

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 4 April 1996 No. 9-II

in the case concerning the review of the constitutionality of certain normative acts of the city of Moscow and Moscow Region, Stavropol Territory, Voronezh Region and the city of Voronezh, on registration of citizens arriving in these subjects of the federation for permanent residence.

Moscow, 4 April 1996

The Constitutional Court of the Russian Federation composed of Presiding Judge O. I. Tiunov and Judges M. V. Baglay, G. A. Gadzhiev, T. G. Morshchakova, Yu. D. Rudkin, N. V. Seleznev, B. S. Ebzeev, V. G. Yaroslavtsev,

in the attendance of attorney E. P. Danilov, as representative of the Head of the Komi Republic; individuals V. I. Kutsyllo and R. S. Klebanov, who submitted their individual complaints to the Constitutional Court of the Russian Federation; representatives of the parties which adopted and signed the challenged normative acts: S. E. Dontsov, PhD in Law, Head of the State and Legal Department of the Moscow Mayor's Office; representative of the Administration of the Moscow Region attorney M. D. Smirnov; V. A. Cherepanov, PhD in Law, Deputy of the Stavropol Territory Duma; representative of the Voronezh Regional Duma T. D. Zrazhevskaya, PhD in Law,

pursuant to Subsection "b", Sections 2 and 4, Article 125 of the Constitution of the Russian Federation, Subsections 1 (b) and 3, Section 1, Article 3, Subsections 1 (b) and 3, Section 2, Article 22, Articles 86 and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation",

in an open hearing, examined the constitutionality of the provisions of Article 2 of the Law of Moscow "On the Fee Compensating the City Budget Expenses for Infrastructure Development and Provision of Social and Living Conditions for Citizens Arriving in Moscow for Residence" of 14 September 1994; Subsections 4 and 10 of the Regulation on the Uniform Procedure for Registration and De-Registration of Persons in Moscow and Moscow Region (adopted by Moscow Government and Moscow Region Government Decree No. 393-14 of 3 May 1995); Subsection 1 of the Procedure for Issuing Residential Permit (Registration) to Citizens Residing Outside of Moscow and Moscow Region and Arriving in Moscow for Residence at Living Premises Owned by Them (adopted by Moscow Government Decree

No. 922 of 11 October 1994); Order of Moscow Region Head of Administration (Governor) No. 83 of 9 February 1993, “On Adopting a Procedure to Consider Requests for a License to Invite Non-resident Employees to the Moscow Region”, and No. 439 of 6 May 1994, “On the Cost of Licenses”; Articles 1 and 3 of the Law of the Voronezh Region “On Regulation of Migration in the Voronezh Region” of 10 March 1995 and Subsection 18 of the Interim Procedure for Registration of Citizens Who Arrived in the Voronezh Region for Permanent or Temporary Residence, approved by the abovementioned Law; Subsections 1.1 and 1.6 of the Procedure for Participation of Enterprises, Organizations, Private Companies and Individuals in Shared Construction of Housing in Voronezh (adopted by Voronezh Administration Decree No. 608 of 10 August 1994); Subsections 3.1 and 3.2 of the Voronezh Head of Administration Board Decision “On Reinforcement of Migration Control in Voronezh” of 14 July 1994; Subsections 3, 21 and 29 of the Interim Procedure for Stay and Permanent Residence in the Stavropol Territory (adopted by Stavropol Territory Duma Decree No. 118-8 of 6 October 1994).

