Anton Burkov

The Impact of the European Convention on Human Rights on Russian Law

Legislation and Application in 1996-2006

With a foreword by Françoise Hampson

SOVIET AND POST-SOVIET POLITICS AND SOCIETY

ISSN 1614-3515

Recent volumes

37 *Vyacheslav Likhachev*
Political Anti-Semitism in Post-Soviet Russia
Actors and Ideas in 1991-2003
Edited and translated from Russian by Eugene Veklerov
ISBN 3-89821-529-6

38 *Josette Baer (Ed.)*
Preparing Liberty in Central Europe
Political Texts from the Spring of Nations 1848 to the Spring of Prague 1968
With a foreword by Zdeněk V. David
ISBN 3-89821-546-6

39 *Михаил Лукьянов*
Российский консерватизм и реформа, 1907-1914
С предисловием Марка Д. Стейнберга
ISBN 3-89821-503-2

40 *Nicola Melloni*
Market Without Economy
The 1998 Russian Financial Crisis
With a foreword by Eiji Furukawa
ISBN 3-89821-407-9

41 *Dmitrij Chmelnizki*
Die Architektur Stalins
Bd. 1: Studien zu Ideologie und Stil
Bd. 2: Bilddokumentation
Mit einem Vorwort von Bruno Flierl
ISBN 3-89821-515-6

42 *Katja Yafimava*
Post-Soviet Russian-Belarussian Relationships
The Role of Gas Transit Pipelines
With a foreword by Jonathan P. Stern
ISBN 3-89821-655-1

43 *Boris Chavkin*
Verflechtungen der deutschen und russischen Zeitgeschichte
Aufsätze und Archivfunde zu den Beziehungen Deutschlands und der Sowjetunion von 1917 bis 1991
Ediert von Markus Edlinger sowie mit einem Vorwort versehen von Leonid Luks
ISBN 3-89821-756-6

44 *Anastasija Grynenko in Zusammenarbeit mit Claudia Dathe*
Die Terminologie des Gerichtswesens der Ukraine und Deutschlands im Vergleich
Eine übersetzungswissenschaftliche Analyse juristischer Fachbegriffe im Deutschen, Ukrainischen und Russischen
Mit einem Vorwort von Ulrich Hartmann
ISBN 3-89821-691-8

Anton Burkov

THE IMPACT OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ON RUSSIAN LAW

Legislation and Application in 1996-2006

With a foreword by Françoise Hampson

ibidem-Verlag
Stuttgart

Bibliografische Information der Deutschen Nationalbibliothek
Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über http://dnb.d-nb.de abrufbar.

Bibliographic information published by the Deutsche Nationalbibliothek
Die Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available in the Internet at http://dnb.d-nb.de.

This publication was possible due to the financial assistance the author received from the Cambridge Overseas Trust which allowed him to adapt his thesis for publication.

Note on the book title and back cover text: The exact name of the document under question here is: Convention for the Protection of Human Rights and Fundamental Freedoms. The formula in the title, cover text and book is the more commonly used designation for this document.

Front cover picture: The European Court of Human Rights in Strasbourg. Photograph by © Anton Burkov.

∞

Gedruckt auf alterungsbeständigem, säurefreien Papier
Printed on acid-free paper

ISSN: 1614-3515

ISBN-10: 3-89821-639-X
ISBN-13: 978-3-89821-639-5

Printed in Germany

Dedicated to my colleagues at the NGO “Sutyajnik”

Contents

List of Appendices

Foreword

This book is not a textbook on the Convention for a Russian audience. Its goal is much more precise. It is designed to explore the extent to which and the manner in which Russian judges are making use of the European Convention on Human Rights and its case-law in their determination of cases. Confronted with the crisis in the case-load of the European Court of Human Rights, the Council of Europe is putting all its energies into finding ways of getting domestic authorities to apply the Convention, so as to reduce the need of applicants to apply to the Court. In order to determine how best to pursue such a strategy, it is vital that the relevant authorities in Strasbourg should be aware of the reality of the situation in member States.

This book is important for two different reasons and for two different types of constituencies. The Russian version could potentially have a significant impact on the work of Russian judges, prosecutors, lawyers and non-governmental organisations. It should also be required reading in various government ministries, including but not confined to the Ministry of Justice. The analysis is based not on abstract theoretical notions but on a careful reading of Russian case-law. That, in itself, may give it novelty value. It should also make the issues which are addressed “real” to judges and prosecutors in a way which academic texts do not normally achieve. The analysis and the conclusions are not the work of an outsider, albeit one with fluency in Russian. It is the work of a person trained within the Russian legal system and who has himself worked as a lawyer within the system. In the light of the author’s conclusion, it is to be hoped that the book will reach as many lawyers as possible. The message is clear. The more that lawyers invoke both the Convention and its case-law, the better are the chances that, over time, the courts will take it into account. If both lawyers and judges start using the case-law, the prosecutors will increasingly have to do likewise. If prosecutors and lawyers start losing cases they are expected to win, their professional future will require that they start addressing Convention issues in their own pleadings.

The English version is of importance to a range of actors and for a different reason. For an English-speaking audience the book is not a call to action but is rather a tool to facilitate understanding, both with regard to implementation generally and specifically in relation to the Russian Federation. First, civil servants in Council of Europe member States and in the Council of Europe itself need to understand where and why the problems of implementation of the Convention are arising in the Russian Federation. Given the similarity between the legal systems of the Russian Federation and other new member States of the Council of Europe, there is a strong possibility that the diagnosis offered by this book is applicable more widely. Second, the book is also a vital tool to any lawyer or NGO working with lawyers and NGOs in the Russian Federation in assisting them to bring cases to Strasbourg. Part of the process of assistance, in my experience, requires understanding domestic remedies. To understand how domestic remedies work in practice, one needs a wider sense of how the legal system itself works in practice. It is not just the language that can be a barrier. There is also the barrier of an entirely different legal culture, particularly with regard to the functioning of legal institutions, such as the procuracy. Third, any academic who teaches the European Convention on Human Rights is increasingly required to understand how domestic implementation works in practice. There is, however, a marked lack of material in English which addresses the specific question of the implementation of the Convention by national courts. There is what might be termed "top-down" information, which recites the constitutional status of the Convention and which may refer to one or two cases in which the national court's judgment referred to the Convention. What is lacking is "bottom-up" material, which looks at what happens when a lawyer tries to invoke the Convention before an "ordinary" court. As both a practitioner and an academic, it is that information that I need. The approach adopted in the book makes it methodologically important not just in relation to the Russian Federation but much more widely. *Anyone* with an interest in the judicial implementation of human rights law, whether at the national, regional or international level and irrespective of any particular jurisdiction in which they may be interested, should read this work.

It is hard to think of anyone as well qualified as Anton Burkov to write this book. Even before undertaking an LL.M. in International Human Rights

Law at the University of Essex, he had already been involved in an advisory capacity in a case before the European Court of Human Rights. He was already a qualified lawyer. He already knew that the Convention provided a tool for redressing what he saw as injustices but wanted to know more both about the detail of the case-law and also about how to use it. At Essex, he was also introduced to the detailed critical analysis of judgments which is automatic to a person used to the common law tradition but which is a skill which civil lawyers normally take some time to develop. Anton took to it “like a duck to water”. As his supervisor, I would have been nervous about submitting a text of my own to his rigorous scrutiny! When he returned to Russia, he put everything he had acquired into practice and won an important human rights case before the Russian Constitutional Court.

I am delighted that this book is being published in both Russian and English. My hope now is that all those who, for one reason or another, would find this book useful will in fact get to read it. That would mean that it would be read by a large number of people.

Françoise Hampson
University of Essex

Preface

This book is based on a dissertation submitted in 2004 for the LL.M degree in International Human Rights Law at the University of Essex. While working on the dissertation under the supervision of Professors Françoise Hampson and Kevin Boyle, I considered the possibility of publishing it in both Russian and English. Once completed, the dissertation was first transformed into a training aimed at lawyers and human rights activists in Russia, on the exhaustion of domestic remedies and implementation of the European Convention on Human Rights in Russian courts. The training was followed by a book, *The Implementation of the European Convention of Human Rights in Russian Courts*, published in the Russian language.[1] This became the sixth volume in a book series established in 2001 by the Urals Centre for Constitutional and International Human Rights Protection (a project of the NGO Sutyajnik).

The English language edition of the book focuses on the impact that the European Convention on Human Rights (the Convention) has produced as a result of its application within the Russian Federation's courts. The study examines the national status of international law within the Russian legal system, focusing on the status of the Convention. It identifies the legal mechanisms of the Convention's implementation in Russian court decisions; contains analysis of Russian courts' jurisprudence regarding both the direct application of the Convention and, more importantly, the case-law of the European Court of Human Rights; and assesses the possible obstacles to the domestic implementation of the Convention.

The contributions of many people and institutions made possible the publication of this volume. My most significant intellectual debt is to my dissertation supervisors, Professors Françoise Hampson and Kevin Boyle.

---

1 Anton Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zashchite Prav Cheloveka v Sudakh Rossii* (Ekaterinburg: Izdatel'stvo Ural'skogo Universiteta, 2006), 264 p. ISBN 5-7525-1570-X. The book can be downloaded in PDF format at http://www.sutyajnik.ru/rus/library/sborniki/echr6/echr6.pdf

I am also grateful to the British Council for granting me a Chevening Scholarship (2003-2004), under which I pursued my LL.M degree in International Human Rights Law and carried out much of the research for this book.

This research would not have been possible without the extensive help of my colleagues at the NGO Sutyajnik (Russia), particularly its, president Sergey Beliaev, and its staff attorneys, Anna Demeneva, Ludmila Churkina, and Natalia Ermilova. I dedicate this book to them. I am particularly indebted to Sergey Beliaev for his insightful comments, for giving me an opportunity to test the findings of this book in practice, and for his moral support. I also deeply appreciate the invaluable comments of Vladislav Bykov, the former staff attorney of the Glasnost' Defence Foundation; Marjorie Farquharson, an independent consultant specializing in research on human rights and institutional development in the former USSR; Ilya Poluyakhtov, an associate at the Linklaters CIS law firm; Kirill Koroteev, a research fellow at the University of Paris 1; Sneh Aurora, national institutions programme officer at Equitas; and Evgenii Finkov, President of the Rostov region non-governmental organization "Trudy i Dni."

In the course of this research the website "Studying the European Convention" was created and has since proven useful to human rights activists and students alike.[2] This online project would not be possible without the informational and technical support of the Urals Centre for Constitutional and International Human Rights Protection. I also express my gratitude to other NGOs and educational institutions for their informational support of this online resource.

I am grateful to my supervisor at the University of Cambridge, Professor David Feldman, for his support while I edited this book.

I also wish to thank the Cambridge Overseas Trust for providing the financial assistance that allowed me to adapt my thesis for publication.

I am grateful to Dr. Andreas Umland, the editor of the book series, *Soviet and Post-Soviet Politics and Society*, for his offer to publish my dissertation, for his collaboration on many different publications, and for his patience.

[2] For more details see Appendix 11. The web-site is available at http://www.sutyajnik.ru/rus/echr/school

No words can express my gratitude to and admiration for the members of my extended family who have supported my ideas and projects throughout my human rights and research career.

This publication would not have been possible without the proofreading assistance provided by my friend William Anspach, a partner with Friedman & Wolf, and Valerie Sperling, an associate professor at Clark University, who became my friend in the course of proofreading.

The rights and freedoms guaranteed by the Convention be protected in the first place at the national level and applied by national authorities… States give effect to the Convention in their legal order, in light of the case-law of the Court.

From the Recommendations of
the Committee of Ministers of the Council of Europe
Rec(2004)5 and Rec(2004)6

Introduction

On 28 February 1996, the Russian Federation was allowed to accede to the Statute of the Council of Europe without meeting all the requirements for member States. The accession followed "an extensive debate within the Council of Europe about the suitability of the applicant for membership."[3] Russia's acceptance occurred despite an unfavourable *ad hoc* Eminent Lawyers Report, which concluded that "the legal order of the Russian Federation does not, at the present moment, meet the Council of Europe standards as enshrined in the statute of the Council and developed by the organs of the European Convention on Human Rights."[4] The same evaluation of the Russian legal system was given by the Director of the Legal Department of the Russian Ministry for Foreign Affairs, A. Khodakov, in the Explanatory Note on the Issue of Signing the European Convention for the Protection of Human Rights and Fundamental Freedoms by the Russian Federation dated 30 January 1996. Khodakov stated that "[a]t the present moment Russian legislation, with the exception of the Constitution of the Russian Federation, and law enforcement practice do not comply fully with the Council of Europe's standards."[5]

Russia's accession is troubling for the future of compliance with Strasbourg law because, *inter alia*, "given Russia's lack of experience in protecting human rights at the level of municipal law, it is likely that a great many violations of European human rights law will be committed there, and that they will not be remedied domestically."[6]

---

3 Mark Janis, "Russia and the 'Legality' of Strasbourg Law," *European Journal of International Law* 8:1 (1997): 93.

4 Rudolf Bernhardt et al., "Report on the Conformity of the Legal Order of the Russian Federation with Council of Europe Standards," *Human Rights Law Journal* 15:7 (1994): 287.

5 Georgii Vinokurov, Andrei Rikhter, Vladimir Chernishov, eds., *Evropeiskii Sud' po Pravam Cheloveka i Zashchita Svobody Slova v Rossii: Pretsedenty, Analiz, Rekomendatsii* (Moskva: Institut Problem Infomatsionnogo Prava, 2004), 583-584, http://www.medialaw.ru/article10/7/2.htm (as of 25 August 2006).

6 Janis, "Russia and the 'Legality' of Strasbourg Law," 98.

Under Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention), the Russian Federation has undertaken an obligation "to secure to everyone within [its] jurisdiction the rights and freedoms defined in Section I of [the] Convention." It appears to be that in Russia this obligation is generally understood as the Russian Government's recognition of the authority of the European Court of Human Rights (the ECHR or the European Court) to adjudicate petitions alleging violations of the Convention's provisions occurring under Russian jurisdiction. In other words, the ratification of the Convention is perceived by Russian citizens as the right "to write to Strasbourg;" the right to complain to an international body as a "panacea" for all their human rights violations.[7] However, the main idea of international human rights law is "to bring human rights home."[8] As far as the Convention is concerned the core of this idea is depicted in its Article 1.

Article 1 does not merely oblige High Contracting Parties to respect human rights and fundamental freedoms, but also requires them to protect and to remedy any breach at subordinate levels.[9] However, it does not prescribe the manner in which States shall secure the rights in question. The Convention does not require states to give direct effect to the Convention within national law. Therefore, "it is not a breach of the Convention that national courts may not directly enforce the Convention rights."[10] As will be seen below, this is not the case in regard to the Russian Federation, which has chosen in its Constitution to require that the Convention be integrated into national law. Therefore, national courts are under an obligation to invoke the Convention on an equal footing with any national statute. In spite of the fact that the Convention is silent in regard to the way the rights shall be secured at the domestic level, by making the Convention part of its national body of law,

---

7 Anna Demeneva, "Evropeiskii Sud: Panatsea ot Vsekh Bed?" in Anton Burkov, ed., *Sudebnaia Zashchita Prav Grazhdan v Ee Naibolee Effectivnikh Formakh,* (Ekaterinburg: Ural'skii Universitet, 2003), 36, http://www.sutyajnik.ru/rus/library/sborniki/sud_zaschita.pdf (as of 25 August 2006).

8 Kevin Boyle, "National Implementation of International Human Rights Commitments." (Lecture given at the General Seminar on International Human Rights Law, LL.M programme, University of Essex, England, 2003-2004).

9 Ireland v. UK. Judgment of 18 January 1978. 2 E.H.R.R. no. 25. Para 239.

10 Mark Janis, Richard Kay, Anthony Bradley, *European Human Rights Law: Text and Materials. Second Edition*. (New York: Oxford University Press, 2000), 488.

the Russian Federation seemed to adhere to the principle which prescribes that those rights shall be secured effectively, not theoretically.[11]

This book thus explores whether the protection of human rights given by the Convention's direct implementation in Russia is effective and not merely symbolic. I also suggest a possible method of ensuring within Russian national law the effective implementation of any of the provisions of the Convention, bearing in mind the peculiarities of Russia's national legal system. This proposal could be employed by the Council of Europe as a criterion for the assessment of explanations submitted by the Russian Federation on the manner "in which its internal law ensures the effective implementation of any of the provisions of the Convention" (Article 52 of the Convention.).

To that end, I assess the current situation regarding the impact of the Convention on Russian law by identifying an existing mechanism — particular to the Russian legal system — for the Convention's implementation at the domestic level. I also examine the actual jurisprudence of the Russian courts on this issue, and identify possible obstacles to the Convention's implementation. I also provide suggestions as to how to improve the situation. In other words, I identify a cause for the mismatch between the State's obligations under the Convention and its fulfilment at the domestic level, find a "linkage between international law and domestic law."[12]

The jurisprudence of most types of Russian courts will be assessed. At present, a new judicial body is being introduced: the magistrates. The jurisprudence of these courts will not be assessed here; although the Federal Law "On Magistrates" was enacted in 1998, the positions of magistrate have not been staffed completely in all Russian regions, and therefore their duties are performed by district courts.[13]

In this work, I will not analyse the entirety of the Convention's impact on the Russian legal system. The question of whether or not the Convention provides an effective remedy to Russian citizens will be considered, particularly whether those whose rights were allegedly violated can use the Conven-

---

11 Airey v. Ireland. Judgment of 9 October 1979. Series A. no. 32. 12-13. Para 24.

12 Boyle, "National Implementation of International Human Rights Commitments."

13 The Alternative NGO Report on the Observance of the International Covenant on Civil and Political Rights (ICCPR) by the Russian Federation, (from 1997 to 2002), http://www.memo.ru/hr/news/doklnpo/eng (as of 25 August 2006).

tion's provisions in domestic courts of various levels and jurisdictions, and whether the Convention has the same status as the Russian Constitution (the Constitution), federal constitutional law or federal law *de jure* and *de facto*. Therefore, this work will not deal with legislative changes prompted or possibly prompted by the ratification of the Convention and ECHR case-law, nor does it deal with anything other than judicial remedies. Nor will this work consider the way judges, procurators or lawyers behave themselves in court, their appearance before the public, the speediness of proceedings, whether judges show any prejudice against a party which under certain circumstances might be contrary to the right to a 'fair hearing' under Article 6 of the Convention, and so on. The International Protection Centre (the Russian branch of the International Commission of Jurists) recently conducted such a study on the Basmannii Mezhmunizipal'nii Court of Moscow.[14] Similarly, in 2001-2002 the Pravoborets Foundation (Yekaterinburg, Russia) monitored district court sessions in Sverdlovsk oblast' on the right to a fair and speedy trial.[15] This study does not seek to replicate those efforts, focusing instead on application of the European Convention on Human Rights by domestic courts.

---

14 "Basmannoe Pravosudie. Uroki Samooborony. Posobie dlia Advokatov," http://www.ip-centre.ru/books/Basmannoe.pdf (as of 25 August 2006).

15 Kollektiv Avtorov Ural'skogo Tsentra Konstitutsionnoi i Mezhdunarodnoi Zashchity Prav Cheloveka, "Problemy Sootvetstviia Pravoprimenitel'noi Praktiki Sudov Obshchei Iurisdiktsii Evropeiiskim Standartam Prava na Spravedlivoe Sudebnoe Razbiratel'stvo Dela v Razumnii Srok," in *Primenenie Mezhdunarodnikh Dogovorov v Oblasti Prav Cheloveka v Pravovoi Sisteme Rossiiskoi Federatsii* (Ekaterinburg: Ural'skaia Gosudarstvennaia Uridicheskaia Akademiia, 2003). 44-47, http://www.sutyajnik.ru/rus/library/sborniki/usla_2003.pdf (as of 8 September 2006).

