

Martens Summer School on International Law

Russia and International Human Rights Law

**Human Rights in Russian Courts: an NGO
Perspective**

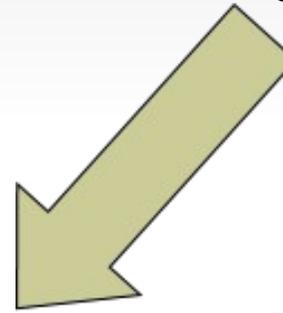
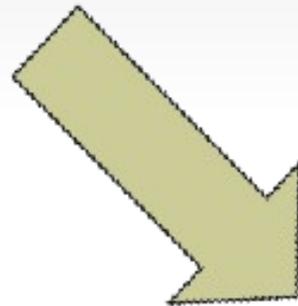
**Seminar 2: Bringing Human Rights Home:
Application of the European Convention in
Russian Courts**

by Dr. Anton Burkov

Russia's Accession to the Council of Europe

Council of Europe

**Russian Ministry for
Foreign Affairs**



Same conclusion



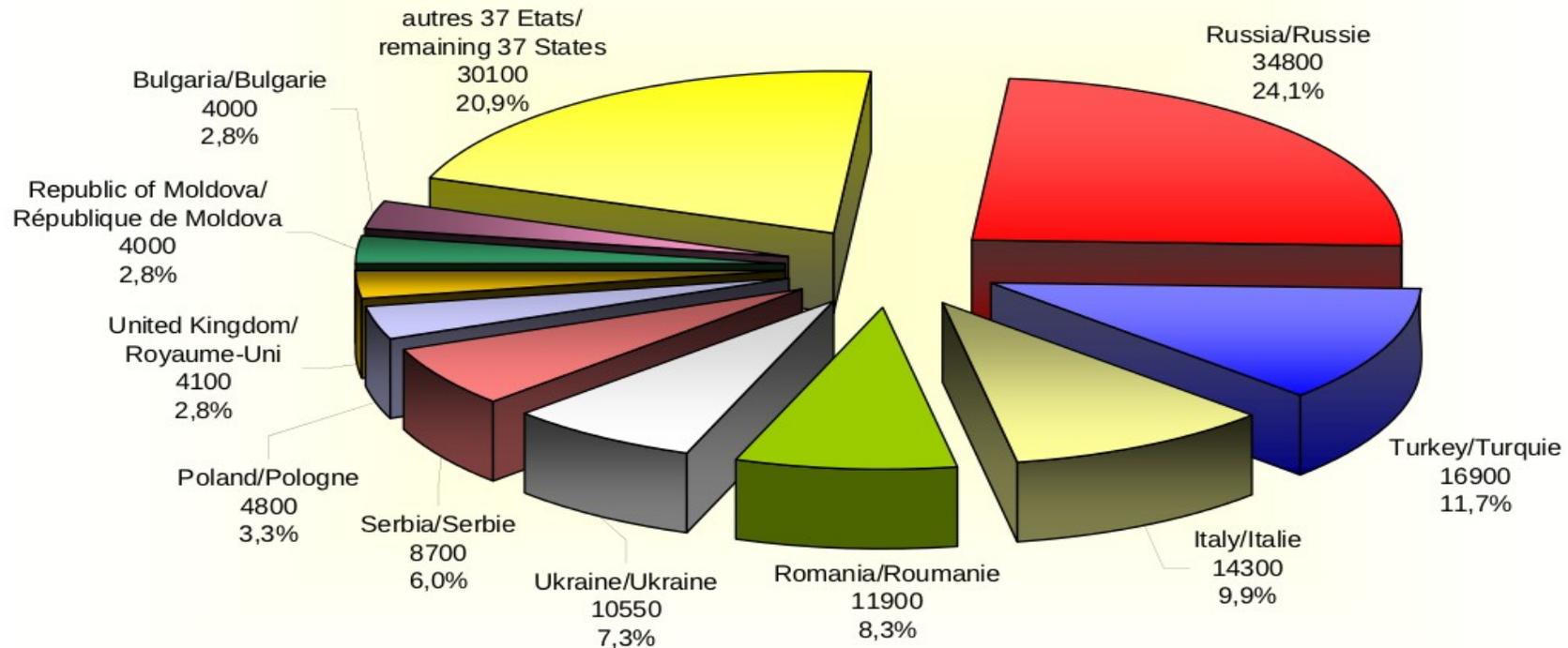
The legal order of the Russian Federation does not meet Council of Europe standards