The reason for the consideration of the case, pursuant to Section 1, Article 36 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, is a request of the Head of the Komi Republic, Y. A. Spiridonov, to recognize the mentioned provisions of Moscow and Moscow Region, Stavropol Territory, Voronezh Region and Voronezh normative acts as non-conforming to the Constitution of the Russian Federation; and individual complaints of V. I. Kutsyllo and R. S. Klebanov requesting review of the constitutionality of Article 2 of the mentioned Law of Moscow. In the applicants’ opinion these normative acts violate Articles 4, 27, 35, 55, 76 of the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur G. A. Gadzhiev, statements by the parties and their representatives: E. P. Danilov, V. I. Kutsyllo, R. S. Klebanov, V. A. Cherepanov, S. E. Dontsov, M. D. Smirnov, T. D. Zrazhevskaya, interventions by M. A. Mityukov, Plenipotentiary Representative of the President of the Russian Federation; S. A. Demikhova, Executive Director of the association Union of Towns of the Polar Region and the Far North; V. K. Bobrova, Head of the Analytical Group, Commission on Human Rights of the President of the Russian Federation; V. Ya. Krivtsov, Deputy Head of the Visa and Registration Department, Ministry of Internal Affairs of the Russian Federation; expert opinion of S. G. Pepelyaev, PhD in Law, Director of the Tax Consulting Department, Financial and Accounting Consultants, an auditor; and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. The Interim Procedure for Stay and Permanent Residence in the Stavropol Territory was adopted by Stavropol Territory Duma Decree No. 118-8 of 6 October 1994. It was further amended by the decrees of 24 November 1994 and 29 June 1995. Pursuant to the Interim Procedure, the citizens' right to choose a place of residence in the Stavropol Territory may be exercised only against payment (Subsection 3); the choice of permanent residence in communities of the Kavkazskie Mineralnye Vody of the Stavropol Territory is permitted only under a special authorization issued within the annual quota of 0.5 percent of the population of the community (Subsection 21). The Interim Procedure also provides that all persons arriving in the Stavropol Territory for permanent residence must be registered within 10 days from the date of arrival at the place of residence. Until otherwise provided by the legislation of the Russian Federation, registration at the place of residence shall mean residential permit (Subsection 29).

The Procedure for Consideration of Requests for a License to Invite Non-resident Employees to the Moscow Region, which determines the fee amount as nine million rubles for a family of not more than three persons for Moscow suburbs, and six million rubles for other Moscow Region territories, was adopted by Moscow Region Head of Administration (Governor) Orders No. 83 of 9 February 1993 and No. 439 of 6 May 1994. Moscow Region Head of Administration (Governor) Order No. 638 of 7 July 1994 repealed Order No. 83 of 9 February 1993 and adopted a new procedure to consider requests for a license giving individuals and legal persons the right to invite, to the Moscow Region, non-resident specialists and workers, who choose the Moscow Region as their place of stay and residence. It reproduces the provisions of the former procedure providing that the license is the ground for residence registration of the invited non-resident specialist and his family at living premises provided by the employer or acquired as private property (Subsection 7). The duty to purchase a license is imposed not only on legal entities (as before), but also on individuals (Subsection 1).

Pursuant to Article 2 of the Moscow Law "On the Fee Compensating the City Budget Expenses for Infrastructure Development and Provision of Social and Living Conditions for Citizens Arriving in Moscow for Residence" of 14 September 1994, citizens of the Russian Federation arriving in Moscow for residence at living premises owned by them shall pay a fee of 500 minimum wages. Owing to the adoption of this Law, the Moscow Government Decree No. 922 of 11 October 1994 adopted the Procedure for Issuing Residential Permit (Registration) to Citizens Residing Outside of Moscow and Moscow Region and Arriving in Moscow for Residence at Living Premises Owned by Them. Pursuant to Subsection 1 of this Procedure, only citizens who paid the fee provided by the Law may be registered in Moscow.

Moscow Government and Moscow Region Government Decree No. 1030-43 of 26 December 1995, “On Registration and De-Registration of Citizens at the Place of Stay or Residence in Moscow and Moscow Region” approved the Rules for Registration and De-registration of Citizens of the Russian Federation at the Place of Stay or Residence in Moscow and Moscow Region. Pursuant to the explanatory note to Subsection III.2 (b) of these Rules, which in fact reproduce the provisions of Moscow Government Decree No. 922 of 11 October 1994, citizens residing outside Moscow and Moscow Region and arriving in Moscow at living premises owned by them shall present a receipt confirming payment of the fee either to the city budget (under the Law of Moscow of 14 September 1994) or to regional, town or district budgets (under Moscow Region Head of Administration (Governor) Order No. 638 of 7 July 1994).