I The Mechanism by Which the Convention Is Implemented by Russian Courts

1) The Russian Constitution and Federal Legislation on the Domestic Status of the Convention

The status of international law provisions in municipal law is a starting point for assessment of the impact of an international treaty on a national legal system. There are the Russian Constitution of 12 December 1993 and a number of statutory acts, subordinate legislation and even judicial practice and so-called "guiding explanations" (*rukovodiaschie raziasneniia*) of higher courts that regulate the domestic status of international law in general and the Convention in particular.

Unlike the USSR or RSFSR Constitutions, the first sentence of Article 15(4) of the Russian Constitution clearly identifies the Russian Federation as a monistic country, stating that "[t]he commonly recognized principles and norms of international law and the international treaties signed by the Russian Federation shall be a component part of its legal system."

This newly recognised principle of Russian law was assessed positively by scholars: "for the first time in Russia's history, the relationship between international law and the national system of laws is established in the Constitution, and in a manner which meets contemporary standards."[16] Another Russian scholar stated that the Russian Constitution as well as many other constitutions of the CIS countries "represent[s] an important step towards a broader application of international law in the domestic legal orders of these states."[17] The legal effect of that principle shall be borne in mind be-

---

16 Igor' Lukashuk, "Russia's Conception of International Law," *The Parker School Journal of East European Law* 2:1 (1995): 14.

17 Gennadii Danilenko, "Implementation of International Law in CIS States: Theory and Practice," *European Journal of International Law* 10:1 (1999): 53, http://www.ejil.org/journal/Vol10/No1/100051.pdf (as of 21 October 2006).

cause of its peculiar location in the Constitution, namely, in Chapter 1 of the Constitution, "The Fundamentals of the Constitutional System." "This locus in the constitutional system signifies that no other provisions of the Constitution, not to mention other legal acts, may contradict its interpretation or application."[18]

This Constitutional provision gives domestic legal force to the international treaties ratified by the Russian Federation. Any international treaty becomes part of the Russian legal system upon its ratification, or, to be more precise, upon the official publication of a law on the ratification of the treaty (Article 15(3) of the Constitution). For example, the Convention entered into force for those under Russian jurisdiction upon the official publication of the Law no. 54-FZ, "On the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms," in *Rossiiskaia Gazeta*[19] and the deposit of the ratification with the Secretary General of the Council of Europe (Article 59(3) of the Convention). Therefore, it is not necessary to transform these treaties into the domestic legal system in order for a judge to apply the provisions of international law. In addition, according to Professor Danilenko's interpretation:

> under Article 15(4) of the 1993 Constitution it is possible not only to invoke rules of treaties before domestic courts but also to rely on the interpretation of such treaties by international organs. Consequently, given that Russia has ratified the European Convention on Human Rights, there is no bar to the domestic use of the interpretation of the Convention advanced by the European Court of Human Rights. The case law of the European Court may thus be gradually transformed into Russian domestic jurisprudence.[20]

The Constitution does not distinguish between self-executing and non-self-executing treaties. However, the 1995 Law "On International Treaties"[21]

---

18 Lukashuk, "Russia's Conception of International Law": 14.

19 *Rossiiskaia Gazeta*, 7 April 1998. Appendix 9.

20 Danilenko, "Implementation of International Law in CIS States": 68.

21 *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* 29 (1995), Stat'ia 2757. Appendix 8.

does so in its Article 5(3)[22] by pointing out that "any treaty provision that expressly requires states to adopt legislative measures cannot be considered directly applicable or self-executing."[23] Nevertheless, this is not the case with the application of the Convention which requires no legislative measures to be adopted. Moreover, according to the last paragraph of Article 1 of the Law "On the Ratification of the Convention," the Russian Federation recognises compulsory jurisdiction of the Court in regard to the interpretation and application of the Convention.[24]

Thus, theoretically there is no difference between the Convention and, for example, the Russian Civil Procedure Code in terms of their implementation in national courts. More than that, the legal order set by the Constitution is more favourable towards the Convention. The second sentence of Article 15(4) of the Constitution sets out the priority of an international treaty over national statutes, stating that "[i]f an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply." This brings us to the question of the hierarchical status of the Convention.

The Convention is placed in between the Constitution on one side and federal constitutional laws and federal laws on the other side. The Russian Constitution "established a higher hierarchical status of treaties with respect to contrary domestic law."[25] There were assertions that due to Article 17(1) of the Constitution international norms had a priority over the Constitution. However, this idea was called a "very bold proposition, which to date has not found confirmation in judicial practice."[26] The following provision of Article 22 of the Law "On International Treaties"[27] supports the latter idea. According to this provision, in cases when treaties contain rules that require amendments to the Constitution an appropriate amendment to the Constitution must precede ratification of the treaty.

---

22 Appendix 8.
23 Danilenko, "Implementation of International Law in CIS States": 65.
24 *Rossiiskaia Gazeta*, 7 April 1998. Appendix 9.
25 Danilenko, "Implementation of International Law in CIS States": 64.
26 *Ibid.*
27 Appendix 8.

2) Legislation and Subordinate Law on the Mechanism of the Convention's Implementation

As was shown before, the domestic status of the Convention is higher than that of any federal law or even federal constitutional law. The question is whether the Convention is applied by courts as frequently as the Constitution or federal laws. Before assessing the jurisprudence itself I shall analyse an existing mechanism for application of the laws of the country, particularly the mechanism for application of the Convention, and whether such a mechanism is well constructed and adequate to the legal system of the country. It is necessary to have an effective and well-controlled system with which to implement statutory norms. Apparently, in terms of implementation of international law in general and the Convention in particular, such a mechanism is under development.

The need for such a system to implement Constitutional provisions can be explained by the peculiarity of the history of the previous constitutions of the USSR and RSFSR. Those constitutions had never had a direct application status. To invoke any of the provisions of the previous constitutions it was necessary to pass corresponding statutes. Since most of the Soviet statutes' provisions were worded very vaguely, subordinate legislation — for example, a regulation by the Ministry of Internal Affairs — was a primary source of law in the Soviet Union (usually secret or labelled "for internal use only"). Such an attitude still exists – judges prefer to apply subordinate legislation or even so-called "systematic letters" (*metodicheskoe pis'mo*)[28] rather than the Constitution, not to mention the Convention. This peculiarity of the Russian legal system – the old tradition of the primary source of law – should be kept in mind. However, this is not as peculiar as it might seem at first sight. It is not possi-

[28] This phenomenon is similar to the Regulations issued by the Russian Supreme Court that will be discussed below. Systematic letters are explanations of particular issues of law and practice. This is an invention which has no basis in law; therefore, such documents are never published and serve as documents "for internal use only." For example, the letter in question was issued by the Sverdlovsk oblast court due to the Rakevich v. Russia case at the ECHR. See the online interview with the Chief Justice of Sverdlovsk oblast court: Ivan Ovcharuk, "Sud'ia Dolzhen Znat' Vse," *News Agency Uralpolit.Ru*, 30 August 2004, http://www.uralpolit.ru/regions/svr/30-08-2004/page_29757.html (as of 25 August 2006).

ble to apply the Convention without looking at the corresponding case-law of the Court. For that reason, there has to be a system of normative acts obligatory for judges other then the Constitution and the Law "On International Treaties." This subordinate legislation shall explain in more detail the way the Convention shall be applied in domestic courts.

First, let us see which rules of Russian legislation directly addressed to judges contain an obligation to apply a provision of an international treaty; in other words, although it might sound strange, which rules include an obligation for a judge to apply Article 15(4) of the Constitution?

The Constitutional provisions concerning the status of international law were reaffirmed in the 1996 Federal Constitutional Law "On the Judicial System of the Russian Federation,"[29] which regulates the activities of all courts in Russia. "Under Article 3 of the 1996 Law, all Russian courts must apply 'generally recognised principles and norms of international law and international treaties of the Russian Federation'."[30] Once again the Russian Federation emphasized the obligation of judges to apply the law of international treaties to which Russia is a party, including the Convention.

However, an obligation to apply international law provisions was expressed for the first time by the Constitutional Court even before the 1993 Russian Constitution and any other laws mentioned earlier entered into force. "While the previous Constitution [of the RSFSR of 12 April 1978] lacked a clear rule declaring international law to be part of the land, the Constitutional Court, in the Labor Code Case,[31] stated that all Russian courts should 'assess the applicable law from the point of view of its conformity with the principles and rules of international law'."[32]

The following judgment by the post-1993 Constitutional Court is significant due to its innovative interpretation of Article 46 of the Constitution.[33] In the "Case Concerning Articles 371, 374 and 384 of the Criminal Procedure Code,"[34] the Constitutional Court provided an interpretation which "established an obligation to give direct domestic effect to decisions of international

29 *Rossiiskaia Gazeta*, 6 January 1997. Appendix 7.
30 Danilenko, "Implementation of International Law in CIS States": 58.
31 *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* 1 (1993): 29.
32 Danilenko, "Implementation of International Law in CIS States": 56.
33 Appendix 6.
34 *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* 2 (1996): 2.

bodies, including the European Court of Human Rights."[35] It should be noted that the Constitutional Court is the only judicial organ that gives an official interpretation of the Constitution, and its judgments are obligatory across the entire territory of the Russian Federation for all legislative, executive and judicial organs.

The most unusual element of the machinery for implementing domestic law within the Russian legal system is the practice of issuing "Regulations" (*postanovleniia*) or "guiding explanations" (*rukovodiaschie raziasneniia*) passed by the Plenum of the Supreme Court and the Plenum of the Supreme Arbitration (Commercial) Court of the Russian Federation (Articles 126, 127 of the Constitution).[36] Regulations are explanations of judicial practice issues based on the overview and generalization of the lower courts' and the supreme courts' jurisprudence. They are abstract opinions that are legally binding on all lower courts, summarizing the judicial practice of lower courts and explaining the way a particular provision of the law should be applied.[37] They are employed for the purpose of consistent application of Russian law by explaining how the law shall be invoked. Regulations have their legal basis in Articles 126 and 127 of the Constitution.

The first Regulation by the Supreme Court related to the issue of implementation of international law was the 1995 Regulation "On Some Questions Concerning the Application of the Constitution of the Russian Federation by Courts,"[38] Section 5 of which instructed lower courts to apply international law. It shall be pointed out that here the Supreme Court instructed lower courts to apply international law but not how to apply the law. This wording is therefore no more than a paraphrase or even restatement of the content of Article 15(4) of the Constitution. Therefore, it serves only as an instrument to stress the obligatory application of international law already provided in the Constitution.

---

35 Danilenko, "Implementation of International Law in CIS States": 68.

36 Appendix 6.

37 For more detail as to the legal character of the regulations (explanations), refer to Demian Bakhrakh, Anton Burkov, "Sudebnie Acty kak Istochniki Administrativnogo Prava," *Zhurnal Rossiiskogo Prava* 2 (2004): 11, http://www.sutyajnik.ru/rus/library/articles/2004/bahrah_burkov_akti_pravosudia.html (as of 25 August 2006).

38 *Bulleten' Verkhovnogo Suda Rossiiskoi Federatsii* 2 (1996).

The first Regulation by the Supreme Court entirely devoted to the implementation of international law was called "On the Application by Courts of General Jurisdiction of the Generally-recognized Principles and Norms of International Law and the International Treaties of the Russian Federation," and was passed five and a half years after the Convention entered into force (the 2003 Regulation).[39] This Regulation is more, however insufficiently, advanced in terms of clarifying for judges their obligation to apply international law provisions, the Convention in particular. Regarding the Convention, there are several points to emphasize.

First of all, the Supreme Court again stressed the obligatory direct applicability of international treaties, and in particular the Convention, and its priority over national laws. The Supreme Court also explained that, according to Article 31(3)b of the Vienna Convention on the Law of Treaties,[40] when applying the Convention judges should interpret the treaty by taking into account any subsequent practice of a treaty body. For the first time it was stressed that non-application of an international treaty (including non-application of the treaty itself, application of a treaty that is non-applicable under particular circumstances, and the incorrect interpretation of a treaty) can bear the same consequences as non-application of the domestic law – namely, the quashing or altering of a judgment.[41] Another feature of the 2003 Regulation is that it provided a brief overview of ECHR case-law on Articles 3, 5, 6, and 13 of the Convention, albeit without mentioning any specific ECHR cases. It is obvious that this overview was prompted by previous judgments by the Court against Russia.[42] Without a doubt, this is a positive moment. However, the 2003

---

39 *Ibid.,* 12 (2003). Appendix 10.

40 The Vienna Convention on the Law of Treaties (with annex) was concluded at Vienna on 23 May 1969 and came into force on 27 January 1980.

41 Section 9 of the 2003 Regulation. Appendix 10. In Section 4 of the Plenum of the Supreme Court Regulation no. 23 of 19 December 2003 "On Court Decision," the Supreme Court stressed the necessity of citing in the declaration section of the decision the material law applied, *inter alia*, the Convention, by taking into account judgments of the European Court of Human Rights, *Bulleten' Verkhovnogo Suda Rossiiskoi Federatsii* 2 (2004).

42 For example, Burdov v. Russia. Judgment of 7 May 2002. Reports of Judgments and Decisions 2002-III (on Article 6(1) and Article 1 of Protocol 1); Kalashnikov v. Russia. Judgment of 15 July 2002. Reports of Judgments and Decisions 2002-VI (on Articles 3, 5(3), 6(1)); Posokhov v. Russia. Judgment of 4 March 2003. Reports of Judgments and Decisions 2003-IV (on Article 6(1)).

Regulation does not contain anything that could not have been surmised from other preceding judgments. This means that the Supreme Court could have provided domestic courts with the necessary information and ordered them to adhere to the Convention as interpreted by the European Court's case-law, before victims' rights were infringed upon and before they were deprived of a domestic remedy.

The final part of the 2003 Regulation set an educational obligation for the Judicial Department at the Supreme Court of the Russian Federation[43] in collaboration with the Official Representative of the Russian Federation at the European Court of Human Rights. This obligation entailed regularly informing judges about the case-law of the European Court and international treaties by supplying the official texts and their translations. Also, the Russian Academy of Justice was advised to pay particular attention to teaching international law to judges and to publish necessary literature on the subject.[44]

Regarding the Supreme Arbitration Court of the Russian Federation, to date, the Plenum of the Supreme Arbitration Court has passed no Regulations on the domestic implementation of the Convention. However, there is one document written by the Chief Justice of the Supreme Arbitration Court of the Russian Federation entirely devoted to this issue. It is called the Informational Letter by the Chief Justice of the Supreme Arbitration Court of the Russian Federation no С1-7/СМП-1341 of 20 December 1999 "On the Main Provisions Applied by the European Court of Human Rights for the Protection of Property Rights and Right to Justice."[45] It was issued and signed by the Chief Justice of the Supreme Arbitration Court on behalf of the Supreme Arbitration Court.

There are several points to bear in mind about this document. It was passed a year and a half after the ratification of the Convention by the Russian Federation. It consists of very brief summaries of the main provisions

---

43 According to the Federal Law no. 7-FZ of 8 January 1998 "On the Judicial Department at the Supreme Court of the Russian Federation," the Judicial Department of the Supreme Court of the Russian Federation is an organ of the federal judiciary which provides support for supreme courts of the republics, krai and oblast courts as well as federal city courts, courts of the autonomous oblasts and autonomous okrugs, military and special purpose courts and other bodies of the judiciary.

44 Sections 17, 18 of the 2003 Regulation. Appendix 10.

45 *Vestnik Visshego Arbitrazhnogo Suda Rossiiskoi Federatsii* 2 (2000).

applied by the ECHR on the issues of the protection of property and right to justice, and it advises applying the Convention in the administration of justice at the domestic level. However, the document is very brief. There are no citations to the particular ECHR cases that served as a basis for the Supreme Arbitration Court summaries. Nor does the document have official status in national law. At present, the activity of the Supreme Arbitration Court is regulated by the Federal Constitutional Law "On the Arbitration Courts in the Russian Federation" of 28 April 1995 no. 1-FKZ[46] and the Arbitral Procedural Code,[47] as well as the Federal Constitutional Law "On the Judicial System of the Russian Federation."[48] None of these documents contains any provision which authorises the Chief Justice of the Supreme Arbitration Court to put forth "informational letters" on behalf of the Supreme Arbitration Court. Therefore, considering the status of the document and the language of its conclusion,[49] it does not appear to impose any obligations on judges to follow its recommendations. It should be noted that the practice of passing so-called letters by the heads of departments and ministries in Russia, which are unauthorised by any statutes, is widespread. Nevertheless, the value of such a letter explaining the interconnection between the jurisdiction of the arbitration courts and the jurisdiction of the ECHR, and informing arbitration judges about some provisions of the case-law of the ECHR, even in this brief form, is difficult to overestimate. From December 1999 to October 2003,[50] this document was the only official paper providing judges with information on the domestic implementation of the Convention.

46 *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* 18 (1995): Article 1589.

47 *Rossiiskaia Gazeta*, 27 July 2002.

48 *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* 1 (1997): Article 1.

49 The Chief Justice "request[s] that the stated provisions be taken into account in the course of the administration of justice."

50 The month in which the 2003 Regulation was issued. Appendix 10.

II Assessment of the Convention's Implementation in Courts of Different Levels and Jurisdictions

As is well known, practice is quite different from theory with respect to the domestic implementation of the Convention. "The actual status of international law in [Russia] is, and will continue to be, determined not only by the relevant constitutional clauses but also by the willingness of domestic court judges to rely on that body of law."[51] An assessment of the existing impact of the Convention on the Russian legal system requires a careful examination of judicial practice.[52] Even if Russian legislation were in line with the standards of the Council of Europe, this would not in itself be a guarantee that it would be applied in practice.

This brings us to an evaluation of the Russian courts' jurisprudence itself. In this section I will ascertain and assess the gap between the theory of law and the practice of the Convention's implementation in domestic courts. I will evaluate whether and to what extent the courts of different levels and jurisdictions employ the Convention for adjudicating cases, and what kind of general trend exists regarding the Convention's implementation.

Gaining access to the jurisprudence of Russian courts is not a straightforward process. There is no official reporting system of the decisions of the district courts or even higher courts, for the Russian Federation is a civil law country. Since the judgments of the Russian Constitutional Court and Charter/Constitutional courts of the subjects of the Russian Federation[53] bear a normative character, all their judgments are officially reported. Selected Supreme Court and Supreme Arbitration Court jurisprudence is unofficially reported on various corporate websites.[54] However, the Supreme Court reports

---

51 Danilenko, "Implementation of International Law in CIS States": 53.

52 *Ibid.*

53 These are the Russian Constitutional Court's counterpart courts in some of the subjects of the Russian Federation. The "subjects" of the Russian Federation are its 89 territorial subdivisions.

54 For example, Consultant Plus, http://www.consultant.ru/online (as of 25 August 2006).

some extracts from its and lower courts' judgments in the *Biulleten' Verkhovnogo Suda Rossiiskoi Federatsii* on a monthly basis. The Supreme Arbitration Court publishes some extracts from its judgments in *Vestnik Visshego Arbitrazhnogo Suda Rossiiskoi Federatsii*. In researching district and high court judgments, I have used mostly non-official sources from non-governmental organisations.

