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July 2015

# Prospects for an Independent Judiciary: The Russian Constitutional Court and the CPSU Trial

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## Recommended Citation

Tracy, Lynne M. (1993) "Prospects for an Independent Judiciary: The Russian Constitutional Court and the CPSU Trial," *Akron Law Review*: Vol. 26 : Iss. 3 , Article 10.

Available at: <http://ideaexchange.uakron.edu/akronlawreview/vol26/iss3/10>

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## PROSPECTS FOR AN INDEPENDENT JUDICIARY: THE RUSSIAN CONSTITUTIONAL COURT AND THE CPSU TRIAL

### INTRODUCTION

A little over a year has passed since the country known as the Soviet Union abruptly passed into history. The collapse of communism did not bring a fairytale ending of a secure democracy with a prosperous economy and a stable society. Rather, the disappearance of the old has ushered in an era of uncertainty.<sup>1</sup> The Russian Republic is beset by political strife and confrontation. Soaring prices, unemployment, and unprofitable factories cripple the economy.<sup>2</sup> Ethnic strife, the decline in the standard of living, and the rise in criminal activity fray the fabric of Russian society.

At stake in this period of turmoil is the continuation of legal reform in Russia and the realization of a society ruled by law rather than dictate. "Law is the lifeblood of any democratically organized polity."<sup>3</sup> The development of an independent judiciary is critical to the democratization of Russia.<sup>4</sup> The former Soviet Union has had little experience with limited government and the principle of separation of powers.<sup>5</sup> However, the recently created Russian Constitutional Court shows signs of emerging as a true third power.

The trial of the Communist Party of the Soviet Union (CPSU) was one of the most anticipated events of the summer of 1992 in Moscow. Earlier, in November 1991, Russian President Boris Yeltsin had issued decrees banning the existence of the CPSU and its successor the Communist Party of Russia.<sup>6</sup> Yeltsin also seized, on behalf of the state, all property held by the CPSU.<sup>7</sup> Members of the CPSU filed a petition with the Russian Constitutional Court in an effort to have the decrees declared unconstitutional.<sup>8</sup> In turn, several members of the Congress of People's Deputies filed a petition to have the CPSU declared an

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<sup>1</sup> Andrew Kopkind, *What Is To Be Done?: From Russia With Squalor*, THE NATION, 18, 1993, at 44 (for a very recent account of the instability in the Commonwealth of Independent States).

<sup>2</sup> See generally *Russia Reborn*, THE ECONOMIST, Dec. 5, 1992, at special section (for a recent assessment of the political and economic scene and the prospect for reform).

<sup>3</sup> Richard Thornburgh, *The Soviet Union and the Rule of Law*, FOREIGN AFFAIRS, Spring 1990, at 13.

<sup>4</sup> *Id.*

<sup>5</sup> ROBERT SHARLET, SOVIET CONSTITUTIONAL CRISIS: FROM DE-STALINIZATION TO DISINTEGRATION 7 (1992).

<sup>6</sup> Serge Schmemmann, *Pre-1917 Ghosts Haunt a Bolshevik Holiday*, N.Y. TIMES, Nov. 7, 1991, at A1.

<sup>7</sup> *Id.*

<sup>8</sup> Andrey Zhdankin, *Kuptsov and Ivashko Set for Battle*, ROSSIISKAYA GAZETA, June 26, 1992 at 1, available in digested form in LEXIS, Europe Library, Russian Press Digest File.

unconstitutional organization.<sup>9</sup> The Court's decision to combine the petitions into one trial set the stage for testing the limits of both executive and judicial power.<sup>10</sup> It also provided an opportunity to gauge the reaction of the Russian people to an event where in a sense both past and present were on trial.

This Comment will explore the role of law in Russian and Soviet history. It will then consider the legal reforms that arose under Mikhail Gorbachev's program of *perestroika*. Particular attention will be devoted to judicial reform and the creation of the Constitutional Court. Second, there will be a description of the events that led to the CPSU trial and the trial itself. Finally, there will be an examination of the impact of the Constitutional Court's verdict on: (1) the future of the Constitutional Court as an independent third branch of the government; (2) the Russian political scene; and (3) the Russian people.

## BACKGROUND

### *Early Russian History and Law*

Russia is often thought of as a European country. Its two most important cities, Moscow and St. Petersburg, lie in the western portion of its territory. Christianity arrived in Russia at the close of the tenth century.<sup>11</sup> Throughout the period of Romanov rule, Europe influenced Russia, particularly its cultural life.<sup>12</sup>

However, both geography and history belie the notion that Russia is a strictly European nation. Russia is also a land of the East. A large portion of her territory lies on the Asian continent. And it is from the East that one of the most important and decisive influences in Russian history appeared: the Tatar invasion and occupation.<sup>13</sup>

The Tatar rule lasted from approximately 1240 until 1450.<sup>14</sup> The occupation affected the development of law and government in Russia in three ways. First, it deprived Russia of contact with Europe during the Enlightenment and Protestant Reformation.<sup>15</sup> This period of isolation created a lack of "awareness of the intellectual foundations of limited government or the idea of a

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<sup>9</sup> Mikhail Gurevich, *This Summer Is Going To Be a Hot One*, MOSKOVSKY KOMSOMOLET, July 4, 1992 at 1, available in digest form in LEXIS, Europe Library, Russian Press Digest File.

<sup>10</sup> *Id.*

<sup>11</sup> JESSE D. CLARKSON, A HISTORY OF RUSSIA 32-33 (1961).

<sup>12</sup> *Id.* at 182-85.

<sup>13</sup> SHARLET, *supra* note 5, at 7; see also OLYMPIAD S. IOFFE & PETER B. MAGGS, SOVIET LAW IN THEORY AND PRACTICE 8-9 (1983); 3 GEORGE VERNADSKY, A HISTORY OF RUSSIA (1953) (for a more detailed account of the Mongol Conquest and rule).

<sup>14</sup> DONALD W. TREADGOLD, TWENTIETH CENTURY RUSSIA 3-4 (7th ed. 1990).

<sup>15</sup> SHARLET, *supra* note 5, at 8.

loyal opposition -- ideas that in the West grew and flowered as the rule of law and constitutionalism."<sup>16</sup>

Second, the Tatar rule left a legacy of a "harsh, centralized administrative system brought from the Orient."<sup>17</sup> In order to drive out the Tatar invaders, the Moscow princes banded together to form a strong centralized Russian state.<sup>18</sup> Consequently, unlike Western Europe, autocracy thrived in Russia until the beginning of the twentieth century.<sup>19</sup>

Finally, the Tatar occupation had a negative influence on "the popular image of the legal system."<sup>20</sup> The low rank of judges in the Tatar administration, the bribery and corruption surrounding legal proceedings, and the absence of lawyers or legal training were elements of the Tatar legal setting.<sup>21</sup> These elements continued to manifest themselves even after the Tatars were driven out of Russia, which perpetuated a low regard for the law among the Russian people.<sup>22</sup>

### *The Romanov Rule and Law*

Following the defeat of Tatar rule, power eventually accrued to one central figure, the tsar.<sup>23</sup> The tsar ruled by *ukaz*, a proclamation or decree which carried the force of law.<sup>24</sup> A low regard for the judiciary, combined with a belief in the supremacy of executive power persisted throughout the period of Imperial Russia.<sup>25</sup>

The nineteenth century was marked by fits and spurts of attempts at legal reform. Alexander I (1801-1825) and Nicholas I (1825-1855), tsars who ruled over the first half of the nineteenth century, recognized the problems with obtaining legal justice and the lack of adequate laws in Russia.<sup>26</sup> In 1801, Alexander established a commission to codify the laws and "placed priority on the reform of legal procedure".<sup>27</sup> Although the commission did not complete its

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> IOFFE & MAGGS, *supra* note 13, at 9.

<sup>19</sup> SHARLET, *supra* note 5, at 8.

<sup>20</sup> IOFFE & MAGGS, *supra* note 13, at 9.

<sup>21</sup> *Id.*

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

<sup>23</sup> GEORGE VERNADSKY, 5 A HISTORY OF RUSSIA, 102-110 (1969).

<sup>24</sup> Thornburgh, *supra* note 3, at 14; *see also* VASILY KLYUCHEVSKY, PETER THE GREAT 145-46 (Liliana Archibald trans., 1958).

<sup>25</sup> RICHARD S. WORTMAN, THE DEVELOPMENT OF A RUSSIAN LEGAL CONSCIOUSNESS 3 (1976).

<sup>26</sup> *Id.* at 35, 42-43.

<sup>27</sup> *Id.* at 35.

work, Nicholas, who came to the throne in 1825, also took up this cause.<sup>28</sup> He believed that legal justice was a fundamental necessity.<sup>29</sup> However, in 1832, when the Code of Laws of the Russian empire finally appeared, it was clear that Nicholas' notion of legal justice was still closely bound to the unlimited authority of the tsardom.<sup>30</sup> The opening words of the Code demonstrated the continued preeminence of the tsar in matters of law and in Russian life:

The Emperor of All Russia is an autocratic and unlimited Monarch. Obedience to his supreme authority, not only from fear, but from conscience, is ordained by God himself.<sup>31</sup>

Historical forces, particularly Russia's poor showing in the Crimean War, began to impinge upon this statement of the tsar's supremacy in the mid-nineteenth century.<sup>32</sup> Alexander II (1855-1881) began to recognize the limitations of autocratic rule<sup>33</sup> and took action by attacking "the most apparent embodiment of the principle of authoritarian control -- the system of serfdom."<sup>34</sup>

The emancipation of the serfs in 1861 and a modernizing society became the catalysts for judicial reform.<sup>35</sup> In 1864, Alexander II enacted into law *The Basic Principles for the Reform of the Courts*.<sup>36</sup> The reform was designed to prevent the arbitrariness that had pervaded the old judicial system.<sup>37</sup> The *Basic Principles* provided a framework for an independent court system controlled by professional jurists.<sup>38</sup> The decision to include a jury system in the reform was one of the more controversial elements of the new law.<sup>39</sup> With this reform, the drafters hoped to inculcate "a sense of law and responsibility in the officials and the population."<sup>40</sup>

"The Reform of 1864 created a modern judicial system and introduced the necessary preconditions to a rule of law in Russia,"<sup>41</sup> but the Reform may have

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<sup>28</sup> *Id.* at 42-43.