These provisions of joint Decree No. 1030-43 of 26 December 1995 reproduce the norms of challenged Moscow Government Decree No. 922 of 11 October 1994; and Moscow Region Head of Administration (Governor) Order No. 638 of 7 July 1994 reproduces the challenged norms of Orders No. 83 of 9 February 1993 and No. 439 of 6 May 1994. Since these norms affect the citizens’ constitutional rights and freedoms, the normative acts mentioned above may be a subject of consideration by the Constitutional Court of the Russian Federation under Section 2, Article 43 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

2. Moscow Government and Moscow Region Government Decree No. 1030-43 of 26 December 1995 repealed the Regulation on the Uniform Procedure for Registration and De-Registration of Persons in Moscow and the Moscow Region adopted by Moscow Government and Moscow Region Government Decree No. 393-14 of 3 May 1995 which provided for an exhaustive list of categories of citizens who may be registered in Moscow and the Moscow Region. Subsection 29 of the Interim Procedure for Stay and Permanent Residence in the Stavropol Territory was repealed due to the adoption of Order No. 713 of 17 July 1995 by the Government of the Russian Federation, which enacted the Rules for Registration and De-registration of Citizens of the Russian Federation at the Place of Stay and Residence in the Russian Federation and the list of officials responsible for registration.

As is clear from additional materials, the Voronezh Region Law “On Regulation of Migration in the Voronezh Region” of 10 March 1995 was amended by the Laws of the Voronezh Region of 9 June 1995, 18 July 1995, and 8 February 1996. Consequently, the most recent version of the Voronezh Region Law of 10 March 1995 does not contain the challenged provisions, and thus these provisions lost their legal force. Due to the adoption of the new Regulation, the Interim Procedure for Registration of Citizens Who Arrived in the Voronezh Region for Permanent or Temporary Residence also lost its force.

Pursuant to Section 2, Article 43 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, constitutional review proceedings shall be discontinued to the extent they concern normative acts which lost their force.

The challenged normative acts of the Voronezh Administration are acts of local self-government bodies. The review of their constitutionality does not fall within the cognizance of the Constitutional Court of the Russian Federation (Article 125 of the Constitution of the Russian Federation, Section 1, Article 3 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”). Consequently, to this extent the proceedings are also discontinued, pursuant to Article 68 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

3. In the Russian Federation, the rights and freedoms of man and citizen are recognized and guaranteed in accordance with generally recognized principles and norms of international law and in accordance with the Constitution of the Russian Federation (Section 1, Article 17 of the Constitution of the Russian Federation). Pursuant to Article 27 (Section 1) of the Constitution of the Russian Federation, everyone who legally stays in the territory of the Russian Federation shall have the right to freedom of movement, choice of the place of stay or residence. The International Covenant on Civil and Political Rights (Article 12), other international acts and instruments, particularly Protocol No. 4 to the European Convention on Human Rights (Article 2), also provide for freedom of movement and freedom to choose residence.

Freedom of movement and freedom of choice of the place of stay or residence are essential elements of individual freedom. They are a precondition of professional and intellectual development of the person; and the Russian Federation as a social state shall ensure this development through its policies.

The normative content of the constitutional right above consists of 1) everyone’s freedom of movement within the territory of the Russian Federation, 2) the freedom to choose a place of stay, 3) the freedom to choose a place of residence. The challenged normative acts directly affect the right to choose a place of residence. This right involves the freedom to choose, for permanent or predominant residence, living premises which a citizen owns, rents, or resides in on other grounds provided by the legislation of the Russian Federation. Pursuant to Article 20 of the Civil Code of the Russian Federation, a place of residence is a place where the person lives permanently or predominantly.

