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*“Do they feel welcome when returning home?  
Intuitive Law of Internationally Mobile Students:  
The Case of the Russian Global Education Program”*

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*Acknowledgements*

To Vladislav and Andrei

## *Abstract*

By exploring the Russian Global Education Program as a case of outward student mobility policy created through and backed by law, the author of this thesis analyses the impact of the legal dimension of said program on students' return and employment decisions from the viewpoint of the socio-legal theory and methodology developed by Leon Petrazycki (1867-1931).

Based on the analysis conducted herein, the author argues that besides traditionally identified economic, political and social conditions that are known to affect highly skilled migrants' (including students') return and employment plans, there are also often overlooked legal factors existing in their countries of origin that can influence their (un)willingness to return and work at home. The latter factors are revealed and explained on the grounds of internationally mobile students' intuitive law (understanding of justice).

Keywords: international student mobility, return migration, legal aspects, Petrazycki, intuitive law, justice, Global Education Program, Russia

## *Statement of Use of Third Party for Editorial Help*

*The author confirms that the thesis was proofread for conventions of language, spelling and grammar by Mr. Mark Jones.*

## I. Introduction

Increasing international mobility of highly skilled specialists and students is regarded as one of the main modern migration trends determined by globalisation (Castles, de Haas, Miller, 2014:112). Among the growing migratory population, the numbers of international students<sup>1</sup> crossing borders in search of educational opportunities have risen exponentially. According to the UNESCO Institute for Statistics, in 2013, over 4.1 million students travelled abroad to study, a figure up from 2 million in 2000<sup>2</sup>. Therefore, this relatively new form of mass mobility attracts increasing policy and research attention in both sending and receiving countries.

While receiving governments seek to attract foreign students, as their countries are known to benefit from international student migration, sending countries find themselves in a less favourable position, as the departure of highly skilled specialists and students is associated with ‘brain drain’ processes and corresponding loss of human capital (Castles, de Haas, Miller, 2014:71; Gribble, 2008; Kapur and McHale, 2005).

In the demanding circumstances of global competition for “the best and brightest,” governments experiencing high numbers of skilled professionals leaving their countries, in search of better places abroad, make significant efforts to implement policies aimed at strengthening their human resource capacity and encouraging highly skilled professional and international student return migration (Castles and Miller, 2009:77, Kapur and McHale, 2005, Tejada et al., 2014).

In modern Russia, these intellectual migration trends are firmly associated with the aforementioned brain drain concept, supported nowadays by strong media opinion that the country is losing its human capital due to a new wave of emigration caused by a deep economic recession and governance shortcomings<sup>3</sup> (Ushkalov and

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<sup>1</sup> The UNESCO Institute for Statistics and the OECD define as *international (or internationally mobile) students* those “who have crossed a national or territorial border for the purpose of education and are currently enrolled outside their country of origin” (Source: UNESCO Institute for Statistics Glossary available at <http://uis.unesco.org/en/glossary-term/international-or-internationally-mobile-students> [accessed on the 6th of May, 2017]; OECD, 2011).

<sup>2</sup> <http://glossary.uis.unesco.org/Education/Pages/international-student-flow-viz.aspx> [accessed on the 6th of May, 2017]

<sup>3</sup> <http://nationalinterest.org/feature/russia-losing-its-best-brightest-16572> [accessed on the 6th of May, 2017]

<https://themoscowtimes.com/articles/will-russias-brain-drain-dry-up-op-ed-48748> [accessed on the 6th of May, 2017]

<http://www.reuters.com/article/russia-putin-emigration-idUSL6N0PI4TH20140724> [accessed on the 6th of May, 2017]

Malakha, 2001; Ganguli, 2014; Iontsev, Ryazantsev and Iontseva, 2016; Iontsev and Magovedova, 2015). Some authors argue that this process may have long-term negative consequences on the country's development, as the social group currently leaving Russia consists mainly of scientists, students, teachers, doctors, engineers and entrepreneurs (Iontsev, Ryazantsev and Iontseva, 2016), or the so-called "creative class"<sup>4</sup>.

As one of the measures aimed at alleviating the above described problems of human capital depletion and the lack of qualified personnel for its economy, in 2013, Russia launched the Global Education Program<sup>5</sup> (hereinafter referred to as 'the GEP' or 'the Program'),<sup>6</sup> regulated by Decree No. 967 of the President of the Russian Federation dated December 28, 2013, "On Measures to Enhance the Human Resource Capacity of the Russian Federation," and Decree No.568 of the Government of the Russian Federation dated June 20, 2014 (with subsequent amendments dated June 26, 2015 and March 15, 2017) under the order of the Ministry of Education and Science of the Russian Federation (the State Customer of the Program)<sup>7</sup>.

The GEP funds Russian citizens' full-time post-graduate studies abroad in the areas of science, engineering, medicine, education and social sphere management. GEP participants are expected to return to Russia upon completion of their studies and obtain employment in accordance with the qualification gained over a period of 3 years<sup>8</sup>. If the participants break certain GEP rules (e.g. evade return or employment), they will have to pay penalties to Russia, including all the money spent on their education and a fine twice again of this amount<sup>9</sup>.

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<sup>4</sup> <http://imrussia.org/en/analysis/nation/2224-a-new-emigration-the-best-are-leaving-part-1> [accessed on the 6th of May, 2017]

<sup>5</sup> 'Global Education' is the short, unofficial name of the program. According to Decree No.568 of the Government of the Russian Federation dated June 20, 2014, the program is officially named "The social support program for nationals of the Russian Federation who have independently enrolled and study at leading foreign educational institutions in specialties and fields of study, the quality of education in which meets the highest world standards, and providing their employment relevant to their qualification with organisations registered in the Russian Federation". The title 'Global Education' comes from earlier drafts of program documents developed in 2012 and later replaced by the President's Decree No. 967 and the Government's Decree No.568 (Source the Ministry of Education and Science of Russia: <http://минобрнауки.рф>)

<sup>6</sup> The GEP's key characteristics and detailed legal framework can be found in Appendix 1 and Appendix 2 to the present thesis.

<sup>7</sup> <http://educationglobal.ru/en/ns/overview/officialdocuments/> [accessed on the 6th of May, 2017]

<sup>8</sup> <http://educationglobal.ru/en/ns/overview/> [accessed on the 6th of May, 2017]

<sup>9</sup> <http://educationglobal.ru> [accessed on the 6th of May, 2017]

Under such conditions the GEP aims “*to build the highly-qualified human resources for Russian employers [included in the GEP approved list], especially those located in Siberian and Far Eastern Federal Regions, in order to facilitate modernization and implementation of innovative technologies and to realize the potential for future growth in social and economic spheres*”<sup>10</sup> (in development).

By exploring the GEP as a case of outward student mobility policy created through and backed by law, I claim that besides traditionally identified economic, political and social conditions of the countries of origin and destination that are known to affect highly skilled migrants’ (including students’) return and employment plans<sup>11</sup>, there are also often overlooked legal factors existing in the countries of origin that may strongly influence their (un)willingness to return and work at home.

Following a legal policy research approach concerned with “how law affects social behaviour and social conditions” and “policy regulation, enforcement and implementation issues” (Banakar, 2015:48-49), I study the impact of the legal dimension of the program on students’ return and employment decisions from the viewpoints of the socio-legal theory and methodology developed by Leon Petrazycki (1867-1931) and his followers. Based on the GEP case, I seek to understand what determines students’ return migration and employment decisions and if the sending country’s laws (policies) influence location choices.

More specifically, I aim at analysing whether legal factors affect Russian students’ decisions to return to Russia and work in their country of origin and exploring the actual and potential conflicts resulting from discrepancies between program regulations (as interpreted and enforced by officials) and their perception by GEP participants. Furthermore, I seek to understand program participants’ comprehension of GEP rules and inform policies seeking to alleviate the brain drain problem and bring positive social change (development) (Banakar, 2015: 49;

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<sup>10</sup> [http://educationglobal.ru/fileadmin/downloads/Leaflet\\_Program\\_july15\\_eng.pdf](http://educationglobal.ru/fileadmin/downloads/Leaflet_Program_july15_eng.pdf) [accessed on the 6th of May, 2017]

<sup>11</sup> Economic, political and social conditions of sending countries influencing students’ return migration will be discussed further in the Literature Review section of the thesis.

Banakar and Travers, 2002:38, Petrazycki,[1905-1907]1955<sup>12</sup>; Petrazhitsky, 2000; Ralko, 2011; Timoshina, 2013).

To sum up, using the GEP case, this study aims at achieving the following objectives:

1) To examine the interplay between the law as a system of legal rules aiming at regulating student return migration in a sending country context, on the one hand, and as a form of people's experiences, on the other.

2) To identify the discrepancies existing between legal rules (positive law, GEP employment regulations) and the reality of their interpretation and implementation by GEP officials and participants.

3) To reveal the underlying causes of the abovenamed discrepancies and what they mean in relation to GEP participants' return and employment plans (behaviours) after graduation.

4) To inform sending country policies aimed at bringing positive social change and mediating the conflicts caused by the abovenamed discrepancies.

The study answers the following research questions:

1. What discrepancies exist between GEP employment regulations (positive law) and the reality of their comprehension and interpretation by GEP participants (intuitive law)? What are the underlying reasons behind these discrepancies?
2. What discrepancies exist between GEP employment regulations (positive law) and the reality of their interpretation and enforcement by GEP officials?
3. How do GEP officials condition the ways in which GEP employment regulations are communicated to GEP participants, and what are the underlying reasons behind their actions? How does GEP officials' interpretation of GEP employment regulations influence GEP participants' attitudes at a discursive level and shape the way they think about and experience GEP employment regulations?

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<sup>12</sup> "Petrazhitsky's *opus magnum* emerged, consisting of two closely related works: *Introduction to the Study of Law and Morals* (1905) and *Theory of Law and the State in Connection with a Theory of Morals* (2 vols., 1907)" Timasheff, 1955:xxvi. For more details see Translator's Note (ibid: x1).



4. How do GEP participants use law to organise employment plans after graduation? Do legal factors influence their decisions to return and seek employment at home? And, if yes, how? What policy lessons can be learnt from GEP experiences?

#### Limitations of the Present Study

Before I proceed to the main chapters of this thesis, several remarks deserve to be made concerning its limitations.

##### *a. Personal participation in the GEP*

The author acknowledges the potential influence of her personal participation in the GEP on the processes and outcomes of the present research and states that the following methodological measures were taken, in order to avoid a conflict of interests and subjectivity (Weiss, 98:108-112). The interviewees for the study were chosen from a GEP participant cohort on the basis that they had no personal communication with the researcher before the study. Other GEP participants who also expressed their interest in participating in the study were given the chance to answer questions in writing, and the GEP operator was invited to participate in the study. The results of the present study, whenever possible, were verified through other sources.

##### *b. The Impact of Economic Recession in Russia on the GEP Employment Process*

Despite the potential impact of economic (currency) crisis in Russia in 2014-2015 on the GEP implementation process is acknowledged, the present study does not provide mechanisms necessary to clarify how the recession influenced GEP stakeholders' behaviours, in particular if the recession led to low activity among GEP employer organisations. The author of this thesis uses only secondary data when discussing the reasons why employers are not motivated to hire program graduates. Further research in this area may be beneficial for GEP development.

### *c. Pilot Study*

The majority of the GEP participants at the time of the study still had a good amount of time to elapse before returning to Russia, therefore making it difficult to explore the influence of legal factors on their actual return and employment behaviours (rather, their return and employment attitudes were explored), as well as observe results which can be generalised. Nevertheless, the research showed that two out of four interviewed participants, who had already returned, were not employed; one of the cases demonstrated the actual use of a covert employment avoidance strategy, discussed in some detail in the Analysis section of the thesis.

To investigate further the relevance of the claims made in this thesis, I analysed the studies of two other student return mobility schemes: Master and Back Program (Sardinia, Italy) and Program of Training High-Caliber Backbone Personnel from the Ethnic Minorities (China), to illustrate the influence of legal factors (students' understanding of justice) on the participants' actual return and employment behaviours.

Although the above listed findings do not allow generalisation, they can be seen as a starting point for further research into GEP participants' employment behaviours. Therefore, this study can be regarded as a pilot.

## **II. Background, Research Design, Methodology and Methods**

### *Background*

As noted by Marina Kurkchiyan, in her study of legal culture in Russia, the initial research questions are often formed at a crossroads where intuition, direct observation and the researcher's experience intersect (Kurkchiyan, 2005:260). This is exactly the case for this study of student return migration and the legal factors which influence the decisions of highly skilled migrants (including students) to return and seek employment in their country of origin.

Being a lawyer interested in how law actually operates in society, as well as its potential to improve people's living conditions, I decided to continue education as an international student in Sweden by taking the Master Program in Development Studies and majoring in Sociology of Law at University of Lund. My studies are sponsored by the Global Education Program (2015-2017) and the Swedish Institute Visby Program (2015-2017).

Feeling excited to be a part of two high-profile student mobility programs in July 2016, I was surprised to learn how many concerns GEP participants expressed regarding the program's employment conditions. Reading their posts on the official Facebook page of the program<sup>13</sup>, written long before the participants' expected studies finished and they returned to Russia, I could not explain the grounds for their anxiety and corresponding pessimistic attitude towards prospective employment within the program.

The GEP implies that participants are given generous scholarships to finance their studies at the world's leading educational institutions and an opportunity to apply their knowledge in Russia after graduation at workplaces matching their qualifications. They are also given the chance to change employer and choose a new one two more times within three years, in case of any unforeseen circumstances (including employment contract termination due to an employee's fault). Therefore, employment matching participants' qualifications is ensured, and even reinsured, by the program's regulations. What is the nature of the participants' concerns?

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<sup>13</sup> <https://www.facebook.com/groups/875255145861397/>

Taking into account that, according to GEP rules, participants are only requested to complete their education successfully, return to Russia after graduation, and “within no more than three months after the arrival in the Russian Federation, select an employer organisation from the list of organisations providing employment to Program Participants as approved by the Program Supervisory Board and get employed with the employer organisation,”<sup>14</sup> their employment concerns seemed unclear.

The more I read the Facebook posts, the more I could not understand why, under such humane program conditions, they should wish to discuss prospective employment in terms of “slavery”, “conscription”, “retribution”, “compulsory community service”, etc. Why should they be so concerned about employment details, when it is the program operator (and not GEP participants) who “establishes mechanisms providing employment of Program participants with employer organisations” and “arranges for interactions between Program participants and employer organisations during the periods of studying and employment”?<sup>15</sup>

Furthermore, why should they be worried whether the procedure for adding new employers to the program list is too complicated, whether the possibilities of part-time employment exist, whether three months to find a first job after graduation is too short, whether quotas on employment in Moscow and Saint Petersburg are adequate or if the program operator<sup>16</sup> can prosecute participants and claim the scholarship fee and penalties back, in case they do not find a job within 3 months? None of the issues raised was the legal responsibility of the GEP participants, as stipulated by the program rules, and yet they still continued to discuss them, expressing increasingly more distressed opinions regarding their prospective employment.

Realising the existence of the ‘gap’ between program policy regulations and the participants’ attitudes towards employment, and having no reasonable explanation for such attitudes, I was even more surprised to learn the opinions of the program

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<sup>14</sup> Decree No.568 of the Government of the Russian Federation dated June 20, 2014/Regulations on Employment, article 4

<sup>15</sup> Decree No.568 of the Government of the Russian Federation dated June 20, 2014/ Functions of the State Customer, the Non-commercial Organisation of the Program, and the program operator. Program Progress Monitoring

<sup>16</sup> An organisation selected in an open tender in accordance with the laws of the Russian Federation to provide organisational, technical, information and analytical support to the program.

operator's representatives, who reinforced these employment concerns. They declared that it was the participants' responsibility to solicit employers, that they would be regarded as program rules violators if they did not find jobs for themselves on time, that part-time employment was not allowed and would be regarded as a breach of their agreement, etc. (the official Facebook group: GEP Webinar Transcript, 20th July, 2016<sup>17</sup>). Simultaneously, most of the participants' attempts to refer to the program's governmental regulations, questioning the operator's 'additional' employment requirements, were either ignored or rejected by the program operator's representatives without any sufficient legal grounds, causing even more dissatisfaction and pessimistic discussions among the program participants.

This sort of interpretation was clearly a factor contributing to the 'gap', but how does this factor contribute exactly? Why does the operator increase the participants' employment anxiety by discursively tightening program rules and adding conditions that do not exist in the official regulations? What do they want to achieve by limiting employment opportunities within the program, when it is a well-known fact that the availability of work in the country of origin is one of the key factors promoting return migration (Castles, de Haas, Miller, 2014; Massey et al., 2009; Cassarino, 2004; Alberts and Hazen, 2005; Bratsberg, 1995)? Moreover, to what extent is this practice consistent with the program's goals?

All of these questions made me start exploring the existing 'gap' between program regulations and their interpretation by the program operator. I focused on employment aspects, with the main goals being to understand how the participants experience program employment regulations, what role the operator's interpretations play in their experiences and how these experiences affect participants' employment attitudes and behaviours.

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<sup>17</sup> A video of the webinar is available at <https://www.youtube.com/watch?v=pXJD4xEQcgQ&feature=youtu.be&t=4481> [accessed on the 6th of May, 2017]

### *Research Design and Methodology*

As noted by Banakar (2015:52-53), studies of the ‘gap’, aimed at exploring inconsistencies between the law in theory and law in practice, have a long history (e.g. Eugen Ehrlich’s living law, Roscoe Pound’s law in action, Leon Petrazycki’s intuitive law) and have played a significant role in the development of sociology of law as a scientific discipline. Nowadays, socio-legal scholars, although acknowledging that the ‘gap’ between formal and informal law is part of the modern legal reality and almost inevitable, continue to address this problem, including new perspectives (e.g. alternatives to the ‘gap’) and areas of inquiry (e.g. public policy measures and different aspects of the information society and globalisation) in their studies (Banakar, 2015:53-54).

Discussing the various forms of the ‘gap’, Banakar argues that at least four factors define how scholars study this problem, namely 1) their understanding of law in its broader or narrower meaning 2) their vision of the major forces constituting society (conflict or consensus) 3) their conceptualisation of relations between law and society and 4) a methodological approach (e.g. top-down or bottom-up) and the methods (e.g. qualitative, quantitative or mixed) they choose (Banakar, 2015:53).

After careful consideration of the above factors, and taking into account that within this study I seek to explore how law is interpreted and experienced by particular social groups (e.g. internationally mobile GEP students and GEP officials), in order to form an idea of whether legal factors affect students’ prospective return and employment plans, I have chosen a bottom-up perspective as a point of departure for the present qualitative research (Banakar, 2015:51-52).