1) The Constitutional Court of the Russian Federation

There are quite a number of papers published on the problem of implementation of international law in general and the Convention in particular by the Constitutional Court.[55] The reason is obvious. Its judgments and decisions are easily accessible in the official publication of the Constitutional Court (*Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii*) and from its official web-site.[56]

There are grounds to state that the degree of the impact of the Convention on the case-law of the Constitutional Court has been somewhat overestimated. Let us begin with the evaluation of the Constitutional Court's case-law in regard to the implementation of international law in general given by Professor Danilenko:

> The Russian Constitutional Court has developed an extensive jurisprudence based on international law. In reviewing the constitutionality of various domestic acts, the Court frequently relies on international law. Analysis of the practice of the Russian Constitutional Court indicates that it invokes international law in almost all the decisions concerning human rights.[57]

---

55 For example, Danilenko, "Implementation of International Law in CIS States": 51-69; Manja Hussner, "The Incorporation of International Human Rights Treaties into the Russian System of Law," in Andreas Umland, ed., *The Implementation of the European Convention on Human Rights in Russia: Philosophical, Legal, and Empirical Studies (Proceedings of an International Conference Held at Yekaterinburg on 6-7 April 2001)* (Stuttgart: *Ibidem*-Verlag, 2004), 91-104; Marat Salikov, "Mezhdunarodnoe Pravo i Zashchita Prav Cheloveka Rossiiskim Konstitutsionnim Sudom," in Andreas Umland, ed., *The Implementation of the European Convention on Human Rights in Russia: Philosophical, Legal, and Empirical Studies (Proceedings of an International Conference Held at Yekaterinburg on 6-7 April 2001)* (Stuttgart: *Ibidem*-Verlag, 2004), 105-120; Mikhail Mitiukov et al., eds., *Obshchepriznannie Printsipy i Normy Mezhdunarodnogo Prava, Mezhdunarodnie Dogovory v Praktike Konstitutsionnogo Pravosudiia: Materialy Vserossiiskogo Soveshchaniia* (Moskva: Mezhdunarodnie Otnosheniia, 2004).

56 http://www.ksrf.ru (as of 20 August 2006).

57 Danilenko, "Implementation of International Law in CIS States": 56.

As far as the implementation of the Convention is concerned, by August 2004 there had been 54 judgments[58] citing the Convention out 215 judgments altogether since the establishment of the Constitutional Court,[59] 166 since Russia's accession to the Statute of the Council of Europe,[60] and 116 since the Convention came into force after the date of the deposit of the Russian instrument of ratification.[61] It should be borne in mind that, since the Constitutional Court mostly considers applications concerning human rights granted by the Constitution, which contains an "extensive catalogue of human rights based on the generally recognised international human rights standards,"[62] theoretically the Convention can be applied in almost every case.

The Constitutional Court started to apply the Convention right after Russia's accession to the Statute of the Council of Europe and long before the Convention's ratification.[63] The first judgment citing the Convention, its Article 2 of Protocol 4 (the Right to Freedom of Movement), is dated 4 April 1996.[64] During this period of time a total of three judgments and one dissenting opinion had cited the Convention. It was suggested that because the Convention at that time was not yet legally binding for the Russian Federation, the citation of the Convention could be seen as having a "subsidiary" character to "enrich the court's argument."[65] The Constitutional Court had not in-

---

58 These and all the following statistics came from analysis of the database of the Constitutional Court judgments at http://www.consultant.ru/online (as of 15 September 2004).

59 12 July 1991 (adoption of the Federal Constitutional Law "On the Constitutional Court of the RSFSR").

60 28 February 1996.

61 5 May 1998.

62 Danilenko, "Implementation of International Law in CIS States": 62.

63 Salikov, "Mezhdunarodnoe Pravo i Zaschita Prav Cheloveka Rossiiskim Konstitucionnim Sudom," 111.

64 The Case Concerning Constitutional Review of a Number of Acts of Moscow and Moscow oblast, Stavropolskii Krai, Voronezh Oblast and the city of Voronezh which Regulate an Order of the Registration of Citizens Arriving for Permanent Residence at Mentioned Regions. The Russian Constitutional Court. Judgment no. 9-P of 4 April 1996, in *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* 16 (1996): Article 1909.

65 Oleg Tiunov, "O Primenenii Konstitutsionnim Sudom Norm Mezhdunarodnogo Prava," in *Pervaia Nauchno-Prakticheskaia Konferentsiia po Voprosam Primeneniia Norm Mezhdunarodnogo Prava Rossiiskimi Pravookhranitel'nimi Organami, 7–9 Fevralia 1996* (Moskva, 1996). Cited in Salikov, "Mezhdunarodnoe Pravo i Zashchita Prav Cheloveka Rossiiskim Konstitutsionnim Sudom," 112.

voked any of the ECHR case-law at that time. Its appeal to the Convention was limited only to citing articles of the Convention. For example, in the judgment of 16 March 1998, the Constitutional Court invoked Article 6 of the Convention in conjunction with Article 7, 8, 10 of the Universal Declaration of Human Rights (the UDHR) and Article 14 of the International Covenant of Civil and Political Rights (the ICCPR) by explaining the content of the articles and stating that those provisions "are a component part of the Russian legal system as they are related to the universally-recognized principles and norms of international law according to Article 15(4) of the Constitution."[66] However, as time passed and with the ratification of the Convention, the practice of the Convention's implementation has not changed dramatically.

Several points can be mentioned about the Convention's implementation by the Constitutional Court. First of all, the Constitutional Court set out obligatory rules for the domestic application of the Convention for other courts. This was referred to in the previous chapter when discussing the Labor Code Case[67] and the Case Concerning Articles 371, 374 and 384 of the Criminal Procedure Code.[68] These rules can be described as an interpretation of the existing constitutional obligation for courts to give direct domestic effect to international instruments. However, it is impossible to qualify the rules as comprehensive. Indeed, they are very vague since they do not give any details on the method to be employed to implement international law, including the case-law of the ECHR.

Second of all, the way the Constitutional Court invokes the Convention's provisions must be questioned. In Russian legal literature, authors positively evaluate the growing influence of the jurisprudence of the ECHR on the Russian courts' jurisprudence, including the Constitutional Court's case-law. It was concluded by a well-known scholar of Russian constitutional law that

> the [Constitutional] Court invokes the provisions of the Convention quite often. However, the common feature

66 The Case Concerning the Constitutional Review of Article 44 of the Criminal Procedure Code of the RSFSR and Article 123 of the Civil Procedure Code of the RSFSR. The Russian Constitutional Court. Judgment of 16 March 1998. Para 4. *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* 12 (1998). Article 1459.

67 *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* 1 (1993): 29.

68 *Ibid.* 2 (1996): 2.

> of these judgments is that not only the Court cites this or that provision of the Convention, which is in itself *imperative*, but also it follows the case-law of the European Court of Human Rights.[69]

In his 'yes-and-no' evaluation of the impact of the Convention on the Russian legal system a foreign lecturer at a Council of Europe summer school for human-rights lawyers also remarked that a

> positive sign comes from Russia's highest courts, where the ECHR is increasingly cited in legal decisions. This July [2002], a new Criminal Procedure Code – strongly influenced by Russia's European commitments – will enter into force earlier than expected thanks to a Russian Constitutional Court ruling citing the ECHR for support.[70]

However, if we draw an overall sketch of the Constitutional Court's practice by evaluating statistics, a different, less optimistic, picture emerges. This can be seen when analysing the following facts.

First, application of the Convention on its own is not 'imperative' at all. Any provision of the Convention can be applied only if a court has learned the true meaning of the provision, which can be done only by addressing ECHR case-law. Invocation of the Convention out of context will, with high probability, lead to a mistake.

It is true that the Constitutional Court has been applying not only the Convention but the case-law of the ECHR as well. The issue here is not that the Constitutional Court employs the Convention but the manner and frequency with which it invokes the case-law. By August 2004 there had been

---

69 Salikov, "Mezhdunarodnoe Pravo i Zashchita Prav Cheloveka Rossiiskim Konstitutsionnim Sudom," 118 [emphasis added].

70 Jeffrey Kahn, "A Marriage of Convenience: Russia and the European Court of Human Rights," *Radio Free Europe/Radio Liberty, Prague, Czech Republic. Russian Political Weekly: A Weekly Review of News and Analysis of Russian Domestic Politics,* 19 June 2002.

only 12 cases[71] referring to ECHR case-law out of a total of 54 judgments by the Constitutional Court citing the Convention. The number in itself does not promise anything optimistic, especially taking into account the fact that the ECHR always refers to its case-law in order to determine the true meaning of the Convention's provisions. In all 12 instances, the entire analysis of the case-law never occupies more than a paragraph.

It might seem that this brief analysis of the case-law is sufficient for the Constitutional Court to learn the true meaning of the provisions applied. In this regard, it is important to highlight a characteristic of Russian judges in general. As Professor Danilenko correctly noted, they are "not inclined to give detailed argumentation in their judgments, which are remarkable for brevity, to support this or that side."[72] Also, it shall be taken into account that where a legal question does not represent any difficulty the ECHR's analysis of its case-law will not necessarily be long. For example, in the ECHR's Burdov v. Russia[73] judgment, the actual analysis of the meaning of the relevant provisions of Article 6(1) and Article 1 of Protocol 1, often invoked by the Constitutional Court, took no longer than one paragraph each. The extent and detail of the necessary analysis of the case-law will always depend on the case.

The Constitutional Court uses international law in its judgments merely as an additional argument made in order to support previously existing arguments based on Constitutional provisions.[74] Therefore, the Constitutional Court has had no need to explore in depth the legal and political problems occurring in the course of direct implementation of international law.[75] As of

---

71 These are: judgment of 17 November 1998. Para 3(11); judgment of 23 November 1999. Para 4(4); judgment of 16 May 2000. Para 3, 5(2, 3); judgment of 27 June 2000. Para. 3(5); judgment of 12 March 2001. Para 1.3(2); judgment of 30 July 2001. Para 2(2); judgment of 13 December 2001. Para 3(6); judgment of 15 January 2002. Para. 4(3); Judgment of 24 January 2002. Para 3(7); judgment of 19 June 2002. Para 8(2); judgment of 30 October 2003. Para 2, 3; judgment of 24 February 2004. Para 5.2(8). Extracts from these judgments are available at http://www.sutyajnik.ru/rus/echr/rus_judgments/con_court/judg_with_case_law.htm (as of 26 August 2006).

72 Gennadii Danilenko, "Primenenie Mezhdunarodnogo Prava vo Vnutrennei Pravovoi Sisteme Rossii: Praktika Konstitutsionnogo Suda," *Gosudarstvo i Pravo* 11 (1995): 122.

73 At para 34, 40.

74 Danilenko, "Implementation of International Law in CIS States": 62.

75 Danilenko, "Primenenie Mezhdunarodnogo Prava vo Vnutrennei Pravovoi Sisteme Rossii: Praktika Konstitutsionnogo Suda": 123.

August 2004 there have been only two instances where the Constitutional Court based its judgments on the Convention's provisions in conjunction with the relevant Constitutional norms, citing it in both the operative part and the main body (the analytical section) of the judgments.[76] However, even in the operative part the citation of the Convention's provision played an interpretational role, elaborating upon the meaning of the Constitution's provisions. In all other cases the Convention was cited only in the main body of the judgments and played a role complementary to the Constitution.

It is worth mentioning that there is evidence of district judges following the judgments of the Constitutional Court. One example is a judgment by the Constitutional Court[77] that mentioned the Burdov v. Russia judgment's interpretation of Article 6(1) that execution of a judgment shall be regarded as an integral part of the "trial" and that "[i]t is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt."[78] In its decision of 28 October 2003, the Pskovskii district court of Pskovskaia oblast, in a case similar to the Burdov case, cited paragraphs 34, 40 of the Burdov v. Russia judgment in support of the applicant's side.[79] Such judgments by district courts are a major step forward for the Russian legal system, as they allow for the resolution of human rights violations within the state and thus avoid more "clone" cases brought before the ECHR on the same topics.[80]

Nevertheless, even those few judgments including an evaluation of the case-law cannot justify the current practice of the Constitutional Court.

---

76 See judgments of 25 January 2001 and 17 July 2002, http://www.sutyajnik.ru/rus/echr/rus_judgments/con_court/judg_with_case_law.htm (as of 26 August 2006).

77 Judgment of 19 June 2002. Para 8(2), http://www.sutyajnik.ru/rus/echr/rus_judgments/con_court/judg_with_case_law.htm (as of 26 August 2006). It might be important to point out that the Constitutional Court did not mention particular paragraphs of the Burdov v. Russia judgment and, moreover, it mentioned incorrect date of the judgment.

78 Burdov v. Russia. Para 34, 35.

79 Fedorov v. Department of Social Security of Pskov. Judgment of 18 October 2003. no. 2-1612/2003, http://www.sutyajnik.ru/rus/echr/rus_judgments/distr/fedorov_pscov_gor_sud_28_10_2003.html (as of 26 August 2006). It shall be noted that the citation of the ECHR judgment is more accurate in the district court judgment than in the judgment of the Constitution Court.

80 Anna Demeneva, "Uridicheskie Posledstviia Postanovlenii Evropeiskogo Suda po Pravam Cheloveka dlia Rossiiskoi Federatsii" (Ekaterinburg: Uralskaia Gosudarstvennaia Uridicheskaia Akademiia, 2004), 74, http://www.sutyajnik.ru/rus/library/sborniki/demeneva_LLM_dissertation.html (as of 15 September 2006).

Any court which makes an effort to enforce an international instrument should adhere to the legal traditions of this particular instrument's implementation. It should be kept in mind that the Convention is a unique legally binding regional instrument which to date embraces 45 different national legal systems (common, civil, post-communist). Inevitably, the Convention has autonomous meaning with respect to almost all its words, sentences and provisions. For this reason, it is impossible to grasp the meaning of a Convention's provision without addressing the case-law of the ECHR in adequate detail. Obviously, it is not enough simply to quote the content of a Convention provision. It does more harm than good to deliver a judgment based on the Convention without revealing the true meaning of a particular provision, which can lead to the incorrect adjudication of a case.

In addition, this practice does not provide a good example for other courts to follow. The Constitutional Court should stop delivering judgments based on the Convention without evaluating the case-law. Obviously, the best example of the Convention's implementation is the jurisprudence of the ECHR itself, which, when analysing the meaning of the Convention's provisions, refers in every instance to the relevant case-law and does so substantially.

On a number of occasions, the ECHR stated that, to satisfy the requirements of a fair hearing in instances where it would be decisive for the outcome of the case, national courts must "indicate with sufficient clarity the grounds on which they based their decision" (guarantee of a reasoned judgment).[81] If a party relied on the body of the Convention and relevant case-law, then it would be the court's duty "to conduct a proper examination of the submissions, arguments and evidence."[82] For this reason, any judgment of the Constitutional Court, or any other domestic courts, citing a provision of the

---

81 Hadjianastassiou v. Greece. Judgment of 16 December 1992. Series A. no. 252. Para 33; Van de Hurk v. the Netherlands. Judgment of 19 April 1994. Series A. no. 288. At Para 61; Hiro Balani v. Spain. Judgment of 9 December 1994. Series A. no. 303-B. At Para 28; Ruiz Torija v. Spain. Judgment of 9 December 1994. Series A. no. 303-A. At para 30. Also see David Harris, Michael O'Boyle, Chris Warbrick, *Law of the European Convention on Human Rights* (London, Dublin, Edinburgh: Butterworths, 1995), 215.

82 Kraska v. Switzerland. Judgment of 19 April 1993. Series A. no. 254-B; Also see Harris, O'Boyle, Warbrick, *Law of the European Convention on Human Rights*, 217.

Convention without actual reference to the case-law of the ECHR does not meet the requirements of a fair trial as expressed in Article 6(1) of the Convention. This is very much the case when a court refuses to evaluate the arguments of a party based on the Convention.

The above-discussed method of implementing the Convention is not a new manner of international law implementation employed by the Constitutional Court. The same style of international law implementation, "simple reference to international conventions,"[83] was used by the Constitutional Court before the ratification of the Convention when applying the ICCPR, or even the not legally binding provisions of the ICESCR and UDHR. Danilenko criticised this approach, calling it "[the Russian Constitutional Court's] own version of sources of international law for domestic consumption."[84] In the case of the Convention's implementation, it can be suggested, as Danilenko does,[85] that the Constitutional Court should use the same method of Convention interpretation as the ECHR does. Such a method would be in line with Article 31(3)b of the Vienna Convention on the Law of Treaties, stating that when applying an international treaty judges shall interpret it by taking into account any subsequent practice of a treaty body.

There is another minor concern about the accuracy of the Constitutional Court's references to the ECHR's case-law. Ten of the twelve judgments by the Constitutional Court containing the case-law do not provide the numbers of the paragraphs from an ECHR judgment where a particular provision was cited,[86] seven have no reference to a source from which the case was reported, two references do not contain the name of the case at all, and

---

83 Danilenko, "Implementation of International Law in CIS States": 63.

84 *Ibid.*

85 To follow Article 4 of the 1993 Institut de Droit International's resolution in determining the content of customary international law to use the same techniques as international tribunals.

86 Judgment of 17 November 1998. Para 3(11); judgment of 23 November 1999. Para 4(4); judgment of 12 March 2001. Para 1.3(2); judgment of 30 July 2001. Para 2(2); judgment of 13 December 2001. Para 3(6); judgment of 15 January 2002. Para 4(3); judgment of 24 January 2002. Para 3(7); judgment of 19 June 2002. Para 8(2); judgment of 30 October 2003. Para 2, 3; judgment of 24 February 2004. Para 5.2(8), http://www.sutyajnik.ru/rus/echr/rus_judgments/con_court/judg_with_case_law.htm (as of 26 August 2006).

one contains an incorrect date of the judgment.[87] These circumstances inevitably deter any lawyer or lower court judge wishing to use an argument contained in a Constitutional Court judgment in any other hearings from doing so.

As far as the parties are concerned, the judgments of the Constitutional Court contain the arguments of the applicants in more or less detail. However, in the judgments there has been no evidence of the parties' arguments based on the Convention.

Thus, the Russian Constitutional Court mostly applies provisions of the Convention without reference to the case-law. Where there is a reference to the case-law, it cannot be said that the reference is of proper quality according to the ECHR's standards. In general, the Constitutional Court's practice resembles the typical attitude of a court in a civil law country where there is no case-law, but rather statutes and subordinate legislation, and therefore no custom of interpreting statutes' provisions by using case-law.

However, it would be fair to highlight recent changes in the Constitutional Court's practice. Angelika Nussberger, reporter on Russia and Ukraine in the research project "The Reception of the European Convention on Human Rights in Europe" noted that

> …it can be observed that in the last two years this approach [when jurisprudence of the European Court of Human Rights is quoted only in relatively small number of cases] is being changed. For 2005 seven and for the first months of 2006 three decisions containing direct references to the jurisprudence of the Court are reported. The Russian Constitutional Court does not only refer to the jurisprudence concerning Russia, but also concerning other States members of the Convention and thus underscores the *erga omnes* effect of the decisions.[88]

---

87 Judgment of 19 June 2002. Para 8(2), http://www.sutyajnik.ru/rus/echr/rus_judgments/con_court/judg_with_case_law.htm (as of 26 August 2006).

88 Angelika Nussberger, "The Implementation of the European Convention on Human Rights in Russia and Ukraine." (Draft report presented at the conference "The Reception of the European Convention on Human Rights in Europe," Zurich, 26-27 October 2006), 17.

2) Constitutional (Charter) Courts of the Subjects of the Russian Federation

It would be appropriate here to consider the case-law of the Constitutional (Charter) courts of the subjects of the Russian Federation (Charter courts). Article 27 of the Law "On the Judicial System of the Russian Federation"[89] stipulates only the possibility of creating Charter courts in the subjects of the Russian Federation. These courts are independent of the Constitutional Court. However, they have similar jurisdiction and resolve cases about the compliance of regional laws and other normative acts of regional and local governments with the constitutions (charters) of the subjects of the Russian Federation.90 As of December 2003 there were 16 Charter courts.91 Two of the 16 Charter courts were randomly selected for this study –the St. Petersburg Charter Court92 and the Sverdlovsk oblast Charter Court.93 Neither of the two employed the Convention at all in their case law during the period under study.