The right to freely choose the place of residence belongs to everyone from birth and is inalienable together with other fundamental rights and freedoms (Section 2, Article 17 of the Constitution of the Russian Federation; Article 150 of the Civil Code of the Russian Federation). However this right is not absolute and may be regulated by law, since its exercise may violate

the rights and freedoms of others, which is not permissible under Section 3, Article 17 of the Constitution of the Russian Federation.

Therefore the exercise of this right may be reasonably restricted on the grounds and under the procedure established in Articles 55 (Section 3) and 56 of the Constitution of the Russian Federation. The legal restrictions of the right to choose the place of residence may be imposed only by a federal law to the extent which is necessary to protect the fundamentals of the constitutional order, morals, health, the rights and lawful interests of others, and to ensure defense of the country and security of the State (Section 3, Article 55 of the Constitution of the Russian Federation). Pursuant to Article 12 § 3 of the International Covenant on Civil and Political Rights, the right to freedom of movement and freedom to choose residence shall not be subject to any restrictions except those which are provided by law, necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with other rights recognized in the Covenant.

Thus, the restriction of the right to freely choose the place of residence only by law is the common requirement of the Constitution of the Russian Federation and international legal norms.

The Constitution of the Russian Federation specifies this requirement and provides that the rights and freedoms of man and citizen may be restricted only by federal law. Accordingly, the provisions of Section 2, Article 1 of the Law of the Russian Federation “On the Right of Citizens of the Russian Federation to Freedom of Movement, Choice of the Place of Stay and Residence within the Territory of the Russian Federation” of 25 June 1993, which stipulate that the restrictions may be imposed only by law, may not be interpreted broadly. In this context, the term “law” implies only federal laws, not laws of subjects of the Russian Federation. Otherwise this norm would have an unconstitutional meaning.

The restrictions on the right of citizens to freedom of movement, choice of the place of stay and residence are necessary to balance public and private interests and depend on a number of socio-economic factors.

The Law of the Russian Federation of 25 June 1993 regulates these social relations in order to ensure necessary conditions for citizens of the Russian Federation to exercise their rights and freedoms and to perform their obligations towards other citizens, the State, and society. The Law provides for a list of grounds for restrictions of the citizens’ right to freedom of movement, choice of the place of stay or residence (Article 8). It introduces a system of registration of citizens where registration is performed by notification; and registration as such or a failure to register is not a ground to restrict or condition the exercise of other rights and freedoms (Section 2, Article 3).

The right to choose the place of residence is part of the freedom of personal self-determination. The bodies of state power are only entitled to register free expression of the people's will in choosing their place of residence. This is precisely why registration may not rely on a procedure based on authorization and be a ground for restrictions of the person's right to choose a place of residence. Registration based on notification by a citizen of the Russian Federation at his place of residence is a permissible restriction of the right to choose a place of residence. Pursuant to Article 6 of the Law of the Russian Federation of 25 June 1993, this procedure obliges the person only to apply to a responsible official for registration within seven days after the arrival at the new place of residence and present this official with a passport and a document certifying his residence on certain living premises.

Pursuant to the Law of the Russian Federation of 25 June 1993, the Government of the Russian Federation adopted Rules for Registration and De-registration of Citizens of the Russian Federation at the Place of Stay and Residence in the Russian Federation (Order of 17 July 1995 No. 713).

However, pursuant to the Constitution of the Russian Federation, the power of ensuring of public and environmental security, specially protected natural areas, and administrative legislation are within the joint competence of the Russian Federation and subjects of the Russian Federation (Subsections "b", "e", "k", Section 1, Article 72 of the Constitution of the Russian Federation). Therefore bodies of state power of the subjects of the Russian Federation are entitled to adopt rules of registration alongside with the Russian Federation to the extent that these rules do not change the legal regime of registration and do not limit rights and freedoms of the citizens.