### *Methods*

According to the initial data collection plan, I aimed to conduct at least 20 semi-structured on-line interviews with GEP participants and at least three semi-structured interviews with GEP officials (the GEP operator’s representatives) in an effort to explore how they interpret and experience GEP regulations. I also planned to analyse socio-legal and development discourse on the topics of outward student mobility and return migration, federal legislation of Russia aimed at managing

intellectual migration, GEP regulations and other GEP-related written materials (media articles, GEP web page content, social media communication among GEP participants, etc.). Hence, qualitative methods (interviews and document (discourse) analysis) were chosen for this research.

However, two incidents that occurred during the study made me change the initial plan. First, on 15<sup>th</sup> March, 2017, the Russian government adopted new GEP regulations, extending possibilities for current participants seeking employment in Moscow and St. Petersburg (the most developed regions of Russia<sup>18</sup>). Therefore, following the chosen theoretical framework assumptions, I decided to contact again all of those I had already interviewed (18 participants) and ask if their attitudes towards prospective employment and/or employment plans had been affected by this change in the regulations (second cycle of interviews).

The second change was dictated by the refusal of GEP officials to participate in the study, which meant I had to use written materials and secondary data (video records of the seminars, presentation materials, etc.) for analysis.

The choice of a qualitative method allowed me to be flexible and stay open to these unplanned events and continue the research without preconceptions, in order to learn what was actually happening (Weiss, 1998:253).

#### *Semi-structured interviews with GEP participants*

To explore GEP participants' attitudes towards the program's employment conditions, and their employment plans and behaviours, I conducted two cycles of semi-structured interviews with 18 contributors (nine male and nine female, aged 22 to 36 years old) currently studying or having completed their studies in the UK, Australia, Sweden, China, France and Italy. The interviews were conducted via means of online telecommunication (Skype, WhatsApp, Viber).

All of the interviews lasted for 30-45 minutes each and were conducted in Russian, the mother tongue of all GEP participants and the researcher (i.e. the most

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<sup>18</sup> The quality of life in Russian regions – rating 2016  
<http://riarating.ru/infografika/20170220/630056099.html> [accessed on the 6th of May, 2017]

natural way of communicating). Of the four participants who had completed their studies and had returned to Russia, two persons said they were employed.

According to the initial data collection plan created during the preparatory stage, I studied socio-legal and development discourse on the topics of outward student mobility and return migration, literature related to the chosen theoretical framework and methodological literature (Bryman, 2008; Bachman and Schutt, 2011; Banakar, 2005; O'Reilly, 2005; O'Reilly, 2009, Prior, 2003; Weiss, 1998) and developed the invitation to participate in the study (Appendix 3), the interview guide (Appendix 4), the interview consent form (Appendix 5) and the research information sheet (Appendix 6). All materials were prepared in Russian and English.

After the first call for participation in a GEP-related Facebook group, I received 47 replies from people willing to take part in the study, from whom I chose 20 individuals (9 males and 11 females) on the basis that we were not personally acquainted and I was not familiar with their views before the interviews. Other GEP participants who were not chosen for the interviews were thanked for their interest and given an opportunity to answer the study questions in writing (Appendix 3).

To test the study instruments (e.g. the interview guide), I conducted three pilot interviews. Before each interview, I formally introduced myself as a Lund University student working on the Master thesis project, explained to the interviewees the purposes of the study and asked for their consent to be interviewed. I specifically explained to each of the three participants that they could stop the interview at any time and that I had audio software installed on my computer, and if they agreed, I would record the interview.

Despite none of them directly requesting the interview not to be recorded, by the change of tone in their voices and/or style of answer (the answers became shorter, repeated twice in 'more correct' versions, etc.) I understood that they did not feel comfortable with this idea. When asked directly if they would prefer not to be recorded, all three of them said that they would probably answer questions more openly ("feel more comfortable"), knowing that no recording would take place. Therefore, taking into account the sensitivity of the topic being researched, I decided to take notes during and after the interviews instead of recording what the



participants were saying, albeit specifically ensuring an adequate display of interest and responses from my side during the interviews (Bachman and Schutt, 2011:278).

After the test interviews, I amended some of the questions and procedures in the interview guide (added a topic on ‘penalty’ conditions) and made necessary organisational arrangements for other interviews conducted within the present study.

As mentioned earlier, in the middle of March 2017, the Government of the Russian Federation adopted Decree No. 298, dated March 15, 2017, amending the GEP employment regulations. In order to explore whether this change in regulations had influenced the participants’ employment attitudes, at the end of March I contacted each of them again (second-cycle interviews) and asked how they perceived the introduced amendments. Second cycle interviews were also conducted in Russian and lasted from 5 to 15 minutes.

#### *Data Analysis*

To analyse the gathered data, I used a framework approach to qualitative content analysis (Bryman, 2012:568). This approach implies a search for themes with theoretical significance within the collected data. This aim can be achieved using coding procedures, whereby data are broken down into smaller components, processed and reassembled in accordance with theoretically significant categories (Weiss 1998, 168-169; Bryman, 2012: 557-579). The analysis within this research consisted of a closer investigation of the notes from the interviews, received questionnaires, GEP-related documents and video records made available to me during the study.

Consequently, by analysing the above sources, I identified recurring themes that could be interpreted through the assumptions of the theoretical framework. I cross-checked information obtained through different modes of inquiry (“triangulated data” from the interviews, the GEP web page and legal documents) and conducted further investigations (e.g. through the state registers) when discrepancies were found (Weiss, 1998:263-264).

### *Ethical Considerations*

Ethical requirements considered in this research: need to be open and honest, ensure confidentiality and anonymity, gain fully informed consent from participants at all times and carry out the research with the highest competence possible (Weiss, 1998; Bachman and Schutt, 2011; O'Reilly, 2009)

I understand that it is my responsibility to make sure that collected data are not misused, and I must state that the study complies with the Swedish Research Council's ethical guidelines (ethical requirements for academic research involving human participants)<sup>19</sup> and the provisions of Russian Federal Law "On Personal Data" dated July 27, 2006 No. 152-FZ. Therefore, no personal data allowing the respondents' unambiguous identification was intentionally collected or disclosed during the study.

Informed consent to participate in the study was obtained at all times, after careful explanation of the present study's goals and methods.

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<sup>19</sup> Available at <http://www.codex.vr.se/en/manniska5.shtml>

### III. Theoretical Framework

The psychological theory of law developed by Leon Petrazycki (1867-1931), who, according to Nicholas Timasheff, “was the most eminent of the Russian legal philosophers of the early twentieth century” (Petrazycki, 1955:xvii) and, according to Pitirim Sorokin, “probably the greatest scientist in the sphere of ethics and law of the 20<sup>th</sup> century” (Sorokin, 1992:30, as cited in Timoshina, 2013:6), continues to attract the attention of researchers in different fields of social sciences and law (Trevino, 2013:51; Cotterrell, 2015).

Many aspects of the theory developed by Petrazycki, such as the scientific definition of ethical prospects for the development of law, acknowledgement of the “social-ancillary” nature of public authority as its fundamental trait, justification of the role of intuitive law in the evolution of law and other concepts, have gained more and more importance over a century after they were justified (Petrazycki, 1955:221, 312, 327; Timoshina, 2013:7; Deflem, 2008:81; Ralko, 2011; Trevino, 2011:ix).

For this thesis, seeking to explore discrepancies existing between legal rules and the reality of their interpretation and implementation by different social groups, and revealing the underlying causes of the abovementioned discrepancies, the most significant are scientists’ findings on the correlation between intuitive and positive law and their influence on the existing social order (e.g. on the probability of social conflicts as well as positive social changes resulting from these discrepancies) (Timasheff, 1955:xxxviii).

As Timasheff noted, instead of the “vague” and “loose” terms in which justice had been discussed before Petrazycki, the scientist’s idea of intuitive law<sup>20</sup> “opens new horizons for the scientific interpretation of justice” (Timasheff, 1955:xxxvii). Furthermore, according to Timasheff, a scientific analysis of intuitive law or justice as an area of legal culture is “a prerequisite to the discovery of uniformities in the process of legal change, prediction of the probable consequences of enactment or repeal of a statute, better understanding of the process through which

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<sup>20</sup> According to Petrazycki, justice “is nothing but intuitive law in our sense” (Petrazycki, 1955:241).

judicial decisions are arrived at, and solutions to many other important problems” (Timasheff, 1955:xxxvii)

Petrażycki considers justice as a special type of “psychic phenomenon”. Outlining two “classes” of ethical experience (‘purely imperative’ – moral, and ‘imperative-attributive’ – legal), the scientist refers the experience of justice to the second “class”, as “the corresponding consciousness is consciousness of what is due from some and owing to others, and not of a unilateral and purely imperative duty” (Petrażycki, 1955:241-242). Therefore, Petrażycki considers justice as a legal phenomenon that must be withdrawn from the jurisdiction of moral philosophy and should be studied within the framework of the general theory of law as one of the types thereof (Timoshina, 2013: 458-459; Trevino 2011: xii).

Differentiating between positive and intuitive law, Petrażycki attributes the experiences of justice to the latter. In this regard, positive law, according to the theory, constitutes imperative-attributive experiences based on normative facts (e.g. one’s perception of statutes, customs, courts’ decisions, orders, etc.) as grounds for obligation (Petrażycki, 1955:253)<sup>21</sup>. Compared to positive law, intuitive law features autonomous legal emotions arising in the mentality of a subject, without mediation by any normative facts (Timoshina, 2013: 459; Trevino 2011: xiii, xvi). Speaking in favour of identifying justice with intuitive law, Petrażycki writes that “we are here concerned not with phenomena of positive law but with those of intuitive law, not

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<sup>21</sup> Discussing the nature of normative facts as “sources of positive law”, Petrażycki points out that “the bases of obligations and determinants of conduct are not the corresponding objective events (commands of legislators and so forth), but the ideas of them as present or past events. Accordingly, if the idea of a corresponding fact is present... it is then immaterial... whether or not this fact actually occurred” (Petrażycki, 1955:248-249) as a fact “of a definite category with definite objective attributes (such as statutes published in proper form, customs of a certain species as such, court practice as such and so forth” (Petrażycki, 1955:252). It is more important that corresponding facts are perceived as normative by individuals, while their forms can vary.

Describing the processes of the evolution of positive law sources, Petrażycki states that “the capacity of the human mind for legal reactions to legislative orders is a product of culture” (Petrażycki, 1955:250) and that only “facts which actually do operate normatively, arousing the corresponding positive law experiences” (Petrażycki, 1955:252) within the given society at the contemporary stage of development of the legal culture can be regarded as positive law sources. Therefore, according to Petrażycki, in the theory of positive law, it is not important if legal acts “are published in accordance with all the corresponding rules and possess all the attributes required or advanced by contemporary science for their legal validity” – they “are not *per se* positive law” in the sense that “they can be and are – ordinarily or sometimes – normative facts, and sometimes they are not” (Petrażycki, 1955:252). Following this line of reasoning, it is more important how particular facts (legal acts, the demands of those in power, customs, etc.) are perceived by individuals, and therefore informal rules, customs and practices (Ledeneva, 2013; Ledeneva, 2017; Galligan and Kurkchyan, 2003) can be regarded – from the point of view of the psychological theory of law – as sources of positive law, if they are accepted as normative facts within the given society or social group (Petrażycki, 1955:252).

with judgments as to what is supposed to be done according to statutes and the like but what is due to another and so forth in ‘conscience’, according to our independent convictions without reference to any external authorities” (Petrazycki, 1955: 242).

Intuitive law or justice, as an individual psychic phenomenon, has a set of features (Trevino 2011: xii). Due to the independence of intuitive legal consciousness from any normative facts, intuitive law has a changeable nature, determined by the inner world of a person. However, taking into account that certain conditions and development factors of the intuitive legal consciousness of individuals within social groups are commonplace, we can talk about the existence of group intuitive law. For example, according to Petrazycki, we can talk about the intuitive law of a society, of class groups (e.g. workers, manufacturers, peasants, landowners) or groups within society, about intuitive law of families, children, females, males, etc., as long as we point out “a certain common content of the relevant intuitive law” (Petrazycki, 1955: 225-226; Timoshina, 2013: 459).

The sphere of justice, according to Petrazycki, is *distributio bonorum atque malorum*, i.e. “the distribution of benefits and ills”, and within which intuitive law and positive law coexist. The intuitive legal conscience, however, does not respond to matters that are beyond ‘good and evil’, e.g. formal and technical arrangements, so the latter ones frequently constitute a subject of positive law regulation. Alongside this notion, the experiences of justice have a great influence on the interpretation, application and scientific understanding of positive law, and they constitute a factor in its creation, change or abolishment (Petrazycki, 1955: 235, 242, 245; Timoshina, 2013: 460; Trevino 2011: xiii).

Thus, according to Ralko, Petrazycki discovered a new “real” object for study (which is scientific and not abstract-philosophical) within the subject (an individual). Peering deep into the individual psyche, Petrazycki discovered objective laws under which individuals experience legal emotions. In spite of the fact that, according to Petrazycki, intuitive law is experienced by the subject as their “own one”, i.e. irrespective of any external normative facts, it is also governed by common objective psychological laws, thereby lending itself to scientific research. Psychological processes are objective and function in accordance with certain regularities;

however, the level of psychological science development reached during Petrazycki's time was unable to define these regularities clearly (Ralko, 2011:17)

Besides the already described significance of the 'intuitive law' concept developed by Petrazycki, it also provides a legal explanation for the nature of social conflicts (including the highest degree of a social conflict, which Petrazycki compares with "an explosion" and names "a revolution") (Petrazycki, 1955: 236; Ralko, 2011:4). Petrazycki's legal theory does not simply capture a shift of legal frameworks in the case of a social upheaval, explaining it through non-legal (social, economic, etc.) reasons – it gives a legal explanation for the social phenomenon (Timoshina, 2013: 460).

According to Petrazycki, consistency between positive law and intuitive law consciousness is a necessary base for any social order: "corresponding mutual support and reciprocal reinforcement of intuitive law consciousness and positive law consciousness, constitute the foundations of the actual legal order and the corresponding social order: political, economic, and so forth" (Petrazycki, 1955: 232). Thus, processes involved in the legitimation of the existing social order occur in the intuitive law consciousness rather than anywhere else. Inconsistencies between positive law and intuitive law (one's understanding of justice) can take the form of a conflict (class, individual, evolutionary, etc.) (Timoshina, 2013: 460) but also create a reciprocal relationship between them through which they influence each other, thus making "legal policy",<sup>22</sup> or social engineering, possible (Deflem, 2008:81; Banakar and Travers, 2002:40; Trevino 2011: xviii).

Discussing the grounds for the 'gap' between positive and intuitive law, Petrazycki points out that its existence is inevitable, due to "the nature of things", and no positive law can completely correspond to the intuitive law in any society, because: 1) extreme diversity of intuitive law of different social groups and individuals ("satisfying the intuitive law demands of some, positive law thereby fails

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<sup>22</sup> Petrazycki calls the scientific approach seeking to influence people's attitudes and behaviours through law and guided by "active, rational love" the science of "legal policy", which he sees as a way to bring about positive social change or development (Deflem, 2008:81)

to satisfy the intuitive law demands of others” causing “class and individual conflicts”), 2) lower responsiveness of positive law to social changes when compared to intuitive law (“historical or evolutionary conflicts”), 3) unifying nature of positive law (“legal standardization”) as opposed to the diversity of specific life circumstances, causing “casuistical” conflicts between positive law and intuitive law of certain groups (Petrazycki, 1955: 231, 233-234).

Acknowledging the inevitability of the ‘gap’ between two types of law, Petrazycki, however, points out that the better positive law correlates with intuitive law, the more legitimacy it secures and the better it functions in society: “the greater the accord within these limits at a given moment, the better and the more correctly *ceteris paribus* does the law function in general in a given nation... the greater are the respect and sympathy for and with the existing positive law and the satisfaction with the existing social order, and the stronger this order is” (Petrazycki, 1955: 234).

Petrazycki underlines that only “rational law represents a complex and mighty school which aims at socializing a national character”. And, quite oppositely, “unsuccessful law may spread demoralization and poison the national spirit – or at least counteract the healthy psychic process and retard the development and flowering of the valuable elements of the individual and mass character” (Petrazycki, 1955:301).

Therefore, Petrazycki believes that the interplay between intuitive and positive law is characterised in different periods of history by fluctuations between the minimum and the maximum limits of agreement (or disagreement), namely the “lower and upper limits of accord (or discord)” (Petrazycki, 1955: 234; Timoshina, 2013: 463). Petrazycki goes on to say that when ‘discord’ goes beyond the limits, “positive law must inevitably break down – and in case of resistance, the debacle will be in the form of a social revolution” (Petrazycki, 1955: 233). The latter outcome can be further intensified by the position of the ruling circles: “the coming of the revolution is ordinarily accelerated and facilitated by the fact that those who take advantages of the existing legal order, extracting therefore material benefits..., or sustaining it upon any other inducement or consideration without the ethical sanction of their intuitive law conscience and without faith in the sanctity and justice of their conduct” (Petrazycki, 1955: 233; Timoshina, 2013:464).

Following Petrazycki's reasoning, the careless approach of authorities ignoring the intuitive legal experiences and expectations of their people in interests "associated with the existing [positive] law" (and therefore stimulating "growing pressure of intuitive law") could lead to the extreme aggravation of social contradictions in the given context and cause "a revolution" (Petrazycki, 1955:233, 236; Timoshina, 2013:464). In this respect, despite providing concrete examples of historical social upheavals discussing 'revolution' (American Civil War and French Revolution) (Petrazycki, 1955: 236), the author of this thesis thinks that Petrazycki's idea can be understood better and applied to more diverse social phenomena.

The term 'social revolution' in this context can be seen as a fundamental change happening in people's consciousness in relation to positive law. Through this change, people regard the legal facts defining positive law as completely illegitimate and refuse to follow their provisions (Timoshina, 2013: 464); hence, when the scholar talks about "an explosion" or "a revolution", he means the occurrence of the most adverse or unwanted in the given context consequences, going beyond the "limits of accord" in the given society or a social group (Petrazycki, 1955: 234; Timoshina, 2013: 458).

In the case of state policies aiming at promoting highly skilled migrants returning to their countries of origin, for example, such consequences can appear in the form of those potentially prepared to return refusing to go back and work in their home country, as well as the corresponding failure of incentivised state programs. Therefore, lawmakers and law enforcers can play positive or negative roles in promoting "accord (or discord)" between highly skilled migrants' intuitive law and the positive law of their countries of origin, thus, facilitating or discouraging any return plans.

To achieve positive results, the authorities, according to Petrazycki, should act in good faith by understanding their "social-ancillary" role ("to be concerned about the welfare of subordinates or the common welfare of a certain social group") (1955:313), paying attention to the experiences and expectations of the targeted social groups and engaging themselves in prior research on the impacts that their lawmaking and law enforcement activities can have on people, in order to ensure that



proposed measures have enough potential to bring about the desirable change in attitudes (Deflem, 2008:81).

Quite conversely, those occupying positions of power but exercising their duties negligently, or in order “to take advantage of the existing legal order, extracting therefore material benefits”, are more likely to “accelerate and facilitate” additional discrepancies (Petrazycki, 1955:236), increase ‘the gap’ between intuitive law and positive law in question and thus discourage the desirable return and employment.