An interesting situation occurred in the Sverdlovsk oblast Charter Court in the course of the proceedings on the Case Concerning Compliance with the Regulation by the Yekaterinburg City Hall on the Order of Holding Direct Actions in the City of Yekaterinburg with the Charter of Sverdlovsk oblast.94 The applicants complained about the Regulation which had set out that those responsible for conducting a protest against a government action must receive permission from the local government to do so. Their arguments were based on Article 31 of the Constitution, a relevant Article of the Charter of Sverdlovsk oblast, as well as Article 11(1) of the Convention. The applicants' citation of the Convention was accompanied by a substantial quotation from ECHR case-law. In spite of the fact that the judgment was for the appli-

89 *Rossiiskaia Gazeta*, 6 of January 1997.

90 Article 27 of the Law "On Judicial System of the Russian Federation." Appendix 7.

91 Olga Zetlina, *Radio Liberty (Moscow)*, http://www.refugee.memo.ru/C325678F00668DC3/$ID/A269FF170869C960C3256E06007CE955 (as of 26 August 2006).

92 As of 10 August 2004 it had 22 judgments on the merits.

93 As of 10 August 2004 it had 42 judgments on the merits.

94 Judgment of 25 January 2002, *Vestnik Ustavnogo Suda Sverdlovskoi Oblasti* 1 (2002).

cants, the Charter Court did not consider the part of their argument that was based on the Convention. Moreover, even when briefly giving the arguments of the applicants in the factual part of the judgment, the court did not mention that the applicants' arguments were based on the Convention. The only language of the Charter Court which references the applicants' invocation of the body of international law was an explanation that the applicants argued that the Regulation infringed upon their right to freedom of peaceful assembly "stipulated by Article 31 of the Constitution and recognised by the world community."95 It is probable that by the phrase 'the world community' the Charter Court meant the Council of Europe, the Convention and ECHR case-law.

The practice of the charter courts can be assessed as unsatisfactory in terms of their reluctance to invoke the Convention even when applicants' arguments were based on the Convention. All the general rules as to the domestic status of the Convention for the Russian courts discussed above are relevant to the charter courts without exception. It is true that the charter courts, when resolving the case, should rule on whether a particular act of the regional or local government is in conformity with the constitution or charter of a subject of the Russian Federation. However, Article 15(4) of the Constitution recognizing the law of international treaties as a part of the law of the land should be adhered to by the charter courts. The adherence to this provision is of vital importance for the charter courts since they are considered to be the courts of subjects of the Russian Federation, and not of the Russian Federation itself. The reason is that, according to Article 3 of the Law "On the Judicial System of the Russian Federation,"[96] the unity of the judicial system is secured by implementing, *inter alia*, international treaties by all of Russia's courts.

95 Judgment of 25 January 2002. Para 1.

96 Appendix 7.

3) The Courts of General Jurisdiction ("Ordinary" Courts)

As noted by Danilenko, "'[o]rdinary' Russian Courts have much less experience in applying international law than does the Constitutional Court."[97] However, all the previously discussed norms of the Constitution and federal laws which provide a normative basis for a broader implementation of international law apply to the courts of general jurisdiction as well. These are the Supreme Court of the Russian Federation, the high courts of the subjects of the federation, district courts and justices of the peace. Moreover, it was mentioned above that the Supreme Court has passed some Regulations instructing lower courts to apply international law in general and the Convention in particular. Let us now explore the way in which the Convention is being applied by the courts of general jurisdiction, starting with the Supreme Court.

The Supreme Court of the Russian Federation

The 1995 Supreme Court Regulation On Some Questions Concerning the Application of the Constitution of the Russian Federation by the Courts (the 1995 Regulation)[98] was assessed by Danilenko in terms of the application of international law in general to the effect that the Supreme Court is "moving in the same direction" as is the Constitutional Court.[99] This is the method of "simple reference to international conventions or 'other documents'."[100] The policy of the Supreme Court has not changed since the promulgation of the 1995 Regulation, regardless of the fact that it has passed a special Regulation On the Application by Courts of General Jurisdiction of the Generally-recognized Principles and Norms of International Law and the International Treaties of the Russian Federation[101] and a number of other regulations on the issue of the Convention's implementation. In these documents, the Su-

97 Danilenko, "Implementation of International Law in CIS States": 58.
98 *Biulleten' Verhovnogo Suda Rossiiskoi Federatsii* 1 (1996).
99 Danilenko, "Implementation of International Law in CIS States": 63.
100 *Ibid.*
101 Appendix 10.

preme Court explained, *inter alia*, that when applying the Convention judges shall interpret the treaty by taking into account any subsequent practice in the application of the Convention by the ECHR.

The state of the Supreme Court's jurisprudence in terms of its implementation of the Convention can be assessed overall as unsatisfactory. Using data from the Supreme Court's website, [102] I analyzed the jurisprudence of the Supreme Court as a court of first instance,[103] second instance (a court of cassation)[104] and extraordinary appeal instance (*nadzor*).[105] The overall number of judgments under scrutiny was 3911. Of the overall number of judgments there were only 12 judgments mentioning the Convention, of which only 8 contain the Supreme Court's assessment of compliance with the Convention. In the other 4 cases, the judgment briefly quotes the arguments of an applicant which were based on the Convention but does not give any assessment of those arguments. The character of the Convention's implementation depicts an even more disastrous situation regarding the impact of the Convention on the Russian legal system after more then 8 years of Russia's accession to the Statute of the Council of Europe.

The eight judgments contain not a single reference to the case-law of the ECHR. The manner in which the Convention is being implemented is very brief and imprecise. Usually only the number of an article is cited. In the best instances, the Supreme Court merely states verbatim the content of an article. The worst example is when it simply states that a particular government act does not contradict the Convention as a whole.[106]

The Supreme Court does not distinguish between the legal effect of the Convention and the UDHR or the ICCPR, sometimes mentioning them all together in support of an argument. Arguments by the Supreme Court based on the Convention bear a complementary character; they support arguments which have been already made based on Russian legislation. The jurisprudence of the Supreme Court lacks any substantial analysis of the Convention.

---

102 http://www.supcourt.ru (as of 26 August 2006).

103 In the cases considered here the judgments were passed by a single judge court.

104 A bench of 3 judges.

105 A bench of 3 judges or up to 13 judges in case of Presidium of the Supreme Court.

106 Ten Muslim Women v. the Ministry of Internal Affairs (Hijab case). Judgment of 5 March 2003 no. ГКПИ 03-76, http://www.sutyajnik.ru/rus/echr/rus_judgments/sup_court/5_03_2003_platki.html

This is not surprising, since it is impossible to assess any facts in regard to their compatibility with the Convention's provisions without addressing the case-law of the ECHR.

In terms of the manner in which the Convention is being invoked, its implementation resembles the method the Supreme Court used when drafting its 2003 Regulation on the implementation of international law.[107] The only legal meaning that can be extracted from the jurisprudence of the Supreme Court is that the Russian Federation has ratified the Convention; therefore, according to Article 15(4) of the Constitution, it shall be taken into account. The situation with the implementation is the same in the judgments of the Supreme Court as a court of first instance, cassation or extraordinary appeal (*nadzor*), in civil or criminal cases.

In order to look more closely at the approach the Supreme Court uses in dealing with the Convention, let us now analyse some of those eight judgments. In the case of the Labour Union of Moscow Police v. the Ministry of Internal Affairs,[108] the Supreme Court stated that the shift (*peremeshchenie*) of the internal affairs officers without their consent to a different permanent duty station (*mesto sluzhby*) [permitted by an Order of the Ministry of Internal Affairs] came under the definition of forced labour (*prinuditel'nogo truda*) contained in Article 4(2) of the Convention. However, it would have been enough to refer to the Convention to learn that it does not contain any such definition. Indeed, the ECHR in one of its judgments stated the absolute opposite, namely, that "Article 4 does not define what is meant by "forced or compulsory labour" and no guidance on this point is to be found in the various Council of Europe documents relating to the preparatory work of the European Convention."[109] The ECHR uses the definition of the term "forced or compul-

---

107 Appendix 10.

108 Judgment of 16 November 2000 no. ГКПИ 00-1195, http://www.sutyajnik.ru/rus/echr/rus_judgments/sup_court/16_11_2000_art_4.html

109 Van der Mussele v. Belgium. Judgment of 23 November 1983. Series A. no. 70. Para 32.

sory labour" given by the International Labour Organisation (ILO)[110] only as "a starting-point for interpretation of Article 4."[111]

It is absolutely unclear whether the Supreme Court would have arrived at the same conclusion if it took into account the case-law of the ECHR. For example, in a case similar to the Labour Union of Moscow Police case, namely Iversen v. Norway,[112] the European Commission held by a majority of six votes to four that the application was inadmissible.[113] "[F]our members of the majority considered that the service of Iversen [being a dentist he was required to take up for one year a position in public dental service] was manifestly not forced or compulsory labour under Article 4(2)."[114] The other two members considered it as falling under Article 4(3). The reasoning of the four members of the majority is that to amount to a violation of Article 4(2), labour shall be unjust or oppressive, although it can be obligatory; shall be for a prolonged period of time, provided there is no favourable remuneration; shall involve a diversion from chosen professional work; shall occur where a position was filled before being duly advertised; and, shall involve discriminatory, arbitrary, or punitive application.[115] Under such requirements, it is very dubious as to whether the provision allowing the shifting of policemen can be qualified as a violation of Article 4(2).

In this case, Russian legislation provides better protection than the Convention does for policemen, stipulating that no subordinate legislation (including a Ministry's order) can limit any of the rights of policemen provided by the Law "On the Police" (Article 17(7) of the Law "On the Police"). In this case, it was unnecessary and inappropriate for the Supreme Court to address the Convention.

---

110 "All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily," International Labour Organization Convention no. 29 Concerning Forced or Compulsory Labour.

111 Van der Mussele v. Belgium. Para 32.

112 Iversen v. Norway. Decision of 17 December 1963. 6 Yearbook (1963), 278.

113 Clare Ovey, Robin White, *Jacobs and White, the European Convention on Human Rights*, (Oxford: Oxford University Press, 2002), 92.

114 Ovey, White, *Jacobs and White, the European Convention on Human Rights*, 93.

115 *Ibid.*

In the Hijab case,[116] the Supreme Court as a first instance court held that an Order of the Ministry of Internal Affairs, which had prohibited wearing a headscarf at the moment of taking a passport photo, did not infringe upon the UDHR, the ICCPR or the Convention's right to freedom of thought, conscience and religion, as it did not prohibit wearing a headscarf in general. Therefore, it did not discriminate against Muslim women since the rule applies to everyone under the jurisdiction. If the Supreme Court had studied the case-law on Article 9(2) more closely, it would have come to a different conclusion. Article 9(2) allows limitations of the right to freedom to manifest one's religion which are prescribed only by "law" as this term is understood in the ECHR case-law.[117] The same conclusion can be drawn from Article 55(3) of the Constitution. Moreover, the Constitution allows more protection in this regard as it considers "law" to be any act of legislation. Further, the right not to be discriminated against would also be violated when the state without objective and reasonable justification fails to treat differently persons whose situations were significantly different (different religions), and Article 14 was therefore applicable.[118] The Supreme Court's judgment of 5 March 2003 might have been different if it had explored the case-law of the ECHR.[119]

In another case, the Supreme Court applied Article 14 of the Convention as if it were a free-standing article. In the case of Kolotkov v. the Government of the Russian Federation,[120] concerning the right to compensation for government officials' moving expenses, the Supreme Court applied Article 14, although in favour of the Government, stating that there was no discrimi-

---

116 Judgment of 5 March 2003 no. ГКПИ 03-76, http://www.sutyajnik.ru/rus/echr/rus_judgments/sup_court/5_03_2003_platki.html

117 Leyla Sahin v. Turkey. Judgment of 29 June 2004. Para 74, 77.

118 Thlimmenos v. Greece. Judgment of 6 April 2000. ECHR 2000-IV. Para 47.

119 It shall be noted that the court of cassation has quashed the judgment and passed a new judgment holding that the Order of the Interior Ministry, not having the status of a statute, had limited the right of citizens to freedom of religion in violation of Article 55(3) of the Constitution. Also the cassation considered the challenged provision as discriminatory. See the Supreme Court judgment of 15 May 2003 (cassation). The judgment is available in Anna Demeneva, Anton Burkov, eds., *Konstitutsiia Rossii: 10 Let Primeneniia* (Ekaterinburg: Izdatel'stvo Ural'skogo Universiteta, 2004), 65-69, http://www.sutyajnik.ru/rus/library/sborniki/konst_10_let_primen/constitution_sutyajnik_10.pdf (as of 27 August 2006).

120 Judgment of 13 March 2003 no. ГКПИ 03-97, http://www.sutyajnik.ru/rus/echr/rus_judgments/sup_court/13_03_2003_art14.html (as of 30 August 2006).

nation on the grounds of place of employment. The reason for doing so resulted from the Supreme Court's failure to refer to the case-law of the ECHR. Article 14 is clear that it "does not prohibit discrimination as such in any context, but only in 'the enjoyment of the rights and freedoms set forth in this Convention'."[121] The article comes into play if (1) there has been a violation of one of those rights of the Convention or (2) there has been no violation of that other Article taken alone, but there may be a violation of Article 14 considered together with that other article of the Convention.[122] In the case of the Supreme Court, it employed Article 14 when considering a right which was not secured in the Convention. In this case, it was inappropriate to apply the Convention. Again, in the case discussed, Article 19(2) of the Russian Constitution gave enough protection against discrimination.

Thus, besides the fact that it implements the Convention on rare occasions and without addressing the case-law, the Supreme Court of the Russian Federation implements the Convention where there is no justification for the Convention to be engaged and refuses to implement the Convention where there is justification. From the above analysis, it is evident that the method of engaging the Convention used by the Supreme Court is incorrect. The implementation of the Convention alone without reference to the case-law of the ECHR inevitably leads one to misinterpretation and misapplication of the binding regional instrument, and reduces to zero all the attempts of the Supreme Court to engage the Convention. All the misapplications of the Convention discussed above were due to the fact that the Supreme Court did not address the ECHR case-law. This reveals the true situation with respect to the application of the Convention within the Russian legal system.

As far as the arguments of parties are concerned, from the jurisprudence of the Supreme Court it is impossible to find out how often applicants or procurators refer to the Convention, not to mention the quality of their arguments. This is partially because of the aforementioned brevity of Russian judgments. The Supreme Court devotes less room for parties' arguments than the Constitutional Court does in its judgments. It provides a very brief

---

121 Ovey, White, *Jacobs and White, the European Convention on Human Rights*, 348.

122 Ovey, White, *Jacobs and White, the European Convention on Human Rights*, 348-349; Grandrath v. Federal Republic of Germany. no. 2299/64. Decision of Committee of Ministers. 29 June 1967. 10 Yearbook (1967), 629.

summary of arguments. In an interview with advocate Ilya Poluyakhtov, he pointed out that well-paid advocates raise arguments based on the Convention and the case-law.[123] Particularly often it happens in the course of high-profile cases, for example, the well-known Khodorkovskii case on fraud charges.[124]

With respect to the procurator's argument, the Supreme Court usually gives information only on the side the procurator office has supported without providing the substance of its arguments. Only one judgment contains evidence; in a criminal case a procurator brought an extraordinary appeal against a judgment based on Article 4(2) Protocol 7 of the Convention.[125]

District and High Courts

The jurisprudence of district and high courts is hardly accessible from official sources in Russia. Therefore, in this part of my study, I assess the practice of two Russian non-governmental organizations (NGOs) – the Glasnost Defence Foundation and the Urals Centre for Constitutional and International Protection of Human Rights of the NGO Sutyajnik. The jurisprudence accessed through these NGOs is of interest in terms of the possibility of witnessing the interdependence between persistent applicants' arguments based on the ECHR case-law before the courts and the quality of the Convention's implementation by courts, as well as the development of the Convention's implementation.

Unlike the case of the Supreme Court, there are instances where lower courts use the ECHR's case-law in their analysis of alleged Convention

---

123 Author's interview with Ilya Poluyakhtov, an associate at the Linklaters CIS law firm. 20 August 2004.

124 Karina Moskalenko, an advocate for Mikhail Khodorkovskii, stated that on 15 January 2004 the Moscow city court (a high court) upheld a decision of the lower court (district court) to leave the accused in custody in violation of Article 5 of the Convention. This was despite the fact that the advocate raised the argument based on the case-law of the ECHR. The interview is available at http://www.hro.org/editions/control/hodorkovski/2004/01/19.php (as of 26 August 2006).

125 The case of Urchenko. Decision of the Presidium of the Supreme Court no. 447п02пр of 4 December 2002, http://www.sutyajnik.ru/rus/echr/rus_judgments/sup_court/judg_with_case_law.htm

violations. However, it would be fair to agree with the conclusion drawn by the lawyers of the Glasnost Defence Foundation based on their assessment of the jurisprudence on Article 10 implementation: it is considerably difficult to apply the Convention and, in particular, its interpretation in the ECHR case-law in Russian courts.[126] On the other hand, there are some examples of good practice of the analysis of the Convention based on the case-law. The assessed jurisprudence of the district courts as a whole demonstrates that systematic and persistent arguments based on the Convention and the case-law raised by the applicants are crucial for good practice by judges. Because there are no substantial submissions by the applicants as to the implementation of the Convention this leads to an absence of analysis of the ECHR case-law, and therefore, to its poor application by courts.

Experts from the Glasnost Defence Foundation found that in most defamation proceedings the Convention affords a strong case for a defence party when applying the principles established in the case-law to balance the right to freedom of expression and, for example, the protection of reputation.[127] On the other hand, a failure to employ the ECHR's principle of the balance between concurring rights leads to the non-fulfilment of Russia's obligation as a High Contracting Party to the Convention to secure to everyone the rights and freedoms of the Convention (Article 1), and therefore to a possible case before the ECHR.

For these reasons, the Glasnost Defence Foundation[128] has organised a strategic litigation campaign with the aim of employing Article 10 of the Convention in all the defamation cases where its lawyers were involved. It was noted that legal proceedings where only the Convention was cited did

---

126 Vladislav Bykov, Dmitrii Shishkin, "Statia 10 Evropeiskoi Konventsii o Zashchite Prav Cheloveka v Grazhdanskikh Processakh o Zashchite Dobrogo Imeni," in Georgii Vinokurov, Andrei Rikhter and Vladimir Chernishov, eds., *Obrashcheniia v Evropeiskii Sud po Pravam Cheloveka: Rukovodstvo dlia Zhurnalistov* (Moskva: Institut Problem Informatsionnogo Prava, 2004), 591, http://www.medialaw.ru/publications/books/book45/33.html (as of 26 August 2006).