Domestication of the European Convention

- When Russia acceded to the Council in 1996, it did so with the understanding that it would:
 1. ratify the European Convention and recognize the jurisdiction of the European Court of Human Rights (ECHR)
 2. further implement national human rights standards defined by the Convention
- When Russia ratified the Convention in 1998, many Russian judges and lawyers understood this to mean only that Russian citizens had the right to appeal at the ECHR, not that Russian courts also had an obligation to implement the Convention at the national level.
- Did not expect the level of legal bindingness

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPEENNE DES DROITS DE L'HOMME

PENDING APPLICATIONS ALLOCATED TO A JUDICIAL FORMATION
REQUÊTES PENDANTES DEVANT UNE FORMATION JUDICIAIRE
30/06/2012



Total number of pending applications: 144,150
Nombre total des requêtes pendantes : 144 150

- Violation judgment in 2011: Turkey (174) 15,04%,
Russia (133) 11,5%

Russia and the European Court of Human Rights

- Violations found in judgments against Russia in 2011:
 - rights to life (53) and effective investigation (58)
 - freedom from torture (6) and inhuman or degrading treatment (62); right to effective investigation (22)
 - rights to liberty and security (68)
 - rights to fair trial (40), reasonable lengths of proceedings (13), non-execution of judgments (18), effective remedy (58), property (26)
- Around 90% of violations found against Russia are **clone cases**
- 2 'pilot' judgments: Burdov v. Russia; Ananiev and others v. Russia
- Such problems have led to legislation and changes in practice on issues of pre-trial detention facilities, extrajudicial review of judgments, libel cases, length of proceedings, and non-execution of judgments (e.g.: Compensation Act of 2010)

Harmonization of the Convention with Russian Law

- Russian Constitution and legislation:
 - The Constitution provides that international treaties (i.e., the Convention) take supremacy over national law
- Constitutional Court:
 - ECHR judgments are part of the Russian legal system (2 February 2007)
- 2003 Supreme Court Regulation:
 - “Judges should interpret the treaty by taking into account any subsequent practice of a treaty body [ECHR]”
 - Non-application of the Convention is grounds to quash a judgment
 - Gives a brief overview of six ECHR cases against Russia to illustrate what the ECHR does

Convention in the Supreme Court's Practice (1998–2003 and 2004–2008)

- Before the 2003 Regulation:
 - out of 3,911 judgments, ONLY 12 judgments mention the Convention
 - cases contain no reference to ECHR case-law.
- After the 2003 Regulation:
 - out of 3,723 judgments, ONLY 32 mention the Convention
 - of these 32 judgments, ONLY 6 refer to ECHR case-law (i.e., progress, but not significant progress).

Recent Improvements:

The Convention in the Supreme Court's Practice (2009–2010)

- In criminal cases in which the ECHR has found human rights violations, the Russian Supreme Court has begun to quash prison sentences more regularly
- The Court has begun to publish judgments of the Presidium of the Supreme Court in which it applied the Convention

BUT

- Sakhnovskiy v. Russia (no. 21272/03)
- Bugrova case (no access to court BUT law changed)

The Attitude of Judges (2004)

Statement of Sverdlovsk region Chief Justice Ivan Ovcharuk:

“No, we do not hold any special trainings on the Convention. What sort of training does one need in order to honor the provisions of Article 6 [of the Convention]? All you need is to follow the national legislation.”