<sup>29</sup> *Id.* at 43.

<sup>30</sup> IOFFE & MAGGS, *supra* note 13, at 11.

<sup>31</sup> *Id.*

<sup>32</sup> WORTMAN, *supra* note 25, at 244.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 245; see also BERNARD PARES, *RUSSIA AND REFORM* (Hyperion Press 1973)(1907); W. BRUCE LINCOLN, *THE GREAT REFORMS* (1990).

<sup>36</sup> WORTMAN, *supra* note 25, at 261.

<sup>37</sup> *Id.* at 260.

<sup>38</sup> *Id.* at 259.

<sup>39</sup> *Id.* at 260.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 269.

succeeded too well too quickly.<sup>42</sup> The rise of revolutionary activity brought trials of political significance into the court system.<sup>43</sup> The courts, however, did not fall into line with the expectation of the tsar and his government that these trials were to be merely a show “to eliminate a political foe of the regime according to some prearranged rules.”<sup>44</sup> The independence exhibited by the courts and the failure of the government to provide competent prosecution in the trials of revolutionaries resulted in a number of acquittals.<sup>45</sup> In the eyes of the government, the courts had failed to act in a “reliable” manner.<sup>46</sup>

The executive branch, humiliated before the Russian populace, began to undermine the independence of the judicial system and took steps to retard its growth and prestige.<sup>47</sup> It abandoned its efforts against the revolutionaries in the courts and simply dealt with them by administrative order.<sup>48</sup> Judicial appointments went to the “politically loyal and submissive.”<sup>49</sup> The salaries of judges were kept at low levels.<sup>50</sup> Perhaps, the crowning blow to the judiciary, albeit in a roundabout fashion, was the assassination of Alexander II, in 1881, at the hands of a revolutionary.<sup>51</sup> Alexander III, moulded by this searing experience, determined that he would rule with a much firmer hand than his father.<sup>52</sup> His ascension to the throne left little hope for the establishment of an independent judiciary or a more limited government.

It was not until Nicholas II’s rule (1894-1917) that limited government again showed signs of emerging. Ironically, it was again a military debacle that precipitated the need for reform.<sup>53</sup> The Russian defeat in the Russo-Japanese War of 1905 created a great feeling of unrest in Russian society.<sup>54</sup> To calm the disturbances which began to threaten the stability of the empire, Nicholas issued the Manifesto of October 17, 1905.<sup>55</sup> The Manifesto declared:

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<sup>42</sup> *Id.* at 278.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 278-79.

<sup>45</sup> *Id.* at 280-83.

<sup>46</sup> *Id.* at 283.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 287.

<sup>50</sup> *Id.*

<sup>51</sup> LINCOLN, *supra* note 35, at 173-74.

<sup>52</sup> IDEAS AND FORCES IN SOVIET LEGAL HISTORY 4 (Zigurds L. Zile ed., 1992).

<sup>53</sup> TREADGOLD, *supra* note 14, at 53-58; IDEAS AND FORCES IN SOVIET LEGAL HISTORY, *supra* note 52, at 5; *see supra* text accompanying note 32.

<sup>54</sup> A.J. SACK, THE BIRTH OF THE RUSSIAN DEMOCRACY 113-14 (1918).

<sup>55</sup> *Id.* at 115. These disturbances initiated the Revolution of 1905. Treadgold, *supra* note 14, at 54-55. The October Manifesto was one of its most significant reforms. *Id.*

We impose upon the Government the obligation to carry out Our inflexible will:

1. To grant the population the unshakable foundations of civic freedoms based on the principles of real personal inviolability, freedom of conscience, speech, assembly, and union.
2. . . . to admit to participation in the [State] Duma,<sup>56</sup> those classes of the population which at present are altogether deprived of the franchise, leaving further development of the principle of universal suffrage to the new legislative order, and
3. To establish it as an unbreakable rule that no law can become effective without the approval of the State Duma and that the elected representatives of the people should be guaranteed an opportunity for actual participation in the supervision of the legality of the actions of authorities appointed by Us.<sup>57</sup>

These political concessions stopped far short of a democratic parliamentary regime.<sup>58</sup>

[However,] the Fundamental Laws of April 23rd, 1906, implementing the assurances of the October Manifesto, transformed the unlimited autocracy into a constitutional monarchy. The institution of civil liberties and an elected parliament with legislative, rather than consultative, functions promised at last to provide the educated public with a legal means to limit the bureaucracy's frequent contraventions of the law, and with an effective voice in the affairs of state.<sup>59</sup>

Unfortunately, social, economic and political forces limited the hope and promise for a society ruled by law.<sup>60</sup> In 1914, the Russian Empire entered World War I.<sup>61</sup> The decision was to have disastrous consequences not only for the monarchy, but also for the development of the rule of law in Russia. The increasing unpopularity of the war and the growing social unrest forced Nicholas II to abdicate in March 1917.<sup>62</sup> A Provisional Government took control in the

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<sup>56</sup> The Duma was a Russian legislative body. TREADGOLD, *supra* note 14, at 58-59.

<sup>57</sup> IDEAS AND FORCES IN SOVIET LEGAL HISTORY, *supra* note 52, at 47.

<sup>58</sup> R.B. MCKEAN, THE RUSSIAN CONSTITUTIONAL MONARCHY: 1907-17 9 (1977).

<sup>59</sup> *Id.*

<sup>60</sup> IDEAS AND FORCES IN SOVIET LEGAL HISTORY, *supra* note 52, at 5.

<sup>61</sup> TREADGOLD, *supra* note 14, at 91-92.

<sup>62</sup> *Id.* at 100.

place of the tsar.<sup>63</sup> Less than a year later, in November 1917, the Bolsheviks staged a coup in St. Petersburg and began to take control of the government and the empire.<sup>64</sup>

### *The Soviet Period 1917-1985*

Lenin stated not long before the 1917 Revolution that “[l]aw is a political instrument, it is politics.”<sup>65</sup> Marx and Engels provided guidance to Lenin on the role of law in society.<sup>66</sup> “[Law] was to be an instrument of class power, a tool to shape society in the image thought to be advantageous to those who ruled.”<sup>67</sup>

Initially, the Bolsheviks had no developed plan for the legal system.<sup>68</sup> Some even believed that it would “wither away” with the state.<sup>69</sup> However, as early as 1918, the Bolshevik government put forth a written constitution that at least in name created a constitutional and limited government.<sup>70</sup> Three more constitutions eventually followed in 1924, 1936, and 1977.<sup>71</sup>

The Constitution of 1924 followed the formation of the Union of Soviet Socialist Republics.<sup>72</sup> Despite the appearance, again, of a constitutional and limited government in written form, the Soviet reality was not consistent with Western-style constitutionalism.<sup>73</sup> The Communist Party (Party) and its dictates were the supreme law in the Soviet Union, not the Constitution.<sup>74</sup> The Russian Empire, now the Soviet Union, remained a “government of men, not laws.”<sup>75</sup>

The Constitution of 1936, developed under Stalin, was the most enduring.<sup>76</sup> There was actually little mention of the Party in this particular document.<sup>77</sup> Rather, Stalin ruled much as the tsars of the Russian empire had. During his time in power, Stalin used his absolute authority not only to terrorize the population,

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 101-02.

<sup>65</sup> RUSSIAN LAW: HISTORICAL AND POLITICAL PERSPECTIVES 235 (William E. Butler ed., 1977).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> THE SOVIET LEGAL SYSTEM 5 (John N. Hazard et al. eds., 3d ed. 1977).

<sup>69</sup> *Id.*

<sup>70</sup> Christopher Osakwe, *Soviet Constitutional Law*, 51 TUL. L. REV. 411, 412 (1977) (book review).

<sup>71</sup> ARYEHL. UNGER, CONSTITUTIONAL DEVELOPMENT IN THE USSR 1 (1981).

<sup>72</sup> SHARLET, *supra* note 5, at 10.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> UNGER, *supra* note 71, at 79.

