power from Moscow to the regions. They have also provided a contractual basis to Russian federalism, and have promoted political stability during Russia's difficult transition period. The Court has been clearly reluctant to upset this delicate political balance, and only time will tell whether its restrained approach to the treaty-making process was the correct one.

In many ways, it is still too early to predict the outcome of Russia's debate between symmetrical and asymmetrical federalism. These two alternative theories may continue to compete against each other, co-exist, or ultimately converge. Despite its own apparent leanings, the Court has been unable to reconcile the differences between symmetrical and asymmetrical federalism. This is at least partly because the Russian Constitution itself contains support for both principles. But even though the Court has not resolved the internal debate within Russian federalism, it still has emerged as one of the primary defenders of Russia's new federal structures. It has assigned specific rights to the regions, upheld certain central powers, and promoted both regional equality and national unity within the Russian federal system.

The Constitutional Court, therefore, has established several important precedents that support the development of Russian federalism. At the same time, however, one must recognize

that the Constitutional Court also reflects the broader weaknesses within the Russian legal system. Just because the Court declares that Russia is one united economic space does not mean that all internal trade barriers suddenly disappear overnight. The *propiska* disputes demonstrate, in fact, just how creative the regions can be in order to get around a ruling. Moreover, as the Udmurtiia case showed, the Court remains overly dependent on the executive branch for the implementation of its decisions. Unfortunately, this situation appears only to be getting worse. Several regions (besides Moscow) have announced that they will not comply with Constitutional Court decisions.<sup>158</sup> Without question, such open hostility and disrespect significantly undermines the Court's public standing and its ability to perform its judicial responsibilities.

In the final analysis, one must understand the limitations under which the Constitutional Court currently works. The Court can provide a legal framework for Russian federalism, but it still cannot impose this theory on the country as a whole. Yet even as the Court struggles to enforce its decisions, it continues to promote the federalist principles within the Russian Constitution. The Court has also emerged as one of the primary arbitrators of disputes between Moscow and the subjects of the Federation. By clarifying center-regional relations, therefore, the Court has begun to create a legal foundation for the future development of Russian federalism.

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1. Dmitrii Kamyshev, "Beg ot politiki kak sredstvo dlia iuridicheskogo dolgoletii," *Segodnia*, July 18, 1997, via e-mail.

2. The Court was suspended for seventeen months after the October 1993 attack on the Russian White House. For a description of the Court's suspension and ultimate reinstatement, see:

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William Pomeranz, "Judicial Review and the Russian Constitutional Court: the Chechen Case," *23 Rev. Cent. & E. Eur. L.* 9, 10-14, 21-2 (1997).

3. *RFE/RL Newslines*, July 15, 1997, via e-mail.; Nikolai Petrov, "The President's Representatives: 'Moscow's Men' in the Regions," *Prism*, April 3, 1998, at 4, 4-5.

4. In June, 1997, President Yeltsin attempted to transfer most of the authority of Evgenii Nazdratenko, the governor of Primorskii *Krai*, to the local presidential representative. Russia's regional leaders naturally felt threatened by Yeltsin's actions and rallied around their fellow governor. Because of this strong support, Yeltsin was forced to back down, and Nazdratenko's powers remained unchanged. Christian Lowe, "Yeltsin Serves Notice to Regional Bosses," *Moscow Times*, June 10, 1997, at 1.; Christian Lowe, "Irate Governors Tell Yeltsin to Back Off," *Moscow News*, July 4, 1997, at 1.; Christian Lowe and Dmitry Zaks, "Council Votes for Trophy Art Lawsuit," *Moscow Times*, July 5, 1997, at 3.

5. Dmitrii Dokuchaev, "Tsentri ob'iavil voiny ekonomicheskomy separatizmy regionov," *Izvestiia*, November 4, 1997, at 1. For an early discussion of Russian fiscal federalism, see *Russia and the Challenge of Fiscal Federalism* (Christine Wallich, ed., 1994).

6. The former Justice Minister (and current Interior Minister) Sergei Stepashin noted that one-third of the 16,000 regional laws that had been examined by the Justice Ministry violated federal statutes. *RFE/RL Newslines*, January 20, 1998, via e-mail. For a broad discussion of these issues, see Kathryn Hendley, "Legal Development in Post-Soviet Russia," 13 *Post Soviet Affairs* 228-51.

7. Graham Smith, "Federation, Defederation and Refederation: from the Soviet Union to Russian Statehood," in *Federalism: The Multiethnic Challenge* 172 (Graham Smith, ed., 1995).

8. Alain-G. Gagnon, "The Political Uses of Federalism," in *Comparative Federalism and Federation* 15 (Michael Burgess and Alain-G Gagnon, eds., 1993).

9. *Id.*, at 17.

10. *Id.*, at 28-9.

11. The search for balance between these centripetal and centrifugal forces have prompted several political scientists to analyze federalism from an ideological, as opposed to a purely institutional standpoint. For a discussion of federalism as an ideology, see Preston King, *Federalism and Federation* 74-76 (1982).; Michael Burgess, "Federalism and Federation: A Reappraisal," in *Comparative Federalism and Federation* 3-13 (Michael Burgess and Alain-G Gagnon, eds., 1993).

