

PUBLIC INTEREST LAW IN RUSSIA
*from the point of view of a Russian
strategic litigation NGO*

by Anton Burkov



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NGO Sutyajnik (Urals Center for International and Constitutional Human Rights Protection)

SUTYAJNIK is a non-governmental human rights organization founded in Yekaterinburg, Russia in 1994.

Sutyajnik assists citizens and organizations

- through litigation, education, and informational campaigns
- by helping to realize rights, both nationally and internationally

www.sutyajnik.ru



Public Interest Law (PIL) in the US

When analyzing PIL in Russia one inevitably to looks at the history of PIL in the US:

- PIL in the US dates back 100 years, first appearing in the Transportation Act of 1920 and in the Radio Act of 1927.
- There is now an entire industry consisting of PIL non-profits and law firms, foundations, law clinics, *pro bono*, etc.
- There are hundreds of books and law journal articles on PIL.
- However, PIL has become a victim of its own success and developed some drawbacks.

Russian PIL is developing US-like elements as well as drawbacks

Before 1993 PIL was not available – administrative justice was introduced this year – people acquired standing to sue the government. Access to courts reached its peak at the end of the 1990s.

1. There is less access to justice now than there used to be in the 1990s. Since 1998, the European Court of Human Rights has become a quasi Supreme and Constitutional courts of Russia. *Enikeev v. Russia*, see <http://sutyajnik.ru/cases/522.html>
2. A network of law clinics has developed BUT they have not become involved in PIL cases -> Work with North American and European law clinics

3. *Pro bono* is gradually coming to Russia, BUT it is still a fairly undeveloped phenomenon. Like law clinics, law firms are reluctant to get involved in PIL cases. -> Work with international law firms without offices in Russia.
4. It is difficult to receive funding since results of strategic litigation are far from immediate (Garland Fund supporting NAACP).
5. There is limited legal education on PIL - no research or publications, limited courses on the ECHR, litigation before which is inherently categorized as advancing PIL.

Russia does have PIL cases and strategic litigation (examples from Sutyajnik):

1. *Michailova v. Russia* was spurred by the arrest of activists for participating in protests and by high fines and detentions for participating in protests and resisting arrest. The outcome of this case will make it expensive and troublesome for the state to make arrests and conduct trials on these grounds in the future, as these cases require the state to provide free legal representation for each person who has been arrested (ECHR judgment is expected in 2014). See <http://sutyajnik.ru/cases/487.html>
2. A movement for better prison conditions led to the creation of public oversight commissions and to numerous cases being brought before the ECHR on prison conditions, most importantly the case of *Bugrova v. Russia*, which challenges rules of building prisons with limits of 2 sq. m. of floor space per prisoner. See <http://sutyajnik.ru/cases/510.html>
3. PIL litigation as a social process often results in unexpected results. In 2003, when we started *Russian Labor Party v. Russia*, regarding the right of a political party to refuse to provide a list of its members, we did not anticipate its relevance today, when prosecutors run checks of NGOs and demand lists of their members. See <http://sutyajnik.ru/cases/161.html>



US in the 1960s – Russia of today



- The head of the Little-Rock office of the **National Association for the Advancement of Colored People (NAACP) Daisy Bates** refused to provide a list of members (advisor in 1957 to the Little Rock Nine, the students who braved hostile opponents of integration to Central High School).
- **Daisy Bates** was charged a fine by the judge for failing to provide information about NAACP members for the public record. She won a reversal in the United States Supreme Court.
- In a similar case, the high court held that the state of Alabama could not compel the NAACP to turn over its membership list to state officials.

(Peter Irons, *The Courage of Their Convictions*. 1990)

FUTURE OF PIL IN RUSSIA

PIL in Russia is in its teenage years but yields results

Unfortunately results achieved through the ECHR decisions are diminished to some extent by the lack of domestic implementation of decisions

The biggest threat is limited access to national courts as well as limited access to the ECHR due to its case overload.

Strategically planned litigation campaigns with more developed infrastructure of law clinics, *pro bono* law firms, PIL NGOs, and law firms has yet to be developed.

However, if Russia lose the effectiveness of turning to the ECHR, like we lost the effectiveness of turning to the Supreme Court (and, to the most part, the Constitutional Court) there will be limited chances for PIL to work.

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

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