<sup>77</sup> SHARLET, *supra* note 5, at 10.



but also to systematically purge the Party and the military of any possible rivals.<sup>78</sup>

Following the death of Stalin in 1953, the Party, itself a victim of the arbitrary power of one person, began to place more emphasis on governance through law.<sup>79</sup> The Constitution of 1936 was amended over the years, finally culminating in the Constitution of 1977.<sup>80</sup> Despite the various amendments, nothing had fundamentally changed since the time of Lenin with regard to the role of the Party in Soviet society.<sup>81</sup>

The party still stood above the law as a metajudicial institution, and the law itself remained an instrument of state designed to maintain social control and drive badly needed economic modernization. From the reign of Alexander I through the death of party leader Konstantin Chernenko in early 1985, the country repeatedly failed to create a constitutional system in the spirit of the rule of law.<sup>82</sup>

#### *Gorbachev, Perestroika, and Judicial Reform*

In 1985, a new leader in the Soviet Union emerged: Mikhail Gorbachev.<sup>83</sup> It quickly became clear that Gorbachev was intent on major reform for his country.<sup>84</sup> He called his plan *perestroika* or “restructuring.”<sup>85</sup> Gorbachev’s plans for *perestroika* went beyond mere tinkering with the economy.<sup>86</sup> He also meant to impact the political system and Soviet society.<sup>87</sup>

To achieve the goals of *perestroika*, Gorbachev began to stress the concept of the rule of law in his public speeches.<sup>88</sup> During the Nineteenth All-Union Conference of the Communist Party of the Soviet Union in July 1988, Gorbachev announced the need to “move along the path of the creation of a socialist state under the rule of law” in order to achieve the “democratization of the life of the state and society.”<sup>89</sup>

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<sup>78</sup> See ROBERT CONQUEST, *THE GREAT TERROR* 277-374 (1971).

<sup>79</sup> SHARLET, *supra* note 5, at 10.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 11.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> John Quigley, *The Soviet Union as a State Under the Rule of Law: An Overview*, 23 CORNELL INT'L L.J. 205, 205 (1990).

<sup>89</sup> *Id.*

“In December 1988, constitutional amendments were enacted to implement a state under the rule of law.”<sup>90</sup> The goals of these amendments were: (1) to strengthen the position of the courts vis á vis the executive and legislative branches;<sup>91</sup> (2) to protect the court from interference by the executive and the legislative branches;<sup>92</sup> and (3) to improve the selection of judges.<sup>93</sup>

One of the amendments created a Constitutional Supervision Committee (Committee) with the power to annul statutes. However, any Committee decision could be overturned by a two-thirds vote in the Congress of People’s Deputies.<sup>94</sup> The creation of this Committee was a major step for the Soviet legal system. “Soviet political theory had generally rejected the idea of judicial review over the constitutionality of legislation as incompatible with the fundamental ‘supremacy’ of parliament.”<sup>95</sup> The USSR Supreme Court had no authority to conduct judicial review.<sup>96</sup> Instead, if there was a conflict between a constitutional right and a statute, the court could uphold the right, but could not declare the statute prospectively unenforceable.<sup>97</sup> This power of annulment gave the Committee considerable power previously unknown in the Soviet legal system.<sup>98</sup>

### *The Creation of the Russian Constitutional Court*

One of the, perhaps, unintended effects of *perestroika* was to unleash nationalist sentiments in the various constituent republics that had long been held in check by a strong central authority in Moscow. Usually, each republic had an organizational framework that mirrored the institutions of the national government. As independence in the republics increased, their institutions began to assert themselves in ways that sometimes conflicted or competed with the central authorities.<sup>99</sup>

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<sup>90</sup> John Quigley, *Law Reform and the Soviet Courts*, 23 CORNELL INT’L L.J. 59, 59-60 (1990).

<sup>91</sup> *Id.* at 60.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 64-65.

<sup>95</sup> Herbert Hausmaninger, *The Committee of Constitutional Supervision of the USSR*, 23 CORNELL INT’L L.J. 287, 287 (1990).

<sup>96</sup> JOHN N. HAZARD ET AL., *THE SOVIET LEGAL SYSTEM: THE LAW IN THE 1980’S* 32 (1984). Russia’s legal system is based on the civil law tradition where the judiciary plays a less decisive role vis á vis the legislature. See generally John Henry Merryman, *THE CIVIL LAW TRADITION* (2nd ed. 1985).

<sup>97</sup> Quigley, *supra* note 90, at 64.

<sup>98</sup> *Id.* at 65.

<sup>99</sup> SHARLET, *supra* note 5, at 11.

In May 1991, the RSFSR (the Russian Republic) adopted a law on the Constitutional Court of the RSFSR.<sup>100</sup> Article 1 of the enactment declares, "The RSFSR Constitutional Court shall be the highest judicial organ of constitutional control in the RSFSR. . . ."<sup>101</sup> The jurisdiction of the Russian Constitutional Court at the time of its enactment was limited to the RSFSR.<sup>102</sup> However, the unprecedented establishment of such a court signalled that the legislators in the Republic's Congress of People's Deputies were clearly moving out ahead of the central authorities in terms of the pace and the extent of judicial reform. In comparison to the Union's Committee for Constitutional Supervision,<sup>103</sup> the Russian Constitutional Court clearly had more prestige and power within its sphere of action. First, the Russian Republic created a court rather than a committee to conduct judicial review. By requiring judicial review to take place at the level of a court, the RSFSR emphasized the importance of this function.

Second, the RSFSR Constitutional Court Act<sup>104</sup> granted the Court even greater power than the Committee had been given. Article 8, Sec. 1 states, "The decisions of the RSFSR Constitutional Court, taken within its jurisdiction, shall be binding throughout the territory of the RSFSR for all the organs of state power and administration, for the courts, and also for enterprises, institutions and organizations, persons in office and citizens."<sup>105</sup> In contrast, a decision of the Committee for Constitutional Supervision could be overturned by a sufficient vote in the legislature.<sup>106</sup> The binding, non-appealable nature of the Constitutional Court's decision-making authority demonstrates the greater power embodied in the Constitutional Court. Such authority also strengthened the principle of separation of powers in the Russian Republic. Like the American system's U.S. Supreme Court, when the Constitutional Court declares a law unconstitutional, there is no further appeal.<sup>107</sup> Instead, the legislature must shape the law to be in conformity with the constitution.<sup>108</sup>

The Preamble of the Act made it clear that the Russian Republic intended the Constitutional Court to play a major role in the efforts to establish the rule of law. "Assertion of the supremacy of the RSFSR Constitution and its direct operation throughout the territory of the RSFSR shall be an integral element of

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<sup>100</sup> The RSFSR Constitutional Court Act, Vedomosti RSFSR 1991, available in LEXIS, Europe Library, Sovleg File [hereinafter Constitutional Court Act].

<sup>101</sup> *Id.* at art. 1.

<sup>102</sup> *Id.*

<sup>103</sup> See *supra* notes 94-98 and accompanying text.

<sup>104</sup> The Constitutional Court Act, available in LEXIS, Europe Library, Sovleg File.

<sup>105</sup> *Id.* at art. 8, §1.

<sup>106</sup> Quigley, *supra* note 90, at 65.

<sup>107</sup> See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). The RSFSR Constitutional Court Act, art. 8 § 1.

<sup>108</sup> *Id.* at art. 8, § 2.

the democratic rule-of-law state of the Russian Federation.”<sup>109</sup> Still, Soviet legal history was rife with paper promises, pledges, and guarantees.<sup>110</sup> The extent of the independence of the Constitutional Court had not yet been tested when the coup in August 1991 occurred.

#### BORIS YELTSIN V. CPSU

##### *The Coup Attempt*

In June 1991, the Russian Republic elected Boris Yeltsin as its President. Yeltsin was a maverick who appeared to press for more reform, and at a much quicker pace than Gorbachev.<sup>111</sup> As head of the largest Soviet republic, Yeltsin had a substantial base from which he could challenge Gorbachev’s authority.

As the summer progressed, plans for the signing of a new Union Treaty went forward.<sup>112</sup> Gorbachev hoped that the treaty would pacify the growing calls for independence in some of the republics,<sup>113</sup> while also further promoting the rule of law in the Soviet system.<sup>114</sup>

On August 18, 1991, in an effort to halt the signing of the Union Treaty, members of the Gorbachev government attempted to stage a coup.<sup>115</sup> Although taken by surprise, large numbers of the citizenry in Moscow and Leningrad rallied around local leaders such as Boris Yeltsin and Anatoly Sobchak, the mayor of Leningrad.<sup>116</sup> The coup crumbled within several days.<sup>117</sup> Gorbachev returned to Moscow after being held under house arrest in the Crimea.<sup>118</sup>

Gorbachev did attempt to reestablish himself and the central government as the primary authority, but the tide was clearly against him. A number of the coup plotters were close friends and colleagues of Gorbachev.<sup>119</sup> Questions about his judgment began to surface. The confusion following the coup attempt gave some of the republics the opportunity that they had been seeking to declare outright

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<sup>109</sup> *Id.* at pmb1.

<sup>110</sup> *See infra* notes 208-211 and accompanying text.

<sup>111</sup> *See Russia Reborn, supra* note 2. the one below is 112

<sup>112</sup> SHARLET, *supra* note 5, at 12.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> The coup plotters felt that the Union Treaty would mean the end of the Soviet Union. Ironically, their actions hastened what they had attempted to halt.

<sup>116</sup> The quick action of these public figures prevented the coup from consolidating.

<sup>117</sup> The coup plotters had not taken into account how far the Soviet Union had traveled in the past few years. Instantaneous communications kept the plotters and their plans constantly in the spotlight.

<sup>118</sup> Gorbachev apparently had no inkling of the plans for a coup.

<sup>119</sup> This fact alone seriously undermined Gorbachev’s credibility.

independence.<sup>120</sup> With the central government in disarray and no guarantee against other similar attempts in the future, many of the republics began to back away from Gorbachev's proposed Union Treaty.<sup>121</sup> By December 1991, the rejection of the Union Treaty was clear and the dissolution of the Soviet Union imminent.