12. Tsarist Russia was largely governed as a unitary state. The country was divided into equal

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territorial units (*gubernii*), and further subdivided into districts (*u'ezd*). There were some asymmetrical elements, however, within Imperial Russia. In 1809, for example, Finland was incorporated into the Russian empire as a grand duchy, with the Russian tsar as its grand duke. The Cossacks also maintained their own distinctive form of local administration. Finally, the Kingdom of Poland was incorporated into Russia in 1815 with its own constitution. This constitution, however, was soon replaced by the 1832 Organic Statute which made Poland an "indivisible part" of the Russian empire. Nicholas Riasanovsky, *A History of Russia* 232, 308, 332 (4th ed. 1984).

13. Gregory Gleason, *Federalism and Nationalism: The Struggle for Republican Rights in the USSR* 26-32 (1990).

14. *Id.*, at 32.

15. *Id.*, at 32-3.

16. Smith, *supra* note 7, at 160-2.

17. *Id.*, at 158-9. See also V.E. Chirkin, *Sovremennyyi federalizm: sravnitel'nyi analiz* 15 (1995).; Victor Knapp, "Central And Eastern European Federations, Communist Theory and Practice," in *Rethinking Federalism: Citizens, Markets, and Governments in a Changing World* 317 (Karen Knop, Sylvia Ostry, Richard Simeon, Katherine Swinton, eds., 1995).

18. Robert Sharlet, "The Prospects for Federalism in Russian Constitutional Politics," 24 *Publius* 115, 115-16 (1994).

19. During his rise to power, Yeltsin urged the regions to take "as much sovereignty as you can swallow." Galina Starovoitova, *Sovereignty after Empire: Self-Determination Movements in the Former Soviet Union* (United States Institute of Peace, 1997), at 11.

20. Smith, *supra* note 7, at 167.

21. Opponents of confederation were soon handed additional ammunition with the failure of the Commonwealth of Independent States. The CIS was designed as a loose confederation among the former republics of the Soviet Union. From the time of its creation, however, the Commonwealth has been unable to achieve the necessary degree of economic integration and political consensus that could transform it into a viable organization. For several early assessments of the CIS, see: Ann Sheehy, "Commonwealth of Independent States: An Uneasy Compromise," *RFE/RL Research Report*, January 10, 1992, at 1, 1-5.; Ann Sheehy, "Unloved, Ill-fed Infant Faces an Uncertain Future," *RFE/RL Research Report*, February 21, 1992, at 1, 1-3.; Suzanne Crow, "Russia Promotes the CIS as an International Organization," *RFE/RL Research Report*, March 18, 1994, at 33, 33-8.

22. Smith, *supra* note 7, at 167.

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23. For earlier assessments of Russia's transition to federalism, see Sharlet, *supra* note 18, at 115-27.; Alex Deghan, "Federalism, Regionalism, and Sovereignty in Russia," 5 *Seton Hall Const. L.J.* 1.; Vera Tolz, "Thorny Road toward Federalism in Russia," *RFE/RL Research Report*, December 3, 1993, at 1, 1-8.; Gennady Danilenko, "The New Russian Federalism," 1 *New. Eur. L. Rev.* 367.
24. L.M. Karapetian, *Federativnoe gosudarstvo i pravovoi status narodov* 15 (1996).
25. Ann Sheehy, "Tatarstan Asserts its Sovereignty," *RFE/RL Research Report*, April 3, 1992, at 1, 1-2.
26. *Id.*, at 2.
27. The Russian Supreme Court has also issued several important rulings on the issue of federalism. For a review of these decisions, and the growing jurisdictional dispute between the Constitutional Court and the Supreme Court, see: Peter Krug, "Departure from the Centralized Model: The Russian Supreme Court and Constitutional Control of Legislation," 37 *Va. J. Int'l L.* 725.
28. *Kommentarii k Konstitutsii Rossiiskoi Federatsii* 24-7 (L.A. Okun'kov, ed., 1996).
29. This issue is further defined in Article 66, which upholds the right of all regions (republics, districts, territories, etc.) to independently define their own legal status. In case of republics, this status is defined by a constitution, while for all other subjects of the Federation, this status is defined by an *ustav*. Despite these two different designations, however, a regional constitution and an *ustav* play the same role, namely they both regulate the legal relationships within a particular region. *Kommentarii k Konstitutsii*, *supra* note 28, at 278.
30. The republics have acquired other privileges as well. They have the right to establish their own state symbols (flag, coat of arms, national anthem). The republics can also use the same name for their regional institutions of power as the national government uses for its state institutions. For example, one can refer to a "president" of a republic, whereas the highest elected official in an *oblast'* is the governor. A.E. Kozlov, *Federativnyi nachala organizatsii gosudarstvennoi vlasti v Rossii* 43-4 (1996).
31. *Kommentarii k Konstitutsii*, *supra* note 28, at 305.
32. Robert Ahdieh, *Russia's Constitutional Revolution* 134 (1997); Steven Solnick, "Federal Bargaining in Russia," 4 *East Europ. Const. Rev.*, No. 4, at 53 (1995).; Kozlov, *supra* note 30, at 34.
33. I.A. Umnova, *Sovremennaia rossiiskaia model' razdeleniia vlasti mezhdru federatsiei i ee sub'ektama* 17 (1996).
34. See the discussion below, Section V(B)

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35. Although the proposed contents of the new Constitution were subject to a rather prolonged public debate, the final draft was hastily composed after the October 1993 events and put to a national referendum two months later. As a result, the Russian Constitution contains numerous lacunae and inconsistencies. See Robert Sharlet, "Transitional Constitutionalism: Politics and Law in the Second Republic," 14 *Wis. Int'l L.J.* 495, 506-7 (1996).