Based on Petrazycki’s theoretical findings, the author of this thesis aims to confirm or refute the following hypotheses. The roots of the GEP participants’ dissatisfaction with program rules, and more specifically with its employment regulations, hardly reflecting the current economic and social realities of Russia, can be found in the divergence between their intuitive law and the positive law of the program. This divergence is aggravated further by lawmakers’ general failure to see the discrepancies between the program’s employment regulations (positive law) and significantly changed social and economic conditions in Russia, as well as by law enforcers’ interpretation of these employment regulations in the direction of their own interests, not consistent with the GEP participants’ intuitive law consciousness.

## IV. Literature Review

### 4. 1. Student Return Migration: Global Perspectives

Academia regards international migration as a multidimensional social phenomenon, and research on migration as multidisciplinary, and so it is widely accepted that contributions of sociology, history, geography, economics, cultural studies, demography, psychology and law are all relevant in studying the subject. Each discipline, using a variety of approaches based on different theories and methods, is capable of highlighting complementary aspects of migration and enhancing one's understanding of its processes, including those guiding international return migration (Castles, de Haas, Miller, 2014:27, 71; Massey et al., 2009:viii).

As a sub-process of international migration, return migration has been subject to explanation from different theoretical standpoints, including but not limited to 'push-pull' models (Passaris, 1989; Bauer and Zimmerman, 1998); the neoclassical economic theory (Lewis, 1954; Todaro, 1969); the human capital theory (Sjaastad, 1962); structuralism (Massey et al., 2009); globalisation theory (Held et al., 2000; Castles, de Haas, Miller, 2014:33-34); segmented labour market theory (Piore, 1979); the new economics of labour migration (Stark, 1978); social network theory (Massey et al., 2009); transnationalism (Basch et al., 1994); etc.<sup>23</sup>

Research on return migration is abundant. However, the word limit for this dissertation makes it impossible to include all the contributions of the above disciplines and theories and requires the author to focus on a sending country perspective<sup>24</sup> and follow the chosen legal policy research approach (Banakar, 2015:48). Therefore, in this section, I will present literature relevant to the following

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<sup>23</sup> For a detailed overview of theoretical approaches to migration, see, for example, Castles, de Haas, Miller (2014:25-53), Massey et al. (2009:1-60). A concise and informative overview of return migration theories can be found in Cassarino (2004).

<sup>24</sup> Despite it being a well-known fact that migrants' willingness and preparedness to return are shaped by circumstances in both host and home countries (Cassarino, 2004:272), in this thesis I focus mainly on the factors that can be influenced by the source countries' policies, only briefly mentioning the conditions in destination countries, as the latter ones are beyond sending countries' control.

question: ‘How do sending countries’ policies and their implementation affect students’ decisions to return home and seek employment?’

As it already noted, rapidly growing international migration of highly skilled specialists and students, both temporary and permanent, has attracted increasing policy and research attention in both sending and receiving countries. An analysis of the literature surrounding high-skilled migration suggests that there are at least two major perspectives from which to view its impact on sending countries and examine the policies sending countries’ governments develop in response to the migration processes with which they have to deal.

The first perspective is largely negative and assumes that while receiving countries benefit considerably from international student migration, mostly through income generated by high tuition fees, the availability of locally trained skilled workers after graduation, and their subsequent contribution to the receiving countries’ development, sending countries traditionally find themselves in a less favourable position, as the departure of students is believed to go along with ‘brain drain’ and can have a detrimental impact on human capital (Castles, de Haas, Miller, 2014:71; Gribble, 2008; Kapur and McHale, 2005).

According to the first approach, receiving states seek to attract and encourage the settlement of highly skilled migrants, including talented foreign graduates, while countries of origin, concerned by the actual and potential loss of talent and skills, develop policies which enable them (with a varying but usually low level of success) to manage the flows of intellectual migration, limiting negative consequences and allowing their societies to at least partially benefit from increased international student and academic mobility (Castle and Miller 2009: 77; Gribble 2008:29; Kapur and McHale, 2005).

The second perspective, examining high-skilled migration, however, suggests that sending countries can actually benefit from educating their citizens abroad. An analysis of the development discourse on migration suggests that countries of origin can receive gains from academic migration through financial and social remittances, links with diasporas abroad and return migration (OECD, 2016; Tejada et al., 2014, Castles and Miller, 2009:65).

Describing the role of diasporas<sup>25</sup>, this approach assumes that they can have significant development potential for countries of origin through financial, professional and socio-cultural links maintained in the forms of remittances, philanthropy, microfinance, long-distance entrepreneurs, cultural associations, hometown associations, professional and scientific networks, etc. (OECD, 2016; Safran, 1991; Darieva, 2011; Brubaker, 2005; Castles, de Haas, Miller, 2014:162-163; Hugo, 2005: 35-37; Kuznetsov, 2006).

As for the return migration, proponents of the approach argue that by being equipped with technological, scientific and managerial competencies, returning migrants are better educated than non-migrants and more likely to engage in entrepreneurial activities, establish new businesses and increase local knowledge than those who never migrated (OECD, 2016; Tejada et al., 2014). Returning migrants are also represented as capable of influencing social norms transformation in their home communities via, for example, democratic values and corruption resistance practice transfer, tolerance enhancing, etc. In migration discourse, this contribution of return migration is regarded as a form of social remittance (OECD, 2016, Kubal, 2015).

Despite the growing body of research supporting the second perspective (Gribble, 2008:27), it is rightfully noted by Castles, de Haas and Miller (2014) that state policies aimed at facilitating remittances, engaging diasporas and/or encouraging return migration, will have very little or no positive effect if not accompanied by more general reforms in the sending countries. The authors underline that *“policies that improve infrastructure, legal security, governmental accountability and macro-economic stability while countering corruption and improving access to public education, health and credit, are crucial not only for creating positive conditions for development, but also for encouraging migrants to return and invest”* (2014:80).

The validity of the above-quoted statement, emphasising the need to improve general conditions in origin countries in order to influence highly skilled migrants’

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<sup>25</sup> In the migration and development literature, the term ‘diaspora’ applies to a group of migrants and their ongoing relationship with their community of origin and home country (OECD, 2016:190).

(including students') decisions to return home, is well illustrated by a study conducted among Indian students in the USA, and several EU countries in 2012-2013 (Tejada et al., 2014). The research found that the interviewed students would be willing to return to India if they could be guaranteed a good career and a good quality of life, for example good research opportunities and lower levels of corruption and bureaucracy (Tejada et al., 2014:16).

The study also shows that former highly skilled migrants, who have returned to India, had been pulled back home by the economic, career, entrepreneurial and business opportunities that they experienced in India, as well as by family ties and a feeling of patriotism. Economic slowdown and job insecurity in host countries, the end of temporary contracts and the inability to extend visas or residence permits in the destination countries also played a role in some of the returns; however, these factors are beyond the scope of the current study, as they cannot be influenced by sending countries' policies (Tejada et al., 2014:15).

From a source country policy perspective, Gribble (2008) identifies three main approaches aiming at harnessing student mobility. The first implies that governments can ensure that students do the major part of their studies in their home country, thus reducing the chances of student migration. The second option is to permit or even promote studies abroad and then encourage a return home (student return migration approach). And the third option is to accept that many students may stay in destination countries and introduce policies that will allow student migrants to contribute to their home country from abroad (Gribble 2008:29).

Examining the student return migration approach in detail, Gribble provides examples of several return policies and their impacts. The researcher points out that so-called "bonding arrangements", implying that sending countries provide support to students in exchange for their obligation to return home after graduation, can be difficult to enforce and counterproductive, since they may lead to intentional isolation from the country of origin. Another policy example is the 'sandwich training' model, encouraging students to take a second year of their postgraduate studies abroad and then return home for a final project or dissertation. Taking this approach allows students to obtain knowledge abroad while focusing on national

interests and decreases the chances of their non-return or departure from their home country after graduation (Gribble, 2008:29).

Gribble also points out that sending countries may encourage students to return home after graduation by “fostering a robust research and development sector, and by providing conditions and incentives that will encourage both transnational investment and entrepreneurship”, specifically underlining the importance of taking appropriate approaches to managing international student migration, depending on the individual conditions of each country (Gribble 2008:35).

#### 4. 2. Student Return Migration: Russian Perspective

In Russian academic discourse, intellectual migration trends are firmly associated with the ‘brain drain’ concept (Ushkalov and Malakha, 2001; Ganguli, 2014; Iontsev, Ryazantsev and Iontseva, 2016; Iontsev and Magovedova, 2015; Ledeneva, 2014). Analysing modern emigration statistics, researchers observe that they have been growing sharply since 1987. According to the Russian Federal State Statistics Service (Rosstat), about 373,000 people left Russia from 1987 to 1992, from 1993 to 2005 it rose to 1.05 million people and from 2006 to 2014 the figure increased further to 1.1 million. Therefore, according to the data, the total number of people who emigrated from Russia from 1987 to 2014 was over 2.4 million (Iontsev, Ryazantsev and Iontseva, 2016:504; Iontsev and Magovedova, 2015:98).

Among these millions of migrants leaving Russia, a special place is occupied by the so-called ‘intellectual’ migration of scientists, graduate students, engineers, doctors and other highly skilled individuals (Ledeneva, 2014). According to Rosstat, the share of intellectual migration increased from 4% in 1992 to 31% in 1999, and to 47% in 2012 (Iontsev and Magovedova, 2015:98). The number of scientists who emigrated from Russia over these years reached 42,000. To illustrate the picture further, Iontsev, Ryazantsev and Iontseva compare the numbers of candidates (equivalent to PhD level) and doctors of sciences who left Russia in 2003 and 2012 and report that in 2003 there were 63 persons in this group, while in 2012 their number reached 234 individuals (Iontsev, Ryazantsev and Iontseva, 2016:504).

As for Russian students studying abroad, in 2006 about 35,000 already studied in OECD countries, and Rosstat reports that over the following decade this figure increased by 30% (Iontsev, Ryazantsev and Iontseva, 2016:504). Iontsev and Magovedova (2015) express concerns that there is a growing number of potential emigrants among students, i.e. those expressing a wish to emigrate and already taking certain actions to organise their departure (2015:98).

The recent sociological study of the value preferences of modern Russian students (Korablin, 2016) revealed that almost two-thirds (65.62%) of 576 respondents (students from different educational backgrounds and of geographical origins, currently studying at Moscow higher educational institutions) expressed readiness to leave Russia if there was an opportunity to be employed abroad (Korablin, 2016:308).

In respect to this finding, Korablin suggests the need for an additional study aiming at clarifying the reasons for the above emigration plans and puts forward the following tentative hypotheses. Plans to work abroad after graduation can be explained by graduates' views on better personal, professional and welfare opportunities available in the Western world, as well as by views on better career perspectives and a higher demand for their professional skills abroad. The researcher also sees one possible reason for students advancing their professional competencies as obtaining international experience. Feelings of better legal security and non-discrimination can be also seen as important factors. Some of the students, according to the research, may look for better climate conditions or availability of better medical services. Among the strong arguments may be a desire to travel, learn a foreign language in a corresponding language environment, become acquainted with new people and cultures and see the world (Korablin, 2016:311).

Despite the above aspirations of Russian students being not significantly different to those of their European counterparts (Orrù, 2015), what raises the Russian researchers concerns is the growing number of young people who do not return to Russia after completing their studies abroad, or, in the case of working youth, after their temporary contracts expire. For example, in the Novosibirsk region, the share of people who did not return after completing their studies abroad was

approximately 70% over the period 2001 to 2005 (Iontsev and Magovedova, 2015:98).

Numbers of educational emigration rose over the period 2000-2010, when it became popular among wealthy Russian families to send their children to study abroad. The trend was also stimulated by US and European programs supporting talented Russian students' studies. The main countries of study for Russian students are the USA, the UK, Germany, Australia and France. Educational migration often takes the form of labour migration – many Russian students stay to work in the hosting countries. Moreover, there is the phenomenon of “constantly circulating” educational migrants from Russia. Some young people extend their staying abroad, by applying for different grants in order not to return to Russia (Iontsev, Ryazantsev and Iontseva, 2016:505; Ledeneva, 2014:111), and so what was initially meant to be a temporary migration for a period of studies results in long-term or permanent emigration, inevitably raising concerns about ‘brain drain’.

The above processes are difficult to manage at the level of the sending country's state policy. The legal regulation of emigration issues is considered to be a rather complicated task for any state, since it is necessary to keep a balance between basic human rights (freedom of movement, right to choose the place of residence, etc.) and state interests in preventing the outflow of its citizens (Iontsev, Ryazantsev and Iontseva, 2016:503).

In practice, migration issues are regulated more by receiving countries than by sending countries, as governments pay special attention to those entering their territories. As for legal regulations surrounding emigration from the Russian Federation, the main document is the Federal Law of the Russian Federation “Concerning the Procedure for Exit from the Russian Federation and Entry into the Russian Federation”, № 114-FZ, dated 15.08.1996 (with subsequent amendments). Article 15 of the law imposes several restrictions to exiting the Russian Federation. The right of an individual to exit may be temporarily restricted, if the individual has access to secret data or state secrets, or is a suspect or an accused, or avoids obligations imposed by the court thereon, etc. Thus, the main legal factor impeding



the exit of citizens is the presence of obligations to the state (Iontsev, Ryazantsev and Iontseva, 2016:503).

In this regard, the researchers note that the regulation of emigration cannot be merely restrictive. A comprehensive political approach, introducing economic, legal and social measures aiming at preventing high emigration flows and ‘brain drain’ at a sending country level, is to be taken (Ushkalov and Malakha, 2001; Ganguli, 2014; Iontsev, Ryazantsev and Iontseva, 2016; Iontsev and Magovedova, 2015; Ledeneva, 2014:111-113)). Some authors also underline the importance of socio-psychological and motivational aspects (e.g. the desire to contribute to your home country) in this approach (Iontsev, Ryazantsev and Iontseva, 2016:503).

However, the adoption of this comprehensive strategy can be postponed or hindered by the position of some Russian politicians denying or underestimating the problem of brain drain in the country,<sup>26</sup> and the role that inefficient official policy can play in highly skilled migrants emigration and return decisions (Iontsev and Magovedova, 2015:99-100; Iontsev, Ryazantsev and Iontseva, 2016:506-507).

Describing “clumsy” policies currently existing in the academic research field in Russia supporting a few institutions currently favoured by state authorities while the majority of scientists who are not part of those institutions struggle for their economic survival, Iontsev, Ryazantsev and Iontseva underline that such policies mostly create an illusion of increasing state financial support of scientific research in Russia, while in fact they actually lead to the further polarisation of scientists and aggravate the problem of degrading scientific schools and the loss of academic qualifications, thence stimulating a new wave of intellectual emigration from Russia (brain drain) (Iontsev, Ryazantsev and Iontseva, 2016:506).

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<sup>26</sup> <https://www.stratfor.com/analysis/problem-russias-best-and-brightest>[accessed on the 6th of May, 2017]  
<http://resolver.ebscohost.com.ludwig.lub.lu.se/openurl?sid=EBSCO%3aedb&genre=article&issn=00280836&isbn=&volume=516&issue=7531&date=20141218&spage=298&pages=298-299&title=Nature&atitle=Putin%27s+Russia+divides+and+enrages+scientists.&btitle=Nature&jtitle=Nature&series=&aulast=Schiermeier%2c+Quirin&id=DOI%3a10.1038%2f516298a&site=ftf-live>[accessed on the 6th of May, 2017]

The above example is of particular interest for the present study, as it not only illustrates the influence of official state policies on Russian intellectual emigration flows, but it also reveals another significant aspect of modern socio-political reality affecting the migration process, namely the role informal powers and practices existing in Russian society (Gelman, 2004; Gelman, 2011; Galligan and Kurkchiyan, 2003; Ledeneva, 2006; Ledeneva, 2013; Ledeneva, 2017) play in highly skilled specialist and scientists' migration and employment decisions<sup>27</sup>.

The example of state favouritism towards particular academic institutions and projects at the expense of the rest of Russian academia increases inequality among scientists and forces those with no access to state goodwill and resources to search for better living and working conditions abroad. In this regard, researchers point to “the paradoxical fact” that such practices encourage Russian scholars to emigrate first, in order to be invited to return and work in Russia later as “outstanding scientists” of Russian origin (Iontsev, Ryazantsev and Iontseva, 2016:507), literally pushing academics out of the country.

Such informal practices of state-guided nepotism are conceptualised by Alena Ledeneva as a part of modern Russian “sistema” (“the system of governance with its peculiar formal rules and informal norms” (Ledeneva, 2013:277-278)), “informal power networks” (e.g. “inner circle”, “useful friends”, “core contacts” (Ledeneva, 2017)), etc. and imply that “*power networks operate without those constraints and extract multiple benefits from the post-Soviet reforms, while undermining the key principles of market competition (equality of economic subjects and security of property rights) and the key principle of the rule of law (equality before the law)*”, and “sistema” based on such networks, “*undermines competition, excludes outsiders, and rewards insiders through network-based allocation and mobilization [of resources]*” (Ledeneva, 2017: 5).

From the viewpoint of the psychological theory of law, the involvement of ruling circles in such informal practices can be regarded as duties exercised by the

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<sup>27</sup> For a concise and informative overview of modern academic research on informality see introduction in Urinboyev and Polese, 2016.

authorities “without the ethical sanction... and without faith in the sanctity and justice of their conduct”, or in order “to take advantage of the existing legal order, extracting therefore material benefits”, which are more likely to “accelerate and facilitate” additional discrepancies (Petrazycki, 1955:236) and increase the ‘gap’ between the intuitive law of academics and the positive law of their countries of origin, thus causing scholarly dissatisfaction with the existing social order. As Petrazycki points out, “the greater the accord between intuitive law and positive law [in a given nation]... the greater... the satisfaction with the existing social order... and vice versa” (Petrazycki, 1955:234).

Therefore, from the theoretical perspective, it is not surprising that such informal practices propel scholars’ decisions to avoid living and working in their home country through the means of emigration and non-return. Therefore, informal powers and rules can significantly influence highly skilled migrants’ (including students’) return and employment decisions and require the special attention of researchers and policymakers.

To understand further the roots of informalities and their meaning in relation to the socio-political reality of modern Russia, it is beneficial to refer to studies of legal culture exploring “the interplay between law, social norms, human values and informal practices” in the Russian context (e.g. Galligan and Kurkchiyan, 2003; Kurkchiyan, 2005). Discussing socio-legal changes characterising post-soviet Russia, Kurkchiyan notes that Russian legal culture, replete with its Byzantine traditions, still implies that the rule of law plays a less important role in maintaining political stability and organising the everyday life of society than political forces, power hierarchies and the positions of persons giving the instructions. In this respect, Kurkchiyan suggests that despite significant social transformation in post-soviet life, “Russia is not on the way to a rule of law” and “informal dealings benefit not only bureaucrats and politicians, but also the corporate owners and managers” (Kurkchiyan, 2005:263-267).