While Gorbachev's star was falling, the political fortunes of the leaders of the republics were clearly rising. Boris Yeltsin of Russia, Leonid Kravchuk of Ukraine, and Nazirbayev of Kazakhstan suddenly found themselves at center stage.<sup>122</sup> In the wake of the collapse Soviet Union, some but not all of the republics chose to form a loose organization of republics called the Commonwealth of Independent States.

### *Banning the Communist Party*

Although the coup attempt had been successfully defeated in August, it had not been without supporters in the general population. In the eyes of these people, *glasnost*, *perestroika*, and reform meant skyrocketing prices, rising crime, and the breakdown of their country. Much of this sentiment could be found outside the main cities where many of the Communist Party structures remained in tact.<sup>123</sup> Yeltsin decided to take steps to blunt any efforts in the countryside to hinder his plans for reform.<sup>124</sup> On November 6, 1991, Yeltsin decreed a ban on the Communist Party of the Soviet Union.<sup>125</sup> He also issued a decree seizing all property of the Party on behalf of the state.<sup>126</sup>

In response to the decrees, former members of the Communist Party filed a petition with the Russian Constitutional Court in an effort to have the decrees declared unconstitutional.<sup>127</sup> In response to the Communist Party's petition, fifty-two members of the Russian Congress of People's Deputies also filed a petition with the Constitutional Court.<sup>128</sup> The aim of this second petition was to

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<sup>120</sup> The Baltic countries declared their independence immediately after the coup failed. They chose not to join the Commonwealth of Independent States that was formed later in the winter of 1991.

<sup>121</sup> Although negotiations continued, it was clear that the trend was toward a break-up rather than even a federated union.

<sup>122</sup> These three republics control all of the nuclear weapons of the former Soviet Union.

<sup>123</sup> L. Aleksandrova, *Decree of the RSFSR President on the Activities of the CPSU and CP RSFSR*, ROSSIISKAYA GAZETA, Nov. 9, 1991, at 2, available in digested form in LEXIS, Europe Library, Russian Press Digest File.

<sup>124</sup> *Id.*

<sup>125</sup> *Decree by Russia's President on Activities of the Communist Part of the Soviet Union and the Communist Party of Russia*, Nov. 6, 1991, Vedomosti RSFSR, available in LEXIS, Europe Library, Official Kremlin Int'l News Broadcast File [hereinafter *Decree*].

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

<sup>127</sup> Zhdankin, *supra* note 8.

<sup>128</sup> Gurevich, *supra* note 9.

have the Communist Party declared unconstitutional.<sup>129</sup> The deputies contended that the CPSU was not and never had been a mere political party.<sup>130</sup> Instead, they claimed in support of the President's decree<sup>131</sup> that the CPSU had been a power structure that represented the state in an unconstitutional manner and that some of its members were attempting to revive this power structure rather than to organize a mere political party.<sup>132</sup> The Court decided to combine the petitions from both the Party and the deputies into one trial.<sup>133</sup>

### *The Trial and The Court's Decision*

The trial opened on July 7, 1992 under the billing "Trial of the Century" in the local papers.<sup>134</sup> While the Court was to determine whether Yeltsin's decrees<sup>135</sup> conformed to the Constitution, the petition on the constitutionality of the CPSU turned the proceedings into an essentially political trial. Seventy-four years of Communist Party rule became the primary focus of the trial.<sup>136</sup>

The proceedings spread out over a four month period and concluded at the beginning of November. In all, the Court held fifty-two sessions and heard from forty-six witnesses and sixteen legal experts.<sup>137</sup> With the Congress of People's Deputies set to open the first week of December, the Constitutional Court was under some pressure to release a verdict before its opening. Supporters of Yeltsin hoped for a favorable ruling that would strengthen the position of the President who was about to face a very difficult legislative session.<sup>138</sup>

The Court announced its decision on November 30.<sup>139</sup> The ruling appeared to be essentially a compromise.<sup>140</sup> First, it held that the decree banning the Communist Party of the Soviet Union was constitutional in so far as the ban

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129 *Id.*

130 *Id.*

131 *Decree, supra* note 125.

132 Gurevich, *supra* note 9.

133 Gurevich, *supra* note 9.

134 Inna Muravyova, *Trial of the Century Opened July 7*, ROSSIISKAYA GAZETA, July 8, 1992, at 1, available in digested form in LEXIS, Europe Library, Russian Press Digest File.

135 *Decree, supra* note 125.

136 *See infra* note 193 and accompanying text.

137 Sergei Parkhomenko, *Constitutional Court: The Decision in the 'CPSU Case' Seems Ambiguous*, NEZAVISIMAYA GAZETA, Dec. 1, 1992, at 1, available in digested form in LEXIS, Europe Library, Russian Press Digest File.

138 *See infra* notes 219-22 and accompanying text.

139 *Decision by the RF Constitutional Court on the Banning of the Communist Party of the USSR (CPSU) and the Communist Party of the Russian Federation (CP RSFSR) - - 30 November* (Official Kremlin Int'l News Broadcast, Nov. 30, 1992), available in LEXIS, Europe Library, Official Kremlin Int'l News Broadcast File [hereinafter *Decision*].

140 *Id.*

applied to structures of the Party that had replaced state institutions.<sup>141</sup> However, the Court found that the ban was unconstitutional in its application at the grassroots level and held that local cells of the Party could continue to operate.<sup>142</sup>

Second, the Court again found the decree that authorized the seizure of Party property by the state to be constitutional in part and unconstitutional in part.<sup>143</sup> The long history of overlap between the Communist Party and the state sometimes left actual ownership of the property unclear. Where the state clearly held title to the property or was in possession of property at the time of the decree, the Court deemed the decree constitutional.<sup>144</sup> With regard to all other property at issue, including property that the state began to occupy after the decree, the Court found the President's order unconstitutional.<sup>145</sup>

Finally, the Constitutional Court ruled that "all legal proceedings" to determine the constitutionality of the CPSU should be terminated.<sup>146</sup> The Court cited its own decision upholding the ban on the power structure of the Party as sufficient reason to end further inquiry into the history of Communist Party rule.<sup>147</sup>

Reflecting on the significance of the trial, historian Richard Pipes noted, as an observer in the courtroom on the opening day of the proceedings, that:

In a small room, 13 magistrates sat in judgment on both the democratically-elected government of President Boris Yeltsin and its predecessor, the CPSU. The event had no precedent in Russian history, for Russia's governments had always stood above the law. Watching the proceedings . . . one had the sense of witnessing a dramatic break in the destiny of an ancient nation that had suffered more than most from the curse of lawlessness.<sup>148</sup>

#### THE IMPACT OF THE CONSTITUTIONAL COURT'S DECISION

One of the factors that may obscure the significance of the overall impact of the Court's decision in this case is the problem of raised expectations. The high profile of the trial with its strong political overtones may have led many to believe that its conclusion would somehow be explosive and dramatic. Some

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<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> Richard Pipes, *The Past on Trial: Russia One Year Later*, WASH. POST, Aug. 16, 1992, at C1.

may believe that without sweeping condemnations or rioting in the streets this trial didn't live up to its billing as "Trial of the Century."<sup>149</sup>

In fact, just the opposite is true. It may be just as important and sometimes more significant to consider what did not happen in order to fully appreciate the meaning of this trial in terms of : (1) the future of the Constitutional Court as an independent third branch of the government; (2) the Russian political scene; and (3) the Russian people. An evaluation of the trial and these three areas hopefully will shed some light on whether the transition from dictatorship to rule of law will be successful in Russia.

### *The Constitutional Court: An Independent Third Branch?*

In an evaluation of the Court's actions, one must take into account the enormous pressures under which the Court operated. Boris Yeltsin's authority and prestige were on the line. Members of the opposition in the Congress of People's Deputies were discussing impeachment if the Court held the decrees unconstitutional.<sup>150</sup> Such a political struggle could have jeopardized not only the reform process, but also the stability of the Russian government.

On the other hand, the legitimacy of the Court in the eyes of the public was at stake. A blanket condemnation of the Communist Party had the potential of undermining the faith of the public in the independence of the Court and the progress of Russia as a democratic society.<sup>151</sup> Such a ruling also had the potential of creating greater unrest and possibly rioting.<sup>152</sup> Essentially, the Court was walking a tightrope amidst these conflicting pressures.

The decision of the Constitutional Court in the CPSU trial demonstrated the independence of the Court. This autonomy may be observed through three avenues: (1) the ruling itself; (2) the nature of the decision-making process; and (3) precedent.

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<sup>149</sup> Muravyova, *supra* note 134.

<sup>150</sup> Mikhail Zinin, *There is a Scenario Providing for the President's Ouster*, NEZAVISIMAYA GAZETA, July 22, 1992, at 2, available in digested form in, LEXIS, Europe Library, Russian Press Digest File.

<sup>151</sup> One of the greatest ironies of the CPSU trial was the way in which the Communist Party claimed the very constitutional protections that it had always denied to others. Primarily, freedom of association was at stake, and Russian society was watching. Except for the accession of some of the nineteenth century tsars, the peaceful transfer of power is virtually unknown in Russian history. Defeated political opponents generally did not fare well at the hands of their successors, so the treatment of the Communist Party by the Yeltsin government and by the Court was a true test for the progress of democratization and respect for the law in Russia.

<sup>152</sup> Andrei Kolesnikov, *A Decision Worthy of Solomon*, ROSSISKIYE VESTI, Dec. 2, 1992, at 1, available in digested form in LEXIS, Europe Library, Russian Press Digest File.