127 *Ibid.*

128 Hereafter referred to as 'the Foundation'. The Foundation provides legal support and advocacy to the mass media in Russia. Founded in Moscow in 1991, the Foundation has established and supported ten regional legal defence centres around Russia. There is also a monitoring network in all the CIS republics. Staffed by lawyers and other professionals, the centres conduct day-to-day monitoring of media rights abuses around Russia and the CIS. The Foundation's web-site is: http://www.gdf.ru

not lead to the resolution of the case based on the principles of international law. The Foundation's lawyers changed their method from simply citing the Convention in their memorandums to courts to submitting comprehensive memorandums as to the direct implementation of the Convention and the case-law in every case. The purpose of the memorandums was to convince the courts that the Convention has the status of a federal law and that attempts to implement the Convention without taking into account the ECHR's case-law were in vain.[129]

A distinctive feature of the district court judgments obtained by the Foundation is that these courts indeed have been citing ECHR precedents. Those references to the case-law have been prompted by the comprehensive memorandums submitted by the applicants' lawyers. For example, in two judgments[130] there are clear citations of the freedom of speech principles set out by the ECHR in the cases of Handyside v. UK[131] and Lingens v. Austria.[132] On the other hand, the courts did not name those cases, not to mention identification of particular paragraphs of the judgments. In the judgment of Vodianikova v. Nasha Zhizn Newspaper and Osenniaia, the district court stated that "the ECHR case-law allowed under certain circumstances […] the use of offending or shocking expressions" by referring to "(т.199983 *I* 92, report of 29 November 1995, paragraph 63)." No further explanations as to the nature and source of that "report" were given. However, the court's reasoning resembles the ECHR's statement that

> [f]reedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it

129 *Ibid.*

130 Vodianikova v. Nasha Zhizn Newspaper and Osenniaia. Judgment of 28 January 2002, in Anton Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zaschite Prav Cheloveka v Sudakh Rossii* (Ekaterinburg: Izdatel'stvo Ural'skogo Universiteta, 2006), 210-220, http://www.sutyajnik.ru/rus/library/ sborniki/echr6/echr6.pdf (as of 26 August 2006); Sannikov v. Veselo Zhivem Newspaper, ZAO RIA Lozman. Judgment of 20 December 2002 in Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zashchite Prav Cheloveka v Sudakh Rossii*, 220-229.

131 Handyside v. UK. Judgment of 7 December 1976. Serial A. no. 24.

132 Lingens v. Austria, Judgment of 8 July 1986. Serial A. no. 103.

> is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.[133]

In Sannikov v. Veselo Zhivem Newspaper, ZAO RIA Lotzman, the court borrowed the whole paragraph 41 from the Lingens judgment.[134] No reference to the judgment followed. However, there has been a positive shift in district court jurisprudence towards implementation of the ECHR case-law. Vladislav Bykov spoke of the recent positive changes:

> Today the situation is different. There is no point in submitting a memorandum [on the domestic status of the Convention] anymore. Judges themselves conduct lectures and are familiar with the Convention. For this reason I cite the right guaranteed in the Convention and the relevant case-law [without paying attention to the domestic status of the Convention]. However, if there is a “willingness” [to rule against the defendant] the judges simply ignore the case-law on purpose and implement those exceptions contained in Article 10(2) of the Convention. The facts that the true meaning of those exceptions may be obtained only from the case-law and that one must not apply the Convention without taking into account the ECHR case-law do not confuse judges and they keep applying the Convention on its own.[135]

Positive changes were noticed by Marjorie Farquharson, a Council of Europe official who attended training seminars, saying it was her impression

---

133 Handyside v. UK. Para 49.

134 Lingens v. Austria. Para 41.

135 Author’s interview with Vladislav Bykov, a lawyer for the Glasnost Defence Foundation, 20 August 2004.

that "civil court judges grasped the Convention very quickly, in particular an excellent group of judges from the North Caucasus (Karachaevo-Cherkassk). Some good judgements might be found there."[136]

A similar situation can be observed when studying the practice of the Urals Centre for Constitutional and International Protection of Human Rights of the NGO Sutyajnik (the Centre).[137] The Centre has not been seeking to maximize the number of cases brought before the ECHR. Right from the beginning, the main task of the Centre was to engage the Convention in every domestic legal proceeding possible in order to avoid an appeal to the ECHR alleging non-compliance of the Russian Federation with its obligation to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention (Article 1). According to the Centre's local rules, lawyers were obliged to invoke the Convention and the ECHR's case-law in particular by submitting memorandums containing comprehensive explanations as to the Convention's and case-law's status in the Russian legal system as well as the obligation of judges to employ provisions of this instrument in their judgments. The Centre has been following this policy since 2000.[138] The results are as follows.

In terms of general observations, there was not a single case where a judge engaged the Convention, let alone the case-law, on her or his own initiative. Judges display strong resistance toward invoking the Convention. Usually the Convention is applied by those judges who have frequently faced applicants' arguments based on the Convention. Those judges who are coming across such arguments for the first time try to avoid mentioning them in their judgments, even when the case-law principles support the applicant and

---

136 Author's interview with Marjorie Farquharson, 23 June 2004.

137 The Centre was founded in 2000 as a result of a joint project of the Russian NGO Sutyajnik (Yekaterinburg) and INTERIGHTS (London). Since then, besides engaging in the litigation, the Centre's lawyers have published a number of papers in various law journals, and a series of six books on the Convention's implementation "International Human Rights Protection," http://www.sutyajnik.ru/news/2006/06/497.html. It also successfully won the case of Rakevich v. Russia before the ECHR. Judgment of 28 October 2003.

138 The NGO Sutyajnik, the founder of the Centre, started to apply the Convention right after the accession of the Russian Federation to the Statute of the Council of Europe. Author's interview with Sergey Beliaev, the President of the NGO Sutyajnik, 19 August 2004.

the judgments are for the applicants. They adjudicate cases based on the domestic law only. In the best case, judges cite an article of the Convention without referring to the case-law analysis submitted by the applicant.

However, over time, those judges, regularly placed by the applicant into a situation where they have to consider the Convention and the case-law, start to apply the Convention and even look into the case-law – which is even more valuable. There are examples where judges cite principles expressed in the case-law as well as the names of the judgments referred to in a case. When the applicant relies on the Convention, the reasoning of the judgment is limited to mentioning the Convention in general or its specific article; there is no reference to the case law.[139]

One of the first cases in which one of the Centre's lawyers pleaded before a court to invoke the Convention was the case of Skakunov v. the Sverdlovsk Oblast Duma [Regional legislative body][140] heard by the Sverdlovsk oblast court (high court). The applicant complained, *inter alia*, that his right to property (Article 1(1) of Protocol 1) was infringed and that he was discriminated against on the grounds of being a student at a private university (Article 14). The applicant, unlike students at state-funded universities,[141] was a subject to a 5% sales tax when paying tuition fees. The position of the applicant rested on the case-law associated with the aforementioned articles of the Convention. In 2000, no translation of any judgment by the ECHR was widely available in Russia.[142] Due to the defendant's objections in regard to the absence of the translated judgments of the ECHR, the applicant submitted relevant self-translated ECHR judgments in addition to a memorandum on

---

139 Topiro v. Ministry of Justice, OAO Saldinskii Metallurgical Factory, The Mining and Smelting Labour Union of Russia (district court). Judgment of 25 April 2001, http://www.sutyajnik.ru/rus/echr/rus_judgments/distr/topiro_25_04_2001.htm (as of 26 August 2006); Topiro v. Ministry of Justice, OAO Saldinskii Metallurgical Factory, The Mining and Smelting Labour Union of Russia (Sverdlovsk oblast court – a court of cassation). Judgment of 12 July 2001, http://www.sutyajnik.ru/rus/echr/rus_judgments/obl/topiro_obl_12_07_01.htm (as of 26 August 2006). Both courts having ruled based on Article 11 of the Convention only, made opposite conclusions.

140 Skakunov v. Sverdlovsk Oblast Duma. Judgment of 16 November 2000.

141 In state-funded universities there are so-called "non-budget" students who, unlike "budget" ones, have to pay tuition fees.

142 The first collection of major cases of the ECHR translated into the Russian language was published in 2000. See Vladimir Tumanov et al., eds., *Evropeiskii Sud po Pravam Cheloveka. Izbrannie Resheniia* (Moskva: Norma, 2000).

the Convention's status in the Russian Federation and arguments based on the case-law.

Without going into the details of the arguments, it should be stressed that the Sverdlovsk oblast court, composed of one judge, ruled in favour of the defendant, but mentioned no case-law of the ECHR. The court limited its arguments to a simple reference to Article 1(2) of Protocol 1 to the Convention.

A more recent case, Beliaev v. the Sverdlovsk Oblast Duma,[143] on a similar Article 1 of Protocol 1 issue heard by the same judge is sharply distinguishable from the one just discussed. In Beliaev's case, the applicant argued that a provision of the regional statute deprived him of the property right to decide on the status of his premises, in particular the right to convert residential properties into non-residential ones. His position was based, *inter alia*, on Article 1(1) of Protocol 1, as well as on some cases which contained a relevant interpretation of the Article.[144] Unlike in the case of Skakunov*,* the judge reflected the position of the ECHR in regard to Article 1 of Protocol 1 by referring to paragraphs 63 and 64 of Marckx v. Belgium. Moreover, holding against the applicant, the judge ruled based on an interpretation of the Article different from that of the applicant by looking into the case-law. In addition, the defendant as well as the co-defendant, the representative of the Governor of Sverdlovsk oblast, argued in the court hearings based on the case-law. The most interesting detail is that the applicant's appeal arguments, as well as the submissions by the co-defendants against the appeal, were almost entirely based on the Convention provisions' interpretation in the case-law. In the end, all the court's actors were largely using the Convention in their arguments. The outcome of the case depends on the analysis of the case-law.

By contrast, almost at the same time, another judge of the Sverdlovsk oblast court, who was recently appointed as a high court judge, delivered a judgment in the case of Ministry of Justice v. Russian Labour Party[145] com-

---

143 Beliaev v. Sverdlovsk Oblast Duma. Judgment of 22 June 2004, http://www.sutyajnik.ru/rus/echr/rus_judgments/obl/beliaev_v_obl_duma_22_06_2004.html

144 Marckx v. Belgium. Judgment of 13 June 1979. Series A. no. 31. Para 63; Sporrong and Lonnroth v. Sweden. Judgment of 23 September 1982. Series A. no. 52. Para 61, 69.

145 Ministry of Justice [Sverdlovsk oblast department] v. Russian Labour Party [Sverdlovsk oblast branch]. Judgment of 29 July 2004, http://www.sutyajnik.ru/

pletely ignoring the applicant's arguments based on the Convention and the case-law. The applicant filed a law suit against the Russian Labour Party asking that defendant's activity be interrupted on the basis of not submitting certain documents that confirm the number of party members, including personal applications to the party regarding willingness to become a member. The defendant pleaded that (1) the applicant had no standing since it had not followed the pre-trial procedure for settling the dispute; (2) the applicant had not proved the necessity of the interruption of the party's activity as required under Article 11(2) of the Convention and relevant case-law; (3) the statute which prescribes that a party shall submit the personal applications of its members upon the request of the Ministry of Justice is contrary to Article 8 and 11 of the Convention, since the applications contain members' personal information such as passport number, place and date of birth, address and telephone, which can be disclosed only with the consent of the members. The defendant's plea was supplemented by a comprehensive memorandum as to the issue of the domestic status of the Convention and its implementation in the case according to the relevant ECHR case-law. The judge ruled for the defendant based on the defendant's first argument, but left the other two aside without any analysis whatsoever.

There are two possible reasons for not considering the international law-based arguments in this case: (1) the judge lacked any experience in the implementation of international law; and (2) the defendant suggested another reason that a possible ruling on the right to respect for private life and the right to freedom of association could have entailed far reaching consequences for the Ministry of Justice and all the political parties of the Russian Federation as to the lawfulness of demanding personal applications of the parties' members and to the interruption of the parties' activities.[146]

The following case of Beliaev v. the Sverdlovsk Oblast Duma and the Judicial Department at the Supreme Court of the Russian Federation[147]

---

rus/cases/judgments/obl_sud_minust_v_rpt_29_07_2004.html (as of 26 August 2006).

146 "Russia Has Been Saved from a Possible Defeat in Strasbourg," *News Agency Sutyajnik-Press*, 29 June 2004, http://www.sutyajnik.ru/rus/news/2004/07/ 29.html (as of 26 August 2006).

147 Beliaev v. Sverdlovsk Oblast Duma and the Judicial Department at the Supreme Court of the Russian Federation (Sverdlovsk oblast office) [cassation]. Judgment of

serves as an example of an incorrect understanding of the phenomenon of precedent or biased consideration of the case by the cassation bench of the Sverdlovsk oblast court. The applicant complained about a violation of his right to a fair trial by arguing that all the district courts of Sverdlovsk oblast could not be considered to have been "tribunals established by law" because they had been composed in breach of the Law "On Lay Judges."[148] The violation of the Law "On Lay Judges" was due to the defendants' failure to provide the district courts with a list of lay judges. The applicant made his case based on the Posokhov v. Russia judgment that failure to observe the requirements of the Law "On Lay Judges," in particular, the absence of a list of lay judges, which should have been provided by the defendants, led to a breach of Article 6(1) of the Convention.[149] The court held that there was no breach of the applicant's rights because, in spite of the fact that there was no list of lay judges available for the district courts, the cases were considered in accordance with the Presidential Decree of 25 January 2000 On the Extension of the Lay Judges Office Term,[150] which extended the statutory term of office of the current lay judges until new lists had been established under the Law "On Lay Judges." However, these circumstances were enough for the ECHR to find a breach of Article 6(1) of the Convention in the Posokhov case.[151] The court rejected the applicant's reference to the Posokhov case as an authority for a similar case and similar question of law by simply stating that

> Mr. Posokhov had been protecting his right breached in the particular case [a criminal case with the accusation against him]; however, Mr. Beliaev complained about the defendants' behaviour [not following the existing order of lay judges appointment] in general.[152]

---

23 October 2003 in Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zashchite Prav Cheloveka v Sudakh Rossii*, 244-246.

148 The Law no. 37-FZ of 2 January 2000, *Rossiiskaia Gazeta*, 10 January 2000.

149 Posokhov v. Russia. Para 41.

150 *Rossiiskaia Gazeta*, 9 February 2000.

151 Posokhov v. Russia. Para 41.

152 Beliaev v. Sverdlovsk Oblast Duma and the Judicial Department at the Supreme Court of the Russian Federation, in Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zashchite Prav Cheloveka v Sudakh Rossii*, 244-246.

Such an interpretation of the nature of precedent with respect to the ECHR case law is incorrect. To apply a precedent means to adjudicate a case on the basis of a principle (a rule of law) established in a prior case which is close in facts or legal principles to the case under consideration.[153] There are no requirements for the cases to be identical in all aspects.

There are two possible reasons for the incorrect application of the case-law here: (1) a sincere misunderstanding of the nature of precedent, or (2) the inability (or lack of political will) to adjudicate according to the case-law principle, which would lead to the recognition that, for a prolonged period of time throughout Russia, not to mention Sverdlovsk oblast, cases had been considered by lay judges courts not established by law.

During 2000-2004, the Centre held a strategic litigation campaign on the problem of lay judges. First, the Centre's lawyers filed a law suit before the Supreme Court seeking to challenge the Presidential Decree of 25 January 2000.[154] The action was dismissed without consideration on the merits due to the Court's conclusion that Presidential Decrees could not be judicially reviewed. Second, in every court proceeding (civil and criminal), the Centre's lawyers have pleaded a challenge to lay judges on the grounds of a breach of the Article 6(1) right to a fair hearing by a tribunal established by law. Third, all the judgments delivered by an unlawfully composed bench of lay judges were appealed to a high court on the same grounds. Fourth, the applicants petitioned the Sverdlovsk Oblast Duma and the Judicial Department at the Supreme Court of the Russian Federation, which were responsible for drafting the list of lay judges, without any success. Fifth, following the Posokhov case, the strategic litigation campaign culminated in the proceedings of the

153 *Black's Law Dictionary with Pronunciations: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern,* (St. Paul, Minnesota: West Publishing Co., 1998), 814.

154 *Rossiiskaia Gazeta*, 9 February 2000.

Beliaev case[155] discussed above. All of the courts were completely ignoring arguments based on the Convention.[156]

The only "remedy" that the Russian Federation provided was the abolition of the lay judges' institute in criminal cases on 1 January 2004 and in civil cases on 1 February 2003 which was reflected even in a Resolution by the Council of Europe's Committee of Ministers.[157] The lack of impact of the Convention at the domestic level in the case of Beliaev led to an application before the ECHR which is similar to Posokhov v. Russia.[158] The unwillingness of the Russian Federation to admit a violation of the right to a fair trial in this regard at the domestic level led to another similar case admitted[159] and heard by the ECHR: Fedotova v. Russia.[160]

This demonstrates that courts acting "on behalf of the Russian Federation"[161] do not appear to be inclined to allow the impact of the Convention at the domestic level in cases with far reaching circumstances. This is understandable from the point of view of the State. It is cheaper for the State to have a small number of Posokhov cases heard by the ECHR, and to aware several thousand euro as a result, than to award a much smaller amount of compensation in a more ample quantity of domestic cases. Given such an alternative, the choice is clear, provided that there is no extra international community pressure on a state, which is hardly possible in the case of Russia,

---

155 Beliaev v. Sverdlovsk Oblast Duma and the Judicial Department at the Supreme Court of the Russian Federation, in Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zashchite Prav Cheloveka v Sudakh Rossii*, 244-246.

156 The material on the lay judges strategic litigation campaign is largely drawn from Anna Demeneva, "Zashchita Prava na Rassmotrenie Dela Sudom, Sozdannim na Osnovanii Zakona: Praktika Primeneniia Stat'i 6 Konventsii o Zashchite Prav Cheloveka i Osnovnikh Svobod v Rossiiskom Sudebnom Protsesse," in Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zahschite Prav Cheloveka v Sudakh Rossii*, 115-129.

157 Council of Europe. Committee of Ministers. Resolution ResDH(2004)46 concerning the judgment of the European Court of Human Rights of 4 March 2003 (final on 4 June 2003) in the case of Posokhov against the Russian Federation, http://www.sutyajnik.ru/rus/echr/res_com_of_min/posohov_v_russia_20_06_2004_eng.htm

158 It shall be noted that in Beliaev's case the court of the first instance (Verh-Isetskii district court) did not refer to the Convention at all.

159 Fedotova v. Russia. Admissibility decision of 1 April 2004.

160 Fedotova v. Russia. Judgment of 13 April 2006.

161 This phrase is placed at the top of every judgment of every court in the Russian Federation.

bearing in mind the political nature of its accession to the Statute of the Council of Europe.[162]

In such situations the impact of the Convention at the domestic level is hardly possible; therefore, there is no effective remedy available before the national authority. Consequently, there is no obligation on the part of an applicant to exhaust all the domestic remedies. It may be the case that for this reason it was suggested that "it is likely that the Court's findings of a breach of Article 3 in Kalashnikov[163] will encourage other detainees in Russian prisons to bring similar complaints to Strasbourg."[164] Domestic courts were not mentioned in this situation. It is hardly possible to suggest that in cases similar to Kalashnikov there is an effective remedy available, bearing in mind the Government's submission in the Kalashnikov case that "the conditions of the applicant's detention were no worse than those of most detainees in Russia," "[o]vercrowding was a problem in pre-trial detention facilities in general" and that, "because of economic difficulties, the very unsatisfactory conditions in Russian penal institutions were below the requirements of the Council of Europe."[165] This means that almost every detainee is entitled to compensation.

Abstention from implementation of the case-law can be observed in the jurisprudence of district courts of the region as well. In 2002, two different judges of the Verkh-Isetskii district court of the city of Yekaterinburg considered two absolutely identical cases – Burkov v. Verkh-Isetskii RUVD (local police station)[166] and Berg v. Verkh-Isetskii RUVD[167] – on the unlawful arrest and detention of two casual observers of a protest against the mayor of the city held on 4 July 2001. They were arrested together and detained for more that 3 hours in the local police station. The detainees brought complaints before the Verkh-Isetskii district court based on the violation of Article 5(1), 5(2)

---

162 Janis, "Russia and the 'Legality' of Strasbourg Law": 93.

163 Kalashnikov v. Russia. Para 93.

164 Alastair Mowbray, "European Convention on Human Rights: Developments in Tackling the Workload Crisis and Recent Cases," *Human Rights Law Review* 3:1 (2004): 138.