36. Chirkin, *supra* note 17, at 29.

37. The Russian Federation is by no means the only country that contains certain asymmetrical elements. Perhaps the closest parallel to the situation in Russia can be found in Spain. The 1978 Spanish Constitution proposed several alternative paths to regional autonomy. Three distinct historical districts (the Basque country, Catalonia, Galicia) were immediately recognized as autonomous communities and granted significant control over local affairs. Spain's other regions had to wait five years before they were granted such elevated status. Moreover, each district had to conduct internal negotiations with provincial and municipal councils to determine the degree of home rule they desired. Although every region ultimately became an autonomous community, they do not share the same relationship with Madrid. They also possess varying degrees of regional sovereignty. Thomas O. Hueglin, "New Wine in Old Bottles? Federalism and Nation States in the Twenty-First Century: A Conceptual Overview," in *Rethinking Federalism: Citizens, Markets, and Governments in a Changing World* 216-18 (Karen Knop, Sylvia Ostry, Richard Simeon, Katherine Swinton, eds., 1995).; Montserrat Guibernau, "Spain: a Federation in the Making," in *Federalism: The Multiethnic Challenge* 245-52 (Graham Smith, ed., 1995).

38. Riasanovsky, *supra* note 12, at 487.

39. The Union treaty sought to keep the Soviet Union together, although several union republics did not even participate in the negotiations. By August 1991, eight union republics (including Russia, Belarus, and the Central Asian republics) were prepared to sign the Union treaty. The Central Asian republics were particularly strong supporters, since they saw a revitalized USSR as the best counterweight to the growing influence of the Russian Republic. The treaty was about to be signed on August 20th, 1991, but on August 19th, the State Committee for the State of Emergency began their ill-fated coup attempt to preserve the Soviet Union. One of the primary reasons why the Committee launched the coup was the fear that the Union treaty would destroy, not save, the USSR. Ann Sheehy, "A Progress Report on the Union Treaty," *Report on the USSR*, July 12, 1991, at 1, 17-18.; Roman Solchanyk, "Ukraine and the Union Treaty," *Report on the USSR*, July 26, 1991, at 1, 22-4.; Dawn Mann, "The Circumstances Surrounding the Conservative Putsch," *Report on the USSR*, September 6, 1991, at 1, 1-2.; Smith, *supra* note 7, at 165.; Nadia Diuk and Adrian Karatnycky, *New Nations Rising: The Fall of the Soviets and the Challenge of Independence* 135 (1993).; John Dunlop, *The Rise of Russia and the Fall of the Soviet Empire* 269 (1993).

40. G.B. Agabekov, "Gosudarstvennyi suverenitet i Rossiiskaia Federatsiia: teoriia, istoriia, i konstitutsionnaia praktika," *Federativnoe ustroistvo Rossii: istoriia i sovremennost* 26 (N.A

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Mikhaleva, ed., 1995).

41. *Konstitutsiia Rossiiskoi Federatsii: Entsiklopedicheskii slovar* 300-1 (V. Tumanov, V. Chirkin, I. Iudin, eds., 1997).

42. Bashkortostan and Sakha (Iakutiia) signed the Federation Treaty only after they had extracted special economic concessions from Moscow. Solnick, *supra* note 32, at 52.

43. Kozlov, *supra* note 30, at 10.

44. N.A. Mikhaleva, "Obsuzhdenie problematiki federativnogo dogovora, 9 *Gosudarstvo i pravo* 147, 147 (1992).

45. *Id.*, at 148. See also Karapetian, *supra* note 24, at 70.

46. Peter Reddaway, "Russia on the Brink," *New York Review of Books*, January 28, 1993, at 30, 30-35.

47. Even at the time of its adoption, the Federation Treaty did not replace the then-acting 1978 Russian Constitution as the supreme law of the land. Instead, the treaty only resolved Russia's emerging system of division of powers. Mikhaleva, *supra* note 44, at 148-49.

48. Officially, 54.8% of all registered voters participated in the referendum. The Constitution itself was supported by 58.4% of the population, although there were numerous charges of fraud in the tabulation of the results. Several Russian commentators also insist that the actual turnout at the referendum was, in fact, below 50% and that therefore, the Constitution was not legally ratified. Gordon Smith, *Reforming the Russian Legal System* 102 (1996). Sharlet, "Transitional Constitutionalism," *supra* note 35, at 496.

49. Kozlov, *supra* note 30, at 13. See also N.A. Mikhaleva, "Pravovye aspekty sovremennogo rossiiskogo federalizma," *Federativnoe ustroistvo Rossii: istoriia i sovremennost* 86 (N.A. Mikhaleva, ed., 1995).

50. "Po delu o proverke konstitutsionnosti Lesnogo kodeksa Rossiiskoi federatsii," *Sobranie zakonodatel'stva Rossiiskoi Federatsii*, Issue No. 3, Item No. 429, at 743, 748-49. (1998) [hereinafter cited as "Karelia Ruling"] See also *RFE/RL Newslines*, January 13, 1998, via e-mail.; *RFE/RL Newslines*, February 3, 1998, via e-mail.

51. The other major constitutional provision is Article 78(3).

52. Kozlov, *supra* note 30, at 40. As of May 1998, 45 of the 89 subjects of the Federation had signed treaties with Moscow. In addition, numerous treaties have been signed among the regions themselves. See *RFE/RL Newslines*, May 22, 1998, via e-mail.; B.S. Krylov, *Osnovy pravovogo statusa natsional'nykh men'shinstv v Rossiiskoi Federatsii* 27-9 (1995).