Following this line of reasoning, it is tempting to claim that the Russian legal culture of informal rules and practices is the key factor shaping diverse socio-legal processes, not excepting the international migration of highly skilled specialists and

students. However, Banakar points out that it is not correct to suggest that all aspects of law and legally meaningful action are culturally embedded, and “what is often taken as cultural behaviour” can also be explained by other factors, for example by “institutional infrastructures of the legal system in different countries” (Banakar 2009:13). To justify this claim, Banakar analyses Nelken’s example of how the Japanese use the court system, agreeing that they “make relatively little use of the courts”, not only due to their “Confucian-shaped culture that emphasizes harmonious and hierarchical relations”, but arguably because “the limited number of legal professionals and courts represents institutional barriers maintained by government bureaucracies and business elite” (Nelken, cited in Banakar 2009:13).

Developing his argument further, Banakar explains that “admittedly, all manifestations of law are – if not directly at least indirectly – connected with collective social psychological mechanisms and taken for granted patterns of thought and action. This cannot be a sufficient basis for treating all aspects of law as culturally *embedded*, for we can use the same type of reasoning to argue that all aspects of law are also historically, politically, linguistically and even perhaps economically embedded” (Banakar 2009:14).

In this respect, taking into account the aims and limitations of the present study, the author of this thesis suggests the need for more extensive future research on the influence of informal practices on highly skilled Russian migrants’ return and employment in their correlation with other significant factors.

#### 4. 3. Determinants of Student Return Migration

In the next part of this chapter, I will provide an analysis of recent studies exploring student return migration policies in different countries, with the aim of identifying internal factors influencing their decisions.

##### 4.3.1. *Master and Back Program (Sardinia, Italy)*

An example of recent research enquiring into the determinants of student return migration from a sending country perspective is a case study on the Master

and Back program, conducted by Enrico Orrù (The London School of Economics and Political Science, UK) in 2014 (Orrù, 2015).

The Master and Back program was implemented in 2005 by the Italian region of Sardinia. It provides exceptional Sardinian students with substantial scholarships to pursue their second- and third-cycle studies (Master's and doctoral degrees) in the world's leading universities, and then additional financial support to those who return to work in Sardinia (the "Back").

Nowadays, the program is regarded as a "success story" by other Italian regions (Orrù, 2015:31) despite demonstrating mixed results when it comes to the "Back" part, as the majority of graduates (55%) choose to work outside Sardinia and the economic incentives offered to returnees do not help to improve the situation (Orrù, 2015:251). Therefore, the study assessed the impact of the program on the participants' employment opportunities after graduation (including monthly income and job matching) and analysed the underlying decision-making process based on their experiences (Orrù, 2015:4).

The study consisted of both quantitative and qualitative phases. The researchers used a mixed method approach and analysed the program's administrative data, using a quantitative statistical method, and later verified their findings using qualitative methods, namely interviews with Master and Back Program participants (Orrù, 2015:260).

Taking a 'jobs vs. amenities' discourse<sup>28</sup> as a starting point of their analysis of the key factors determining students' return and employment decisions, Orrù and colleagues initially found that highly skilled migrants' return patterns are linked to job opportunities, amenities (e.g. quality of life, cultural diversity, tolerance and other soft factors) and social networks in the places of destination and origin (Orrù, 2015:260). Further exploring the correlation between and significance of each of these factors in the decision-making process, Orrù noted that those participants who

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<sup>28</sup> The discourse is inspired by the works of Richard Florida (2002) and his supporters, who argue that highly skilled migrants ('the creative class') tend to migrate to places with more developed "cultural industries", tolerance and so on, almost neglecting the role of employment opportunities, as the theory assumes highly skilled individuals will be easily employable anywhere they choose to move. Thus, following Florida's reasoning, the migration decisions of the creative class are only dependent on personal preferences for particular amenities. Florida's theory is criticised "on the grounds that jobs do not follow people – rather, the opposite is true" (Orrù, 2015:299-300)..

self-reported job opportunities and amenities as important were less likely to return to Sardinia (one of the Italian “lagging” regions) (Orrù, 2015:261).

Simultaneously, social networks in the home region play a significant role when it comes to return decisions, in the sense that the stronger social networks (family ties, friendships, acquaintances, sentimental relationships) in the home region, the more the chance students will return, provided, however, their social networks in receiving places are weaker and do not allow their successful integration into the chosen country of destination. The latter correlation is due to social networks’ “key role in shaping access to opportunities, both in the sending and in the receiving countries” (Orrù, 2015:261).

According to Orrù, almost all study participants stated that professional and work opportunities, as well as family and relationship ties, are crucial for making their migration decisions, while geographical location plays a less important role. Therefore, Orrù continues, the choice of location is determined by migrants’ personal preferences, prior migration experiences and their own perceptions of migration opportunities, but professional reasons, family ties and cultural elements (“feeling at home”, “where one can speak his/her mother tongue”) are the most important factors of all (Orrù, 2015:261).

In the case of economically ‘lagging’ regions (like Sardinia), the lack of professional and employment opportunities is the most important non-return motivational factor revealed within the study discussed here. Interviewed graduates stated that the local labour market, which they described as “poor and inefficient” is less likely to meet their needs and expectations than labour markets in more developed areas (job instability, poor or no professional prospects, etc.). The students also said that they were unwilling to return, as their knowledge and skills obtained during the Master and Back studies could not be applied in Sardinia, simply because there were no employers that needed them (Orrù, 2015:262-265).

Other negative factors existing in the Sardinian labour market and discouraging students’ return included: extremely low salaries or unpaid work (internships) frequently offered to graduates or inexperienced employees, a lack of meritocracy and the prevalence of favouritism - i.e. employers did not value the

employees' talents, abilities and skills and instead would offer promotions to those whom they favoured. In the case of Sardinia, the latter reasons are reported to be especially relevant to the academic field. Coupled with the absence of innovative research areas and good universities, the above-listed factors hinder students returning home (Orrù, 2015:262-265).

Interestingly enough, when the interviewees and Orrù talk about the perceived lack of meritocracy and their attitudes towards this phenomenon, they literally talk about the lack of justice, reflected in Petrazycki's interpretation of the concept<sup>29</sup> (Petrazycki 1955:243-244).

"It must be said that this critique can be extended to the Italian academic system as a whole, which has also been defined as a 'baron system', i.e. an academic system that is a legacy of the past and 'based on a feudal-like system where a professor uses his power to foster or stop a young scientist in his/her career' (Foadi, 2006, p. 217 cited in Orrù, 2015:264). Commenting on this situation, one interviewee – a female researcher, based in Sardinia – stated that *"ineptitude, corruption and clientelism result in lack of meritocracy: this is why I am planning to leave again"* (Orrù, 2015:264).

Another interviewee – a male researcher, based in Sardinia – declared *"what I do not like about the academic career, at least here in Italy, is that it's not the best who advances, but the ones supported by the most powerful patronization or the ones with the right sponsors that let them work and appear in many publications in a short time compared to other who do not have the same opportunity. [Working in academia in Italy] is a very precarious condition which can last for many, many years, so it's a very risky path. [...] I don't feel like waiting anymore; if you do not give me a chance to work now, I'll go somewhere else!"* (Orrù, 2015:264).

In the above examples, both graduates say that the 'injustice' they witness in their home region stimulates their departure plans. Orrù confirms that "various interviewees currently working outside Sardinia state that meritocracy is a value in

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<sup>29</sup> "The expressions justice, injustice, and so forth are accordingly applied chiefly when the concern is with the conduct or the character of those who are standing higher and are dominant as regards those who are standing lower and are subordinate or dependent, and not vice versa" (Petrazycki 1955:243).

their current working environment and that this is one of the reasons why they have decided not to come back” (Orrù, 2015:264). Therefore, the Russian context is not unique when it comes to the influence of informal rules and practices on highly skilled migrants’ (including students’) emigration and employment decisions; hence, informal factors require the special attention of researchers and policymakers.

Further discussing the migration determinants of the program participants, Orrù identifies social networks as “drivers” and “facilitators” when it comes to location choices. The researcher acknowledges the particular importance of family and stable relationship ties, as they play not only an emotional, but also an economic role (e.g. financial and other kinds of support in case of job loss or other unforeseen circumstances) in serving an important return factor. Having a family of one’s own can significantly affect the location decision, since the goal of the good of the family becomes more important than individual ambitions (Orrù, 2015:265-269).

The role of amenities, however, according to Orrù’s study, appeared to be less important in the students’ location decisions than it when emphasised by Richard Florida (2002). In fact the studies conducted by Murphy and Redmond (2009) in Dublin and by Martin-Brelot et al. (2010) in another 11 European cities demonstrate similar findings, in that the meaning of amenities or ‘soft factors’ in highly skilled migrants’ location choices is rather exaggerated and that this group of migrants chooses their places of living on the basis of traditional factors, namely job availability, family ties and emotional links with their places of birth, etc. So-called ‘soft factors’ do not play an important role in the decision-making process of the absolute majority of the respondents (Orrù, 2015:270, Murphy and Redmond ,2009).

The findings of Master and Back program analysis can have specific policy implications for sending governments trying to reap the gains from their investment in student mobility and favour return migration. The study provides evidence that economic motivators are not the only factors that define students’ return decisions, and so other factors of relevance (e.g. family ties, social networks and emotional attachment to the home countries) should be taken into account (Orrù, 2015:279).



#### *4.3.2 Program of Training High-Calibre Backbone Personnel from the Ethnic Minorities (China)*

Another example of a recent research exploring student mobility policy from a sending country perspective is a case study of the Chinese Program of Training High-Calibre Backbone Personnel from the Ethnic Minorities, conducted by Zhiyong Zhu and Si Xiang (Beijing Normal University, China) (Zhu and Xiang, 2014: 19).

The program was launched in 2005 by the Chinese government as a supportive measure for human resources development in western regions of the country (one of the least developed areas) and empowering vulnerable ethnic groups. Under the program, participants are given financial means and preferential access to Masters or doctoral degree programs and expected to return and contribute to their home region development after graduation. However, the numbers of graduates who are unwilling to return to their home towns and intend to break away or have already breached their employment contracts continue to grow (Zhu and Xiang, 2014: 22).

Through the means of in-depth interviews, this case study explores the experiences of three program graduates who had violated their employment contracts and traces the reasons of their non-return (Zhu and Xiang, 2014: 22).

The research shows that due to social and economic changes in China, policies surrounding the Program had become largely irrelevant, thereby making it impossible for regional officials to ensure the fulfillment of employment contracts under the socialistic market economy system. As for individuals' motivation behind contract breaches, the study found that family pressure (return to poor regions after graduation is often regarded as a student's failure to find a better job, due to a lack of skills), major differences in the level of development between western and eastern parts of China, weakened by a sense of ethnic identities as well as increased employment expectations and a lack or absence of adequate placements in home towns, coupled with generally ineffective program's supervision and assessment mechanisms, contribute to contract violation choices (Zhu and Xiang, 2014: 42).

The findings of this study reveal many implementation problems of the program, and despite Zhu and Xiang not regarding it as a complete failure, they do readily admit that "there is much room to improve this policy", suggesting that

government at all levels should carefully examine graduates' employment opportunities both in their home towns and in major cities (Zhu and Xiang, 2014: 48).

In this study, as well as in the previous one, we can trace a correlation between students' perceptions of circumstances in home places as 'unjust' and their motivation to violate contracts and not return to their regions. One of the interviewees, Li Ming, who used to work as a court secretary in his hometown before the program, studied and then made the decision to stay in Beijing.

From an interview with Li Ming:

*"Hmm. I had never expected to work as a secretary for so many years. With high marks I could have chosen to work in more promising organizations. At that time I was too naive, thinking that so long as I could perform well I could get promoted. In fact, that's not the case. To be on good terms with leaders is the priority. When other colleagues got promotion one by one, I remained a secretary writing articles for leaders and managing daily routines of the office. Didn't I rank the highest in the exam? Then why it was others that got promoted? I couldn't accept it. So I was determined to prepare for the national graduate entrance exam. I wanted to prove that I am abler than others"* (Zhu and Xiang, 2014:39).

*"That's the case. Aren't I mad if I go back at the very thought that there will be no change in my work? Then why should I waste four years in pursuing graduate education?"* (Zhu and Xiang, 2014:39).

*"Beijing is after all the capital of China. Here, of course, there are those who get promotion through nepotism, but there are also some who are appointed on their own merit. At least, here are more chances for me to develop"* (Zhu and Xiang, 2014:40).

The above example of Li Ming (China) further illustrates the role informal rules and practices (e.g. nepotism) can play in students' emigration and employment plans. Therefore, neither Russian, nor Italian contexts are unique when it comes to the influence of informalities on highly skilled migrants' (including students') return and work decisions; hence, it is necessary for researchers and policymakers to consider the role of informal factors (as well as formal regulations) when analyzing

the law and society relations and developing corresponding policies in any state context.

Another interview with a program participant, Zhang Yike, who was initially very determined to return and work in her hometown after graduation despite her mother being against her return, explains how inadequate formal program regulations, forcing specialists with Masters and doctors degrees to take grass roots positions in local organisations not requiring any of these qualifications, discouraged her plans to return (Zhu and Xiang, 2014:36).

*“Very soon, the document was transmitted from one to another in our QQ group. Almost everyone was mad, discussing what to do next. Some said we were like kids under no custody, and we had to make a living for ourselves. Others said it was a waste of talents if we were to be treated like bachelor degree graduates. I found it both funny and annoying. For one thing, we had never been in such a heated discussion of an issue. Normally we were silent and invisible. Now when it concerned our interests, we could not keep silent any longer. For another, words failed me when I learned what arrangement the provincial government had made for us. I was capable of those things when I graduated with a bachelor degree. If I were to be treated like a bachelor degree graduate, why should I have spent four precious years studying for a master degree? It is totally a waste”* (Zhu and Xiang, 2014:36).

This example clearly shows some form of ‘discord’ or conflict between the ‘positive law’ of the program and the student’s understanding of justice (‘intuitive law’), which eventually resulted in her non-return and a breach of her contract with the program, regardless of the risks of significant financial penalties, diploma withdrawal and an inability to return home and see he family (Zhu and Xiang, 2014:37).

#### *4.3.3. Global Education Program (Russia) – Previous Studies*

In this section, I will provide a review of two recent studies of the Global Education Program, conducted by Marina Kovalenko (National Research University “Higher School of Economics”, Moscow, Russia) and Polina Sarafanova (University of Hong Kong, Hong Kong, China).

A. *“The Global Education Programme in the Era of the Knowledge Based Economy: Context and Implications” by Marina Kovalenko*

In the article “The Global Education Programme in the Era of the Knowledge Based Economy: Context and Implications” (publication is expected in June, 2017), Kovalenko explores the GEP as a policy initiative for economic modernisation in a political and cultural context and from the standpoints of theories of internationalisation (Knight, 2004), seeking to identify existing mismatches between the program’s aims and the realities of its implementation (Kovalenko, 2017).

In her analysis, Kovalenko positively assesses the program’s humanistic goals to provide access to high-quality education to Russian citizens and significant financial incentives made available to program participants. Nonetheless, she also identifies the following areas of concern influencing the program’s realisation: 1) low competition among program applicants, 2) an ineffective informational campaign introducing the program to the general public, 3) difficulties experienced in the funding process, due to Russian currency instability, 4) mismatches between knowledge/skills obtained abroad and participants’ expected work duties in Russia, 5) discrepancies between work availability in the most developed regions of Russia (Moscow and Saint-Petersburg) and existing limitations of employment in these cities (employment quota) and 6) potential ‘brain drain’ risks associated with economic “(in)stability” in the country (Kovalenko, 2017).

Kovalenko also points out that the major disadvantage of the program is the limited employment opportunities for participants: *“all such answers [offered by the respondents] look similar and describe the issue of quotas for Moscow and Saint-Petersburg, low payments, bureaucracy and time restrictions”* (Kovalenko, 2017).

The researcher also provides interesting data on GEP participants’ plans to stay in Russia or leave the country after three years of compulsory employment, pointing to factors that may encourage their long-term careers in the country. According to Kovalenko, all the respondents (26 persons) indicated that they would be pleased to stay and continue working in GEP-approved companies, if they allowed them to “apply their skills, provide decent working conditions, career

development opportunities and a competitive salary”. More than 40% of the participants, nevertheless, said that they might leave Russia if better opportunities were offered. The UK, Canada, the USA, Australia, New Zealand as well as the UAE and Singapore were mentioned as potential destination countries (Kovalenko, 2017).

Based on her analysis, Kovalenko concludes that the program is currently showing mixed results, due to the unpredictability of participants’ educational and employment choices, high career expectations, Russian currency instability, etc. (Kovalenko, 2017:19). Nevertheless, the researcher remains optimistic about the program’s potential for international knowledge and experience exchange, establishing scientific and educational networks and bringing to Russia innovative research methodologies, albeit emphasising the need to reassess the program and further monitor its practices (Kovalenko, 2017).

B. *“State Regulation and Market Coordination in the Context of Government-Funded Scholarships of Outward Mobility: A Case of the “Global Education” by Polina Sarafanova*

Similar concerns were expressed earlier by Polina Sarafanova in her Master dissertation titled “State Regulation and Market Coordination in the Context of Government-Funded Scholarships of Outward Mobility: A Case of the “Global Education” Program in the Russian Federation”, in which the author examines interactions between state and market forces in the framework of international government-funded assistance schemes for external student mobility. Taking Russia’s “Global Education” Program as a case study the researcher seeks to determine the aspects that facilitate or hinder successful implementation of the Program (Sarafanova, 2016:2).

Sarafanova claims that the success of international scholarship schemes depends on how efficient the national government is in directing individual motivation (“interest”) in the desired direction (“satisfaction of public goals”) (Sarafanova, 2016:7). In order to justify the claim, in spring 2016, the researcher conducted 15 interviews with program participants and analysed program documents available on GEP’s official webpage at that time.

The collected data allowed Sarafanova to conclude that despite the program still being in its initial stage, and the fact that it was rather difficult to identify its strengths or shortcomings with certainty, some of the factors revealed raised concerns about its implementation practices. In this respect, Sarafanova points out that the program was designed without the careful analysis of Russian labour market demands (“local needs”), and thus currently enrolled students could be studying fields and/or levels of education that would not be relevant to potential employers.

The lack of job opportunities, which Sarafanova associates with the skills/jobs mismatch (“already evident in the program”), can, according to the researcher, discourage returning participants and “signal about the irrelevance of their personal investment”. Employers’ low interest and the lack of transparent procedures in the program, in combination with participants’ obligation to gain employment after graduation within three months, “*put returnees in a situation of uncertainty about their future and weaken their negotiation position in the labor market leading either to passivity or opportunistic behavior*” (Sarafanova, 2016: 38-39).