165 *Ibid.*; Kalashnikov v. Russia. Para 93.

166 Burkov v. Verkh-Isetskii RUVD. Judgment of 4 September 2002, http://www.sutyajnik.ru/rus/cases/judgments/burkov_v_ruvd_4_09_2002.html (as of 27 August 2006).

167 Berg v. Verkh-Isetskii RUVD. Judgment of 1 November 2002.

and 5(5) of the Convention. For unknown reasons, these twin cases were assigned to different judges within the same court. The applicants' representative was the same lawyer of the Centre. The arguments of both cases introduced in the memorandum were based on the same grounds: the violation of Article 5, supported by the relevant case-law.

Previously, the Centre's lawyers had not had a case involving the Convention's issues before these judges. The result was that, having held for the applicant, none of the judges rested their judgments on the reasoning expressed in the case-law submitted by the applicants' representative. The judgments were based only on the domestic legislation. One judge briefly mentioned that "the applicant complained about the violation of Article 22 of the Constitution (the right to liberty and security) and Article 5 of the Convention." No reasoning as to the alleged violation of Article 5 of the Convention was given.

However, the situation is quite different when a case is heard by a judge who happened to have experience in dealing with applicants' arguments based on the Convention. A defamation case, Yekaterinburg City Hall v. Beliaev, News Agency Region-Inform, and News Paper Oblastnaia Gazeta,[168] can serve as an example of good practice of district courts' synchronous implementation of Russian legislation and the Convention. In this case, heard by the judge Pronyaeva, who regularly considers cases brought before the court by the Centre's lawyers, the judge applied a number of case-law principles laid down by the ECHR. The applicant brought an action for libel alleging that the first defendant in his interview to the news agency defamed the good name of the applicant on eight occasions.

The defendant's representative, one of the Centre's lawyers, submitted, *inter alia*, a memorandum on the domestic status of the Convention and relevant principles set down by the ECHR. The point of the memorandum was to convince the judge to apply three principles expressed in the ECHR's case-law: (1) "freedom of expression is applicable not only to 'information' and 'ideas' that are favourably received or regarded as inoffensive or as a

168 Yekaterinburg City Hall v. Beliaev, News Agency Region-Inform, News Paper Oblastnaia Gazeta. Judgment of 1 June 2004, in Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zashchite Prav Cheloveka v Sudakh Rossii*, 229-242.

matter of indifference, but also to those that offend, shock or disturb;"[169] (2) "a careful distinction needs to be made between facts and value-judgments. The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof;"[170] and (3) "[t]he limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician."[171]

As a result, having reached conclusions based on the comprehensive wording of the European human rights standards, the judge ruled that there was defamation only on three occasions. It should be noted that, despite the fact that the judge devoted considerable attention not just to the wording of Article 10 itself but to the relevant case-law principles, for unknown reasons the judge did not name any ECHR judgments containing the principles referred to in the case. On the other hand, the applicant's representative mentioned only the wording of the case-law provisions, and the titles of the cited cases, but not the relevant paragraphs of the judgments. However, this case is one of the best examples of the Convention's impact on the jurisprudence of the district courts.

---

169 Oberschlick v. Austria. Judgment of 23 May 1991. Series A. no. 204. Para 57; Oberschlick v. Austria (no. 2). Judgment of 1 July 1997. Reports 1997-IV. Para 29; Lingens v. Austria. Para 41.

170 Lingens v. Austria. Para 46.

171 Castells v. Spain. Judgment of 23 April 1992. Serial A. no. 236. Para 46; Lingens v. Austria. At para 42.

4) Arbitration (Commercial) Courts

The jurisdiction of arbitral courts is the adjudication of economic disputes (Article 127 of the Constitution).[172] For that reason as far as the Convention is concerned, only a limited number of provisions of the Convention can be applied by these courts, such as Article 6(1), 13, 14, and Article 1 of Protocol 1.

Experts from the Glasnost Defence Foundation evaluated the arbitration courts' situation in regard to the implementation of the Convention as being better than that of the Supreme Court of the Russian Federation.[173] As an example, the authors cited The Information Letter On the Main Provisions Applied by the European Court of Human Rights for the Protection of Property Rights and Right to Justice by the Chief Justice of the Supreme Arbitration Court. [174] However, bearing in mind the nature of this document (which was discussed in detail in the previous chapter), it should be noted that this document does not accurately represent the jurisprudence of the arbitration courts. As far as the real jurisprudence of the arbitration courts is concerned, the situation resembles that of the jurisprudence of the Supreme Court of Russia.

The state of the arbitration courts' jurisprudence in terms of its implementation of the Convention can be assessed overall as unsatisfactory. The jurisprudence under analysis includes that of the Supreme Arbitration Court, the Arbitration Court of Moscow, the Arbitration Court of Moscow oblast, the Moscow Federal District Arbitration Court (a court of cassation), and the North-West Federal District Arbitration Court (a court of cassation), which is available from the Consultant Plus database.[175] The overall number of judgments under scrutiny was 38068. Of the overall number of judgments, there were only 23 judgments that mentioned the Convention. Of these, only eight contain the courts' citation of an article of the Convention. In the other 15

---

172 Appendix 6.

173 Bykov, Shishkin, "Stat'ia 10 Evropeiskoi Konventsii o Zashchite Prav Cheloveka v Grazhdanskikh Processakh o Zashchite Dobrogo Imeni," 600, http://www.medialaw.ru/publications/books/book45/33.html (as of 26 August 2006).

174 *Vestnik Visshego Arbitrazhnogo Suda Rossiiskoi Federatsii* 3 (2000).

175 http://www.consultant.ru/online (as of 25 August 2004).

cases, the courts briefly cited the arguments of a party which were based on the Convention but did not provide any assessment of those arguments. The eight judgments do not contain a single reference to the case-law of the ECHR whatsoever. Typically, only the number of a given article is cited. In the best instances, the courts merely state verbatim the content of the article in question. The worst example is when a court states that a particular act does not contradict the Convention as a whole. For that reason the way the Convention is being applied by the courts cannot be defined as “implementation” as such because the Convention cannot be engaged without reference to the case-law.

III Assessment of the Obstacles to Domestic Implementation of the Convention and Proposed Means to Overcome Them

Let us now look at the reasons for the poor implementation of the Convention to date. These can be divided into three categories: impartiality, professionalism, and motivation.

1) Impartiality

As discussed above, judgments, if delivered on the basis of the Convention, may lead to far reaching consequences in terms of changing practice in the application of law or challenging a statute itself. In order to rule according to the law in such a situation a judge has to be truly impartial. Yet the independence of the judiciary is dubious at this point. There are two sources of genuine independence of the courts from the other branches of government – structural and financial. As far as structural independence is concerned, it was correctly noted in the Alternative NGO Report on the Observance of the ICCPR by the Russian Federation that

> Federal Law On the Status of Judges in Article 11.2 provides that federal judges shall be initially appointed for three years, and only upon completion of this term can the judge hold the office indefinitely. In practice it means that during their first years in office judges are absolutely powerless; the threat of being deprived of their status as judges is constantly looming over them, thus rendering them incapable of making independent

> decisions, because after three years their status as judges can be denied without explanation.[176]

It is not clear whether judges rule more independently after they are appointed to hold the office indefinitely. Usually during the first three years, a judge is made either to give up the position, or to become loyal to the system. Otherwise he or she will not be appointed for a life term. In cases where a person not loyal to the system is appointed, there is a high probability that he or she will be discredited, and thereby forced to resign. In the worst case, the judge will be denuded of his or her status as a judge.[177]

A possible candidate for a judgeship is not examined by the public since his profile is not in the public domain. A qualification collegium of judges (*kvalifikatsionnaia kollegiia sudei*) decides whether to recommend a particular candidate for appointment as a judge by the Russian President, and might not be representative of the public in some cases. It is mostly composed of current or retired judges (70%). The remaining 30% is composed of public representatives.[178] In practice, for example, in Sverdlovsk oblast for the third year as of 2004 the qualification collegium of judges was understaffed by 24% (five public representatives of a possible seven, and 21 members overall, were not appointed).[179] However, this number is enough to secure a two-thirds quorum.

---

176 *The Alternative NGO Report on the Observance of the International Covenant on Civil and Political Rights (ICCPR) by the Russian Federation*.

177 Former Moscow city court judge Sergey Pashin, well known for his professionalism in handling jury trials and his "liberal" judgments, was under the denunciation procedure of the judge status twice carried out by the Qualification Collegium of Judges. He appealed his denunciation twice. At the end of the second trial he announced his resignation.

178 Article 19(3) of the Law "On Judicial Community in the Russian Federation," *Rossiiskaia Gazeta*, 19 March 2002.

179 "Open Letter of the NGO Sutyajnik on the Set-up of the Qualification Collegium of Judges on the Judiciary in Sverdlovsk Oblast," *The Ural Human Rights Website*, 17 May 2002, http://www.humanrights.by.ru/justice/op_kvkol.shtm (as of 27 August 2006); "Social Control over the Judiciary," *News Agency Sutyajnik-Press*, 2 July 2004, http://www.sutyajnik.ru/rus/news/2004/07/2.html (as of 27 August 2006); from my interview with the President of the NGO Sutyajnik, Sergey Beliaev, 26 August 2004.

The judiciary is mainly staffed by former procurators. This does not facilitate the independence and impartiality of the judiciary, as their former professional prejudices predetermine the mindset of the judiciary in general.[180]

The judicial system also experiences a number of serious problems with respect to its financial independence. Despite the fact that Russian law provides guarantees for judges' financial independence, including funding the judicial system from the federal budget, there are examples of gross violations of this principle. Part of a judge's salary and housing expenses as well as expenses for the offices and equipment of the courts are frequently paid from regional and municipal budgets, which inevitably leads to judicial dependence upon the local authorities.[181]

---

180 For more details as to the problems of the independence of the judiciary, refer to the report on human rights violations in Sverdlovsk Oblast in 2003 *Doklad Obshchestvennogo Ob''edineniia Sutyajnik o Polozhenii s Pravami Cheloveka v Sverdlovskoi Oblasti* (Ekaterinburg: Informatsionnoe Agentstvo Sutyajnik-Press, 2004), http://www.sutyajnik.ru/rus/library/hr_reports/hr_2003_in_cv_obl_by_sut.html (as of 27 August 2006).

181 *The Alternative NGO Report on the Observance of the International Covenant on Civil and Political Rights (ICCPR) by the Russian Federation*.

2) Professionalism

One of the main problems in the spotlight today concerns the recruitment of judges. A lack of well-educated lawyers with appropriate moral characteristics leads to a low level of professionalism within the judiciary. At the end of June 2004, the Chief Justice of the Supreme Court announced that around 5000 judges' positions were unoccupied — one fifth of the overall number of judgeships (23176).[182] This leads to the growth of a backlog of cases.

However, to some extent the problem of a backlog is artificial. There exists an unjustified but widespread practice of considering identical law suits separately in different proceedings or by different judges not allowing collective complaints.[183] There are examples when unsophisticated cases are considered for years; however, the actual consideration of such a case takes only minutes. For example, it took five years for a judge at the Ordzhonikidzevskii district court to resolve the case of Golosnova v. Ural State Teacher's Training University (Uralskii Gosudarstvennii Pedagogicheskii Universitet). [184] However, the sole hearing on the case lasted for only 15 minutes. On the other hand, cases which demand very careful consideration are often dealt with briefly. In cases of the detention of persons of unsound mind, judges, wishing to avoid visits to the hospital, have been known to consider "a collection" of such cases all in a single day.[185] For example, Anna Demeneva, the applicant's legal representative in the case Rakevich v. Russia and a staff attorney with the Urals Centre for Constitutional and International Protection of

---

182 "Vstat'! Sud Idet (Interview with the Chief Justice of the Russian Supreme Court)," *Rossiiskaia Gazeta*, 29 June 2004, http://www.rg.ru/2004/06/29/lebedev.html (as of 27 August 2006); "V. Lebedev: v Rossiiskoi Sudebnoi Sisteme Otkrity Vakansii Primerno 5000 Sudei," http://www.lawportal.ru/news/news.asp?newsID=4909 (as of 27 August 2006).

183 For example, see the cases considered above: Burkov v. Verkh-Isetskii RUVD; Berg v. Verkh-Isetskii RUVD.

184 Judgment of 2 September 2002, in Demeneva and Burkov, eds., *Konstitutsiia Rossii: 10 Let Primeneniia*, 168, http://www.sutyajnik.ru/rus/library/sborniki/konst_10_let_primen/constitution_sutyajnik_10.pdf (as of 27 August 2006).

185 Anna Demeneva, "Psikhiatry ne Zlodei, no dazhe Smiritel'naia Rubashka ne Dolzhna Lishat' Cheloveka Prav," *Uridicheskii Vestnik,* September 2002, http://www.sutyajnik.ru/rus/library/articles/2004/psihiatri_ne_zlodei.html (as of 27 August 2006).

Human Rights, describes an instance wherein a judge had 10 cases to consider while on the hospital's premises, and decided them all within 25 minutes.[186] Therefore, an alleged lack of judges cannot explain the real cause of the current case backlog.

The operation of any court depends almost entirely on the personal qualities of its judges and particularly on the court's chief justice. "Domestic courts have lost many experienced judges who have chosen to leave the bench for private practice"[187] or for another position. For example, the former Chief Justice of the Russian Constitutional Court Vladimir Tumanov resigned after three years as a judge and two years as a Chief Justice to become the first Russian judge in the European Court of Human Rights. It may be suggested that the Constitutional Court's practice on the Convention's implementation has not benefited from his resignation.

There is no doubt that inadequate university education is at the root of the problem. The quality of legal education in terms of teaching international law in general and European human rights law in particular is unsatisfactory. According to Danilenko, "[M]any [CIS] judges received their training, and thus formed their value systems, during the Soviet era."[188] As far as the current situation is concerned, "lawyers and judges continue to have inadequate training in international law. In many CIS countries, international law, especially international human rights law, is not included in the core curricula of the legal education and practical training of lawyers and judges."[189] Since 1999 (the year in which Danilenko's article was published) the situation remains largely unchanged. Law schools do not include more or less comprehensive questions on European human rights law in the curriculum of international law courses, and sometimes do not include them at all.

For the same reasons, bar examinations and examinations for a judgeship rarely check candidates' knowledge of the Convention. For instance, the Chief Justice of Sverdlovsk oblast court Ivan Ovcharuk, when asked whether the examination for candidates to a judgeship position contained any questions on the Convention and the ECHR case-law, stated that

---

186 *Ibid.*

187 Danilenko, "Implementation of International Law in CIS States": 56.

188 *Ibid.*

189 *Ibid.* At 69.

"[t]here are no questions on the Convention specifically, but the questionnaire contains problems that are clearly reflected in the Convention."[190] The only reference to the Convention is formulated as "Norms of international law on the protection of human rights and fundamental freedoms."[191]

Topics for law school research papers (*kursovaia rabota*) or for a graduation thesis (*diplomnaia rabota*) rarely cover issues of the Convention or the ECHR. For example, as of August 2004 in the international law department of Moscow State University, the list of topics for students' research papers (100 topics) and graduation theses (82 topics) do not include even any general themes concerning European human rights law, let alone specific topics on the Convention. This leads one to surmise that there are no faculty members able to supervise the work of students on such papers. It should be noted that this situation exists in the best Russian University, the only university that is placed at number 66 in the list of the top 100 World Universities.[192]

The leading university in the field of European law is the Institute of European Law at the Moscow State University of International Relations (*MGIMO*). Its teaching staff participated in the publication of the first collection of selected judgments of the ECHR[193] and commentary on the Convention.[194] However, this University is the only university of its kind in Russia and usually supplies lawyers to the Ministry of International Affairs, not to the judiciary or the bar.

Taking into account the current state of legal education in regard to European human rights law, the availability of continued training as well as self-education on issues pertaining to the direct application of the Convention are of vital importance. Due to the constraints of this research, it will not be possible here to substantially discuss the state of Russian continuing education. Instead, let us consider one episode that reflects a major effort for continuing education that was made in vain to a greater or lesser extent.

---

190 Ivan Ovcharuk, "Sud'ia Dolzhen Znat' Vse."

191 The questionnaire is available from the Sverdlovsk Oblast Court's web-site, http://www.femida.e-burg.ru/kvalkol_det.php?id=3

192 Top 500 World Universities (1-100), http://ed.sjtu.edu.cn/rank/2004/top500(1-100).htm (as of 27 August 2004).

193 Tumanov et al., eds., *Evropeiskii Sud po Pravam Cheloveka. Izbrannie Resheniia*.

194 Vladimir Tumanov and Lev Entin, ads., *Kommentarii k Konventsii o Zashchite Prav Cheloveka i Osnovnikh Svobod i Praktike ee Primeneniia* (Moskva: Norma, 2002).

In 2001-2002 the Russian Academy of Justice, as a special institution for the continuing education of judges in collaboration with the Directorate General of Human Rights of the Council of Europe, carried out a publishing project aimed at the preparation, issuing, and distribution to courts of the subjects of the Russian Federation text-books for judges on Articles 3, 5, 6, 8, 10 and Article 1 to Protocol 1 of the Convention.[195] According to the Council of Europe and the officials of the Russian Academy of Justice, the project was successfully implemented, including its distribution phase.[196] However, most of the legal professionals interviewed in the course of this research, who are accustomed to litigating cases by arguing based on the Convention, not only did not observe judges consulting those text-books, but did not even see the judges in possession of the text-books. This fact, although not statistically representative, is surprising since according to the Russian Academy of Justice more then 100,000 copies were distributed among judges of the courts of general jurisdiction, which amounts to six text-books per judge.[197] Such a significant effort to circulate the texts should not have gone unnoticed by their intended recipients.

The most important thing about publishing a book is not the publication itself, and not even its proper distribution and advertisement. The most important thing is an interest in the book' this is what motivates judges to address the books and not simply possess them. An interesting interview with a legal practitioner on the topic of the whereabouts of the text-books should be noted in this regard:

> Those books are in the codification division of the courts [courts' libraries]. But the reason that nobody sees them with the judges is that the judges do not read them. Why should they if none of the parties

---

195 From the author's interviews with Marjorie Farquharson and Kristina Pencheva, Council of Europe officials, who were responsible for the project, 2 September 2004.

196 Vladimir Peisikov, "Annual Report of the Russian Academy of Justice for 2001," http://www.abanet.org/ceeli/special_projects/jtc/russia_report_2001.html (as of 27 August 2006).

197 From my interviews with Marjorie Farquharson and Kristina Pencheva, 2 September 2004.

> argue based on the Convention and the case-law, do not ask the judges to apply the Convention.[198]

Apparently the reason behind this obscurity is not an improper distribution of the books, as might have been the case. The judges have to be motivated to read the distributed books in order to be able to pass judgements based on the Convention. The problem here is that, unlike with the Civil Procedure Code for instance, there are no negative repercussions for judges if they do not apply the Convention on their own initiative or even when they are asked to by a party. In the five and a half years following the Convention's ratification the Supreme Court did not express the opinion that judges have to apply the Convention or else risk that their judgment be quashed by a higher court.

Let us make the following comparison. If a law professor does not ask students to read a particular text-book or a case, the professor is thereby implying that he will not address the principles contained in this book at the examination, and, as a result, only a few individuals will refer to the book. Why would one do so if one could manage to graduate without addressing this particular book? Will one know about the existence of the book in the library? The Supreme Court of Russia should become this "professor" asking the courts to read the book, the case-law, to learn the Convention. Otherwise, only few lawyers and judges will apply the Convention.