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53. Vladimir Lysenko, "Razdelenie vlasti i opyt Rossiiskoi Federatsii," *Asimmetrichnost' Federatsii* 28 (A. Zakharova, ed., 1997).

54. *Id.*, at 29.

55. *Id.*, at 30.

56. There is a surprisingly broad consensus against asymmetrical federalism among Russia's major political parties. The parties differ, however, over how fast Russia should go in order to overcome these inequalities. In general, Russia's liberals and centrists have advocated caution and urged a gradual approach to resolving this issue. By contrast, the left-wing and patriotic parties have stated that upon achieving power, one of their first priorities would be to establish equal relationships between all subjects of the federation. Rodion Mikhailov, "Vedushchie rossiiskie politicheskie organizatsii o probleme asimmetrichnosti Rossiiskoi Federatsii," *Asimmetrichnost' Federatsii* 59 (A. Zakharova, ed., 1997).

57. Individual republics have also contributed to the development of asymmetrical federalism. Several republican constitutions, for example, contain outright violations of the Russian Constitution. The Tuva Constitution includes the right of secession even though the Russian Constitution does not recognize this choice. Alternatively, the Sakha (Iakutiia) Constitution includes a provision that potentially restricts freedom of movement in the region, a right guaranteed by Article 27 of the Russian Constitution. In total, 19 of the 21 constitutions have provisions that contradict the Russian Constitution, although it should be noted that several of these republican constitutions were adopted before the ratification of the 1993 Constitution. Kozlov, *supra* note 30, at 52-4.; *RFE/RL Newslines*, January 13, 1997, via e-mail.

58. In the Chechen case, the Court concluded that the 1993 Russian Constitution does not include the right of secession. See Pomeranz, *supra* note 2, at 25-6.

59. Kozlov, *supra* note 30, at 39.

60. Karapetian, *supra* note 24, at 63. Several other republics (Bashkortostan, Buriatiia, Tuva) have asserted within their constitutions that they are sovereign states. Kozlov, *supra* note 30, at 52.

61. Kozlov, *supra* note 30, at 39. See also Rafael' Khakimov, "Asimmetrechnost' Rossiiskoi Federatsii: vzgliad iz Tatarstana," *Asimmetrichnost' Federatsii* 69 (A. Zakharova, ed., 1997). Tatarstan has also established 15 overseas representation offices as well. Paul Goble, "Representing Tatarstan," *RFE/RL Newslines*, February 17, 1998, via e-mail.

62. Karapetian, *supra* note 24, at 67. See also Umnova, *supra* note 33, at 29.

63. E.V. Tadevosian, "Rossiiskii federalizm i sovremennyi natsional'no-gosudarstvennyi

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nigilizm,” 10 *Gosudarstvo i pravo* 3, 13-14 (1996). See also Lysenko, *supra* note 53, at 20.; Agabekov, *supra* note 40, at 72-3.

64. Gagnon, *supra* note 8, at 17.

65. Lysenko, *supra* note 53, at 31.

66. Chirkin, *supra* note 17, at 69.

67. Egor Stroev, the Chairman of the Federation Council, recently criticized these bilateral treaties, stating that they had led arbitrary relations between the center and the regions. In the case of Tatarstan, Stroev added, a virtual “confederative” relation had been established between Moscow and the republic. *RFE/RL Newslines*, January 20, 1998, via e-mail.

68. “Delo o proverke konstitutsionnosti Deklaratsii o gosudarstvennom suvernitete i Zakonov Tatarskoi SSR ob izmeneniiakh i dopolneniiakh Konstitutsii i o referendumе, postanovleniia Verkhovnogo Soveta Respubliki Tatarstan o provedenii referendumа,” *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*, No. 1., at 41 (1993). See also Herman Schwartz, “The New East European Constitutional Courts,” 13 *Mich. J. Int’l L.* 741, 768-75.

69. The Court’s jurisdiction over these treaties is defined in Article 125(2)(v) of the Russian Constitution and Article 3(1)(v) of the law on the Constitutional Court. See *Federal’nyi konsitutsionnyi zakon ‘O Konsitutsionnon Sude Rossiiskoi Federatsii:’ Kommentarii* 39-40 (N.V. Vitruk, L.V. Lazarev, B.S. Ebzeev, eds., 1996).

70. *Komentarii*, *supra* note 28, at 46.

71. The Karelia case revolved around the Russian Forest Code, which was adopted in 1997. The Code placed the national forest fund under joint federal-regional management. The republic of Karelia objected to this provision. It maintained that Karelia, alone, had to the right to regulate forests within its national borders. In order to support this claim, Karelia turned to Article 11(3), which states that the division of powers shall be governed by the Russian Constitution, the Federation Treaty, and any subsequently approved bilateral treaty. According to the republic of Karelia, this clause meant that one should not turn to federal law if the Constitution was vague on a particular subject matter involving the division of powers. Instead, one moved further down the judicial hierarchy to the Federation Treaty and, in this particular case, the May 1993 agreement (*soglashenie*) between the Russian Federation and the republic of Karelia. The Constitutional Court rejected this argument. In its opinion, released in January 1998, the Court ruled that the Constitution, and any federal law taken in direct conjunction with the Constitution, was superior to the Federation Treaty and any bilateral agreement. “Karelia Ruling,” *supra* note 50, at 744-51.

72. *Federal’nyi Konstitutsionnyi zakon*, *supra* note 69, at 257-8. The right to file such a petition

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is quite limited. According to Article 125, only the Russian President, the Federation Council, the Duma, the Government of the Russian Federation, the Supreme Court, the Supreme Arbitration Court, and the bodies of executive and legislative power of the Russian Federation can appeal this issue to the Constitutional Court.