### 1. The Independent Nature of the Constitutional Court's Decision

On the constitutionality of the decree banning the CPSU, Judge Ernest Ametistov of the Constitutional Court made it clear in an interview<sup>153</sup> following the decision that the ruling on this decree was a compromise.<sup>154</sup> A minority of the Court agreed with the CPSU argument that the organization was merely a political party.<sup>155</sup> However, the majority of the Court accepted the President's argument that the CPSU was a state structure.<sup>156</sup>

This distinction was the key fact for determining the constitutionality of the ban. If the Court decided that the Communist Party was a state structure, then the decree would be upheld because Yeltsin had the authority under his executive powers to dissolve any state structure.<sup>157</sup> However, if the Court found the Party to be merely a political organization, then the decree would be struck down because under the Public Organizations Act<sup>158</sup> only the Constitutional Court has the authority to suspend the activities of a political party.<sup>159</sup>

To resolve the disagreement on this key fact, the Court reached a compromise.<sup>160</sup> The Court held that the top levels of the CPSU were state structures.<sup>161</sup> Thus, in part, the ban on the Communist Party was

<sup>153</sup> The Court has not yet published its rationale for the verdict issued Nov. 30, 1992. The Constitutional Court "may postpone the drawing up of a well-reasoned decision for a period of not more than two weeks, confining itself to the abstract of the decision attached to the minutes of the sitting." The RSFSR Constitutional Court Act, Vedomosti RSFSR 1991, art. 46, sec 4, available in LEXIS, Europe Library, Sovieg File. Although the rationale is overdue, the Court's Chairman, Valery Zorkin, stated that the rationale is treated "as something auxiliary." *Extremism Versus Conciliation: Interview With Constitutional Court Chairman Valery Zorkin*, (Official Kremlin Int'l News Broadcast, Dec. 29, 1992), available in LEXIS, Europe Library, Official Kremlin Int'l. News Broadcast File [hereinafter *Interview with Valery Zorkin*]. The lack of official rationale forces one to turn to press interviews of the judges for further information about the verdict. The Constitutional Court Act only prohibits a judge from "set[ting] forth his opinion in the mass media on a matter *sub judice* before the . . . Constitutional Court" prior to the "adoption of a decision" on the matter. The Constitutional Court Act, art. 18, § 1, subsec. 4.

<sup>154</sup> *Revival of the Communist Party is Impossible* (Official Kremlin Int'l News Broadcast, Dec. 18, 1992), (Interview with Constitutional Court Judge Ernest Ametistov), available in LEXIS, Europe Library, Official Kremlin Int'l News Broadcast File [hereinafter *Interview with Ernest Ametistov*]. Zorkin also described the Court's position as centrist "and not serving the goals of political expediency." *Interview with Valery Zorkin*, *supra* note 153.

<sup>155</sup> Anna Ostapchuk, *Constitutional Court: Viktor Luchin's Dissenting Opinion*, NEZAVISIMAYA GAZETA, Dec. 2, 1992, at 2, available in digested form in LEXIS, Europe Library, Russian Press Digest File. Two of the thirteen judges voted against the verdict. *Id.* Luchin charged that the Court acted out of political expediency rather than by the law. *Id.* He stated that reaching a compromise "cannot be the main criterion in solving constitutional problems." *Id.*

<sup>156</sup> *Decision*, *supra* note 140; *Interview with Ernest Ametistov*, *supra* note 154.

<sup>157</sup> *Interview with Ernest Ametistov*, *supra* note 155.

<sup>158</sup> Lidiya Lukyanova, *It Will Be Impossible to Revive 'the Intelligence, Honor, and Conscience of the Epoch'*, KURANTY, Dec. 18, 1992, at 4, available in digested form in LEXIS, Europe Library, Russian Press Digest File. See also Ostapchuk, *supra* note 155.

<sup>159</sup> Ostapchuk, *supra* note 139.

<sup>160</sup> *Interview with Valery Zorkin*, *supra* note 153; *Interview with Ernest Ametistov*, *supra* note 154.

<sup>161</sup> *Decision*, *supra* note 139.

constitutional.<sup>162</sup> However, the Court also found that the local cells of the Communist Party represented only a political party.<sup>163</sup> This finding partially invalidated the ban.<sup>164</sup>

Clearly, the Court adopted an independent stance on the issue of banning the Party. If the Court had been operating in cooperation with or at the will of President Yeltsin, the Court would have completely upheld the ban. Yeltsin wanted to disable the official Party apparatus as much as possible. By banning the Party, he could undercut its ability to rally support. Even more important, a total ban might have left the state in a better position to seize all Party property.<sup>165</sup>

Likewise, if the Court had been acting in sympathy with the Party<sup>166</sup> or with the hard-line opposition forces, the Court would have struck down the ban completely. Such a blow to Yeltsin's authority and prestige on the eve of the 7th Congress of People's Deputies could have led to his ouster with a devastating impact on the progress of reform.<sup>167</sup>

On the constitutionality of the decree seizing all Communist Party property, the Court also seemed to reach a compromise decision. Again, the Court supported the decree in part and struck it down in part.<sup>168</sup> Property that was clearly a part of the state structure or that was in the possession of the state at the time of the decree remained in the hands of the government.<sup>169</sup> However, the Constitutional Court turned over to the civil courts the task of determining the ownership of all other disputed properties.<sup>170</sup>

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> With a complete ban on the Party, the government might have had a strong argument that the property should escheat to the state. *But see infra* note 178 and accompanying text (other parties espousing communism).

<sup>166</sup> Justin Burke, *Politics Buffets Russian Court*, CHRIS. SCI. MON., Dec. 15, 1992, at 14. Most members of the Court are members of the "[former] Soviet establishment." *Id.* (quoting Russian human rights lawyer Genrikh Reznik). This statement is probably applicable to the vast majority of the current Russian government, including Yeltsin himself. However, since the fall of the Party, it is often difficult to know just how much sympathy a former member may have had for his previous affiliation. Party membership was essentially a prerequisite for promotion in government service. Consequently, many who felt no particular attraction to the principles of communism nevertheless became members out of necessity.

<sup>167</sup> See Daniel Sneider, *Tough Days for Russia's Yeltsin*, CHRIS. SCI. MON., Dec. 7, 1992, at 3. The 7th Congress refused to extend Yeltsin's emergency powers that had permitted him to enact most of his key economic reforms by decree. *Id.* The Congress also narrowly defeated two amendments that would have reduced Yeltsin's executive powers. *Id.* One would have given the parliament the power to approve all key cabinet appointments. *Id.* The other would have permitted the parliament to form ministries and executive departments. *Id.*

<sup>168</sup> *Decision, supra* note 139.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

One of the criticisms of the Court's ruling on the property decree was that it cleared the way for a revival of the Communist Party.<sup>171</sup> Primarily, critics feared that the decision left the Party with a sufficient base of wealth to again become a real force in Russian politics.<sup>172</sup> The total worth of the CPSU is not clear.<sup>173</sup> Some percentage of its wealth is now firmly in the hands of the state by virtue of the Court's decision.<sup>174</sup> Following the verdict, Party representatives claimed that only 7% of the total volume of Party assets would go to the civil courts for resolution of ownership.<sup>175</sup> These representatives seemed to believe that this left the surviving elements of the Communist Party of the Russian Federation (CPRF) with clear title to the remainder of the CPSU's wealth.<sup>176</sup>

However, a revival of the Communist Party still faces obstacles before any representatives on its behalf may claim the property of the CPSU. First, the CPRF will most likely have to be declared the legal successor to the CPSU.<sup>177</sup> There are other parties also advocating communism which may also wish to lay claim to the CPSU assets as its political heirs.<sup>178</sup>

Second, it is not beyond the realm of possibility that former victims of CPSU rule might choose to lodge claims against the CPSU.<sup>179</sup> Of course, such

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<sup>171</sup> Justin Burke, *Russian Ruling Gives Partial Nod to Yeltsin's Ban*, CHRIS. SCI. MON., Dec. 1, 1992, at 1. But see *Interview with Ernest Anetstov*, *supra* note 154.

<sup>172</sup> Burke, *supra* note 171, at 1. In fact, the Communist Party never really ceased to exist. At the local level, the Party still exerts a great deal of influence. Yelena Kamenetskaya, a Russian exchange scholar of the Institute of State and Law who is currently visiting the University of Akron School of Law, reminded me that reform has occurred in the top layers of the government, but at the lower layers of Russian society, change has been slow or not all. This is particularly true of areas that lie outside the large population centers. Indeed, Yeltsin aimed his ban at these very regions. Aleksandrova, *supra* note 123.

<sup>173</sup> Celestine Bohlen, *Soviet Turmoil: Soviets Trying to Find Party's Assets*, N.Y. TIMES, Sept. 1, 1991, at A1. "Just the list of property belonging to the Central Committee, not including local and republic parties, [was] 5,000 buildings, 114 publishing houses, 81 printing plants, 29 spas, 4 rest houses, a 500-bed hospital and a special nursery called 'Sunshine.'" *Id.* Different accounts have estimated the Party's worth at somewhere between \$80 and \$100 million. *Id.* Investigators began to take account of Party property following the coup, but investigators believe much has been hidden in "joint ventures, shell companies, . . . and foreign bank accounts." *Id.*

<sup>174</sup> *Decision*, *supra* note 139.

<sup>175</sup> *Press Briefing of the "Communists of Russia" Organization* (Official Kremlin Int'l News Broadcast, Dec. 7, 1992), available in LEXIS, Europe Library, Official Kremlin Int'l News Broadcast File.