The provisions of the normative acts of Moscow Government, Moscow Region Government and Moscow Region Head of Administration (Governor) on payment of a fee and presenting a receipt confirming this payment as conditions for registration are inconsistent with the Law of the Russian Federation of 25 June 1993 and the Rules for Registration and De-registration of Citizens of the Russian Federation at the Place of Stay or Residence in the Russian Federation. Actually, these regulations introduce another legal regime of registration based on authorization. This contradicts the fundamental right of everyone legally present in the territory of the Russian Federation to freely choose a place of residence. Besides, denial of registration on the basis of the challenged normative acts may be deemed as a sanction for non-payment of the fee.

These norms prevent the exercise of a number of fundamental rights and freedoms of the citizens, which are recognized and guaranteed by the Constitution of the Russian Federation, i.e. the right to elect and be elected to bodies of state power and local self-government, the right to

participate in referenda, the right to freely use abilities and property for entrepreneurial and other economic activities not prohibited by law; the right to the free use and disposal of property, free movement of goods, services and funds; the right to social security, medical assistance, preschool and school education.

The exercise of the constitutional right to choose a place of residence shall not depend on the payment or non-payment of certain taxes or duties, because the Constitution of the Russian Federation guarantees the rights of citizens of the Russian Federation irrespective of any fiscal conditions. Thus the denial of registration of a citizen due to his failure to pay certain taxes or other duties contradicts the Constitution of the Russian Federation (Section 1, Article 27).

4. In the opinion of the Head of the Komi Republic, Article 2 of the Law of Moscow of 14 September 1994 and Moscow Region Head of Administration (Governor) Orders No. 83 of 9 February 1993 and No. 439 of 6 May 1994 do not conform to Articles 4 (Section 2) and 76 (Section 5) of the Constitution of the Russian Federation since the Law of the Russian Federation “On the Fundamental Principles of the Taxation System in the Russian Federation” of 27 December 1991 does not provide for any fees for infrastructure development or license fees for invitations for non-resident employees.

V. I. Kutsyllo and R. S. Klebanov also challenge the constitutionality of Article 2 of the Law of Moscow in their complaints. In their opinion, this Article implies that payment of a fee is a precondition of registration of a citizen at a place of residence, both within the literal meaning and within the meaning attributed to it in the Moscow Government Orders mentioned above.

The joint competence of the Russian Federation and subjects of the Russian Federation includes establishment of common principles of taxation in the Russian Federation (Subsection “i”, Section 1, Article 72 of the Constitution of the Russian Federation).

The Constitution of the Russian Federation does not prevent subjects of the Russian Federation from their own legal regulations in joint competence domains before adopting a federal law. This includes determining common principles of taxation and imposing duties provided that preemptively adopted act of a subject of the Russian Federation needs to be amended in order to comply with the newly adopted federal law. Therefore subjects of the Russian Federation have the possibility to impose their own taxes and duties to the extent permitted by the Constitution of the Russian Federation and provided that they comply with the fundamental rights and freedoms of citizens.

However a tax or a duty may be imposed only by law. Taxes introduced by any other act may not be deemed as “legally established” (Article 57 of the Constitution of the Russian Federation). This provision is significant both for constitutional review of a law (including laws

of a subject of the Russian Federation) imposing a certain tax, and for constitutional review of powers of a certain body to impose a tax.

Pursuant to Subsection 2 of Section II, “Final and Transitional Provisions”, of the Constitution of the Russian Federation, the Law of the Russian Federation “On the Fundamental Principles of the Taxation System in the Russian Federation” of 27 December 1991 shall be applied to the extent that it does not conflict with the Constitution of the Russian Federation. Under its Article 2, all kinds of payments (taxes, duties, fees, and others) shall be collected in accordance with a procedure established by law. However, in violation of this requirement the Moscow Region Head of Administration (Governor) imposed a fee for residence in the Moscow Region by Orders No. 83 of 9 February 1993, No. 439 of 6 May 1994 and No. 638 of 7 July 1994. Besides, the latter Order, which is still in force, also contradicts Article 49 of the Civil Code of the Russian Federation, which provides that licenses may be issued only for activities specified by federal law.