73. 5 *East Europ. Const. Rev.*, No. 1, at 25 (1996). It should be noted that some of the early bilateral treaties were not officially published at the time of their adoption. This has also prevented any sort of formal constitutional review of these agreements. See Umnova, *supra* note 33, at 46.

74. “Po delu o proverke konstitutsionnosti statei 23 i 24 Vremennogo polozheniia ob obespechenii deiatel’nosti deputatov Kaliningradskoi oblastnoi Dumy, utverzhdenogo postanovleniem Kaliningradskoi oblastnoi Dumy ot 8 iulia 1994 goda,” *Sobranie zakonodatel’sva Rossiiskoi Federatsii*, Issue No. 50, Item No. 4969, at 9148 (1995).

75. *Id.*, at 9149.

76. *Id.*, at 9150.

77. *Id.*

78. Regional laws must be brought into agreement with any subsequent federal legislation as well. Kozlov, *supra* note 30, at 36.

79. The Court reaffirmed this decision four months later in the Chita case. See “Po delu o proverke konstitutsionnosti riada polozhenii Ustava--Osnovnogo Zakona Chitinskoi oblasti,” *Sobranie zakonodatel’sva Rossiiskoi Federatsii*, Issue No. 7, Item No. 700, at 1805, 1809-10 (1996).

80. See the discussion below on advertising and taxation, Section V(C)

81. Aleksander Kislov, “V saratovskoi oblast’ vvedena chastnaia sobstvennost’ na zemliu,” *Izvestiia*, October 22, 1997, at 1.; “Saratovskii gubernator podpisal zakon o zemle,” *Segodnia*, November 15, 1997, via e-mail.; “Saratovskie vlasti otrazhiut napadki Gosdumy,” *Segodnia*, November 20, 1997, via e-mail.; Ilya Malyakin, “Saratov Oblast’s Land Privatization Law,” *Prism*, June 12, 1998, at 8, 8-9.

82. “Zemel’nyi kodeks snova v povestke dnia,” *Izvestiia*, February 19, 1998, at 2. In April 1998, the republic of Tatarstan also approved its own land code. “Duma teriaet vliianie na zemliu,” *Segodnia*, April 16, 1998, via e-mail.

83. The Saratov land law has survived its first challenge in the courts. In May 1998, the Saratov *Oblast’* Court rejected an appeal by the Procurator-General’s office of the Russian Federation to have the law declared unconstitutional. “Saratovskii sud otstaivaet zakon o zemle,” *Segodnia*,

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May 16, 1998, via e-mail.; “Saratov otstoial zakon o zemlie,” *Izvestiia*, May 21, 1998, at 1.; *RFE/RL Newslines*, May 28, 1998, via e-mail

84. “Po delu o proverke konstitutsionnosti riada polozhenii Ustava (Osnovnogo Zakona) Altaiskogo kraia,” *Sobranie zakonodatel’stva Rossiiskoi Federatsii*, Issue No. 4, Item No. 409, at 1092, 1093 (1996). [hereinafter cited as “Altai Ruling”]

85. The Constitution does not contain an explicit demand for the separation of powers. Instead, the Court referred to several provisions within the Constitution that implicitly uphold this principle. Article 77(1), for example, declares that regional institutions of state power will be divided into executive and legislative branches (as specified by federal law). The Court also noted that Article 10 demands that state power be divided into three branches--executive, legislative, and judicial--and that each branch be independent. *Id.*, at 1093. It should be noted that Russian legal scholars have interpreted Article 10 as upholding the principle of separation of powers. See *Kommentarii k Konstitutsii*, *supra* note 28, at 41-3.

86. “Altai Ruling,” *supra* note 84, at 1095.

87. *Id.*

88. *Id.*, at 1096. The Court also referred to Article 32 to support direct elections for regional officials

89. *Id.*, at 1097. The Court did not find that all of the disputed provisions within the Altai *Ustav* were unconstitutional. It ruled that the Altai legislature had the right to approve the administration’s management plan. The Court also found that the legislature was entitled to hear an annual report from the regional administration, as long as such a presentation did not infringe upon the independence of the executive branch. *Id.*, at 1096-98.

90. The Russian Constitution upholds the right of the Russian population to establish institutions of local self-government that will be independent from the federal and regional power structures. Article 132 goes on to define some of the broad powers that are to be assigned to these local bodies, such as the right to manage municipal property, prepare a local budget, and establish local taxes. The Constitution does not specify, however, the process by which regional power is transferred to these new bodies, nor does it define the actual structure of these new institutions. Instead, according to Article 131, it is up to the local population, based on their own historical and regional traditions, to create institutions of local self-government. For an overview of this issue, see *Konstitutsionnoe pravo Rossiiskoi Federatsii* 451-87 (M.B. Baglai, B.N. Gabrichidze, eds, 1996).

91. “Udmurtskoe delo ofitsial’no otkryto,” *Segodnia*, November 27, 1996, via e-mail.

92. In general, Russia’s regional elites have been reluctant to introduce local self-government,

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since they see such institutions as a clear limitation on their authority. It is no accident, for example, that Russia's Federation Council, which is made up of regional leaders, has rejected numerous pieces of legislation that would have strengthened the position of local self-government. Vladimir Shpak, "Senatory ne liubiat mestnogo samoupravleniia," *Segodnia*, July 5, 1997, at 1.