Sarafanova criticises the state response to this situation, pointing out that emerging difficulties have not been addressed properly, and instead of facilitating the employment process, the state (the Ministry of Education and Science of the Russian Federation) has actually limited further returnees’ opportunities by imposing additional requirements (for example, accepting full-time employment only and becoming part of the staff) and disregarding the present economic situation and labour market demands, thus increasing uncertainty and producing even more mistrust and opportunism among program participants (Sarafanova, 2016: 38-39).

Describing their attitudes towards the program, Sarafanova says that based on the interviews “*the participants feel the unfairness of the whole situation, where they are the only party to bear direct responsibility not only for non-return but also for non-employment, which was guaranteed by the decree. This feeling leads to frustration and enhances mistrust in the actions and intentions of the State*” (Sarafanova, 2016: 38-39).

Furthermore, “*Participants find themselves in a situation of misalignment of expectations. The drafted framework [ official program regulations] is not working as expected: employers from the list are not ready to compete and to offer attractive working conditions, the operator facilitates but does not guarantee employment, and participants are the only party who faces with both the obligation and the possible punishment*” (Sarfanova, 2016:43).

In the above-quoted examples, Sarfanova, though using the word ‘unfairness’ instead of ‘injustice’, talks about the participants’ perceptions of the program rules as being unjust, by explaining the core factor influencing these attitudes: “*the drafted framework is not working as expected*”, thus pointing to the ‘gap’ between ‘official law’ and the ‘intuitive law’ of the participants. Furthermore, the researcher explains how the position of the authorities contributes to the deterioration of the situation and increases this gap.

“*The Ministry treats the activity of participants [individual and collective petitions pointing at the Program shortcomings] as a means to avoid responsibility or as a possible source of opportunistic behavior. Thus, instead of changing the inefficient and destabilizing elements of the program, the state intervention targets the activity of participants. The situation is worsened by the lack of a mechanism that will provide participants with an opportunity to influence the management of the program. Such a reaction from the part of the State leads to mistrust from the part of Participants and has the potential to encourage individuals to behave in the postulated opportunistic fashion.*” (Sarfanova, 2016:43-44)

In this quote, we see how the intuitive law of the program participants “exerts pressure upon the interpretation and application of positive law in the securing the decisions in accord with (or as little as possible divergent from) the directives of the intuitive law consciousness” (Petrazycki, 1955: 234) and how these efforts of intuitive law are being resisted by those in positions of power seeking to preserve existing ‘positive law’, regardless of its poor enforceability. The potential link between this ‘gap’ (stimulated by program officials) and the occurrence of unwanted consequences in the form of participants’ “opportunistic behaviour” (Sarfanova, 2016: 44) is also well illustrated by the above example.

Sarafanova's study provides valuable insights into the program's early-stage implementation processes and its existing shortcomings (associated with a designated employers' list, quotas on employment in Moscow and St. Petersburg, jobs/skills mismatches, shifting program risks on the participants, etc.), with which I mostly agree. However, one of her conclusions I cannot support, namely the role that Sarafanova assigns to the program operator in the GEP implementation process.

Depicting the program operator as the party acting in the participants' interests, who therefore "functions as a buffer" between the participants and the state "trying to reduce tensions, mitigate clash of interests", but having no "decision-making powers" and being unable "to resolve arising issues independently without a prior consent of the Ministry of Education", Sarafanova misinterprets the role and responsibilities, which are described in detail in Decree No.568 of the Government of the Russian Federation and will be discussed further in the next section.



## V. Analysis

This chapter contains an analysis of the discrepancies existing between GEP employment regulations (positive law) and the reality of their interpretation and implementation by GEP officials and participants. It explores the underlying causes of the above-named discrepancies and their meaning to GEP participants' return and employment plans (behaviours) after graduation.

### 5.1. Positive Law: GEP Employment Regulations

According to the hierarchy of legal acts of the Russian Federation, decrees of the Government of the Russian Federation shall be issued on the basis and for the sake of implementation of the Constitution of the Russian Federation, federal laws and normative decrees of the President of the Russian Federation. Government of the Russian Federation decrees shall be obligatory for fulfillment in the Russian Federation. Other normative and non-normative acts of the executive power bodies of the Russian Federation are to be consistent with the provisions of the decrees of the government (Article 115 of the Constitution of the Russian Federation).

The regulations below define procedures for the employment of the program participants as stipulated in Decree No.568 of the Government of the Russian Federation, dated June 20, 2014 (with amendments made by Decree No. 635 of the Government of the Russian Federation, dated June 26, 2015, and Decree No. 298 of the Government of the Russian Federation, dated March 15, 2017) (article 1)<sup>30</sup>:

*“A Program Participant who has graduated from a leading foreign educational institution and obtained a relevant degree certificate shall return to the Russian Federation within 30 calendar days for further employment with an Employer Organization (article 2).*

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<sup>30</sup> To verify that the regulations below constitute the positive law of the program from the view of the psychological theory of law (i.e. they are perceived as normative fact by GEP participants and officials), the corresponding questions were asked by the researcher during the interviews with GEP participants (Appendixes 3,4). Their answers, as well as the GEP operator's interpretations, were analysed in due course.

*A Program Participant shall, within 30 calendar days after the arrival in the Russian Federation upon the completion of the full training at a leading foreign educational institution, furnish the Program Operator with the original certificate of education granted by the leading foreign educational institution (article 3).*

*A Program Participant shall, within no more than 3 months after the arrival in the Russian Federation, select an Employer Organization from the list of organizations providing employment to Program Participants as approved by the Program Supervisory Board and get employed with the Employer Organization.*

*With respect to employment in companies and/or entities that are subject, under the laws of the Russian Federation, to special arrangements for security and protection of state secrets, including special conditions of residence, the employment period shall not exceed 6 months (article 4).*

*The Program Participant may change the Employer Organization no more than 2 times during the period of his/her participation in the Program; provided that the Program Participant shall work at Employer Organizations according to his/her qualification for at least 3 years.*

*In case of change of the Employer Organization, the Program Participant shall choose and get employed with a new Employer Organization within no more than 2 months or, in case of employment in businesses and/or entities that are subject, under the laws of the Russian Federation, to special arrangements for security and protection of state secrets, including special conditions of residence, within no more than 6 months.*

*The number of Program Participants who are domiciled in Moscow and St. Petersburg, employed by Employer Organizations and whose actual place of work is an Employer Organization located in Moscow and St. Petersburg shall not exceed 10*

*percent of the total number of the Program Participants employed (valid before the 15<sup>th</sup> of March, 2017)*<sup>31</sup> (article 5).

*The Program Participant shall, within 10 calendar days after the date of employment with an Employer Organization or the date of re-employment in case of change of the Employer Organization, notify the Program Operator accordingly and provide supporting documents and information about the full name of the Employer Organization, his/her job title, and the employment commencement date (article 6)*".

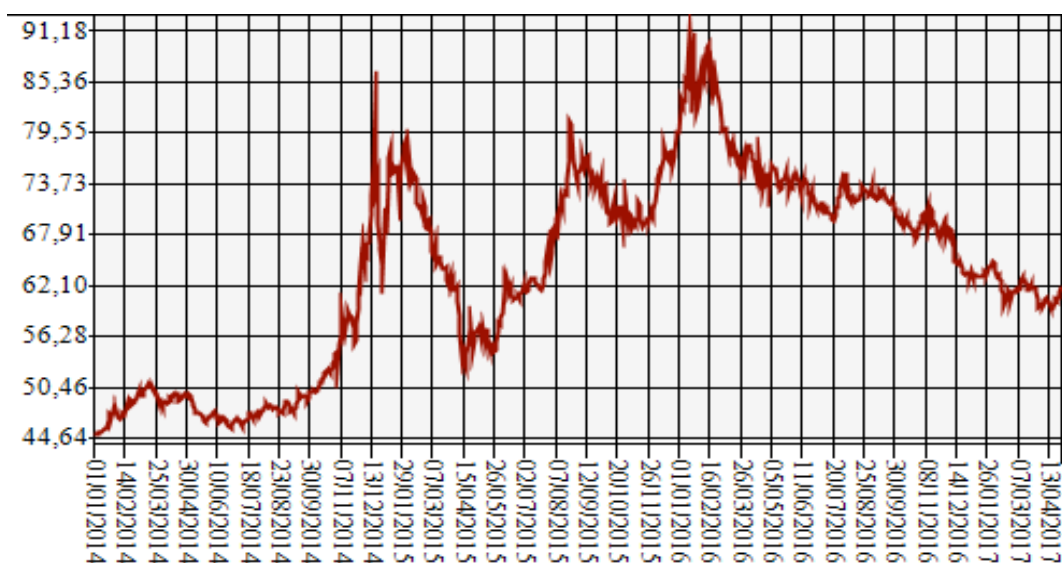
It is necessary to note that the present regulations had been developed and adopted by the government in 2013-2014, before the so-called '2014-2015 Currency Crisis in Russia' broke out. The crisis was caused, according to the Ministry of Economic Development of Russia, by low global oil prices, conflict escalation in Ukraine, international sanctions and Russian countersanctions. It resulted in high inflation, income reduction and a sharp decline of business confidence and economic activity in Russia by the end of 2014-2015<sup>32</sup>.

Therefore, the basic assumption of the employment regulations – that GEP graduates and their skills will be in high demand among designated employers (so the participants will be able to “*select an Employer Organisation from the list of organisations providing employment to Program Participants*”) – might have been affected by the economic crisis and the corresponding labour market slowdown, and thus might have lost its relevance.

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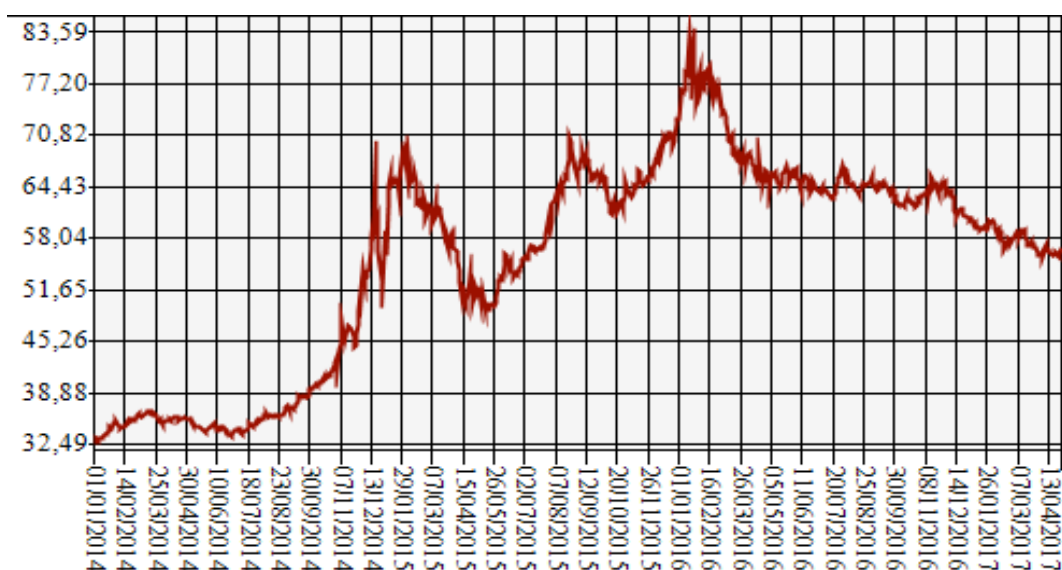
<sup>31</sup> The last paragraph of the clause contains the GEP employment quota condition. On 15<sup>th</sup> March, 2017, it was amended as follows: “The number of Program Participants who are domiciled in Moscow and St. Petersburg, employed by Employer Organizations and whose actual place of work is an Employer Organization located in Moscow and St. Petersburg shall not exceed 25 percent of the total number of the Program Participants’ (Decree No. 298 of the Government of the Russian Federation dated March 15, 2017)

<sup>32</sup> <http://economy.gov.ru/wps/wcm/connect/69429320-a2fe-49ea-9823-bf6ea17ab6b3/Прогноз+2015+-+пояснительная+записка.pdf?MOD=AJPERES&CACHEID=69429320-a2fe-49ea-9823-bf6ea17ab6b3> [viewed on 10<sup>th</sup> May, 2017]



Development of the Euro-Ruble Exchange Rate January 1, 2014- May 1, 2017.

Source: Central Bank of Russia<sup>33</sup>



Development of the USD-Ruble exchange rate January 1, 2014-May 1, 2017.

Source: Central Bank of Russia<sup>34</sup>

<sup>33</sup>[https://www.cbr.ru/eng/currency\\_base/dynamics.aspx?VAL\\_NM\\_RQ=R01239&date\\_req1=01.01.2014&date\\_req2=01.05.2017&rt=2&mode=2](https://www.cbr.ru/eng/currency_base/dynamics.aspx?VAL_NM_RQ=R01239&date_req1=01.01.2014&date_req2=01.05.2017&rt=2&mode=2) [viewed on the 10<sup>th</sup> of May, 2017]

<sup>34</sup>[https://www.cbr.ru/eng/currency\\_base/dynamics.aspx?VAL\\_NM\\_RQ=R01235&date\\_req1=01.01.2014&date\\_req2=01.05.2017&rt=2&mode=2](https://www.cbr.ru/eng/currency_base/dynamics.aspx?VAL_NM_RQ=R01235&date_req1=01.01.2014&date_req2=01.05.2017&rt=2&mode=2) [viewed on the 10<sup>th</sup> of May, 2017]

## 5.2. The ‘Gap’ between GEP’s Positive Law and the Intuitive Law of its Participants

To explore GEP participants’ attitudes towards the program’s employment conditions, and their employment plans and behaviours, I conducted two cycles of semi-structured interviews with 18 GEP participants currently studying or having completed their studies in the UK, Australia, Sweden, China, France and Italy. Four of the participants who had completed their studies had returned to Russia, two of which said they were employed.

During the first cycle of interviews, the following three aspects of GEP employment regulations were actively discussed by the study participants: 1) the 10% quota on employment in Moscow and St. Petersburg, 2) the existence of a list of employer organisations providing employment to GEP participants and 3) the three-month timeframe given to search for first employment after graduation.

These recurring topics are mainly mentioned by the interviewees as program disadvantages, due to the inconsistency of corresponding GEP employment conditions with the current labour market situation, the level of development and economic realities of Russia as well as with the participants’ personal circumstances (e.g. absence of certain professions and academic fields in cities other than Moscow and St. Petersburg, as well as the need for Moscow and St. Petersburg residents to leave their home cities, etc.). These topics constitute areas of concern, revealing discrepancies or gaps between GEP employment regulations and the perceptions of participants.

Anna (name changed), 26, female:

*“Who needs the list [of employers], if the employers do not need us? Let us return and find work in Russia like other people do... It seems very strange that we can’t work in Russian companies which want to hire us, but instead have to struggle in order to get employed by GEP-authorized organisations which are not interested.”*

Alexandra (name changed), 27, female:

*“What can be done to facilitate employment within the Program? Get rid of the list [of the employers] and quotas [for Moscow and St. Petersburg], or at least give the participants more time [to search for work] without chasing them.”*

The recurring issues associated with the list of employers (showing low interest in hiring GEP graduates), existing quota conditions and the inflexibility of the initial employment timeframe constitute the basis for conflicts between the positive law of the program and the intuitive law of its participants, subsequently influencing the latter group’s employment plans and behaviours.

Konstantin (name changed), 30, male, says:

*“(1) No, initially I did not have any worries about the ‘penalties’ condition of the Program, because I knew I was able to complete the studies and I wanted to work in Russia – and I still want, but it seems almost impossible now. There are only two institutions in Russia... [gives their names], where my theme [field of research] exists...*

.....

*(2) No, I do not mean any workplace where I can apply my ‘side skills’ like computer programming or data analysis, I mean my research in [states the field of his research]... So, I cannot work outside the equipped laboratory, and both of the institutions having these laboratories are located in Moscow....*

.....

*(3) Yes, the organisations are included in the GEP list [of employers], but it does not mean anything as they clearly indicate that they did not ask to be part of the list and there will be no preferences for GEP participants. But this is not a major problem. I’m prepared to compete for work there.*

*Will I get ‘the quota’ to work in Moscow when I still have more than 18 months of studies plus dissertation? That’s the problem. They [GEP officials] want me to find work in accordance with my ‘qualification’, but how am I supposed to do*

*that, if I'm not able even to consider the relevant institutions, not to mention if they have any open vacancies in almost two years' time, etc?*

.....

*(4) No, I do not know any other places in Russia [with the necessary facilities]...*

*Well, in principle, I can work in any university teaching the basics to undergraduates, but I could do that without going abroad and leaving my family in Russia... Working as a lecturer after graduation? No, for two reasons: first, I'm not good at teaching, second, my family needs my salary to live on, and with those salaries it would not be possible.*

.....

*(5) Can you imagine what I feel when my professor here in... [the university of studies] talks about our research program extension opportunities, saying that I could be a part of it? Or when the colleagues discuss new campus facilities for families with children? So, it is not even the money that attracts, it's the attitude. I won't be able to earn a fortune here either, at least while I'm a junior researcher, but our project is developing, my work is valued and the promotion is a matter of time and my own efforts.*

.....

*(6) Well, even if I'm not able to continue working in my university here in [the country of studies] .... which is unlikely, I will certainly get a similar position in Germany, Switzerland or the USA... but ironically not in Russia, where GEP 'quotas' won't allow me to do that and where I most likely will have to take any formally 'suitable' work not necessarily in my field of studies.*

.....

*(7) ... that's when one really understands what the [GEP] 'penalties' condition is about... It is designed to force you to return and seek employment in Russia, even if it is against common sense... because your work is not really needed there.*

.....

(8) *Yes, I think I'm returning... I have my family there.... But I will do my best in order to stay or at least work abroad*'.

The above interview with Konstantin is an illustration of a conflict between the positive law of the program and the intuitive law of its participants, potentially resulting in intentional non-return or non-employment (GEP rule violation). It shows the process of change happening in the participant's consciousness in relation to program regulations, from the initial preparedness to comply fully with requirements, (1) to the emerging plan to violate program conditions (7,8). It also highlights the reason behind such a change, namely the inconsistency of the program regulations with the economic and labour market realities of Russia, further aggravated by the lack of mechanisms for employment provision (which will be discussed in detail in the next section of the present chapter).

The situation caused by 'quota' conditions (3), and the fact that both of the relevant employers in Konstantin's case are located in Moscow, is further escalated by the lack of attractive vacancies in other regions of Russia (low salaries (4), jobs/skills mismatch (2)) and the availability of such vacancies abroad (5,6).

Despite the latter condition related to foreign countries being outside the Russian government's control, issues associated with program regulations, such as 'quota' conditions and the existence of the list of GEP designated employers showing low or no interest in graduates (3), could be resolved at Russia's own discretion, before any unwanted consequences (GEP rule violations) occur.