This lack of motivation among Russian judges was noticed by Professor Hampson, a lecturer at a seminar for judges organised by the Russian Academy of Justice. At the seminar there were quite a few judges who were not really involved in the training; they appeared to treat participation at the seminars as "vacations paid for by the Council of Europe." This observation is not a surprising one taking into account the statement made in a recent interview by the Chief Justice of the Sverdlovsk Oblast Court:

> No, we do not hold any special trainings on the Convention. What sort of training does one need in

[198] From the author's interview with Evgenii Finkov, President of the Rostov region non-governmental organization "Trudy i Dni," 3 September 2004.

> order to honour the provisions of Article 6? All you need is to follow the national legislation.[199]

This extraordinary statement belongs to the Chief Justice under whose chairmanship the Sverdlovsk Oblast Court delivered its decision on Rakevich v. Sverdlovsk City Hospital, by following Russian legislation. This case became the seventh successful case at the ECHR against Russia.[200]

199 Ivan Ovcharuk, “Sud’ia Dolzhen Znat’ Vse.”

200 Rakevich v. Russia.

3) Motivation

Diverse social phenomena, such as conscience, ideas, notions, conceptions, views, and traditions, can motivate adherence to the rule of law. In addition to these factors it seems that there is one vital aspect of the professionalism of judges in their application of the Convention that might be called “professional motivation.” To date, Russian judges lack any professional motivation to apply the Convention, therefore studying it, unlike the Civil Procedure Code or any other Russian statutes, is not a priority to them. Such a motivation could come from fearful anticipation that one’s judgment might be quashed in a higher court due to non-application of the act, as is the case when Russian statutes are applied

Motivation plays a crucial role when dealing with a conflict of laws. In a situation where laws are in conflict with each other, a judge applies a particular legal provision because (1) one provision is clearer than another; (2) the judge was officially advised to apply the provision; or (3) the judge is biased, and the provision invoked is more suitable for the party whose interests he or she is serving.

To overcome these obstacles, legal systems developed their own unique mechanisms to unify the application of the laws of the land. In common law countries, the case-law itself copes with conflicts between laws. As far as civil law countries are concerned, in case of the Russian Federation, for example, a special mechanism for the unified application of the laws was developed, called the Regulations of the Plenum of the Supreme Court of the Russian Federation and of the Plenum of the Supreme Arbitration Court (regulations).

Non-adherence to a regulation may lead to the quashing of a judgment on the basis of incorrect implementation of the material or procedural law by a court. For this reason the level of the binding authority of that instrument is considered to be very high. The issue as to whether the Regulations have the power of a source of law equal to a statute has been constantly dis-

cussed in the legal literature throughout the years of judicial reforms.[201] The volumes containing the collections of regulations are the handbooks of every judge.

This mechanism has been successfully used as a tool to explain how a legislative act, for example the 2002 Civil Procedure Code (the Code), should be applied. To date there have been more than 35 Regulations by the Supreme Court on different issues and provisions of the Code's implementation.[202] After the Code's promulgation on 20 November 2002, the Supreme Court passed its first Regulation[203] on the issue of the Code's implementation 11 days before (!) the Code entered into force on 1 February 2003.

Despite the fact that the Convention and Russian federal law are on an equal footing, in its Regulations the Supreme Court does not devote to the Convention as much attention as it does to the Code. So far there has not been a single Regulation entirely devoted to the Convention. There are three Regulations by the Supreme Court which slightly touch upon the issue of the Convention's implementation. They can be characterized as containing provisions that restate the Constitution's articles on the Convention's equal domestic status with federal laws. The only Supreme Court Regulation devoted to the implementation of international law was issued almost eight years after Russia's accession to the Statute of the Council of Europe and five and a half years after the ratification of the Convention.[204]

Such Regulations could be employed as a means to explain to the courts the way the Convention and the ECHR case-law should be applied.

---

201 For example, Boris Topornin, ed., *Sudebnaia Praktika kak Istochnik Prava* (Moskva: Institut Gosudarstva i Prava Rossiiskoi Academii Nauk, 1997); Boris Topornin et al., *Sudebnaia Praktika kak Istochnik Prava* (Moskva: Iurist, 2000); Alexei Rarog, "Pravovoe Znachenie Raz''iasnenii Plenuma Verkhovnogo Suda RF," *Gosudarstvo i Pravo* 2 (2001), 51-58; Bakhrakh, Burkov, "Sudebnie Acty kak Istochniki Administrativnogo Prava," 11.

202 Regulations passed before the new 2002 Civil Procedure Code was promulgated are still in force and employed for the 2002 Civil Procedure Code.

203 The Regulation of the Supreme Court of the Russian Federation no. 2 of 20 January 2003 "On Some Questions Arising Concerning Adoption and Promulgation of the Civil Procedure Code of the Russian Federation," *Rossiiskaia Gazeta*, 25 January 2003.

204 Regulation no. 5 of 10 October 2003 Adopted by the Plenum of the Supreme Court of the Russian Federation "On Application by Courts of General Jurisdiction of the Generally-recognized Principles and Norms of the International Law and the International Treaties of the Russian Federation." Appendix 10.

The Supreme Court and the Supreme Arbitration Court should have passed Regulations on the Convention immediately after the accession of the Russian Federation to the Statute of the Council of Europe. Such Regulations should contain detailed explanations of the nature of the Convention and the ECHR case-law. The Regulations on the Convention should contain comprehensive explanations as to the basic precedents for each provision of the Convention including the main details of the judgment. This will not be a problem since both the Supreme Court and the Supreme Arbitration Court are accustomed to issuing so-called "summaries of judicial practice" (*obzory sudebnoi praktiki*) published in their official journals (*Bulleten' Verkhovnogo Suda Rossiiskoi Federatsii* and *Vestnik Visshego Arbitrazhnogo Suda*). Featuring a brief description of a legal principle evolved from a judgment, a summary of judicial practice provides extracts from the judgment.

Thus, it may be proposed that the supreme courts should pass special regulations on the Convention:

(1) on each provision of the Convention, with a comprehensive explanation of its precedents and citation of the relevant ECHR case-law; and

(2) on each essential judgment or even decision on admissibility against Russia explaining the identified problems in the Russian legal system to which judges should direct their attention.

For example, on 28 October 2003 the ECHR delivered a judgment on the case Rakevich v. Russia where it recognised that Article 33(2) of the Law "On Psychiatric Treatment"[205] did not provide the applicant with a direct right of appeal in order to secure the release of a person confined in a psychiatric hospital, which was contrary to Article 5(4) of the Convention.[206] As a result of the case the Official Representative of the Russian Federation to the ECHR on behalf of the Government should have published a translation of the judgment.[207] The Supreme Court should have explained the conclusions of the ECHR as to the unlawfulness of the provision of the Law and the emerging

---

205 *Vedomosti S''ezda Narodnikh Deputatov i Verkhovnogo Soveta Rossiiskoi Federatsii* 33 (1992), Article 1913.

206 Rakevich v. Russia. Papa 44-46.

207 Section 17 of the Plenum of the Supreme Court Regulation no. 5 of 10 October 2003. Appendix 10.

conflict between the international and the domestic law, as well as what judges should do to overcome the gap in the Law in their subsequent jurisprudence. However, more than three years has elapsed since the judgment and this fact is not known to the judiciary, to lawyers, or to the concerned public.

The promulgation of such regulations on the Convention would cause judges to fear that a judgment could be quashed due to non-application of the Convention according to the way it was explained by the supreme courts. It would motivate judges to invoke the Convention. It would have a strong positive side effect on the way the Convention is taught in law schools. The introduction of regulations on the Convention would prompt university administrations to include an entire course on the Convention in the curriculum or as a part of an international law course. In any case, the regulations would be taught in the course of different sets of lectures such as civil law, civil procedure, criminal law, criminal procedure, and administrative law as is done today in regard to other regulations devoted to the implementation of various domestic statutes. If the judicial system has a need for judges who are able to operate the Convention, state-funded law schools will be required to graduate students trained for the Convention's implementation. Final law school examinations, qualification examinations for judgeship positions, and bar examinations would include comprehensive questions on the Convention.

The proposed measures to be undertaken following ECHR judgments against Russia could serve as criteria to be used by the Council of Europe's Committee of Ministers, when it assesses Russia's compliance with ECHR judgements. Such assessments are made by a political body (the Committee of Ministers) competent to suspend or expel a state from the Council of Europe.[208] Under Article 46(2) of the Convention the Committee of Ministers supervises the execution of final judgments of the ECHR. The ECHR expressed the position that it should be left for the state to choose "the means to be utilised in its domestic systems for performance of its obligations under Article 53 [now 46]."[209] Rule 3(b) of the Rules for the Application of Article 46, Paragraph 2, of the European Convention on Human Rights stipulates that

---

208 Article 8 of the Statute of the Council of Europe. Appendix 1.

209 Marckx v. Begium. Papa 58.

when supervising the execution of a judgment by the respondent State the Committee of Ministers shall examine whether "general measures have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations."[210] These could be "legislative or regulatory amendments, changes of case law or administrative practice or publication of the Court's judgment in the language of the respondent State and its dissemination to the authorities concerned."[211] In terms of the Russian Federation's compliance with Article 3 of the Statute of the Council of Europe, the Committee of Ministers can consider regulations by the Russian supreme courts as one of Russia's general measures that are required from the Government in order to comply with ECHR judgments. In fact, the Russian Government has already cited the 2003 Regulation[212] in order to prove that it has undertaken general measures required due to the judgment of Posokhov v. Russia.[213] However, as was mentioned above, the character of the Regulation must be dramatically changed.

---

210 Rules Adopted by the Committee of Ministers for the Application of Article 46, paragraph 2, of the European Convention on Human Rights (text approved by the Committee of Ministers on 10 January 2001 at the 736th meeting of the Ministers' Deputies), http://www.sutyajnik.ru/rus/cases/law/rules_for_appl_ of_A_46_echr.htm (as of 30 August 2006).

211 Rules Adopted by the Committee of Ministers for the Application of Article 46, paragraph 2, of the European Convention on Human Rights, n. 2.

212 Appendix 10.

213 Council of Europe. Committee of Ministers. Resolution ResDH(2004)46 concerning the judgment of the European Court of Human Rights of 4 March 2003 (final on 4 June 2003) in the case of Posokhov against the Russian Federation, http://www.sutyajnik.ru/rus/echr/res_com_of_min/posohov_v_russia_20_06_2004_eng.htm (as of 30 August 2006).

Conclusions

To date, the impact of the Convention on the Russian legal system in terms of its implementation by domestic courts is unsatisfactory. There is a manifest and visible imbalance between the normative provisions and the jurisprudence.

On the positive side of the ledger, we can identify the existence of a Constitutional provision which stipulates that the Convention as well as any other ratified international treaty is part of the law of the land; provisions of subsidiary legislation for the implementation of international law; as well as general rules adopted by the Constitutional and the supreme courts that develop monistic principles.

The jurisprudence of the Supreme Court and the Supreme Arbitration Court to a greater or lesser extent resembles an attempt to *demonstrate* to the Council of Europe that the Convention is being applied rather than to *implement* the Convention in fact. Otherwise, how can we explain a situation wherein a national supreme court, having issued a special document that orders all the lower courts to apply the Convention by taking into account ECHR case-law, does not follow this document in its own jurisprudence? Nor does it follow the Committee of Ministers' Recommendation that suggests that "[s]tates give effect to the Convention in their legal order, in the light of the case-law of the Court."[214] It would be fair to say that the Supreme Court's jurisprudence does not invoke the Convention at all. It was also shown that the implementation of the Convention on its own leads to incorrect application of the instrument.

---

214 Recommendation Rec(2004)5 of the Committee of Ministers to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights (adopted by the Committee of Ministers on 12 May 2004 at its 114th Session), Para 3. Appendix 4. The translation into the Russian language is available in Anton Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zashchite Prav Cheloveka v Sudakh Rossii*, 139-147.

The quality of the supreme courts' guiding explanations (regulations, informational letters) themselves as to the Convention's implementation is unsatisfactory, since these explanations restate the Constitutional provision to apply the treaty but do not further explain how to do so.

The jurisprudence that has emerged from the decisions of the Constitutional Court and the district courts seems to indicate a better understanding of the spirit and purpose of the Convention. This achievement cannot be ascribed to the Supreme Court or Supreme Arbitration Court's jurisprudence or to their Regulations and informational letters. There is evidence that those rare occasions of the Convention's implementation by the district courts were prompted by applicants' arguments based on the ECHR case-law rather than on the courts' own initiative. The quality of the Convention's implementation directly depends on the arguments made by the parties. However, it appears that the Supreme Court has contributed to the level of awareness (albeit, a low level) among district court judges in relation to the need to implement the Convention. This means that the supreme courts' Regulations could be effective instruments, and therefore should be employed in order to improve the impact of the Convention. On the other hand, the supreme courts are to blame for the lower courts' reluctance to invoke the Convention, let alone the ECHR case-law, due to their belated and poor attempt to raise awareness about the Convention among all those involved in the Convention's implementation at the domestic level.

There are a series of reasons that produced the existing situation, including problems within the judicial system and the educational system, and the lack of motivation to invoke the Convention. To date, judges are hardly motivated to study and invoke the Convention. This is partially due to a lack of will on the part of the supreme courts to provide lower courts with an exhaustive network of Regulations devoted to the Convention, mainly to the method of its implementation and the ECHR case-law. For the same reasons, practicing lawyers are not inclined to argue based on the Convention, since they are aware that such attempts are unproductive. The latter is of high importance, as it was noted that the arguments of the parties are crucial for the implementation of the Convention.

It was proposed that supreme courts regulations should be employed in order to educate and motivate judges as well as practicing lawyers to prop-

erly implement the Convention. The supreme courts already do this in terms of raising awareness about the domestic status of the Convention, however, they do not do nearly enough in this direction. Regulations should be much more comprehensive and should be issued on each essential ECHR judgment against the Russian Federation and on each principle expressed in the case-law.

This would motivate judges as well as practicing lawyers to apply the Convention. It would also influence the way law schools teach European human rights law and the Convention in particular. At the same time, the Council of Europe could make use of regulation as a criterion for assessment of the Russian Government's compliance with recent judgments in terms of enforcing general measures.

If implemented these proposed measures would dramatically strengthen the influence of the Convention on the Russian legal system. More consistent application of the Convention at all levels of Russia's court system would represent a much-needed means of protecting Russian citizens' human rights and increasing the potential power of the judiciary against Russia's unduly powerful executive branch.

Appendices

1) Statute of the Council of Europe (extract)

Article 3

Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I.

<…>

Article 8

Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.

2) Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol no. 11 (extract)

Article 1 – Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

<…>

Section I – Rights and freedoms

Article 13 – Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

<…>

Section III – Miscellaneous provisions

Article 52 – Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

3) Recommendation Rec(2004)4 of the Committee of Ministers to member states on the European Convention on Human Rights in university education and professional training[215]

(Adopted by the Committee of Ministers on 12 May 2004, at its 114th Session)

The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") must remain the essential reference point for the protection of human rights in Europe, and recalling its commitment to take measures in order to guarantee the long-term effectiveness of the control system instituted by the Convention;

Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all states parties;

Stressing the preventive role played by education in the principles inspiring the Convention, the standards that it contains and the case-law deriving from them;

Recalling that, while measures to facilitate a wide publication and dissemination in the member states of the text of the Convention and of the case-law of the European Court of Human Rights (hereinafter referred to as "the Court") are important in order to ensure the implementation of the Con-

215 The translation of this resolution into the Russian language is in Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zaschite Prav Cheloveka v Sudakh Rossii*, 131-138.

vention at national level, as has been indicated in Recommendation Rec(2002)13, it is crucial that these measures are supplemented by others in the field of education and training, in order to achieve their aim;

Stressing the particular importance of appropriate university education and professional training programmes in order to ensure that the Convention is effectively applied, in the light of the case-law of the Court, by public bodies including all sectors responsible for law enforcement and the administration of justice;

Recalling the resolutions and recommendations it has already taken on different aspects of the issue of human rights education, in particular: Resolution (78) 41 on the teaching of human rights; Resolution (78) 40 containing regulations on Council of Europe fellowships for studies and research in the field of human rights; Recommendation no. R (79) 16 concerning the promotion of human rights research in the member states of the Council of Europe; Recommendation no. R (85) 7 on teaching and learning about human rights in schools, as well as its appendix containing suggestions for teaching and learning about human rights in schools;

Recalling the role that may be played by the national institutions for the promotion and protection of human rights and by non-governmental organisations, particularly in the field of training of personnel responsible for law enforcement, and welcoming the initiatives already undertaken in this area;

Taking into account the diversity of traditions and practice in the member states as regards university education, professional training and awareness-raising regarding the Convention system;

Recommends that member states:

I. ascertain that adequate university education and professional training concerning the Convention and the case-law of the Court exist at national level and that such education and training are included, in particular:

- as a component of the common core curriculum of law and, as appropriate, political and administrative science degrees and, in addition, that they are offered as optional disciplines to those who wish to specialise;

- as a component of the preparation programmes of national or local examinations for access to the various legal professions and of the initial and continuous training provided to judges, prosecutors and lawyers;

- in the initial and continuous professional training offered to personnel in other sectors responsible for law enforcement and/or to personnel dealing with persons deprived of their liberty (for example, members of the police and the security forces, the personnel of penitentiary institutions and that of hospitals), as well as to personnel of immigration services, in a manner that takes account of their specific needs;

II. enhance the effectiveness of university education and professional training in this field, in particular by:

- providing for education and training to be incorporated into stable structures –public and private – and to be given by persons with a good knowledge of the Convention concepts and the case-law of the Court as well as an adequate knowledge of professional training techniques;

- supporting initiatives aimed at the training of specialised teachers and trainers in this field;

III. encourage non-state initiatives for the promotion of awareness and knowledge of the Convention system, such as the establishment of special structures for teaching and research in human rights law, moot court competitions, awareness-raising campaigns;

Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of those states parties to the European Cultural Convention which are not members of the Council of Europe.

Appendix to Recommendation Rec(2004)4

Introduction

1. The Ministerial Conference held in Rome on 3 and 4 November 2000 to commemorate the 50th anniversary of the European Convention on Human Rights (hereinafter referred to as “the Convention”), invited the member states of the Council of Europe to “take all appropriate measures with a view to developing and promoting education and awareness of human rights in all sectors of society, in particular with regard to the legal profession”.[216]

---

[216] European Ministerial Conference on Human Rights. H-Conf(2001)001. Resolution II. Para 40.

2. This effort that national authorities are requested to make is only a consequence of the subsidiary character of the supervision mechanism set up by the Convention, which implies that the rights guaranteed by the Convention be fully protected in the first place at national level and applied by national authorities.[217] The Committee of Ministers has already adopted resolutions and recommendations dealing with different aspects of this issue[218] and encouraging initiatives that may be undertaken notably by independent national human rights institutions and NGOs, with a view to promoting greater understanding and awareness of the Convention and the case-law of the European Court of Human Rights (hereinafter referred to as "the Court").

3. Guaranteeing the long-term effectiveness of the Convention system is among the current priorities of the Council of Europe and, in this context, the need for a better implementation of the Convention at national level has been found to be vital. Thus, it appears necessary that all member states ensure that adequate education on the Convention is provided, in particular concerning legal and law enforcement professions. This might contribute to reducing, on the one hand, the number of violations of rights guaranteed by the Convention resulting from insufficient knowledge of the Convention and, on the other hand, the lodging of applications which manifestly do not meet admissibility requirements.