93. "Urdmurt Law Goes to High Court: A Test Case," *The Current Digest of the Soviet Press*, Vol. XLVIII, No. 47, at 11 (1996).

94. Mikhail Piskotin, "Reshenie priniato--konflikt prodolzhaetsia," *Rossiiskaia Federatsiia*, No. 3, at 15 (1997).

95. "Udmurtskoe delo," *supra* note 91, via e-mail.

96. "Po delu o proverke konstitutsionnosti Zakona Udmurtskoi Respubliki ot 17 apreliia 1996 goda 'O sisteme organov gosudarstvennoi vlasti v Udmurtskoi Respublike'" *Sobranie zakonodatel'stva Rossiiskoi Federatsii*, Issue No. 5, Item No. 708, at 1169, 1170 (1997) [hereinafter cited as "Udmurtiia Ruling"].

97. *Id.*

98. Representatives from the Udmurtiia State Council tried to lobby the Duma to back its revocation of local self-government, but to no avail. The State Council found much more support among its fellow republics. The heads of 15 republics signed an appeal to President Yeltsin asking him to withdraw his petition to the Constitutional Court in this case. See Sergei Mitrokhin, "Tendency: It is a Rare Governor Who Does Not Dream of Becoming a Khan," *Moscow Obshchaia gazeta*, November 6-13, 1996, as translated in FBIS-SOV-96-236-S, November 13, 1996, via e-mail.

99. Udmurtiia Ruling, *supra* note 96, at 1170.

100. *Id.*

101. *Id.*, at 1171.

102. *Id.*

103. "Kto vyigral udmurtskoe delo v Konstitutsionnom sude," *Segodnia*, January 30, 1997, via e-mail.

104. The court also referred to Article 130(2), which upholds the rights of Russian citizens to participate in local self-government elections. Udmurtiia Ruling, *supra* note 96, at 1174.

105. "Udmurtiia Ruling," *supra* note 96, at 1174.

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106. *Id.*

107. *Id.*, at 1175. In October 1997, the Constitutional Court confirmed the procedures to either remove a locally elected official or dissolve an institution of local self-government before the completion of its term. This process is outlined in the law on local self-government, which requires that before any action can be taken, the national legislature of a particular region must first appeal to the appropriate court. If the court recognizes that a violation of the law has occurred, then the authority of local self-government can be terminated by the state legislative body, provided that the date for new elections is announced. As similar court order can lead to the dismissal of an elected local government official by the legislature. The Court upheld the constitutionality of this law, concluding that it did not violate the independence of local self-government. “Po delu o proverke konstitutsionnosti punkta 3 stat’i 49 Federal’nogo zakona ot 28 avgusta 1995 goda ‘Ob obshchikh printsipakh organizatsii mestnogo samoupravleniia v Rossiiskoi Federatsii,’” *Sobranie zakonodatel’stva Rossiiskoi Federatsii*, Issue No. 42, Item No. 4902 (1997). See also Victor Khamraev, “Gubernator mozhet sniat mera. Esli sumeet,” *Segodnia*, October 17, 1997, via e-mail.

108. “Udmurtiia Ruling,” *supra* note 96, at 1172-74.

109. *Id.*, at 1175-76.

110. In general, the Constitutional Court has supported the institutions of local self-government. In May 1996, for example, the Court rejected President Yeltsin’s request to postpone local elections and demanded that the voting take place according to the timetable in the law on local self-government. “Po delu o proverke konstitutsionnosti punkta 1 stat’i 58 i punkta 2 stat’i 59 Federal’nogo zakona ot avgusta 1995 goda ‘Ob obshchikh printsipakh organizatsii mestnogo samoupravleniia v Rossiiskoi Federatsii (s izmeneniami ot 22 apreliia 1996 goda),” *Sobranie zakonodatel’stva Rossiiskoi Federatsii*, Issue No. 23, Item No. 2811 (1996).

111. “Udmurtiia Ruling,” *supra* note 96, at 1179.

112. *Id.*

113. *Id.*, at 1171.

114. Alexander Blankenagel, “Local Self-Government vs. State Administration: The Udmurtiia Decision,” 6 *East Europ. Const. Rev.*, No. 1, at 50, 50-54 (1997).

115. *RFE/RL Newslines*, February 12, 1997, via e-mail.

116. *RFE/RL Newslines*, March 11, 1997, via e-mail. Initial reports also suggest that the Udmurtiia State Council has only feigned compliance with the Court’s decision. 6 *East Europ. Const. Rev.*, No. 1, at 26 (1997). Michael Spector, “Regions Defy Yeltsin to Start Talk of a More Perfect Union,” *N.Y. Times*, March 25, 1997, at A1, A4.

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117. “Konstitutsionnyi sud zaniatsia zakonom ‘O reklame,’” *Segodnia*, February 14, 1997, via e-mail.

118. “Po delu o proverke konstitutsionnosti stat’i 3 Federal’nogo zakona ot 19 iulia 1996 goda ‘O reklame,’” *Sobranie zakonodatel’sтва Rossiiskoi Federatsii*, Issue No. 11, Item No. 1372, at 2362, 2363 (1997).

119. *Id.*

120. *Id.*

121. The Court also referred to Article 74, which states that there can be no obstacles to the free transport of goods. *Id.*, at 2364.

122. *Id.*

123. *Id.*, at 2365. Justice Zorkin objected to the Court’s broad interpretation of the single market in his special opinion. *Id.*, at 2367.