The need to change these two GEP conditions was indicated in nearly every interview conducted within the present research and is supported by the findings of Sarafanova (2016) and Kovalenko (2017) in their studies. The above unanimity, however, is not surprising, because for GEP participants, both of these conditions are part of *distributio bonorum atque malorum* and thus lie in the sphere of intuitive law or justice. Therefore, the experiences of justice (or injustice) with regards to these areas have great influence over the participants' interpretation, fulfillment or violation of their GEP obligations (Petrazycki, 1955: 235, 242, 245).



In this respect, the following GEP policy amendments, aimed at the participants' employment facilitation, seem necessary:

1. Increase or eliminate quota conditions for program participants' employment in organisations registered in Moscow and St. Petersburg;
2. Eliminate the list of organisations providing employment to program participants, or change the procedure for adding new organisations to the list.

### 5.3. The Operator's Interpretation of GEP Employment Regulations and its Meaning in relation to the 'Gap' Problem

As noted, earlier I did not receive the GEP operator's consent to interview their staff within the present study, and so in this section I shall analyse a transcribed video record from the GEP webinar (internet conference) conducted by the program operator on 20<sup>th</sup> July, 2016<sup>35</sup> as well as materials available on the GEP's official webpage ([www.educationglobal.ru](http://www.educationglobal.ru)).

An analysis illustrates how GEP officials condition the way GEP employment regulations are communicated to participants and explores the underlying reasons behind their actions. In addition, it traces how GEP officials' interpretations of GEP employment regulations impact upon GEP participants' attitudes at a discursive level and influence the way they think about and experience employment regulations.

GEP Webinar, 20th July, 2016:

GEP participant's question: *"If a participant cannot find a job for himself [after graduation], can GEP provide it?" (0:50).*

Operator's reply: *"There is such a moment here. The employment obligation lies with the participant. This is stated in the agreement that you [participants] sign after the Supervisory Board approves you as a winner of the program, before receiving the grant. Consequently, the operator of the Global Education Program provides maximum assistance in many matters, but this is not a Soviet system of*

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<sup>35</sup> Video of the webinar (in Russian) is available at <https://www.youtube.com/watch?v=pXJD4xEQcgQ&feature=youtu.be&t=4481> [accessed on the 6th of May, 2017]

*‘raspredelenie’*<sup>36</sup> [distribution]. *Ready-made* [work] *places that will be assigned to individual participants... those the program does not provide*” (0:50-51).

In this example, in answering the question, the operator’s representative refers to the GEP participation agreement which stipulates that participants are to be employed in accordance with the GEP employment regulations (Decree No.568 of the Government of the Russian Federation dated June 20, 2014) explicitly described in the previous section of this chapter. These state that “a program participant shall select an employer organisation from the list of organisations providing employment to program participants... and be employed with the employer organisation” (article 4 of the employment regulations).

However, the operator discursively shifts employment responsibility and corresponding risks to the participants replacing the concept of employment ‘provision’ [‘obespecheniye’], stipulated in Government Decree No. 568, via vague employment ‘assistance’ [‘sodeistvie’] not included in GEP employment regulations. Furthermore, the operator intentionally avoids using the word ‘provision’ [‘obespecheniye’] when it comes to GEP participants’ employment and instead states that the program does not use “*a Soviet system of ‘raspredelenie’*<sup>37</sup> [‘distribution’]”, groundlessly linking work ‘provision’ within GEP to the currently discredited Soviet postgraduate work assignment system.

Taking into account that, according to program regulations, it is the GEP operator (and not the participants) who is responsible “for the Program employment mechanisms provision, communication with the employers and overall Program effective implementation” (Decree No.568 of the Government of the Russian Federation, dated June 20, 2014), the above ‘juggling with words’ gets a pretty obvious legal meaning, namely that the operator discursively shifts its duties on GEP

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<sup>36</sup> Nowadays, a discredited Soviet system of mandatory job allocations for university and institute graduates (White, 2007)

<sup>37</sup> Nowadays, discredited Soviet system of mandatory job allocations for university and institute graduates (White, 2007)

participants and limits its own role to the participants' actions monitoring without any sufficient legal grounds.

I will provide several other examples from the 20<sup>th</sup> July, 2016, GEP webinar to illustrate further this discursive 'risk-shifting' practice.

GEP participant question: *"If a participant cannot find a job, is it possible to somehow extend the period of time [three months after graduation] by writing an explanatory letter?"* (0:52-54)

Operator's reply: *"Explanatory letters, fortunately or unfortunately, do not constitute grounds for extending the period of three months... Again, I advise you to carefully read the [Government's] Decree, its employment clauses. It stipulates that you are obliged to return to Russia within 30 days, starting from the date of completion of your [study] program, not the receipt of a diploma... So, after 30 calendar days, we are waiting for you in Russia. You have the next three months as a period to find a job. The exception is made for regime enterprises... where additional actions are required [for those seeking employment there], there is a period of up to six months...*

*If, within three months, no matter what the reasons, there is no employment and you do not provide us with the relevant documents (an employment confirmation or a copy of employment contract), then, within ten days, we will notify you as a participant of the Program that you are violating the terms of the program. And we remind you that you are obliged within 60 days either to correct this situation, or to reimburse the amount of the grant together with penalties. If, within 60 days, neither the first nor the second variant occurs, then we transfer your case to the court"* (0:52-54).

GEP participant question: *"Does the employer's refusal to offer employment [to a GEP participant] lead to the imposition of penalties [on the participant] after 3 months?"*(0:55)

Operator's reply: *"There is a wrong emphasis made in this question. The employment obligation lies with the participant. Employers included in the list approved by the Supervisory Board..., again according to the principles of the*

*program, are not required. (pause) I will say it differently... They may be interested in you, and may not be interested [in you], based on their personnel policy and the availability of open vacancies. The principle of the Global Education Program implies that employment takes place in accordance with the Labour Code of the Russian Federation, i.e. the employer should be interested in you, and you as a specialist should be interested in working in a particular company. Thus, you cannot force the employer to hire you, nor can the operator force you to work in a certain city or for a certain company” (0:55-56).*

GEP participant’s question: “*Will it be regarded as an evasion of employment if I [a GEP participant] cannot find a job?*” (1:13)

Operator’s reply: “*Yes!*” (1:13)

Thus, the operator discursively removes the responsibility for GEP participant employment, not only from itself, but also from employer organisations included on the GEP-approved list<sup>38</sup> and shifts it to GEP participants. Therefore, it is understandable why “*the participants feel the unfairness of the whole situation, where they are the only party to bear direct responsibility not only for non-return but also for non-employment, which was guaranteed by the decree. This feeling leads to frustration and enhances mistrust in the actions and intentions of the State*” (Sarafanova, 2016: 38-39).

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<sup>38</sup> According to Decree No.568 of the Government of the Russian Federation, dated June 20, 2014, “The Employer Organization shall, throughout the Program period:

Be registered on the Program Website for posting a list of vacancies for Program Participants;

Participate in activities organized by the Program Operator to provide employment of Program Participants;

Post a list of available vacancies for Program Participants indicating the applicable conditions of remuneration and social security (if any) on the Program Website and update it on a monthly basis;

Employ Program Participants in accordance with the laws of the Russian Federation and on the basis of the list of vacancies posted on the Program Website

Enable the Program Operator, according to the procedure provided by the laws of the Russian Federation, to receive, with consent of the Program Participant, information regarding the Program Participant’s work at the Employer Organization, including personal data of the Program Participant.”

Lyudmila (name changed), 24, female, says:

*“It does not matter what’s written in the Program documents, as nothing will be done to facilitate the employment within the Program. The operator and the Ministry [of Education and Science of Russia] are more interested in bureaucratic formalities than in actual outcomes... I mean, they make the participants feel like scapegoats and do not even care that many companies [included on the GEP list of employers] do not know about the existence of the program, and those which know are not in a hurry to hire the participants... I guess the employers are not interested in employees whose careers will be monitored by the state... due to additional reporting and supervision, I guess. At least one of my applications was declined [by an employer] on the basis that they did not understand the program requirements... and I noticed that I got more positive replies from companies when I did not mention the program in a cover letter and/or my resume...”*

*“Of course, one can choose not to be a ‘scapegoat’, disagree with their [the operator’s] opinion and demand the guaranteed work in accordance with the qualifications obtained, but then he/she should be prepared to be treated like a ‘black sheep’, incapable of finding a job or as someone intentionally avoiding employment.”*

Andrei (name changed), 28, male, says:

*“I understand the program requirements [rules] in a way that they anyhow will not be interpreted in our favour [in favour of the program participants], so I see no point in arguing or proving anything to the officials; instead, I’ve already found a place to formally put my employment record and get necessary work confirmations. Now I can do what I want”.*

Similar considerations are expressed by Igor (name changed), 23, male:

*“No, I can’t say that I’m well informed about the program rules, especially those on employment, because the explanations I get from the operator often contradict what I have read in the documents before, so I’m not sure if my understanding is correct. It is hard for me to justify my views, so I prefer to accept*

*the official position and then see what can be done to get what I need. There is always a way around. And even if I can't find it, 3 years is not so long".*

Indeed, it is not often the operator's interpretations of GEP employment regulations are openly questioned by the participants, but when such cases occur, the operator tends to speak by referring to the Ministry of Education and Science [the state customer of the program] and its 'legal partners', using *argumentum ad verecundiam* to back up their opinions.

GEP Webinar, 20th July, 2016.

GEP participant's question: "*Can I [a Program participant] work part-time [within the GEP's mandatory employment period]?"* (1:14)

Operator's reply: "*Dear participants, we have repeatedly consulted with our legal partner and the [state] customer of the program, and they unanimously interpret the existing regulatory documents in a way that full-time employment is mandatory. This clarification will be very soon included in the [GEP] normative documents"* (1:15).

The announced change to the normative documents of the program has not yet occurred (as of 9<sup>th</sup> May, 2017) despite the operator presenting this information regarding 'full-time employment' to the program participants as a *fait accompli* in July, 2016. Nevertheless, this interpretation affects the participants' employment plans.

Anna (name changed), 26, female, says:

*"I understand that what they [the program operator] say about full-time employment is not what is written in the government's regulations, but I have no way of attending the court hearings or hiring a professional representative in case they [the program operator] decide to sue me; therefore, I'm prepared to decline an hourly-based Tomsk University offer and take whatever position is available that fits the formal criteria. At the end of the day, it's just for three years. Then I'm free to go wherever I want."*

To explore why the GEP operator disregards the employment provision clauses and discursively tightens GEP rules for participants it is worth to note how GEP operator presents itself to general public. The GEP official website ([www.educationglobal.ru](http://www.educationglobal.ru)) states that “Moscow School of Management ‘Skolkovo’ – one of the leading private business schools of Russia and CIS, established in 2006 – is the official operator of the Global Education Program”<sup>39</sup>. In communication with GEP participants, the operator compares itself with a university career service or an educational agency providing consultations to GEP participants.

GEP Webinar, 20th July, 2016.

Operator’s comment: *“Please do not understand our assistance, as if you send us your resume and a questionnaire, and then sit with your hands folded and wait for offers from the best companies of Russia, seeking to invite you for interviews and in the future provide you with jobs... Without your efforts, finding quality work will be extremely difficult... Who helped you to apply and get enrolled in the best universities? You did it yourself... Maybe, educational agencies helped you to fill in the forms... but most of the work you did yourself” (1:04).*

However, the Protocol of Opening of the Envelopes with Applications for the Program Operator’s Position №AK-151/05pr dated 03.09.2014 (available at the Ministry of Education and Science web-page)<sup>40</sup> states that it is not the educational organisation Moscow School of Management “Skolkovo” (established in accordance with the legislation of Russia for non-profit organisations<sup>41</sup>), but the Limited Liability Company “UK Skolkovo Management” that applied and was chosen to be GEP operator.

Taking into account that the latter is a commercial organisation pursuing profit-making as the main goal of its activity (Article 50 of the Civil Code of Russia), it is reasonable to suggest that the commercial interests of the operator<sup>42</sup> play the major role in the above-described program rules, interpretations and employment

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<sup>39</sup> <http://educationglobal.ru/ns/overview/partners/> [accessed on the 6th of May, 2017]

<sup>40</sup> [http://минобрнауки.рф/%D0%BD%D0%BE%D0%B2%D0%BE%D1%81%D1%82%D0%B8/4421/%D1%84%D0%B0%D0%B9%D0%BB/3397/Protokol\\_vskrytiya%2C\\_AK-151-05pr.pdf](http://минобрнауки.рф/%D0%BD%D0%BE%D0%B2%D0%BE%D1%81%D1%82%D0%B8/4421/%D1%84%D0%B0%D0%B9%D0%BB/3397/Protokol_vskrytiya%2C_AK-151-05pr.pdf) [accessed on the 6th of May, 2017]

<sup>41</sup> Article 22 of the Federal Law № 273-FZ dated 29.12.2012

<sup>42</sup> The Program Operator is allocated 260 million rubles (approx. SEK 40 million) to execute its duties within the program (Decree No. 298 of the Government of the Russian Federation dated March 15, 2017).

practices, as ‘career assistance’ and ‘consultations’ are arguably less labour-intensive and, hence, less expensive activities compared to employment mechanism ‘provision’ or ‘guaranty’.

The above said, of course, does not mean that the operator’s commercial interest is the only factor explaining the ways in which it interprets GEP rules. The author of this thesis assumes that there are many other internal and external factors that can affect the operator’s vision of program implementation (Weiss, 1998:46-72). These potential factors include changes in the economic and political situation in Russia (e.g. the recent recession, labour market slowdown, international sanctions and countersanctions with a corresponding decrease in employer interest in specialists with foreign education, etc.), existing power and institutional structures, formal and informal practices within which the operator has to work (e.g. the relationships with the state customer, cooperation with other state bodies reluctant to support program activities, by giving recommendations to prospective employers), GEP ‘positive law’ provisions not consistent with the current uneven development and labour market realities in Russia (e.g. employment quotas for Moscow and St. Petersburg, list of ‘disinterested’ employers).

Furthermore, the operator’s practices can possibly be explained in terms of legal culture reflecting the role that law plays in the society. As previously noted, Russian legal culture still implies that the rule of law plays a less important role in organising the everyday life of society than informal rules and practices, political forces, power hierarchies and the positions of persons giving out instructions (Kurkchiyan, 2005:263-267).

All of the above factors, when carefully examined, may shed a different light on the rationale of the GEP operator’s activities; however, the unwillingness of officials to participate in the interviews made it impossible to explore these factors within the present study. Such reluctance to cooperate constitutes a specific area of concern and requires additional research to be conducted.

Nevertheless, the aim of this research to examine whether the operator’s interpretation of GEP employment regulations influences the way GEP participants



think about and experience GEP employment regulations, and if the operator's interpretation affects participants' employment plans being achieved.

Data collected within the study show that despite the program operator being responsible for program employment mechanism provision, communication with employers and overall program implementation, it seeks through GEP rule interpretation to shift the above responsibilities and corresponding risks of their non-fulfillment to program participants, thus increasing pessimistic employment attitudes and anxiety among the latter cohort.

In response to the operator's interpretation, GEP participants tend to either search for so-called 'ways around' program rules, and develop strategies only formally complying with requirements, but aiming at covert avoidance of the employment (e.g. "*to formally put an employment record and get necessary work confirmations*"), or they choose to endure temporary difficulties ("*it is just for three years*"), hoping to escape the situation as soon as practically possible.

Arguably, none of the above scenarios corresponds to the program goals to "preserve and enhance scientific, teaching, medical, engineering and social management workforce, and provide support and subsequent employment to nationals of the Russian Federation who have independently enrolled in leading foreign educational institutions" or expected program outcomes "to staff employer organisations, including those registered in the areas of advanced social and economic development in the Far East and Eastern Siberia, with highly skilled professionals in order to accelerate the modernisation processes and introduce the latest technologies for social sector reforms" (Decree No.568 of the Government of the Russian Federation, dated June 20, 2014)

Therefore, it is reasonable to conclude that changes happening in the participants' consciousness, as a result of the operator's interpretation of the program rules (positive law), further extend the 'gap' between the intuitive law of the participants and the program's positive law, decreases the legitimacy of the program's employment regulations and leads, in the form of covert employment avoidance, to the participants' refusal to follow program rules (Petrazycki, 1955: 234).

#### 5.4. Decreasing the Gap: Improving Employment Attitudes

In the middle of March, 2017, the Government of the Russian Federation adopted Decree No. 298, dated March 15, 2017, amending GEP employment regulations. According to this new Act, the quota size for Moscow and St. Petersburg was increased to 25% of the total number of program participants.

To explore if this change in regulations influenced the participants' employment attitudes, I contacted each of the interviewees again (second-cycle interviews) and asked how they perceived the introduced amendments to GEP regulations.

Alexandra (name changed), 27, female:

*“It is fantastic – at least now I have a chance to return and work in my home city [Moscow]”*

Anna (name changed), 26, female, says:

*“I did not plan to work in the capitals [Moscow and St. Petersburg], but still I think it's a good decision. It means that our [participants'] opinions can be heard.”*

Konstantin (name changed), 30, male, says:

*“It [the increased quota] gives a little more hope, of course... Besides that, the operator says that it's possible to get a quota before the completion of the studies and return... it will be possible if an employer makes a formal work offer to a participant and they are prepared to sign necessary documents. So, I contacted someone I know in... [states the name of the prospective employer (institution in Moscow)] and they promised to see what can be done to secure a work place for me.”*

The above quotes illustrate the change in the employment attitudes and plans of GEP participants after the adoption of Decree No. 298, dated March 15, 2017. Based on posts on the GEP Facebook group, the majority of the participants regard these amendments as a positive move. The interviewees also expressed a more optimistic vision of their prospective employment: those who initially planned to work in Moscow or St. Petersburg said the increase in the quota made them feel

more comfortable and they were now more positive about their prospective employment.

Interestingly enough, though, those interviewees who did not plan to seek employment in Moscow or St. Petersburg, and hence were not directly affected by the quota conditions, also expressed more optimistic views regarding their employment when compared to their first-cycle interviews. These participants indicated that they appreciated newly introduced regulations, because they better correspond to the economic and labour market situation in Russia, allow participants more flexibility when choosing an employer and a prospective location and, in general, demonstrate the responsive attitude and ‘goodwill’ of the authorities.

From the viewpoint of the socio-legal theory developed by Petrazycki, this example can be regarded as a correct step towards the ‘greater accord’ between students’ intuitive law and the GEP’s positive law, resulting in “greater... satisfaction with the existing social order” (Petrazycki, 1955:234).

## **VI. Final Discussion and Conclusion**

Following Leon Petrazycki's theoretical framework, I argued that besides traditionally identified economic, political and social conditions that were known to affect highly skilled migrants' (including students') return and employment plans, there were also often overlooked legal factors existing in their countries of origin that could influence migrants' (un)willingness to return and work at home. The latter factors were revealed and explained on the grounds of internationally mobile students' intuitive law (understanding of justice).