<sup>176</sup> *Id.*

<sup>177</sup> Lawyers at the trial acknowledged the difficulty of any party becoming the legal successor to a banned party. Serge Schmemmann, *Court Upholds Yeltsin's Ban on Communist Party*, N.Y. TIMES, Dec. 1, 1992, at A1. Following the trial, the Ministry of Justice has stated that "there are no legal grounds for the restoration and activity of the Communist Party of the Russian Federation as a legal successor to the CPSU or the RCP." Valery Vyzhukhovich, *Finishing an Adjourned Game*, IZVESTIA, Feb. 13, 1993, at 5, available in *digested form* in LEXIS, Europe Library, Russian Press Digest File.

<sup>178</sup> Lukyanova, *supra* note 158.

<sup>179</sup> Burke, *supra* note 166. Andrei Makarov, a member of Yeltsin's legal team, mentioned the possibility of future litigation against the CPSU in terms of specific crimes. *Id.*

claims would raise a host of problems,<sup>180</sup> both legal and practical, but the immediate effect of these claims might be to freeze CPSU assets.

A third obstacle, again, may be the state. The Constitutional Court's ruling merely prohibited the state from simply seizing disputed property. The government does have an opportunity to gain title through the civil courts. The state might even be able to make the argument that all CPSU assets belong to the state by virtue of the fact that the CPSU received most of its funding from the state. Such an argument would be consistent with the Court's determination that, except for the local cells, the Party was a state structure.

Whatever the outcome in the civil courts on the property issue, it would be fair to say that the Constitutional Court's ruling on the property decree demonstrates the independence of the Court, particularly in its relationship with the executive branch. If the Court had upheld the decree in its entirety, Boris Yeltsin and the Russian government might have gained immediate possession of a tremendous amount of property.<sup>181</sup> As privatization begins to take hold, land may become one of the most important sources of wealth. During these difficult times in Russia, Yeltsin's government is in need of all the resources that it can possibly muster. Nor was the Party granted any special treatment in this decision. The disputed property may yet fall into other hands.<sup>182</sup>

Overall, it should be noted that the Court adopted a legal rather than a political approach to this issue. The task of the Court was to determine the constitutionality of the seizure of the property rather than to adjudicate ownership rights of the property.<sup>183</sup> The Court recognized that such an adjudication was not within its jurisdiction and properly transferred the issue of ownership to the civil courts.<sup>184</sup>

Finally, the issue of the constitutionality of the CPSU (in a historical sense) presented a different dilemma for the Constitutional Court than the previous two issues. Those issues centered around the constitutional validity of decrees promulgated by President Yeltsin. Although these decrees raised difficult questions, they implicated familiar constitutional issues such as freedom of assembly and seizure of property.

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<sup>180</sup> Claims could be complicated by problems of evidence, sovereign immunity, and the sheer number of possible victims.

<sup>181</sup> See *supra* notes 173-76 and accompanying text.

<sup>182</sup> See *supra* notes 177-80 and accompanying text.

<sup>183</sup> It is true that by virtue of the validity of a portion of the decree some of the property fell to the government. However, this result seems to simply recognize the fact that a government normally has control of the property on which it operates. Permitting the Communist Party to retain ownership rights to buildings housing government operations would be akin to the Republican Party gaining and retaining ownership of government property after a Democratic administration is elected.

<sup>184</sup> See *supra* note 170 and accompanying text.

In contrast, the petition of the members of the Congress of People's Deputies asked the Court to evaluate the constitutionality of the CPSU.<sup>185</sup> The Court was not judging a law enacted by the Communist Party during its time in power or whether some specific instance of Party behavior conformed to the Constitution. Instead, the Court was being asked to judge the Communist Party on the basis of its leadership of the Soviet Union.

The Court decided to terminate "all legal proceedings" on the question of the constitutionality of the CPSU.<sup>186</sup> According to one description of the decision, the Court's ruling on the issue demonstrated that the Court was "unprepared to tackle the issue of assigning responsibility for crimes committed during Soviet rule."<sup>187</sup> This criticism actually provides the key to understanding why the Court's decision to terminate the proceedings was correct.

There are two judicial doctrines that tend to support the Court's decision on this issue: political question and mootness. Both doctrines place limitations upon a court's ability to act.<sup>188</sup> A political question is one which a court "will refuse to take cognizance [of], or to decide, on account of [its] purely political character."<sup>189</sup> The RSFSR Constitutional Court Act<sup>190</sup> appears to incorporate this principle by negative inference. Article 32, Section 1 states, "[The] Constitutional Court shall determine and decide issues of law only."<sup>191</sup>

No issue of law was at stake in the petition.<sup>192</sup> Any judgment of the Deputies' request would have forced the Court to make general political evaluations of the Communist Party's decisions on matters such as the Katyn Forest massacre<sup>193</sup> or the invasion of Afghanistan. This petition would be analogous to a suit brought before the U.S. Supreme Court asking that Court to decide whether or not American involvement in Vietnam was proper. Such a question asks the Court to evaluate the rightness or wrongness of the policy

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<sup>185</sup> See *supra* notes 128-29 and accompanying text.

<sup>186</sup> *Decision, supra* note 139.

<sup>187</sup> *Burke, supra* note 166. See also *Schmemann, supra* note 177, at A1.

<sup>188</sup> GEOFFREY R. STONE ET AL., *CONSTITUTIONAL LAW* 114, 123-24 (2d ed. 1991)

<sup>189</sup> *BLACK'S LAW DICTIONARY* 1158-59 (6th ed. 1990). See also *Baker v. Carr*, 369 U.S. 186, 217 (1962) (lack of judicially discoverable and manageable standards as one of the tests of political question).

<sup>190</sup> The RSFSR Constitutional Court Act, *Vedomosti RSFSR* 1991, available in LEXIS, Europe Library, Sovleg File.

<sup>191</sup> *Id.* at art. 32, § 1.

<sup>192</sup> This petition seems to raise the type of questions better suited to a Nuremberg style tribunal. *Burke, supra* note 166. However, there are many in the Russian legal community who feel that the timing is not right for such a trial. *Id.*

<sup>193</sup> The Katyn Forest massacre occurred during World War II when Stalin ordered the "execution of more than 20,000 Poles, including nearly 5,000 senior Polish Army officers, whose bodies were dumped in a mass grave in the forests of Katyn." Celestine Bohlen, *Russian Files Show Stalin Ordered Massacre of 20,000 Poles in 1940*, N.Y. TIMES, Oct. 15, 1992, at A1. The Soviet government denied responsibility until very recently. *Id.* See also TREADGOLD, *supra* note 14, at 359-60; CLARKSON, *supra* note 11, at 677.

decisions of another branch rather than the constitutionality of the action. Consideration of this type of question places the Court in danger of violating the principle of separation of powers. Similarly, the petition at issue here asked the Russian Constitutional Court to render a decision on a subject that would have violated the jurisdictional boundaries of the Court.<sup>194</sup> It presented a political nonjusticiable question phrased as a constitutional issue that the Court properly declined to further evaluate.

A second judicial doctrine that the Court seemed to invoke was the principle of mootness. "A case is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy."<sup>195</sup> The Court stated two key points in its decision to terminate the proceedings on the constitutionality of the CPSU. First, the Court noted that the CPSU broke up at the national level in the aftermath of the coup.<sup>196</sup> The Court also cited its own decision to uphold the ban on the Communist Party above the local level as further reason to end the inquiry.<sup>197</sup>

Both of these reasons are consistent with the doctrine of mootness. The "existing controversy" in this petition seemed to be whether it was constitutional for a political party to transform itself into a governmental structure rather than simply administering the governmental structure. There is no doubt that the CPSU was the *de facto* government of the Soviet Union. Out of fear that this type of rule by the Communist Party would be revived, the Deputies presented this petition hoping to gain a legal ruling that would essentially condemn the past and prohibit the future existence of the Communist Party. However, the Court's reasoning underscores the point that a decision on this matter could have no "practical effect on the existing controversy."<sup>198</sup> The break-up of the national leadership of the CPSU and the ban on its power structure were already preventing the revival of CPSU as a type of governmental entity.<sup>199</sup>

Another possible reason for the Court's decision to terminate the proceedings was to maintain the internal consistency of the entire decision. A finding that the CPSU was an unconstitutional organization may have appeared

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<sup>194</sup> The Constitutional Court Act art. 32, § 1.

<sup>195</sup> BLACK'S LAW DICTIONARY 1008 (6th ed. 1990). *See also* FCC v. Pacifica Foundation, 438 U.S. 726, 734 (1978) (Supreme Court avoids unnecessary decision of constitutional questions); Bowen v. United States, 422 U.S. 916, 920 (1975) (Supreme Court is reluctant to decide constitutional questions unnecessarily); Broadrick v. Oklahoma, 413 U.S. 601, 610-11 (1973) (constitutional judgements are justified only out of necessity of adjudicating rights in particular cases between litigants brought before the court).

<sup>196</sup> *Decision, supra* note 139.

<sup>197</sup> *Id.*

<sup>198</sup> *See supra* note 195 and accompanying text.

<sup>199</sup> *Decision, supra* note 139. *See also* Interview with Ernest Ametistov, *supra* note 154 (Party will not revive). *Contra supra* note 171 and accompanying text (ruling paves the way for the revival of Party). It is true that the Communist Party may legally continue to exist. However, its revival as a political party and its revival as a *de facto* government are two different matters.

to conflict with the portion of the decision that permitted the Communist Party to continue on the local level as a political party.