—From “Judges Shall Know Everything,” Online Press Conference, August 2004

The European Convention in Russian District Courts' Practice

- Applicants' arguments based on ECHR case-law prompt implementation of the Convention (often argued by NGO pro-bono lawyers)
 - Correlation between persistent arguments based on ECHR case-law and the quality of the Convention's implementation by the courts
 - NGO lawyers succeed in getting district courts to apply the Convention more than private attorneys
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A Vicious Circle: The Attitudes of Judges and Litigators

- **Judges:** We do not apply the Convention or ECHR case-law because attorneys do not ask us to do so.
 - **Private Attorneys:** We do not argue the Convention or ECHR case-law because judges do not apply it.
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Recommendations for Domestication: Change from the Top

- The Supreme Court should do even more to motivate judges and lawyers to apply the Convention in their arguments and decisions, further implementing the Convention as a force for rule of law
- The Supreme Court should publish summaries of ECHR judgments as part of regulations of the Supreme Court's Plenum in its official bulletin so that lawyers can read them as well
- Russia should end impunity for those individuals and institutions responsible for violating the Convention (Demeneva's research)
- Russia should have a parliamentary organ with the mandate to monitor compliance of legislation and legal practice with the Convention

Recommendations for Domestication: Change from the Bottom

- As a force for change from below, lawyers should argue the Convention when bringing cases to Russian courts (lawyers arguing the Convention, especially in district courts, affect change from the bottom)
- Improved human rights education for legal professionals and law students alike:
 - a required course on the Convention in Russian law schools
 - a master's degree program in international human rights protection
- Legal trainings and seminars for district court judges
- Lawyers should seek to obtain ECHR “pilot judgments”

Recent Political Will

- In 2010, Dmitry Medvedev stated:
“We are interested in improving our judicial system so as to make it effective and to create an environment where our citizens do not need to resort to international courts.”
- Minister of Justice Alexander Kononov stated:
“Justice must be administered by taking into account the case-law of the ECHR.”

Applying the Convention in Russian Courts: General Observations of Campaigners

- “In 1996 neither us, nor anybody else in Russia knew how to apply the Convention.”
- Nobody knew
 - "what does it mean' (to applicants and to Russia)
 - ‘where to use it’
 - ‘how to use it.’

Sutyajnik's Educational Campaign

- Began strategic litigation campaign first by **educating themselves**
- Filing law-suits
 - Each law-suit contained a paragraph on the Convention
 - Each case memo had a section on the Convention
 - Each trial speech contained arguments based on the Convention

Other Methods Used in Sutyajnik's Advocacy Campaign

- Teach what we have learned and experienced
 - at special trainings
 - at universities (mostly private)

- Publish
 - newspaper and law-journal articles
 - Books

- Conduct PR-campaigns
 - press-releases
 - press-conferences
 - round tables
 - Conferences

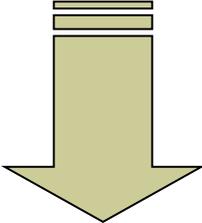
- Create web-site “Learning How to Apply the Convention”

- Bring cases to the European Court as a last resort

Main Reason for Ignoring Arguments Based on the Convention

- Motivation (more of a problem)
- Judges lack knowledge and experience in implementing the ECHR (less of a problem)
 - However, the more judges face arguments based on ECHR case-law, the more likely they will apply it

Conclusion

- Visible progress since ratification of the Convention BUT
 - Change is not that one would expect in 14 years
 - Implementation of the Convention by courts is not satisfactory
 - Disbalance between legislation and jurisprudence
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- The initiative in implementation of the Convention is on litigators

Home Work!

- Enjoy reading

Burkov, “The European Convention on Human Rights and Fundamental Freedoms in the Russian Legal System” in *The European Convention for Human Rights and Fundamental Freedoms in Central and Eastern Europe*. (Utrecht: Eleven International Publishing). 2012.