By examining the GEP as a student outward mobility program initiated by Russia (a source country) and created through and backed by law, I explored the impact of the legal dimension of this program on students' return and employment attitudes and behaviours. The data collected and analysed within this study allowed the author to conclude that the greater the divergence between the intuitive law of internationally mobile students, on the one hand, and the positive law of their home country, on the other, the weaker their intention to return and work in their country of origin, and vice versa: "The greater the accord between intuitive law and positive law [in a given nation]... the greater... the satisfaction with the existing social order (Petrazycki,1955:234), and therefore more positive attitudes towards prospective return and employment in the home country.

However, the present study leaves many questions to be explored by future research. For instance, how do informal rules and practices existing in Russian society affect students' return and employment decisions? To what extent can "the limits of accord (or discord) between the intuitive and positive law" (Petrazycki, 1955: 234), with reference to the particular case of the Global Education Program, be pushed? How will the interplay between intuitive and positive law in the studied case unfold in the future? Furthermore, will the "growing pressure of intuitive law" eventually cause "an explosion", resulting in program failure due to mass contract breaches, non-return or intentional false (un)employment? Alternatively, will the participants' opinions be heard and all parties remain satisfied by the fulfillment of

GEP obligations? All of the above questions and many others can be explored and answered by future studies.

Nowadays, trying to answer the above questions based on the data available and collected within this study is a matter of speculation or unjustified generalisation, and therefore the author of this thesis will not do it, as the fact that GEP participants currently express certain opinions or beliefs does not mean that they will necessarily act in accordance with their opinions. However, as Banakar points out, “there is undoubtedly a link between perceptions (attitudes, opinions, beliefs) and actions (behaviour and conduct)” (Banakar, 2002:41), and despite the impossibility of describing the link between attitudes and actions in the form of an explicit causal relationship, it cannot be simply ignored.

Taking into account that it is problematic to trace GEP participants’ actual employment behaviours within this study, as the majority of the students are currently still studying and are expected to return to Russia in the coming years, in order to investigate closer the link between internationally mobile students’ attitudes and return and employment actions, I analysed the studies of two other student return mobility schemes: Master and Back Program (Sardinia, Italy) and Program of Training High-Calibre Backbone Personnel from the Ethnic Minorities (China) – where the correlation between students’ opinions and their subsequent actions becomes more visible.

Both programs demonstrate mixed results in terms of facilitating student return migration, and the studies provide evidence that economic and political motivators are not the only factors that define these decisions. As a result, other factors of relevance (e.g. cultural factors, informalities, family ties, social networks, emotional attachment to home countries and towns, etc.) need to be taken into account (Orrù, 2015:279; Zhu and Xiang, 2014). Furthermore, the studies illustrate that Chinese and Italian students choose to re-emigrate as soon as possible or not go back, regardless of penalties, if they perceive circumstances in their home country or towns as ‘unjust’ or, in Petrazicki’s terms, not reflecting their intuitive law.

Hence, the roots of GEP participant dissatisfaction with program rules, and more specifically with employment regulations, hardly reflecting the current

economic and social realities of Russia, can be found in divergence between their intuitive law and the positive law of the program. This disagreement is further aggravated by lawmakers' general failure to identify these issues between program employment regulations (positive law) and significantly changed social and economic conditions in Russia, as well as by law enforcers' interpretation of these employment regulations in the direction of their own interests, not consistent with the GEP participants' intuitive law consciousness.

. To conclude, an analysis of the academic literature and data collected within the study suggests that countries evidencing significant emigration flows of highly skilled nationals, including students, should apply comprehensive policies aimed at limiting the negative consequences of increased international student, academic and skilled labour mobility. The above policies, often seeking to facilitate economic and social remittances (including scientific and professional networking), engage diasporas and encourage return migration, will be more effective if sending countries' governments regard high emigration numbers as a signal for the need to improve governance and introduce more general reforms seeking to enhance the quality of life of their people ("policies that improve infrastructure, legal security, governmental accountability and macro-economic stability while countering corruption and improving access to public education, health and credit" (Castles, de Haas, Miller, 2014:80)).

In this respect, when designing 'brain drain' prevention schemes, policymakers should first of all address the causes behind the problem and refer to migration research, in an effort to understand the innermost reasons for emigration and non-return decisions, which are much more diverse than traditionally identified economic and political factors.

Almost completely neglected in the present academic discourse, socio-legal factors existing in the countries of origin (e.g. highly skilled migrants' perceptions of their conditions in home countries, including economic and employment conditions, as unjust) can become strong emigration motivators, and vice versa. The better sending governments justify their political and economic decisions, and the more

legitimacy they can secure in the eyes of their citizens, the less chance their people will search for a better place abroad.

Therefore, student return migration policies cannot rely on pure economic incentives, restrictions or penalties. To increase policies' efficiency and secure long-term advantages, more factors should be analysed and taken into account – students' understanding of justice in Leon Petrazycki's interpretation of this concept is certainly one of them.

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## GLOBAL EDUCATION PROGRAM KEY CHARACTERISTICS

Program name	-	The social support program for nationals of the Russian Federation who have independently enrolled and are studying at leading foreign educational institutions in specialties and fields of study, the quality of education which meets the highest world standards and providing employment relevant to their qualification with organisations registered in the Russian Federation
Name, number and date of the resolution to develop the program	-	Decree No. 967 of the President of the Russian Federation dated December 28, 2013 “On Measures to Enhance the Human Resource Capacity of the Russian Federation”
Numbers and - dates of the Government of the Russian Federation Decrees regulating the program	-	The Decree No.568 of the Government of the Russian Federation dated June 20, 2014 The Decree No. 635 of the Government of the Russian Federation dated June 26, 2015 The Decree No. 298 of the Government of the Russian Federation dated March 15, 2017
State customer of the program	-	The Ministry of Education and Science of the Russian Federation <a href="http://минобрнауки.рф/">http://минобрнауки.рф/</a>
Non-commercial organisation of the program	-	A public institution subordinate to the state customer of the program who provides funding to program participants as determined by the State Customer of the program (Interobrazovanie - <a href="http://ined.ru/">http://ined.ru/</a> - as on the 15th of May 2017)
Program operator	-	An organisation selected in an open tender in accordance with the laws of the Russian Federation to provide organisational, technical, information and analytical support to the program (limited liability company “UK Skolkovo Management” as of 15th May)
Employer organisations	-	Russian higher education institutions, scientific, medical and social organisations and high technology companies registered in the Russian Federation that meet the criteria established under the

program and which are included by the program's supervisory board on the list of employer organisations

- Program participants - Nationals of the Russian Federation who have independently enrolled and are studying at leading foreign educational institutions on a full-time basis under educational programs classified as 'higher education programs' under the laws of the Russian Federation (Master's programs, postgraduate academic and teaching programs, and residency programs), who have been selected in a competition to participate in the program, entered into an agreement for social support with the non-commercial organisation of the program as provided by the program, and undertaken a commitment to gain employment with employer organisations according to their qualifications
- Program goals - Preserve and enhance a scientific, teaching, medical, engineering and social management workforce, and provide support and subsequent employment to nationals of the Russian Federation who have independently enrolled in leading foreign educational institutions
- Program objectives - Establish groups of individuals who have independently enrolled in leading foreign educational institutions;  
Select program participants on a competitive basis;  
Inform program participants of the program terms and progress;  
Establish mechanisms providing employment of program participants with employer organisations;  
Monitor program participants' compliance with their commitments and the terms of participation in the program;  
In case of a program participant's failure to comply with the terms of participation in the program, ensure that the amounts paid to the program participant are refunded, and a fine is collected
- Program period - 2014-2025 (as amended by Decree No. 298 of the Government of the Russian Federation dated March 15, 2017)
- Funding amount and sources - Allocations from the federal budget in the amount of 4,233.6 million rubles, including:  
1,470 million rubles in 2014;  
1,323 million rubles in 2015;  
0,964 million rubles in 2016;  
other sources to the extent permitted by the laws of the Russian Federation  
  
(as amended by Decree No. 298 of the Government of the Russian Federation, dated March 15, 2017)

Program targets and indicators - At least 718 nationals of the Russian Federation trained at leading foreign educational institutions in the specialties and fields of study that are a priority to the Russian economy;  
Employment of at least 718 program participants who have graduated from leading foreign educational institutions  
(as amended by Decree No. 635 of the Government of the Russian Federation, dated June 26, 2015)

Expected outcomes of the program - Staff employer organisations, including those registered in the areas of advanced social and economic development in the Far East and Eastern Siberia, with highly skilled professionals, in order to accelerate modernisation processes and introduce the latest technologies for social sector reforms

Source: Decree No.568 of the Government of the Russian Federation dated June 20, 2014

(as amended by Decree No. 635 of the Government of the Russian Federation dated June 26, 2015 and Decree No. 298 of the Government of the Russian Federation dated March 15, 2017)



## GLOBAL EDUCATION PROGRAM: DETAILED LEGAL FRAMEWORK

Source: Decree No.568 of the Government of the Russian Federation dated June 20, 2014 (extracts)  
(as amended by Decree No. 635 of the Government of the Russian Federation, dated June 26, 2015, and Decree  
No. 298 of the Government of the Russian Federation dated March 15, 2017)

### I. Program Goals and Objectives

The program goals are to preserve and enhance a scientific, teaching, medical, engineering and social management workforce, and provide support and subsequent employment to nationals of the Russian Federation who have independently enrolled in leading foreign educational institutions.

To achieve these goals, the following objectives are to be accomplished:

Establish groups of individuals who have independently enrolled in leading foreign educational institutions;

Select program participants on a competitive basis;

Inform program participants of the program terms and progress;

Establish mechanisms providing the employment of program participants with employer organisations;

Monitor program participants' compliance with their commitments and the terms of participation in the program;

In case of a program participant's failure to comply with the terms of participation in the program, ensure that the amounts paid to the program participant are refunded, and a fine is collected.

The program has the following features:

Social support is provided to nationals of the Russian Federation who have independently enrolled and are studying at leading foreign educational institutions on a full-time basis under educational programs classified as higher education programs under the laws of the Russian Federation (Master's programs, postgraduate academic and teaching programs, and residency programs), who have been selected in a competition to participate in the program, have entered into agreements for social support with the non-commercial organisation of the program as provided by the

program, and undertaken a commitment to gain employment with employer organisations according to their qualification (hereinafter “agreements with program participants” and “program participants”, respectively);

Training of a scientific, teaching, medical, engineering and social management workforce under the program is subject to quotas;

If a program participant fails to comply with the terms of participation in the program, the program participant must, in cases specified in the Refund Regulations, refund the amounts allocated to them from the federal budget under Agreements, and pay a fine approved by Decree No. 568 of the Government of the Russian Federation, dated June 20, 2014;

Additional funding for program activities may be raised from other sources (program participants’ own funds, funds of employer organisations and other sources provided by the laws of the Russian Federation (hereinafter “non-budget sources”)).

## II. Program Implementation Mechanisms

Social support measures for program participants are taken to cover the cost of their training at a leading foreign educational institution, return travel costs between the location of the leading foreign educational institution and the program participant’s place of residence, medical insurance, accommodation, meals, purchase of educational and scientific literature and money transfer fees charged by credit institutions (hereinafter “social support measures”), provided that such costs have been, and/or will be, incurred by nationals of the Russian Federation after registration in the electronic queue on the official website of the program on the internet (hereinafter, the “program website” and the “electronic queue”, respectively).

(as amended by Decree No. 635 of the Government of the Russian Federation, dated June 26, 2015)

Social support measures do not cover costs incurred by nationals of the Russian Federation prior to the registration in the electronic queue on the program website, costs of student exchange activities or costs arising from training simultaneously at a Russian higher education institution and a leading foreign educational institution (as amended by Decree No. 635 of the Government of the Russian Federation, dated June 26, 2015).

The state customer of the program shall fund the implementation of the program within the limits of the budget allocations to the state customer for this purpose by providing subsidies to the non-commercial organisation of the program for the relevant calendar year, in accordance with the second paragraph of section 1 of Article 78.1 of the Budget Code of the Russian Federation.

The non-commercial organisation shall fund the social support measures for program participants by providing a grant to the program participant on the basis of an agreement with the program participant (hereinafter the “grant”).

In order for the operator program to provide organisational, technical, information and analytical support of the program, the state customer of the program shall ensure that the program operator is granted subsidies for the relevant calendar year according to the procedure set out in Articles 78 and 78.1 of the Budget Code of the Russian Federation. For this purpose, the state customer of the program shall, within the limits of the allocations from the federal budget provided in the consolidated federal budget breakdown for financial support of the program, make proposals on appropriate changes in the consolidated budget breakdown to the Ministry of Finance of the Russian Federation, according to the established procedure.

In order to ensure transparency in the implementation of the program and effective management, a program supervisory board shall be established.

The powers of the program supervisory board shall be determined by the regulations on the program supervisory board.

The membership of the program supervisory board shall be approved by the state customer of the program.

Program participants shall be selected for a grant on a competitive basis. The procedure and quantitative criteria for the competitive selection of program participants shall be determined by the program supervisory board.

In order to be eligible to apply for grants, nationals of the Russian Federation shall:

Agree with the terms of the program;

Be registered in the electronic queue on the program website in the relevant calendar year (as amended by Decree of the Government No. 635 of the Russian Federation, dated June 26, 2015);

Furnish the program operator with an official document (issued no later than 2 months prior to the submission date) confirming that he/she has been enrolled in (is studying at) a leading foreign educational institution included in the list of foreign educational organisations offering educational programs in specialties and fields of study, the quality of education in which meets the highest world standards, as approved by Order No. 1094-p of the Government of the Russian Federation, dated June 20, 2014, in an educational program that is classified as a higher education program in accordance with the laws of the Russian Federation (Master's programs, postgraduate academic and teaching programs and residency programs) (hereinafter the "educational program") in specialties and fields of study, the quality of education in which meets to the highest world standards;

Have no outstanding or non-expunged convictions;

Hold a certificate of education and qualification (Bachelor's or specialist (certified specialist) degree);

At the time of registration in the electronic queue, have no reasons for being released from their employment commitments under section 4 of the refund regulations.

Criteria for the competitive selection of nationals of the Russian Federation applying for a grant shall be as follows:

Professional work experience relevant to their qualification in a higher education institution, scientific, medical or social organisation or a high technology company registered in the Russian Federation;

Publication of research and development findings in scientific journals indexed in the Scopus database or the Web of Science database at the time of enrolling in specialties and fields of study within the quotas for training of scientific workforce;

Training at a leading foreign educational institution on an educational program in the specialties and fields of study offered by foreign educational institutions included in the list of foreign educational institutions, if the duration of the educational program exceeds 1 year and the national of the Russian Federation has paid for a certain period of study and applies for a grant for the remaining period of study not exceeding 2 years.

The non-commercial organisation of the program shall provide grants to program participants for educational programs with the duration of at least 1 year,

upon the completion of which the leading foreign educational institution issues an education and/or qualification certificate.

The program operator shall ensure the establishment of organisational and information mechanisms for employment of program participants with employer organisations, including the possibility for the program participants to move from one employer organisation to another, but no more than two times, in accordance with the terms of the program and agreement with the program participant.

To be eligible to become an employer organisation, an organisation shall:

Be registered in the Russian Federation;

Have been carrying out its activities for at least 3 years;

Not be under liquidation or bankruptcy proceedings;

Be in one of the following categories:

Scientific organisation;

Leading classical university of the Russian Federation, federal university or national research university;

Organisations selected on a competitive basis as provided by Decree No. 218 of the Government of the Russian Federation dated April 9, 2010 “On Measures of State Support for the Development of Cooperation Between Russian Higher Education Institutions, State Scientific Institutions, and Organisations Implementing Comprehensive Projects for the Creation of High Technology Production”;

Resident of a high technology park in accordance with Order N 328-p of the Government of the Russian Federation, dated March 10, 2006;

Organisations of other categories of employer organisation as proposed and justified by a federal executive body and approved by the program supervisory board.

An organisation intending to become an employer organisation shall be included in the list of employer organisations approved by the program supervisory board.

The employer organisation shall, throughout the program period:

Be registered on the program website for posting a list of vacancies for program participants;

Participate in activities organised by the program operator to provide employment of program participants;

Post a list of available vacancies for program participants indicating the applicable conditions of remuneration and social security (if any) on the program website and update it on a monthly basis;

Employ program participants in accordance with the laws of the Russian Federation and on the basis of the list of vacancies posted on the program website;

Enable the program operator, according to the procedure provided by the laws of the Russian Federation, to receive, with consent of the program participant, information regarding the program participant's work at the employer organisation, including personal data of the program participant.

The form of agreement with the program participant shall be developed by the program operator and approved by the program supervisory board.

The agreement with the program participant shall stipulate the following:

Procedure and timing for payment of grants to the program participant;

The rights of the program participant, including, without limitation, the right to timely receive complete and reliable information about the terms and progress of the program from the program operator, and to contact the program operator for clarifications of the terms and progress of the program;

Obligations of the non-commercial organisation of the program to pay grants to program participants;

Reasons for release of the program participant from their commitment to be employed with an employer Organisation in cases listed in section 4 of the refund regulations;

Reasons for the extension of the agreement with the program participant, including, without limitation, a call up for military service after the graduation for up to 1 year (subject to a summons from a military commissariat indicating the time and place of departure to the place of military service), academic leave for medical reasons (subject to a medical panel report issued by a medical institution) for up to 2 years or maternity and child care leave. The periods of extension of the agreement with the program participant for the above reasons shall not be included in the period of work at employer organisations;

Liability of the program participant for failure to comply with the agreement;

Obligations of the program participant, including, without limitation, to:

Use the grant in accordance with the program goals;

Become employed with an employer organisation according to his/her qualification and work for 3 years;

Refund the grant to the non-commercial organisation of the program in accordance with the refund regulations;

Interact with the program operator and participate in the activities organised by the program operator within the scope of its functions under the program;

Comply with requirements set by the program operator within its scope of authority under the program;

Provide the program operator and/or the employer organisation with his/her personal data necessary for participation in activities undertaken by the program operator and/or the employer organisation, including consent to transfer and processing of personal data of the program participant;

Provide the program operator with information about the employment (an employment proof) every 6 months;

Provide the program operator with information about his/her participation in the program and progress, including information relating to training, internships and employment;

Notify the program operator of change in his/her personal details, including, without limitation, his contact information (place of residence/stay address, phone numbers (residential, office, mobile), email address) in the country of stay and in the Russian Federation within 10 days.

The amount of grant shall be calculated based on the need to cover expenses for 1 year of education and shall not exceed an equivalent of 2,763.6 thousand rubles per program participant at the exchange rate of the Bank of the Russian Federation as at the date of money transfer.

(as amended by Decree No. 635 of the Government of the Russian Federation, dated June 26, 2015)

Where the duration of the educational program exceeds 1 year, the above amount shall be increased accordingly.

The grant shall be paid by the non-commercial organisation of the program into the program participant's bank account or, as instructed by the program participant, into the account of the leading foreign educational institution.