Finally, there was some fear that a ruling condemning the history of the CPSU could touch off a wave of social instability.<sup>200</sup> Difficult economic and social problems had already lowered the morale of Russian society.<sup>201</sup> A finding of unconstitutionality might have taken on the appearance of rejection of the past, a past that many Russians are quite proud of.<sup>202</sup>

Even more upsetting to some was the fact that many of those who were participating in the effort to condemn the history of the Party were former Communists.<sup>203</sup> This problem of moral authority extended even to the membership of the Court.<sup>204</sup> Nine of the judges were former members of the Party.<sup>205</sup> In terms of the social situation, the time and the participants were not right for this particular judgment.

In light of these reasons, the charge that the Constitutional Court was simply unprepared to tackle this issue seems unwarranted. The Court adopted a sound legal and socially responsible approach to this sensitive question. Even more, the Court again demonstrated an autonomy from the executive branch that bodes well for the future of an independent judiciary in Russia.

## 2. The Independent Nature of the Judicial Decision-Making Process

Article 6 of the RSFSR Constitutional Court Act<sup>206</sup> sets forth the independent nature of the Court, "The judges of the Constitutional Court shall adjudicate causes and issue determinations in conditions ruling out extraneous influence on the free expression of their will. They must not request or receive instructions from any state or public agencies or persons in office whatsoever."<sup>207</sup> However, codification of the independence of the judiciary by itself is not

<sup>200</sup> Kolesnikov, *supra* note 152. See also Otto Latsis, *The Verdict in the 'CPSU Case': Friendship Won*, IZVESTIYA, Dec. 1, 1992, at 1, available in digested form in LEXIS, Europe Library, Russian Press Digest File.

<sup>201</sup> Yuri Levada, *Critical Balance of "Extraordinary" Year*, MOSCOW NEWS, Dec. 30, 1992, at 1, available in LEXIS, Europe Library, Moscow News File. In a poll of 1,700 people, sixty-seven percent felt that higher prices and the falling standard of living were the most distressing issues in Russia. *Id.*

<sup>202</sup> Many Russians today look back with fondness to the days of low prices, low crime rates, and a stable political scene. Vyzhukhovich, *supra* note 177. The Soviet government developed a space program that in many areas surpassed its Western counterparts. The Red Army was a force to be reckoned with. In the present, situation, these same Russians felt the sting of humiliation as Russia has been forced to accept Western aid. High prices and increasingly violent criminal activity has injected a previously unknown note of fear into their lives. Finally, the growing cooperation between the Yeltsin government and the West is sometimes viewed as toadying to countries that in the past treated Russia with respect.

<sup>203</sup> Burke, *supra* note 166. See also Schmemmann, *supra* note 177, at A6.

<sup>204</sup> Burke, *supra* note 166.

<sup>205</sup> *Id.*

<sup>206</sup> The Constitutional Court Act, art. 6.

<sup>207</sup> *Id.* at art. 6, § 5.

enough. Both the Constitutions of 1936<sup>208</sup> and of 1977<sup>209</sup> contained the constitutional principle that “judges are independent and subordinate only to the law.”<sup>210</sup> Despite these constitutional declarations of the autonomy of judges and the supremacy of the law, the Party and other sources of power constantly interfered in the judicial decision-making process.<sup>211</sup>

There are at least two indications that Article 6, of the Constitutional Court Act is more than mere lip service to the principles of limited government. First, Article 6 contains another section that provides some teeth to the protection of the independence of the Court. “No intervention whatsoever in the activity of the Constitutional Court shall be permitted and shall entail prosecution in conformity with the law.”<sup>212</sup> This type of liability may act as a deterrent to those who might feel tempted to interfere with the decision-making process of the Court.

Second, the outcome of the trial itself confirms the lack of interference by the government. There were clearly other possible rulings much more favorable to the government. Executive meddling in the Court’s deliberations would have surely resulted in stronger judicial support for the government’s contentions. However, the Court was able to reach conclusions that demonstrated the importance of the law rather than simply the wishes of the powerful.

It must be admitted that the Constitutional Court is only one branch of the Russian judiciary. Reform in the civil and criminal courts must also take hold in order to achieve independence in the judiciary on a system-wide, top to bottom basis.<sup>213</sup> Still, despite the Constitutional Court’s limitations, the Court does serve as a powerful example and a source of encouragement for judicial reform.

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<sup>208</sup> KONST. SSSR (1936) art. 112.

<sup>209</sup> KONST. SSSR (1977) art. 155.

<sup>210</sup> See *supra* notes 208-09.

<sup>211</sup> Quigley, *supra* note 90, at 66-69. See also Quigley, *supra* note 88, at 213-15. This interference was sometimes referred to as “telephone law.” PERESTROIKA AND THE RULE OF LAW: ANGLO-AMERICAN AND SOVIET PERSPECTIVES 40 (W. E. Butler ed., 1991) [hereinafter PERESTROIKA].

The satirical journal KROKODIL in a cartoon depicted a judge and two lay assessors in a room to which they retire to consider their judgment. In front of them is a telephone. One says: ‘The telephone does not ring. We will have to decide the judgment ourselves.’ A Soviet satirist has rewritten the words of the Constitution: judges shall be independent and subordinate only to law, as being subordinate only to the district Party Committee.

*Id.* at 40-41.

See generally Aleksandr Iakovlev, *Constitutional Socialist Democracy: Dream or Reality?*, 28 COLUM. J. TRANSNAT’LL. 117, 126-28 (1990) (on establishing an environment of impartiality for the judiciary).

<sup>212</sup> The Constitutional Court Act art. 6, sec. 6. The Constitutional Court Act was not the only recent attempt to provide better protection for judges. Quigley, *supra* note 90, at 66-69. In particular, the 1989 Law on the Status of Judges addressed the problems of outside influences on the judiciary and contained guarantees similar to those in the Constitutional Court Act. See *Zakon o statuse sudei v SSSR* (Law on the Status of Judges in the USSR), 1989 Ved. Nat. Dep. SSSR & Verkh. Sov. SSSR (No. 9), item 223, art. 20(2), reprinted in IZVESTIYA, Aug. 12, 1989, at 1.

<sup>213</sup> See *supra* comments accompanying note 172. See also PERESTROIKA, *supra* note 211, at 40-41.



### 3. The CPSU Ruling: Building a Pattern of Independence

Some may argue that these conclusions of independence are premature. The argument might be that since the Court has revealed its true colors, the other branches may attempt to undermine the Court. Such attempts might occur to assure a more favorable result the next time a case, important to the government, comes before the Constitutional Court.

However, the CPSU decision is not the first time the Court has ruled against a high-profile government position. Almost a year before the CPSU decision, the Court ruled against President Yeltsin in the Court's first case.<sup>214</sup> Yeltsin had wanted to combine the Ministry of the Interior and the domestic intelligence wing of the former KGB into a new Russian Ministry of Security and Internal Affairs.<sup>215</sup> The Court unanimously held that the combination infringed on the separation of powers among all three branches and was therefore unconstitutional.<sup>216</sup>

The Yeltsin government certainly had warning that the Constitutional Court might not simply rubberstamp the government's wishes.<sup>217</sup> And yet, the ruling in the CPSU trial does not appear to have been engineered by outside forces. Of course, these are still early days for judicial reform in Russia, but the precedent of independence established by the Court and the reaction of the government indicate the beginnings of a pattern of respect for the judiciary that bodes well for Russia's transition to a rule of law.

#### *The Constitutional Court and the Russian Political Scene*

The ability of the Constitutional Court to act in an independent manner may force the Court to play a political as well legal role.<sup>218</sup> The Court's verdict in the CPSU trial arrived on the eve of a political showdown<sup>219</sup> between Boris Yeltsin

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<sup>214</sup> *Text of Parliamentary Resolution on Property Division*, SOV. BUS. L. RPT., Feb. 7, 1992, available in LEXIS, Europe Library, Sov. Bus. L. Rpt. File.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> The current judicial situation seems much like the period of judicial reform under Alexander II when the courts were ruling against the government position. See *supra* notes 41-45 and accompanying text. The question is whether the executive will begin to interfere as its tsarist counterpart did when it began to lose important cases. Thus far, the answer appears to be no.

<sup>218</sup> Marina Shakina, *Looming at the End of the Tunnel Is . . . the Congress*, NEW TIMES, Dec. 1992, at 6,7.

<sup>219</sup> The Court announced its verdict Nov. 30. The Congress opened on Dec. 1. There was some speculation that the Court had acted quickly (the trial ended in early November) in order to strengthen the hand of a particular camp. Lyudmila Yermakova, *Constitutional Court Verdict to Communist Party Is Ready*, TASS, Nov. 27, 1992, available in LEXIS, Europe Library, TASS File. Another possible reason for the speed of the decision was the need to circumvent any attempts by the legislature to change the outcome of the case by changing the Constitutional Court Act. Parkhomenko, *supra* note 138. There were also two vacancies on the Court to be filled by special elections during the 7th Congress. *Id.* (The Congress of People's Deputies elects the judges who sit on the the Constitutional Court. The Constitutional Court Act art. 3. Once elected, judges

and opposition forces in the legislature at the 7th Congress of People's Deputies. Tension had been building between the executive and the legislature, particularly over the substance and pace of Yeltsin's economic reforms.<sup>220</sup> The contentious tone of the Congress<sup>221</sup> finally led Yeltsin to call for an immediate nation-wide referendum on the following question, "Whom do you entrust with taking the country out of the economic and political crisis and reviving the Russian Federation -- the Russian Federation President or the present composition of the Russian Congress of People's Deputies and the Supreme Soviet?"<sup>222</sup> Yeltsin's proposal threw the Congress into turmoil for largely two reasons. First, he did not have the authority to call for a referendum.<sup>223</sup> Second, some members believed that Yeltsin was attempting to dissolve the legislature by referendum.<sup>224</sup> The president and the legislature appeared on the verge of an ugly all-out political struggle.<sup>225</sup>

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arc, in general, irremovable. *Id.* at art. 16, sec. 1. ) However, even if the vacancies were filled by judges sympathetic to the communist cause, the 11-2 verdict of the Court indicates that a change of two votes would not have altered the final decision.