124. “Regiony b’iutsia v Konstitutsionnom sude za nalogovuiu vol’nitsu,” *Segodnia*, February 18, 1997, via e-mail.

125. *Id.*

126. The specific clause is Article 72(1)(i). “Po delu o proverke konstitutsionnosti polozhenii abzatsa vtorogo punkta 2 stat’i 18 i stat’i 20 Zakona Rossiiskoi Federatsii ot 27 dekabria 1991 goda ‘Ob osnovakh nalogovoi sistemy v Rossiiskoi Federatsii,’” *Sobranie zakonodatel’sтва Rossiiskoi Federatsii*, Issue No. 13, Item No. 1062, at 2715, 2716 (1997).

127. The petitioners also asserted this right under Article 5 of the Protocol to the Federation Treaty. *Id.*

128. *Id.*, at 2719.

129. *Id.*, at 2717.

130. The Constitutional Court specifically referred to Article(s) 8(1) and 114(1)(b). *Id.*

131. *Id.*

132. *Id.* Apart from federalism considerations, it should be noted that the Constitutional Court has not upheld the legality of every federal tax, proposed by the Russian government. In April 1997, the Court struck down a tax on electricity supplied to industrial enterprises because the specific tax had not been approved by the Russian Duma. For a similar reason, the Court struck

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down a licensing fee for the production and distribution of alcohol products. Instead of immediately canceling the licensing fee, however, the Court announced that the tax would remain in effect for another six months. According to the Court, the licensing fee was an important source of income for the Russian government and could not be immediately canceled without serious public consequences. “Po delu o sootvetstvii Konstitutsii Rossiiskoi Federatsii punktov 8 i 9 postanovleniia Pravitel’stva Rossiiskoi Federatsii ot apreliia 1996 No. 479 ‘Ob otmene vyvoznnykh tamozhennykh poshlin, izmenenii stavok aktsiza na neft i dopolnitel’nykh merakh po obespecheniiu postupleniia dokhodov v federal’nyi biudzhzet,’” *Sobranie zakonodatel’stva Rossiiskoi Federatsii*, Issue No. 14, Item No. 1729 (1997). “Po delu o proverke konstitutsionnosti postanovleniia Pravitel’stva Rossiiskoi Federatsii ot fevralia 1995 goda ‘O vvedenii platy za vydachu litsenzii na proizvodstvo, rozliv, khranenie i optovuii prodazhu alkohol’noi produktsii,’” *Sobranie zakonodatel’stva Rossiiskoi Federatsii*, Issue No. 8, Item No. 1010 (1997). “Konstitutsionnyi sud b’et rekordy,” *Segodnia*, March 21, 1997, via e-mail. “Konstitutsionnyi sud prinial uchastie v biudzhetnom protsesse,” *Segodnia*, February 19, 1997, via e-mail.

133. In general, republics receive higher subsidies and pay lower taxes than either the districts or territories. Solnick, *supra* note 32, at 54-5. See also Aleksei Lavrov, “Asimetriia biudzhetnogo ustroistva Rossii: problemy i resheniia,” in *Asimmetrichnost’ Federatsii 103-7* (A. Zakharova, ed., 1997).

134. For a broader discussion on the relationship between civil rights and federalism, see *Federalism and Rights* (Ellis Katz and G. Alan Tarr, eds., 1996).

135. William Pomeranz, “Legal Assistance in Tsarist Russia: The St. Petersburg Consultation Bureaus,” 14 *Wis.Int’l. L.J.* 590, 597 (1996).

136. Even the Constitutional Court’s Soviet predecessor, the Committee on Constitutional Supervision, found that the *propiska* system did not correspond to the Soviet Constitution. For an overview of this issue, see Peter Maggs, “The Russian Constitutional Court’s Decisions on Residence Permits and Housing,” 2 *Parker Sch. J. E. Eur.L.* 561, 567-9 (1995).

137. “Po delu o proverke konstitutsionnosti chastei pervoi i vtoroi stat’i 54 Zhilishchnogo kodeksa RSFSR v sviazi s zhaloboi grazhdanki L.N. Sitalovoi,” *Sobranie zakonodatel’stva Rossiiskoi Federatsii*, Issue No.18, Item No. 1708, at 3117, 3119 (1995). The Court also noted that Ms. Sitalova’s case did not fall under the exceptions of Article 55(3), which permit restrictions on civil rights in certain specific instances (health, state security, etc.). *Id.*, at 3118. For an overview of this case and the major *propiska* decisions, see Konstantin Katanian, “The *Propiska* and the Constitutional Court,” 7 *East Europ. Const. Rev.*, No. 2, at 52, 52-7 (1998).

138. Maksim Zhukov, “Konstitutsionnyi sud otmenil platu za propisku. Nasovsem,” *Kommersant Daily*, July 3, 1997, at 1.

139. “Po delu o proverke konstitutsionnosti riada normativnykh aktov goroda Moskvy i

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Moskovskoi oblasti, Stavropol'skogo kraia, Voronezhskoi oblasti i goroda Voronezha, reglamentiruiushchikh poriadok registratsii grazhdan, pribyvaiushchikh na postoiannoe zhitel'stvo v nazvannye regiony," *Sobranie zakonodatel'stva Rossiiskoi Federatsii*, No. 16, Item 1919, at 4195, 4201 (1996).

140. *Id.*, at 4202-3.

141. Zhukov, *supra* note 138, at 1.

142. *Id.* See also Bronwyn McLaren, "Court Deals a Blow to Hated 'Propiskas,'" *Moscow Times*, July 10, 1997, via e-mail.