The program participant shall refund the grant according to the procedure and in cases listed in the refund regulations.

During the program period, the program operator shall monitor the program participants' compliance with their commitments, and in case of failure of a program participant to comply with his/her commitments or in case of refund of the grant and

payment of the fine by the program participant, make a decision to terminate the agreement with the program participant.

The procedure for interactions between the program operator and the non-commercial organisation of the program, including funding of administrative expenses incurred by the non-commercial organisation of the program in connection with the performance of its functions under the program, shall be governed by the program cooperation agreement between the program operator and the non-commercial organisation of the program, the form of which shall be approved by the program supervisory board.

#### IV. Functions of the State Customer, the Non-Commercial Organisation of the Program and the Program Operator: Program Progress Monitoring

The state customer of the program shall:

Monitor the program's progress;

Select the program operator by means of an open tender;

Decide on the non-commercial organisation of the program;

Enter into an agreement with the non-commercial organisation of the program to provide it with subsidies to fund the program;

Enter into an agreement with the program operator to provide it with a subsidy to fund the performance of the program operator's functions;

Monitor and review expenses funded by allocations from the federal budget for the implementation of the program activities;

Prepare program progress reports on the basis of reports issued by the program operator and the non-commercial organisation of the program;

Make proposals on changes to the program and, where necessary, to other program related documents to the Government of the Russian Federation on the basis of recommendations of the program supervisory board;

The non-commercial organisation of the program shall:

Enter into agreements with program participants;

Enter into the program cooperation agreement with the program operator;

Pay grants under agreements with program participants;

Prepare and submit reports and other information regarding payment of grants to program participants to the state customer of the program, the program supervisory board and the program operator;



Carry out other activities to implement the program in accordance with decisions of the state customer of the program and the program supervisory board.

The program operator shall:

Be responsible for the efficiency of the program;

Enter into the program cooperation agreement with the non-commercial organisation of the program;

Monitor that grants are used by program participants for their intended purpose;

Select program participants on a competitive basis in accordance with the requirements and criteria set out in the program;

Develop a form of agreement with program participant;

Develop a form of program cooperation agreement;

Prepare draft agreements with program participants for execution;

Monitor the program participants' compliance with their commitments, the terms of participation in the program, and the terms and conditions of agreements with program participants;

If a program participant fails to comply with the terms of participation in the program, the program operator shall give the program participant a notice of such failure with a request to refund the grant and pay a fine in writing within 10 days;

Ensure that the grants paid to program participants are refunded and a fine is collected in case of program participants' failure to comply with the terms of participation in the program;

Monitor the program participants' progress in mastering educational programs and their compliance with the commitments under the program and agreements with program participants;

Raise funds from non-budget sources to fund the program activities;

Establish mechanisms providing employment of program participants with employer organisations;

Provide outreach and publicity of the program among nationals of the Russian Federation residing both in and outside the Russian Federation and among employer organisations;

Arrange for interactions between program participants and employer organisations during the periods of studying and employment of program participants;

Ensure the creation and operation of the program website, including a system for registration of prospective program participants in the electronic queue;

Arrange for posting of information about the program progress and outcomes on the program website;

Process data/information necessary for the program implementation, including personal data of program participants, in compliance with the personal data laws of the Russian Federation, including collection, recording, arrangement, accumulation, storage, adjustment (update and change), retrieval, use, transfer (dissemination, disclosure and access to), depersonalization, blocking, deletion, destruction, and verification of such data/information according to the procedures stipulated by the laws of the Russian Federation;

Inform the state customer of the program and the program supervisory board of the program progress;

Carry out other activities to implement the program in accordance with decisions of the state customer of the program and the program supervisory board;

Make proposals on changes to the program and other program related documents to the state customer of the program and the program supervisory board.

To perform its functions, the program operator is entitled to enter into agreements with third parties approved by a relevant decision of the program supervisory board.

The program operator and the non-commercial organisation of the program shall provide the state customer of the program and the program supervisory board with information and reports on the program's progress according to the procedure and using the form prescribed by the program supervisory board.

## V. Program Staging

The program will be implemented in stages.

The first stage (2014) will include organisational and preparation activities (publicity campaign, deciding on the non-commercial organisation of the program, competitive selection of the program operator, arrangements for interactions with prospective program participants and potential employer organisations, creation of the program website, establishment of the program supervisory board, development of regulatory legal acts and forms of documents necessary for the implementation of the program).

The second stage (2014 – 2016) will involve measures to promote training of program participants in leading foreign educational institutions, create mechanisms

for providing employment of program participants, and monitor program participants' compliance with their commitments.

The state customer of the program, the program supervisory board, the non-commercial organisation, the program operator, the employer organisations and the leading foreign educational institutions will continue to carry out activities necessary to achieve the program goals until the deadline for performance of the program participant's commitments in accordance with the agreement with the program participant.

The program may be extended for another period based on recommendations of the program supervisory board issued on the basis of a review of its implementation.

(According to Decree No. 298 of the Government of the Russian Federation, dated March 15, 2017 The program was extended until 31/12/ 2025).

## VI. Program Targets and Indicators

The program targets and indicators shall be as follows:

At least 718 nationals of the Russian Federation trained at leading foreign educational institutions in the specialties and fields of study that are a priority for the Russian economy;

(as amended by decree no. 635 of the government of the Russian Federation, dated June 26, 2015).

Employment of at least 718 program participants who have graduated from leading foreign educational institutions (save as provided in section 4 of the refund regulations) with employer organisations, including those registered in the fields of advanced social and economic development in the Far East and Eastern Siberia.

(as amended by Decree No. 635 of the Government of the Russian Federation, dated June 26, 2015).

## VII. Expected Outcomes of the Program

The program will ensure that employer organisations, including those registered in the fields of advanced social and economic development in the Far East and Eastern Siberia, are staffed with highly skilled scientific, teaching, medical, engineering and social management workforce in order to accelerate the modernization processes and introduce the latest technologies for social sector reforms.

## REGULATIONS

### ON EMPLOYMENT OF NATIONALS OF THE RUSSIAN FEDERATION RECEIVING SOCIAL SUPPORT UNDER THE SOCIAL SUPPORT PROGRAM FOR NATIONALS OF THE RUSSIAN FEDERATION WHO INDEPENDENTLY ENROLL AND STUDY IN LEADING FOREIGN EDUCATIONAL INSTITUTIONS IN SPECIALTIES AND FIELDS OF STUDY, THE QUALITY OF EDUCATION IN WHICH MEETS THE HIGHEST WORLD STANDARDS, AND PROVIDING THEIR EMPLOYMENT RELEVANT TO THEIR QUALIFICATION WITH ORGANISATIONS REGISTERED IN THE RUSSIAN FEDERATION

1. These regulations define the procedure for employment of program participants.

2. A program participant who has graduated from a leading foreign educational institution and obtained a relevant certificate of education shall return to the Russian Federation within 30 calendar days for further employment with an employer organisation.

3. A program participant shall, within 30 calendar days after the arrival in the Russian Federation upon the completion of the full training at a leading foreign educational institution, furnish the program operator with the original certificate of education granted by the leading foreign educational institution.

4. A program participant shall, within no more than 3 months after the arrival in the Russian Federation, select an employer organisation from the list of organisations providing employment to program participants as approved by the program supervisory board and get employed with the employer organisation.

With respect to employment in businesses and/or entities that are subject, under the laws of the Russian Federation, to special arrangements for security and protection of state secrets, including special conditions of residence, the employment period shall not exceed 6 months.

5. The program participant may change the employer organisation no more than 2 times during the period of his/her participation in the program; provided that the program participant shall work at employer organisations according to his/her qualification for at least 3 years.

In case of change of the employer organisation, the program participant shall choose and get employed with a new employer organisation within no more than 2 months or, in case of employment in businesses and/or entities that are subject, under the laws of the Russian Federation, to special arrangements for security and

protection of state secrets, including special conditions of residence, within no more than 6 months.

The number of program participants who are domiciled in Moscow and St. Petersburg, employed by employer organisations and whose actual place of work is an employer organisation located in Moscow and St. Petersburg shall not exceed 10 percent of the total number of the program participants employed<sup>43</sup>.

6. The program participant shall, within 10 calendar days after the date of employment with an employer organisation or the date of re-employment in case of change of the employer organisation, notify the program operator accordingly and provide supporting documents and information about the full name of the employer organisation, his/her job title, and the employment commencement date.

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<sup>43</sup> The last paragraph of the clause contains the GEP employment quota condition. On 15<sup>th</sup> March, 2017, it was amended as follows: “The number of Program Participants who are domiciled in Moscow and St. Petersburg, employed by Employer Organizations and whose actual place of work is an Employer Organization located in Moscow and St. Petersburg shall not exceed 25 percent of the total number of the Program Participants’ (Decree No. 298 of the Government of the Russian Federation dated March 15, 2017)

INVITATION TO PARTICIPATE IN THE STUDY (Translation from Russian)

Thank you for agreeing to participate in the study on intellectual migration (socio-legal aspects) and the experiences of participating in the Global Education Programme. The main purpose of this study is to explore how sending country law can influence the decisions of highly skilled migrants to return and seek employment in the country of origin. More information about the present research is available on the Research Information Sheet (available upon request). Additionally, if you are willing to participate in an interview within the study, you will be sent an interview consent form for your information and signature.

If you prefer to answer the questions in writing, you are welcome to do so in this file. By answering the questions in writing, you confirm that you are familiar with the terms and purposes of this study and give your consent to the processing and analysis of the data you include in this file.

**IMPORTANT!** The study does not require any personal information, thereby ensuring the identification of respondents will not be disclosed. You can choose to send the file with the answers to my e-mail address by any means, precluding your identification. If you choose to provide your name and contact information for the purposes of conducting a subsequent interview and/or sending additional questions, you can do it at the end of the questionnaire. Your name will be known to the researcher only, and any personal details will be changed in the text of the thesis and interview notes to ensure confidentiality.

Best Regards,

Yulia Petruneva,

**dvs15ype@student.lu.se**

Lund University, Graduate School,  
Department of Sociology of Law

## List of Questions

(Answers can be inserted in this file, using a different colored font)

### **General information**

1. Your gender

2. Your age

3. Your education (Bachelor, specialist, Master, PhD, doctorate, etc.)

4. Your specialisation

5. Are you studying/looking for work/working? (please specify)

### **Topic 1. Expectations**

6. Why did you decide to participate in the GEP?

7. What expectations did you have regarding your participation in the program at the time of signing the participation agreement?

8. What expectations did you have regarding employment within the GEP and your future work after graduation, at the time of signing the participation agreement?

9. Have your expectations changed? If yes, how?

10. What opportunities does the GEP offer to you (for example, from the short-term (1 year+), medium-term (3 years+) and long-term (5 years+) perspectives?

**Topic 2. GEP Rules**

11. From what source(s) did you learn about GEP rules, your rights and duties as a GEP participant? (E.g. media, information on the official website, the explanations of representatives of the GEP operator/normative documents/the participation agreement/from other participants/other). Which of these sources do you trust more (e.g. information obtained from which sources will guide your actions)?

12. Are you familiar with GEP rules (your personal opinion/inner view)?

13. Did you notice any changes in GEP rules since signing the participation agreement? If yes, what changes have you noticed?

14. Your main rights as a GEP participant (3-5 examples):

15. Your main duties as a GEP participant (3-5 examples):

**Topic 3. Penalties**

16. Why does the GEP have a ‘penalties’ condition?

17. What role did the ‘penalties’ condition play in your decision to participate in the GEP? (for example, “it scared/discouraged me”, “no idea/did not play any role” “what is this condition?”)

18. What role did the ‘penalties’ condition play in your study process (for example, “it disciplined (s) me”)?

19. What role did the ‘penalties’ condition play (will play) in your employment process?

20. Would you return to Russia after graduation, if there were no ‘penalties’ condition in the GEP?

**Topic 4. Employment**



21. Is employment within the GEP guaranteed?

22. What positive aspects of your work in Russia (compared to the work abroad) do you see?

23. What negative aspects of your work in Russia (compared to the work abroad) do you see?

24. "I feel that Russia is interested in my return and my knowledge and skills will be relevant there". To what extent is this statement correct?

25. Do you know what organisation/company(s) in Russia need your qualifications obtained during your GEP funded studies? Is this organisation (organisations) included in the GEP approved list?

26. How do you perceive your ideal future job?

27. What measures need to be taken in order to assist you with GEP-related employment (p. 26)?

Your name (optional) \_\_\_\_\_

Your contact information (optional) \_\_\_\_\_

Thank you for your time and participation. Please send the completed questionnaire to: [dvs15ype@student.lu.se](mailto:dvs15ype@student.lu.se)

If you do not have time to complete the questionnaire but wish to discuss the above topics and answer further questions, please contact me. We can agree on about a 30-40 minute-long online interview when it is convenient to you (without audio recording, on the same terms of confidentiality). Thanks again!

## **Interview Guide**

(Translation from Russian)

### Before the Interview

1. To thank for participation
2. To introduce the researcher
3. To introduce the study (purposes, terms, the outcome, contacts)
4. To explain the interview procedure (no audio recording, notes, stop at any time)/ to remind about the consent form
5. To ask if there are any questions before the interview/ answer the questions
6. To ask a couple of 'warm up' questions (eg. weather/ studies)

### Interview Topics/ Questions

#### **General information**

1. Your gender
2. Your age
3. Your education (Bachelor, specialist, Master, PhD, doctorate, etc.)
4. Your specialisation
5. Are you studying/looking for work/working? (please specify)

#### **Topic 1. Expectations**

6. Why did you decide to participate in the GEP?
7. What expectations did you have regarding your participation in the program at the time of signing the participation agreement?
8. What expectations did you have regarding employment within the GEP and your future work after graduation, at the time of signing the participation agreement?
9. Have your expectations changed? If yes, how?
10. What opportunities does the GEP offer to you (for example, from the short-term (1 year+), medium-term (3 years+) and long-term (5 years+)) perspectives?

## **Topic 2. GEP Rules**

11. From what source(s) did you learn about GEP rules, your rights and duties as a GEP participant? (E.g. media, information on the official website, the explanations of representatives of the GEP operator/normative documents/the participation agreement/from other participants/other). Which of these sources do you trust more (e.g. information obtained from which sources will guide your actions)?
12. Are you familiar with GEP rules (your personal opinion/inner view)?
13. Did you notice any changes in GEP rules since signing the participation agreement? If yes, what changes have you noticed?
14. Your main rights as a GEP participant (3-5 examples):
15. Your main duties as a GEP participant (3-5 examples):

## **Topic 3. Penalties**

16. Why does the GEP have a 'penalties' condition?
17. What role did the 'penalties' condition play in your decision to participate in the GEP? (for example, "it scared/discouraged me", "no idea/did not play any role" "what is this condition?")
18. What role did the 'penalties' condition play in your study process (for example, "it disciplined (s) me")?
19. What role did the 'penalties' condition play (will play) in your employment process?
20. Would you return to Russia after graduation, if there were no 'penalties' condition in the GEP?

## **Topic 4. Employment**

21. Is employment within the GEP guaranteed?
22. What positive aspects of your work in Russia (compared to the work abroad) do you see?
23. What negative aspects of your work in Russia (compared to the work abroad) do you see?

24. “I feel that Russia is interested in my return and my knowledge and skills will be relevant there”. To what extent is this statement correct?
25. Do you know what organisation/company(s) in Russia need your qualifications obtained during your GEP funded studies? Is this organisation (organisations) included in the GEP approved list?
26. How do you perceive your ideal future job?
27. What measures need to be taken in order to assist you with GEP-related employment (p. 26)?

#### After the Interview

1. To thank for participation
2. To ask if there are any questions after the interview
3. To remind the contact details (if there are any questions at a later stage)
4. Wish good luck with the studies/employment/work
5. To complete the notes ASAP

**Interview Consent Form**

Research title: **Intuitive Law of Intellectual Migration. The Case of the Russian Global Education Programme (GEP)** (working title)

Researcher: Yulia Petruneva

Research Participant's name (initials) : \_\_\_\_\_

The interview will take 30 to 60 minutes. The language of the interview will be Russian.

Thank you for agreeing to be interviewed within the present study. Ethical rules of academic research require that interviewees explicitly agree to being interviewed and how the information contained in their interview will be used. This consent form is being sent to you to ensure that you understand the purpose of your involvement and that you agree with the conditions of your participation. Would you therefore read the accompanying **Research Information Sheet** and then confirm that you approve the following:

- You can stop the interview at any time
- The interview will not be recorded, and the researcher will take notes during the interview
- The notes from the interview will be analysed by Yulia Petruneva
- Access to the interview notes will be limited to Yulia Petruneva, the research supervisor and academic staff with whom she might collaborate as part of the research process

- Any summary of interview content, or direct quotations from the interview, will be anonymised so that you cannot be identified, and care will be taken to ensure that other information in the interview that could identify you is not revealed
- Any variation in the conditions above will only occur with your further explicit approval

I understand the conditions above and agree to be interviewed.

I agree to be quoted directly if my name is not published and a made-up name (pseudonym) is used.

I agree that the researcher may publish documents that contain quotations by me.

\_\_\_\_\_ (signature/ initials)

## **Research Information Sheet**

Lund University, Lund, Sweden

Graduate School/Department of Sociology of Law

Programme: Msc in Development Studies (majoring in Sociology of Law)

Research Title: Intuitive Law of Intellectual Migration. The Case of the Russian Global Education Programme (GEP) (working title)

Researcher: Yulia Petruneva ([dvs15ype@student.lu.se](mailto:dvs15ype@student.lu.se))

Research Supervisor: Professor Reza Banakar ([reza.banakar@soclaw.lu.se](mailto:reza.banakar@soclaw.lu.se))

### The Purpose of the Study:

To explore how sending country law can influence the decisions of highly skilled migrants to return and seek employment in their country of origin.

Using the Russian Global Education Programme (GEP) as a case study, the thesis:

- 1) Examines the interplay between the law as a system of legal rules aiming to regulate human capital development and intellectual migration in a sending country context, on the one hand, and as a form of people's experience, on the other;
- 2) Identifies discrepancies existing between legal state rules and the reality of their interpretation and realisation by different social groups;
- 3) Reveals the underlying causes of the above-named discrepancies and their meaning in relation to people's behaviour;
- 4) Informs policies aimed at mediating the conflicts caused by the above named discrepancies.

Information for Participants: The study will take place between 1<sup>st</sup> March 2017 and 30<sup>th</sup> April 2017 as part of the Master Thesis Project conducted by Yulia Petruneva, to satisfy the requirements for the Msc in Development Studies (major in Sociology of Law) degree. The results will be presented in the form of a Master dissertation in May 2017.

Ethical Statement: I hereby confirm that I shall take all measures to secure the actual permission and interests of all those involved in the present study. I shall not misuse any of the information discovered and will protect the rights of people in the study, as well as their privacy and sensitivity. The confidentiality of those involved in the study will be ensured, keeping participants' anonymity and privacy secure.

Yulia Petruneva