

STRATEGIC LITIGATION to change the attitude of legal professionals to domestic application of the European human rights law

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WHAT IS STRATEGIC LITIGATION

WHAT IS STRATEGIC litigation – handling a number of cases with one goal to make a change that cannot be achieved by a single case.

PARTICULAR GOAL – domestic application of the European human rights standards through changing the attitude of legal professionals to international law

WHY DO WE DO IT - an NGO cannot deal with all human rights violations, therefore it selects cases that concern the widest circle of people and uses the most effective tools available.

HOW DO WE DO IT - it involves a number of tools such as public outreach, any tool that can draw attention to the problem.

ATTITUDE TOWARDS THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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 more the better

-One of the reasons for backlog of cases is the old attitude towards international law: for states - not for persons; for international courts – not for national courts.

- vicious circle:

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.

- Correlation between persistent arguments based on ECHR case-law and the quality of the Convention's implementation by the courts

Conditions of detention

- DIFFERENT TYPES OF DETENTION – SIMILAR PROBLEMS:
 - KPZ - case of Bugrova:
 - Complaint against militia officers' inaction
 - 2 sq. m. cell issue (Bugrova)
 - Standing issue for a widow (district court, Supreme and Constitutional courts, ECHR)
- COLONIES – min 2 sq. meters – *Rozhin* case.

Other issues

Right to Association (NGOs). NGO Sutyazhnik v. Russia (I, II, III) – network of cases on issues of access to court, the right to be re-registered, the right to be registered as international organization

Right to free legal aid for those detained after mass actions. Mikhailova v. Russia – right to a free lawyer when “criminally charged” in an administrative case

Voting Rights – no right to challenge fraud before courts; blank prohibition in the Russian Constitution as in the UK; lack of domestic remedy

Right to meet with non-bar-member representative - Zakharkin v. Russia (2010)– violation, representative of an NGO could not meet with a ECHR applicant. - But subsequent cases of Borisov, Maryin (2010)

Right to non-discrimination in taxation and to freedom of movement - 30% (instead of 13%) for those who study and work abroad for more than 183 days a year.

Right to freedom of movement - right to get driving licence at the place of residence, not at the place of registration.

Right to private life – protection of personal data for whistle-blowers about violations of administrative and criminal law

Harrasment and discrimination of women cases

Rights of disabled to physical access to courts

PUBLIC OUTREACH

- www.sutyajnik.ru merged with database of cases and documents
- publications
- conferences
- lectures
- press-conferences and interviews

VOLUNTEERING

- involvement of law clinics,
- students-volunteers,
- global law firms devoting their *pro bono* time

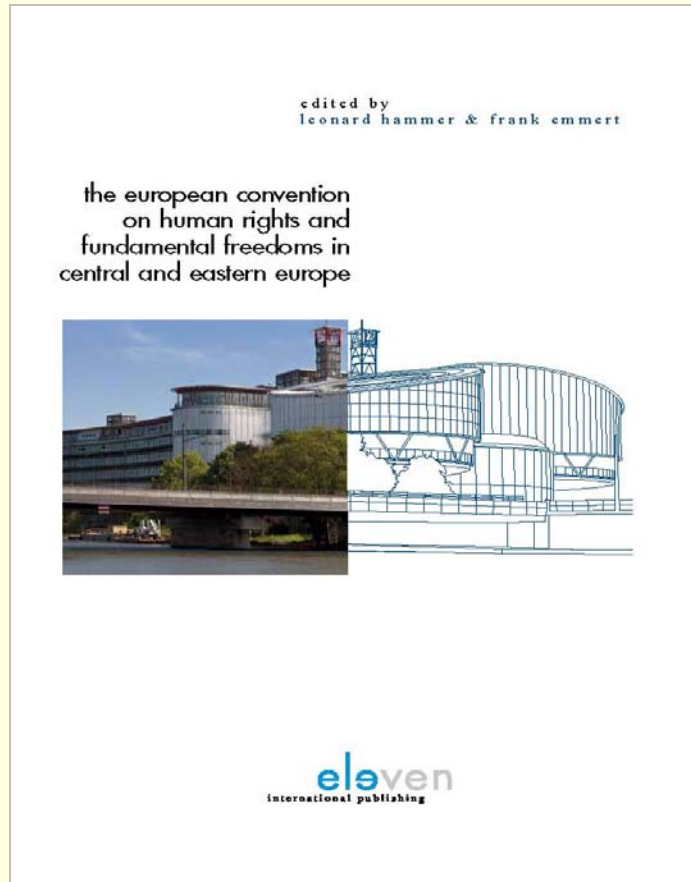
YOU CAN BE INVOLVED TOO

- legal translations
- legal research
- copy editing of draft documents
- IT assistance (video editing,...)

LACK OF LEGAL EDUCATION ON THE CONVENTION

- Root of majority of violation is lack of application of the Convention domestically
- 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

“The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe”



Chapter on Russia in English by
the speaker

<http://www.elevenpub.com/law/catalogus/the-european-convention-on-human-rights-and-fundamental-freedoms-in-central-and-eastern-europe-1>