143. "Po delu o proverke konstitutsionnosti chastei pervoi, vtoroi i tret'ei stat'i 2 i chasti shestoi stat'i 4 Zakona Moskovskoi oblasti ot 5 iiulia 1996 "O sbore na kompensatsiiu zatrat biudzheta Moskovskoi oblasti po razvitiuu infrastruktury gorodov i drugikh naselinykh punktov oblasti i obespecheniiu sotsial'no-bytovymi usloviiami grazhdan, prebyvaiushchikh v Moskovskuiu oblast' na postoiannoe zhitel'stvo" v sviazi s zhalobami grazhdan I.V. Shetopal'ko, O.E. Sachkovi, i M.I. Kriuchkovi," *Sobranie zakonodatel'stva Rossiiskoi Federatsii*, Issue No. 27, Item No. 3304 (1997).

144. *RFE/RL Newslines*, March 11, 1998, via e-mail. A Moscow municipal court has also supported Mayor Luzhkov and not enforced the Constitutional Court's ruling on the *propiska* issue. *RFE/RL Newslines*, May 28, 1998, via e-mail.

145. Igor Korol'kov, "Luchshii gorod zemli' trebuet osobykh uslovii; Chtoby ikh sozdat, nuzhno otmenit Konstitutsiiu," *Izvestiia*, March 12, 1998, at 2. President Yeltsin also appears to be searching for a way around the *propiska* decision. This can be seen in his statement that the new internal passports would retain the *propiska* stamp. 6 *East Europ. Const. Rev.*, No. 4, at 39 (1997).

146. The Court has issued additional opinions on the *propiska* issue since July 1997. The Court concluded in January 1998 that citizens who do not have a *propiska* can still travel abroad. In February 1998, the Court ruled that a region must register anyone who applies for a residency permit. Chloe Arnold, "Court Abolishes Propiska Travel Rule," *Moscow Times*, January 17, 1998, via e-mail.; Andrei Zolotov, "Court Takes Step Toward Dismantling Propiskas," *Moscow Times*, February 4, 1998, at 3.

147. 6 *East. Europ. Const. Rev.*, No. 4, at 37 (1997).

148. Dmitrii Kamyshev, "Teoriia otnositel'nosti s konstitutsionnym podtekstom," *Segodnia*, July 15, 1997, via e-mail.

149. Kseniia Frolova, "Diktat 'sverkhu' neumesten," *Nezavisimaia gazeta*, July 4, 1997, at 2.

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150. "Po delu o tolkovanii soderzhashchegosia v chasti 4 stat'i 66 Konstitutsii Rossiiskoi Federatsii polozheniia o vkhozhdanii avtonomnogo okruga v sostav kraia, oblasti," *Sobranie zakonodatel'stva Rossiiskoi Federatsii*, Issue No. 29, Item No. 3581, at 5817, 5818 (1997).

151. *Id.*

152. *Id.*, at 5820.

153. *Id.*, at 5821.

154. *Id.* In an interview after the decision, Justice Luchin stated that the best way to resolve this problem was through the enactment of a law on the relationship between districts, territories, and autonomous districts. Kamyshev, *supra* note 148, via e-mail.

155. The Tiumen elections were held on December 14, 1997, but only produced another constitutional dispute. Four deputies from the legislatures of the autonomous districts were elected to serve in the Tiumen *Oblast'* Duma. The Tiumen *Oblast'* Court ruled that it was unclear whether or not a deputy could serve simultaneously in two legislatures, and at last report, the issue was headed to the Constitutional Court. *RFE/RL Newslines*, December 18, 1997, via e-mail.

156. The Constitutional Court has increasingly shown a willingness to rule against President Yeltsin. In April 1998, the Court ordered Yeltsin to sign the law on trophy art, since the Duma and Federation Council had successfully overridden his veto. The Court also quietly intervened during the governmental crisis of that same month, when it was unclear if the Duma would approve the nomination of Sergei Kirienko as prime minister. Various rumours circulated that President Yeltsin would either postpone Duma elections or issue a presidential decree, changing Russia's electoral system. In an unprecedented press news conference, Chairman Baglai announced that any postponement of Duma elections would be a violation of the Constitution, and that any future election would take place according to the existing electoral law. See *RFE/RL Newslines*, April 6, 1998, via e-mail.; Denis Babichenko, "Prezident--sam sebe Konstitutsiia," *Segodniia*, April 7, 1998, via e-mail.; *RFE/RL Newslines*, April 16, 1998, via e-mail.; "Constitutional Court Chairman Displays Legal Resolve," *Russia Today*, April 22, 1998, via e-mail.

157. In addition to signing new treaties, President Yeltsin has also suggested that several old treaties may be renegotiated if they have become outdated. It remains uncertain, however, whether such revised agreements will actually address existing constitutional violations or simply create new ones. *RFE/RL Newslines*, June 8, 1998, via e-mail.

158. Iurii Spirodonov, the head of the Komi republic, announced on February 3, 1998 that the republic would ignore a recent Constitutional Court decision that required several revisions to Komi's law on executive authorities. Spirodonov claimed that the Court was not empowered to

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change such laws. On February 12, 1998, Ivan Skliarov, the governor of Nizhnii Novgorod, issued an order that partially suspended a Constitutional Court decision. The Court had struck down the requirement that enterprises first pay their workers before paying their local taxes. *RFE/RL Newsline*, February 3, 1998, via e-mail.; *RFE/RL Newsline*, February 16, 1998, via e-mail.