The Constitution of the Russian Federation precludes the imposition of taxes and duties by executive authorities. In imposing a fee for residence in the Moscow Region, the Moscow Region Head of Administration (Governor) acted *ultra vires* and infringed on the competence of the legislator contrary to Article 57 of the Constitution of the Russian Federation.

5. Subjects of the Russian Federation regulating taxation shall be guided by Article 18 of the Constitution of the Russian Federation, which stipulates that the rights and freedoms of man and citizen determine the meaning, contents, and enforcement of laws. The laws of subjects of the Russian Federation imposing taxes and duties shall respect such constitutional principles as the principle of equality (Section 1, Article 19) and the principle of restrictions on rights and freedoms being proportionate to the constitutionally significant aims (Section 3, Article 55).

In order to regulate the taxation in compliance with the Constitution of the Russian Federation, the principle of equality requires consideration of the actual tax-paying capacity with regard to the legal principles of fairness and proportionality. In a rule of law state, the principle of equality in the obligation to pay taxes and duties established by law (Section 2, Article 6 and Article 57 of the Constitution of the Russian Federation) presumes that equality is achieved through fair redistribution of income and differentiation of taxes and duties.

However, Article 2 of the Law of Moscow of 14 September 1994 does not consider the financial capacity of different taxpayers and establishes a *per capita* taxation system. For excessively high taxes, it implies taking of a significantly larger share of property of the poor and low-income citizens and a smaller share of wealthy citizens’ property.

Taxation always results in certain restrictions on the right of property guaranteed by Article 35 of the Constitution of the Russian Federation. Thus, laws of subjects of the Russian

Federation on taxes and duties are fully within the scope of Article 55 (Section 3) of the Constitution of the Russian Federation, which provides that the rights and freedoms of man and citizen may be limited only by federal law to the extent compliant with constitutionally significant aims, i.e. proportionate. Taxation which paralyzes exercise by the citizens of their constitutional rights is disproportionate. Accordingly, for excessive taxes, their differentiation regarding the principles of equality and fairness is of special significance.

In imposing their own taxes and duties, subjects of the Russian Federation shall consider that pursuant to Article 75 (Section 3) of the Constitution of the Russian Federation the system of taxes payable to the federal budget and general principles of taxation in the Russian Federation shall be established by federal law. This also implies that subjects of the Russian Federation are not entitled to establish taxes in an arbitrary fashion, in violation of the principles recognized by the Constitution of the Russian Federation and federal law. Unrestricted imposition of taxes and duties would contradict Article 7 of the Constitution of the Russian Federation and its aims as a social state. The policy of a social state shall be aimed at creating conditions ensuring a decent life and free development of the person. It also follows from principles of uniform financial policy, including taxation policy, guaranteed by Article 114 (Subsection “b”, Section 1) of the Constitution of the Russian Federation that it is not permissible to arbitrarily impose taxes by laws of subjects of the Russian Federation.

Thus, Article 2 of the Law of Moscow of 14 September 1994 conforms to the Constitution of the Russian Federation (Article 73) to the extent that a subject of the Russian Federation is permitted to impose its own taxes and duties, and does not conform to the Constitution of the Russian Federation (Articles 7, 19 (Section 1), 55 (Section 3), 57) to the extent that it violates the constitutional principles of equality and restrictions on fundamental rights and freedoms of man and citizen proportionate to the constitutionally significant aims, and to the extent that it distorts the meaning of the general principles of taxation in the Russian Federation.

6. Pursuant to Subsection 21 of the Interim Procedure for Stay and Permanent Residence in the Stavropol Territory, adopted by the Stavropol Territory State Duma Decree of 6 October 1994 (as amended on 24 November 1994), in any community of the Stavropol Territory other than towns of the Kavkazskie Mineralnye Vody and adjacent communities citizens of the Russian Federation have the right to choose a place of residence only under a special authorization. These authorizations may be issued by heads of administrations of the respective districts and towns only subject to recommendations of special commissions under these heads of administration and within the annual quota of 0.5 percent of the population of the respective community.