<sup>220</sup> Daniel Sneider and Justin Burke, *Yeltsin's Prime Minister Rejected by Legislators, Darkening Reform Bid*, CHRIS. SCI. MON., Dec. 10, 1992, at 6. See generally *Russia Reborn*, *supra* note 2 (a recent assessment of the economic reforms).

<sup>221</sup> Sneider and Burke, *supra* note 220, at 6. Yeltsin's struggle to keep Yegor Gaidar, his chief architect of economic reform, as Acting Premier, ended in defeat.

<sup>222</sup> Daniel Sneider and Justin Burke, *Yeltsin Risks All in Call for Referendum to Choose Between Him and Parliament*, CHRIS. SCI. MON., Dec. 11, 1992, at 1.

<sup>223</sup> *Id.* at 4. Only the legislature or a petition with a million signatures may call forth a referendum. *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> Such a political struggle could have been devastating. Political chaos at the top levels of the government would only compound the multitude of problems that already exist in Russia. Any struggle that gives the hard-line opposition an opportunity to take power threatens the stability of Eastern Europe. The ultra-nationalism of the hard-line opposition could lead ethnic clashes to new heights.

It is difficult to imagine a repeat of the Yugoslavian experience in the former Soviet territories, but some of the circumstances are frighteningly similar. During the tsarist period and particularly the Soviet period, ethnic Russians fanned out into the other republics. Also, boundaries were drawn within the republics to designate other ethnic enclaves. The most familiar examples of this practice are the Nagorno-Karabakh Armenian enclave in Azerbaijan and the Abkhazian enclave inside Georgia. The central authorities in Moscow always acted as a force to hold the ethnic divisiveness in check, but with the break-up of the Soviet Union, Russia finds itself ringed by ethnic tension and violence, mainly in Moldova, the Caucasus, and Central Asia. The vulnerability of Russians in these new countries has led to calls by the hard-liners for the Russian Republic to intervene and protect these minority Russian populations.

The Yeltsin government appears to be committed to the new boundaries that were drawn following the break-up of the Soviet Union. The hard-line opposition, however, seems much less committed. The consequences of a political struggle that might leave the former Soviet Union in the same situation as the former Yugoslavia would be nightmarish.

Some fear that the Constitutional Court's involvement in disputes like the referendum issue will politicize the Court. See generally Burke, *supra* note 167. (Court's susceptibility to politicization will hinder transition from dictatorship to democracy). However, if the executive and parliament trust the Court to act as a mediator, the possible reward of stability and a peaceful settlement seems worth the risk of politicization. The alternatives may be much more costly for Russia.

It was at this juncture that the parties turned to Valery Zorkin, chairman of the Constitutional Court, to mediate the dispute.<sup>226</sup> Within several days, Yeltsin, Zorkin, and Ruslan Khasbulatov, Speaker of the Parliament, negotiated an agreement to end the crisis.<sup>227</sup>

Of course, this agreement does not mark the end of the political struggle, but the involvement of the judiciary may be a positive result of the confrontation between the president and the parliament.<sup>228</sup> These parties turned to a member of the Court rather than to force to resolve their differences. This event is a measure of the confidence that the Court enjoys to act as a third independent party. If either the president or the legislature had believed that an ally or subordinate of the other was being brought into the negotiations, it is doubtful that the presence of Zorkin would have been accepted at the table by both of the other parties.

One possible source for the belief in Zorkin's independence was the Court's decision in the CPSU trial. The Court's ruling demonstrated to the legislature that the Court is not a simply a rubberstamp of Yeltsin's wishes.<sup>229</sup> At the same time, the Court's decision also showed Yeltsin that the Court would support the executive on legal grounds. The perception of the Court as an independent mediator may ultimately serve as an important stabilizing influence in the Russian political scene.

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<sup>226</sup> See Shakina, *supra* note 218, at 7-8.

<sup>227</sup> *Evening Moscow TV News - Review*, TASS, Dec. 12, 1992, available in LEXIS, Europe Library, TASS File. See also Justin Burke, *Yeltsin Defuses Crisis in Russian Parliament*, CHRIS. SCI. MON., Dec. 14, 1992, at 7. The agreement set April 11, 1993 as the date for the referendum. However, since this Comment was first written, the compromise on the referendum broke down as tensions between the executive and legislative branches of the government reached a crisis point. Only a couple weeks prior to the referendum, members of the Congress seized on a Yeltsin decree that called for a "special order" for governing the country, as the basis for impeachment. The Constitutional Court again found itself at the center of controversy and struggle for power as it was asked to rule on the constitutionality of the decree. In this instance, the situation seemed even more ripe for violent confrontation if not handled carefully. In a fashion similar to its ruling in the CPSU trial, the Court issued a ruling that demonstrated the narrow tightrope upon which it walked. The Court found that President Yeltsin's decree was unconstitutional; however, the Court was extremely careful to avoid mention of impeachment in its decision. With careful language, the Court helped to defuse what seemed to be an almost certain powder keg. The Court's refusal to give either side a total legal victory forced the parties back to the negotiating table. The ultimate result of these subsequent negotiations was the referendum on April 25 with a strong showing of support for Yeltsin. Although some may accuse the Court of becoming politicized due to its role in the referendum crisis, its ruling, in the final analysis, merely permitted an agreement that had already been reached to go forward.

<sup>228</sup> Shakina, *supra* note 218, at 7.

<sup>229</sup> *Press Conference by Speaker of the Russian Federation Parliament, Ruslan Khasbulatov* (Official Kremlin Int'l News Broadcast, Dec. 15, 1992), available in LEXIS, Europe Library, Official Kremlin Int'l News Broadcast File. At the press conference the Speaker noted, "The role of the Constitutional Court, of its Chairman, seems to me to be difficult to overestimate." *Id.* The Constitutional Court is a third branch of power. *Id.*

*The Impact of the Trial on Russian Society*

The impact of the trial on Russian society seems minimal at this point. This appears to be due to the preoccupation with difficult economic times.<sup>230</sup> In the past, political events were among the dominant concerns of Russians.<sup>231</sup> However, the lack of immediate interest in the CPSU trial may be one of the "signs of political exhaustion, the spreading of a kind of political numbness."<sup>232</sup>

Another possible reason for the low interest in the trial was the anti-climactic nature of the proceedings.<sup>233</sup> No startling revelations about Communist Party history came out in the trial. Access to Western accounts of Soviet history, although limited, and the past few years of *glasnost* softened the surprise value of the information that the Yeltsin team sought to marshal against the Communist Party.

Finally, just as it will take time for reforms to filter down and change the system,<sup>234</sup> it will also take time for centuries of mistrust of the judiciary to pass.<sup>235</sup> However, the Court has set a tone of legality and fairness for Russian society to observe. As the Court builds on the record that it has begun to establish in this case, public confidence in the independence of the judiciary may grow.<sup>236</sup>

## CONCLUSION

Although Russia has lacked an independent judiciary for most of its history, the development of the rule of law through judicial reform appears to be taking hold. The CPSU trial is an important example of the success of the reform efforts. In an overall estimation of the Court's decision, neither Yeltsin nor the Communist Party won a clear political or legal victory, but the ability of the Court to act independently was a judicial victory that in the long run may be much more important than any of the particular issues of this trial.

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<sup>230</sup> Levada, *supra* note 201. See also Ted Weihe and Nelle Temple Brown, *Grass-Roots Leaders in Russia Embrace Change*, CHRIS. SCI. MON., Dec. 18, 1992, at 18 ("Shell shocked by the rapid changes, Russia is a country in psychological depression. Many Russians are passive and barely coping with day-to-day life.").

<sup>231</sup> Levada, *supra* note 201.

<sup>232</sup> *Id.* An imported soap opera from Mexico, *The Rich Also Cry*, earned higher marks (nineteen percent) than the CPSU trial (eleven percent) did, as one of the main events of 1992. *Id.*

<sup>233</sup> Alexander Pumpysky, *The Trial of the Party That Was the Government*, NEW TIMES, Oct. 1992, at 10, 11-13.

<sup>234</sup> See *supra* note 122 and accompanying text.

<sup>235</sup> See *supra* notes 20-22 and accompanying text.

<sup>236</sup> Leon Lipson, *Piety and Revision: How Will the Mandarins Survive Under the Rule of Law?*, 23 CORNELL INT'L L.J. 191, 199-200 (1990) (important to remember that progress will be little by little).

The decision received criticism for its appearance as a compromise. What such criticism fails to recognize, however, is how well the Court managed to navigate some very dangerous waters. At the end of the day, the Court had: (1) maintained its stance of independence; (2) upheld the constitutionality of the decrees in a manner that would head off a political struggle; and (3) ruled in a way that made it clear that even the Communist Party could receive fair treatment in a court of law in post-Communist Russia.

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