Pursuant to the Order of the President of the Russian Federation “On a Specially Protected Eco-Resort Area of the Russian Federation” of 27 March 1992 the area of the Kavkazskie Mineralnye Vody is a federal specially protected eco-resort area of the Russian Federation. Pursuant to Federal Law “On Natural Curative Resources, Health and Recreation Localities and Resorts” (Articles 1 and 3) the resorts of federal significance are specially protected natural areas used for curative purposes within the competence of federal bodies of state power. The procedures and particularities of resort functioning are determined in a special regulation, which is adopted either by the Government of the Russian Federation or a respective body of the executive branch of the subject of the Russian Federation (depending on the significance of the resort). The Government of the Russian Federation determines the borders and regime of sanitary control for resorts of federal significance, *inter alia* it establishes a regime of economic management, residence, use of natural resources in order to preserve natural curative resources and health and recreation localities and adjacent areas and protect them from pollution and premature depletion.

The abovementioned Order of the President of the Russian Federation authorizes the Government of the Russian Federation to regulate the migratory growth of the population in the Kavkazskie Mineralnye Vody area. However neither the Order nor the decrees of the Government of the Russian Federation adopted under it authorized the authorities of the Stavropol Territory to resolve the matter.

When the Stavropol Territory Duma established a residence quota for communities of the Kavkazskie Mineralnye Vody it restricted the right to choose the place of residence notwithstanding the fact that these restrictions fall within the federal legislator’s competence. It also infringed on the competence of the Russian Federation in the area of rights and freedoms of man and citizen (Subsection “c” of Article 71 of the Constitution of the Russian Federation). Besides, the exercise of the constitutional rights to freedom of movement and choice of the place of residence was regulated by the Interim Procedure adopted by a Stavropol Territory Duma Decree, and not by law. Thus, Subsection 21 of the Interim Procedure for Stay and Permanent Residence in the Stavropol Territory does not conform to the Constitution of the Russian Federation in respect of the division of powers between bodies of state power of the Russian Federation and bodies of state power of the subjects of the Russian Federation and in respect of the form of a normative act.

Pursuant to Subsection 3 of the Interim Procedure, the citizens’ right to choice residence in the Stavropol Territory may be exercised only against payment, i.e. reimbursement to territorial and local budgets of additional expenses related to labor, consumer, social and cultural services for newcomers. Such condition of registration of citizens in the Territory as payment of

a fee transform this registration into one based on authorization and restricts the fundamental right of everyone legally present in the territory of the Russian Federation to freely choose a place of residence (Section 1, Article 27 of the Constitution of the Russian Federation), and violates Article 55 (Section 3) of the Constitution of the Russian Federation.

Concluding from the above and by virtue of Articles 72, 74, 75, 87, 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize, as non-conforming to the Constitution of the Russian Federation and its Articles 27 (Section 1), 55 (Section 3) and 57, the provision of Subsection 1, Procedure for Issuing Residential Permit (Registration) to Citizens Residing Outside Moscow and the Moscow Region and Arriving in Moscow for Residence at Living Premises Owned by Them, adopted by Moscow Government Decree No. 922 of 11 October 1994; Subsection 1, Moscow Region Head of Administration (Governor) Order No. 83 of 9 February 1993, “On Adopting a Procedure for Consideration of Requests for a License to Invite Non-resident Employees to the Moscow Region”; Moscow Region Head of Administration (Governor) Order No. 439 of 6 May 1994, “On the Cost of Licenses”; Subsection 1, Moscow Region Head of Administration (Governor) Order No. 638 of 7 July 1994, “On Adopting a Procedure for Consideration of Requests for a License Giving Individuals and Legal Persons the Right to Invite, to the Moscow Region, Non-resident Specialists and Workers Who Choose the Moscow Region as Their Place of Stay and Residence”, and provisions of the Procedure itself to the extent they reproduce the provisions of Moscow Region Head of Administration (Governor) Orders No. 83 of 9 February 1993 and No. 439 of 6 May 1994; the explanatory note to Subsection III.2 (b) of the Rules for Registration and De-registration of Citizens of the Russian Federation at the Place of Stay and Residence in Moscow and the Moscow Region adopted by Moscow Government and Moscow Region Government Decree No. 1030 43 of 26 December 1995 to the extent it *de facto* reproduces the norms of Moscow Government Decree No. 922 of 11 October 1994.

2. To recognize, as conforming to the Constitution of the Russian Federation, Article 2 of the Law of Moscow “On the Fee Compensating the City Budget Expenses for Infrastructure Development and Provision of Social and Living Conditions for Citizens Arriving for Residence in Moscow” of 14 September 1994 to the extent it permits the Moscow City Duma to impose taxes and duties under the Constitution of the Russian Federation and federal laws.

To recognize Article 2 of the Law of Moscow of 14 September 1994 as non-conforming to the Constitution of the Russian Federation and its Articles 7, 19 (Section 1), 55 (Section 3) to

the extent it violates the principle of equality, disproportionately restricts the fundamental rights and freedoms of man and citizen and infringes upon the principle of a social state.

3. To recognize Subsections 3 and 21 of the Interim Procedure for Stay and Permanent Residence in the Stavropol Territory, adopted by Stavropol Territory Duma Decree No. 118 8 of 6 October 1994 (as amended on 24 November 1994) as non-conforming to the Constitution of the Russian Federation and its Articles 27 (Section 1), 55 (Section 3), 71 (Subsection “c”).

Due to the high economic and recreational burden on the Kavkazskie Mineralnye Vody area and pursuant to Federal Law “On Natural Curative Resources, Health and Recreation Localities and Resorts” of 23 February 1995 and President of the Russian Federation Order No. 309 of 27 March 1992, “On a Specially Protected Eco-Resort Area of the Russian Federation”, the Government of the Russian Federation shall take necessary measures to ensure protection and conservation of the natural curative resources of the Kavkazskie Mineralnye Vody area.

4. Pursuant to Section 3, Article 79, and Section 2, Article 87 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, normative acts or their provisions recognized as unconstitutional by the present Judgment shall lose their legal force, which is a ground for annulment, according to the established procedure, of the provisions of other normative acts reproducing or containing these norms.

5. Pursuant to Section 2, Article 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the lawsuits of V. I. Kutsyllo and R. S. Klebanov decided by courts or executive authorities on the basis of the provisions which are recognized as unconstitutional by this Judgment are to be reconsidered by courts according to the established procedure.

6. Pursuant to Section 2, Article 43 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the proceedings for constitutional review are to be discontinued to extent they concern provisions of the following repealed normative acts, which are not reproduced elsewhere: Moscow Government and Moscow Region Government Decree No. 393 14 of 3 May 1995 which approved the Regulation on the Uniform Procedure for Registration and De-Registration of Persons in Moscow and the Moscow Region; the provisions of the Law of the Voronezh Region “On Regulation of Migration in the Voronezh Region” of 10 March 1995 and Subsection 18 of the Interim Procedure for Registration of Citizens Who Arrived in the Voronezh Region for Permanent or Temporary Residence; Subsection 29 of the Interim Procedure for Stay and Permanent Residence in the Stavropol Territory, approved by Stavropol Territory Duma Decree No. 118-8 of 6 October 1994 (as amended on 24 November 1994).

7. Pursuant to Article 68 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the proceedings for constitutional review of the Procedure for Participation of Enterprises, Organizations, Private Companies and Individuals in Shared Construction of Housing in Voronezh, adopted by the Voronezh Administration, and Voronezh Head of Administration Board Decision No. 13 of 14 July 1994, “On Reinforcement of Migration Control in Voronezh”, are to be discontinued since this issue falls outside the competence of the Constitutional Court of the Russian Federation.

8. Pursuant to Sections 1 and 2, Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement and shall be directly applicable.

9. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be published in the Collection of Laws of the Russian Federation and Rossiyskaya Gazeta, other official publications of public authorities of the Russian Federation and subjects of the Russian Federation concerned. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court
of the Russian Federation

No. 9-II