4. This recommendation refers to three complementary types of action, namely:

i. the incorporation of appropriate education and training on the Convention and the case-law of the Court, notably in the framework of university law and political science studies, as well as professional training of legal and law enforcement professions;

ii. guaranteeing the effectiveness of the education and training, which implies in particular a proper training for teachers and trainers; and

---

217 See Article 1 of the Convention.

218 In particular: Resolution (78)41 on the teaching of human rights; Resolution (78)40 containing regulations on Council of Europe fellowships for studies and research in the field of human rights; Recommendation no. R(79)16 concerning the promotion of human rights research in the member states of the Council of Europe; Recommendation no. R(85)7 on teaching and learning about human rights in schools, as well as its appendix containing suggestions for teaching and learning about human rights in schools.

iii. the encouragement of initiatives for the promotion of knowledge and/or awareness of the Convention system.

5. Bearing in mind the diversity of traditions and practice in the member states in respect of university education, professional training and awareness-raising regarding the Convention, it is the member states' responsibility to shape their own education programmes according to their respective national situations, in accordance with the principle of subsidiarity, while ensuring that the standards of the Convention are fully presented.

University education and professional training

6. Member states are invited to ensure that appropriate education on the Convention and the case-law of the Court is included in the curricula of university law degrees and Bar examinations as well as in the continuous training of judges, prosecutors and lawyers.

University education

7. It is essential that education on the Convention be fully incorporated into faculty of law programmes, not only as an independent subject, but also horizontally in each legal discipline (criminal law, civil law, etc.) so that law students, whatever their specialisation, are aware, when they graduate, of the implications of the Convention in their field.

8. The creation of post-graduate studies specialised in the Convention, such as certain national master's degrees or the European Master in Human Rights and Democratisation (E.MA) which involves twenty-seven universities over fifteen European states, as well as shorter university programmes such as the summer courses of the Institut international des droits de l'homme René Cassin (Strasbourg) or those of the European University Institute (Florence), should be encouraged.

Professional training

9. Professional training should facilitate a better incorporation of Convention standards and the Court's case-law in the reasoning adopted by domestic courts in their judgments. Moreover, legal advice which would be given to potential applicants by lawyers having an adequate knowledge of the

Convention could prevent applications that manifestly do not meet the admissibility requirements. In addition, a better knowledge of the Convention by legal professionals should contribute to reducing the number of applications reaching the Court.

10. Specific training on the Convention and its standards should be incorporated in the programmes of law schools and schools for judges and prosecutors. This could entail the organisation of workshops as part of the professional training for lawyers, judges and prosecutors. In so far as lawyers are concerned, such workshops could be organised at the initiative of Bar associations, for instance. Reference may be made to a current project within the International Bar Association to set up, with the assistance of the Court, training for lawyers on the rules of procedure of the Court and the practice of litigation, as well as the execution of judgments. In certain countries, the Ministry of Justice has the task of raising awareness and participating in the training of judges on the case-law of the European Court: judges in post may take advantage of sessions of one or two days organised in their jurisdiction and of a traineeship of one week every year; “justice auditors” (student judges) are provided with training organised within the judges' national school (Ecole nationale de magistrature). Workshops are also organised on a regular basis within the framework of the initial and continuous training of judges.

11. Moreover, seminars and colloquies on the Convention could be regularly organised for judges, lawyers and prosecutors.

12. In addition, a journal on the case-law of the Court could be published regularly for judges and lawyers. In some member states, the Ministry of Justice publishes a supplement containing references to the case-law of the Court and issues relating to the Convention. This publication is distributed to all courts.

13. It is recommended that member states ensure that the standards of the Convention be covered by the initial and continuous professional training of other professions dealing with law enforcement and detention, such as security forces, police officers and prison staff but also immigration services, hospitals, etc. Continuous training on the Convention standards is particularly important given the evolving nature of the interpretation and application of these standards in the Court's case-law. Staff of the authorities dealing with persons deprived of their liberty should be fully aware of these persons' rights

as guaranteed by the Convention and as interpreted by the Court in order to prevent any violation, in particular of Articles 3, 5 and 8. It is therefore of paramount importance that in each member state there is adequate training within these professions.

14. A specific training course on the Convention and its standards and, in particular, aspects relating to rights of persons deprived of their liberty should be incorporated in the programmes of police schools, as well as schools for prison warders. Workshops could also be organised as part of continuous training of members of the police forces, warders and other authorities concerned.

Effectiveness of university education and professional training

15. For this purpose, member states are recommended to ensure that university education and professional training in this field are carried out within permanent structures (public and private) by well-qualified teachers and trainers.

16. In this respect, training teachers and trainers is a priority. The aim is to ensure that their level of knowledge corresponds with the evolution of the case-law of the Court and meets the specific needs of each professional sector. Member states are invited to support initiatives (research in fields covered by the Convention, teaching techniques, etc.) aimed at guaranteeing a quality training of specialised teachers and trainers in this sensitive and evolving field.

Promotion of knowledge and/or awareness of the Convention system

17. Member states are finally recommended to encourage initiatives for the promotion of knowledge and/or awareness of the Convention system. Such initiatives, which can take various forms, have proved very positive in the past where they have been launched and should therefore be encouraged by member states.

18. One example could be the setting-up of moot court competitions for law students on the Convention and the Court's case-law, involving at the same time students, university professors and legal professionals (judges,

prosecutors, lawyers), for example the Sporrong and Lönnroth competition organised in the Supreme Courts of the Nordic countries, and the pan-European French-speaking René Cassin competition, organised by the association Juris Ludi in the premises of the Council of Europe.

4) Recommendation Rec(2004)5 of the Committee of Ministers to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights[219]

(Adopted by the Committee of Ministers on 12 May 2004 at its 114th Session)

The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") must remain the essential reference point for the protection of human rights in Europe, and recalling its commitment to take measures in order to guarantee the long-term effectiveness of the control system instituted by the Convention;

Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all states parties and noting in this respect the important role played by national courts;

Recalling that, according to Article 46, paragraph 1, of the Convention, the high contracting parties undertake to abide by the final judgments of the European Court of Human Rights (hereinafter referred to as "the Court") in any case to which they are parties;

---

219 The translation of this resolution into the Russian language is in Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zaschite Prav Cheloveka v Sudakh Rossii*, 139-147.

Considering however, that further efforts should be made by member states to give full effect to the Convention, in particular through a continuous adaptation of national standards in accordance with those of the Convention, in the light of the case-law of the Court;

Convinced that verifying the compatibility of draft laws, existing laws and administrative practice with the Convention is necessary to contribute towards preventing human rights violations and limiting the number of applications to the Court;

Stressing the importance of consulting different competent and independent bodies, including national institutions for the promotion and protection of human rights and non-governmental organisations;

Taking into account the diversity of practices in member states as regards the verification of compatibility;

Recommends that member states, taking into account the examples of good practice appearing in the appendix:

I. ensure that there are appropriate and effective mechanisms for systematically verifying the compatibility of draft laws with the Convention in the light of the case-law of the Court;

II. ensure that there are such mechanisms for verifying, whenever necessary, the compatibility of existing laws and administrative practice, including as expressed in regulations, orders and circulars;

III. ensure the adaptation, as quickly as possible, of laws and administrative practice in order to prevent violations of the Convention;

Instructs the Secretary General of the Council of Europe to ensure that the necessary resources are made available for proper assistance to member states which request help in the implementation of this recommendation.

Appendix to Recommendation Rec(2004)5

Introduction

1. Notwithstanding the reform, resulting from Protocol no. 11, of the control system established under the European Convention on Human Rights (hereinafter referred to as “the Convention”), the number of applications submitted to the European Court of Human Rights (hereinafter referred to as “the

Court") is increasing steadily, giving rise to considerable delays in the processing of cases.

2. This development reflects a greater ease of access to the European Court, as well as the constantly improving human rights protection in Europe, but it should not be forgotten that it is the parties to the Convention, which, in accordance with the principle of subsidiarity, remain the prime guarantors of the rights laid down in the Convention. According to Article 1 of the Convention, "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". It is thus at national level that the most effective and direct protection of the rights and freedoms guaranteed in the Convention should be ensured. This requirement concerns all state authorities, in particular the courts, the administration and the legislature.

3. The prerequisite for the Convention to protect human rights in Europe effectively is that states give effect to the Convention in their legal order, in the light of the case-law of the Court. This implies, notably, that they should ensure that laws and administrative practice conform to it.

4. This recommendation encourages states to set up mechanisms allowing for the verification of compatibility with the Convention of both draft laws and existing legislation, as well as administrative practice. Examples of good practice are set out below. The implementation of the recommendation should thus contribute to the prevention of human rights violations in member states, and consequently help to contain the influx of cases reaching the Court.

Verification of the compatibility of draft laws

5. It is recommended that member states establish systematic verification of the compatibility with the Convention of draft laws, especially those which may affect the rights and freedoms protected by it. It is a crucial point: by adopting a law verified as being in conformity with the Convention, the state reduces the risk that a violation of the Convention has its origin in that law and that the Court will find such a violation. Moreover, the state thus imposes on its administration a framework in line with the Convention for the actions it undertakes vis-à-vis everyone within its jurisdiction.

6. Council of Europe assistance in carrying out this verification may be envisaged in certain cases. Such assistance is already available, particularly in respect of draft laws on freedom of religion, conscientious objection, freedom of information, freedom of association, etc. It is none the less for each state to decide whether or not to take into account the conclusions reached within this framework.

Verification of the compatibility of laws in force

7. Verification of compatibility should also be carried out, where appropriate, with respect to laws in force. The evolving case-law of the Court may indeed have repercussions for a law which was initially compatible with the Convention or which had not been the subject of a compatibility check prior to adoption.

8. Such verification proves particularly important in respect of laws touching upon areas where experience shows that there is a particular risk of human rights violations, such as police activities, criminal proceedings, conditions of detention, rights of aliens, etc.

Verification of the compatibility of administrative practice

9. This recommendation also covers, wherever necessary, the compatibility of administrative regulations with the Convention, and therefore aims to ensure that human rights are respected in daily practice. It is indeed essential that bodies, notably those with powers enabling them to restrict the exercise of human rights, have all the necessary resources to ensure that their activity is compatible with the Convention.

10. It has to be made clear that the recommendation also covers administrative practice which is not attached to the text of a regulation. It is of utmost importance that states ensure verification of their compatibility with the Convention.

Procedures allowing follow-up of the verification undertaken

11. In order for verification to have practical effects and not merely lead to the statement that the provision concerned is incompatible with the

Convention, it is vital that member states ensure follow-up to this kind of verification.

12. The recommendation emphasises the need for member states to act to achieve the objectives it sets down. Thus, after verification, member states should, when necessary, promptly take the steps required to modify their laws and administrative practice in order to make them compatible with the Convention. In order to do so, and where this proves necessary, they should improve or set up appropriate revision mechanisms which should systematically and promptly be used when a national provision is found to be incompatible. However, it should be pointed out that often it is enough to proceed to changes in case-law and practice in order to ensure this compatibility. In certain member states compatibility may be ensured through the non-application of the offending legislative measures.

13. This capacity for adaptation should be facilitated and encouraged, particularly through the rapid and efficient dissemination of the judgments of the Court to all the authorities concerned with the violation in question, and appropriate training of the decision makers. The Committee of Ministers has devoted two specific recommendations to these important aspects: one on the publication and the dissemination in member states of text of the Convention and the case-law of the Court (Rec(2002)13) and the other on the Convention in university education and professional training (Rec(2004)4).

14. When a court finds that it does not have the power to ensure the necessary adaptation because of the wording of the law at stake, certain states provide for an accelerated legislative procedure.

15. Within the framework of the above, the following possibilities could be considered.

Examples of good practice

16. Each member state is invited to give information as to its practice and its evolution, notably by informing the General Secretariat of the Council of Europe. The latter will, in turn, periodically inform all member states of existing good practice.

I. Publication, translation and dissemination of, and training in, the human rights protection system

17. As a preliminary remark, one should recall that effective verification first demands appropriate publication and dissemination at national level of the Convention and the relevant case-law of the Court, in particular through electronic means and in the language(s) of the country concerned, and the development of university education and professional training programmes in human rights.

II. Verification of draft laws

18. Systematic supervision of draft laws is generally carried out both at the executive and at the parliamentary level, and independent bodies are also consulted.

By the executive

19. In general, verification of conformity with the Convention and its protocols starts within the ministry which initiated the draft law. In addition, in some member states, special responsibility is entrusted to certain ministries or departments, for example, the Chancellery, the Ministry of Justice and/or the Ministry of Foreign Affairs, to verify such conformity. Some member states entrust the agent of the government to the Court in Strasbourg, among other functions, with seeking to ensure that national laws are compatible with the provisions of the Convention. The agent is therefore empowered, on this basis, to submit proposals for the amendment of existing laws or of any new legislation which is envisaged.

20. The national law of numerous member states provides that when a draft text is forwarded to parliament, it should be accompanied by an extensive explanatory memorandum, which must also indicate and set out possible questions under the constitution and/or the Convention. In some member states, it should be accompanied by a formal statement of compatibility with the Convention. In one member state, the minister responsible for the draft text has to certify that, in his or her view, the provisions of the bill are compatible with the Convention, or to state that he or she is not in a position to make such a statement, but that he or she nevertheless wishes parliament to proceed with the bill.

By the parliament

21. In addition to verification by the executive, examination is also undertaken by the legal services of the parliament and/or its different parliamentary committees.

Other consultations

22. Other consultations to ensure compatibility with human rights standards can be envisaged at various stages of the legislative process. In some cases, consultation is optional. In others, notably if the draft law is likely to affect fundamental rights, consultation of a specific institution, for example the Conseil d'Etat in some member states, is compulsory as established by law. If the government has not consulted as required, the text will be tainted by procedural irregularity. If, after having consulted, it decides not to follow the opinion received, it accepts responsibility for the political and legal consequences that may result from such a decision.

23. Optional or compulsory consultation of non-judicial bodies competent in the field of human rights is also often foreseen. In particular these may be independent national institutions for the promotion and protection of human rights, the ombudspersons, or local or international non-governmental organisations, institutes or centres for human rights, or the Bar, etc.

24. Council of Europe experts or bodies, notably the European Commission for Democracy through Law (“the Venice Commission”), may be asked to give an opinion on the compatibility with the Convention of draft laws relating to human rights. This request for an opinion does not replace an internal examination of compatibility with the Convention.

III. Verification of existing laws and administrative practice

25. While member states cannot be asked to verify systematically all their existing laws, regulations and administrative practice, it may be necessary to engage in such an exercise, for example as a result of national experience in applying a law or regulation or following a new judgment by the Court against another member state. In the case of a judgment that concerns it directly, by virtue of Article 46, the state is under obligation to take the measures necessary to abide by it.

By the executive

26. In some member states, the ministry that initiates legislation is also responsible for verifying existing regulations and practices, which implies knowledge of the latest developments in the case-law of the Court. In other member states, governmental agencies draw the attention of independent bodies, and particularly courts, to certain developments in the case-law. This aspect highlights the importance of initial education and continuous training

with regard to the Convention system. The competent organs of the state have to ensure that those responsible in local and central authorities take into account the Convention and the case-law of the Court in order to avoid violations.

By the parliament

27. Requests for verification of compatibility may be made within the framework of parliamentary debates.

By judicial institutions

28. Verification may also take place within the framework of court proceedings brought by individuals with legal standing to act or even by state organs, persons or bodies not directly affected (for example before the Constitutional Court).

By independent non-judicial institutions

29. In addition to their other roles when seized by the government or the parliament, independent non-judicial institutions, and particularly national institutions for the promotion and protection of human rights, as well as ombudspersons, play an important role in the verification of how laws are applied and, notably, the Convention which is part of national law. In some countries, these institutions may also, under certain conditions, consider individual complaints and initiate enquiries on their own initiative. They strive to ensure that deficiencies in existing legislation are corrected, and may for this purpose send formal communications to the parliament or the government.

5) Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies[220]

(Adopted by the Committee of Ministers on 12 May 2004, at its 114th Session)

The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity among its members, and that one of the most important methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reiterating its conviction that the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") must remain the essential reference point for the protection of human rights in Europe, and recalling its commitment to take measures in order to guarantee the long-term effectiveness of the control system instituted by the Convention;

Recalling the subsidiary character of the supervision mechanism set up by the Convention, which implies, in accordance with its Article 1, that the rights and freedoms guaranteed by the Convention be protected in the first place at national level and applied by national authorities;

Welcoming in this context that the Convention has now become an integral part of the domestic legal order of all states parties;

Emphasising that, as required by Article 13 of the Convention, member states undertake to ensure that any individual who has an arguable complaint concerning the violation of his rights and freedoms as set forth in the Convention has an effective remedy before a national authority;

Recalling that in addition to the obligation of ascertaining the existence of such effective remedies in the light of the case-law of the European Court of Human Rights (hereinafter referred to as "the Court"), states have the general obligation to solve the problems underlying violations found;

---

220 The translation of this resolution into the Russian language is in Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zaschite Prav Cheloveka v Sudakh Rossii*, 147-156.

Emphasising that it is for member states to ensure that domestic remedies are effective in law and in practice, and that they can result in a decision on the merits of a complaint and adequate redress for any violation found;

Noting that the nature and the number of applications lodged with the Court and the judgments it delivers show that it is more than ever necessary for the member states to ascertain efficiently and regularly that such remedies do exist in all circumstances, in particular in cases of unreasonable length of judicial proceedings;

Considering that the availability of effective domestic remedies for all arguable claims of violation of the Convention should permit a reduction in the Court's workload as a result, on the one hand, of the decreasing number of cases reaching it and, on the other hand, of the fact that the detailed treatment of the cases at national level would make their later examination by the Court easier;

Emphasising that the improvement of remedies at national level, particularly in respect of repetitive cases, should also contribute to reducing the workload of the Court;

Recommends that member states, taking into account the examples of good practice appearing in the appendix:

I. ascertain, through constant review, in the light of case-law of the Court, that domestic remedies exist for anyone with an arguable complaint of a violation of the Convention, and that these remedies are effective, in that they can result in a decision on the merits of the complaint and adequate redress for any violation found;

II. review, following Court judgments which point to structural or general deficiencies in national law or practice, the effectiveness of the existing domestic remedies and, where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court;

III. pay particular attention, in respect of aforementioned items I and II, to the existence of effective remedies in cases of an arguable complaint concerning the excessive length of judicial proceedings;

Instructs the Secretary General of the Council of Europe to ensure that the necessary resources are made available for proper assistance to

member states which request help in the implementation of this recommendation.

Appendix to Recommendation Rec(2004)6

Introduction

1. The Ministerial Conference[221] held in Rome on 3 and 4 November 2000 to commemorate the 50th anniversary of the European Convention on Human Rights (hereinafter referred to as "the Convention") emphasised that it is states parties who are primarily responsible for ensuring that the rights and freedoms laid down in the Convention are observed and that they must provide the legal instruments needed to prevent violations and, where necessary, to redress them. This necessitates, in particular, the setting-up of effective domestic remedies for all violations of the Convention, in accordance with its Article 13.[222] The case-law of the European Court of Human Rights (hereinafter referred to as "the Court")[223] has clarified the scope of this obligation which is incumbent on the states parties to the Convention by indicating notably that:

- Article 13 guarantees the availability in domestic law of a remedy to secure the rights and freedoms as set forth by the Convention.

- this article has the effect of requiring a remedy to deal with the substance of any "arguable claim" under the Convention and to grant appropriate redress. The scope of this obligation varies depending on the nature of the complaint. However, the remedy required must be "effective" in law as well as in practice;

---

221 European Ministerial Conference on Human Rights, see paragraph 14.i of Resolution no. 1 on institutional and functional arrangements for the protection of human rights at national and European levels, section A ("Improving the implementation of the Convention in member states").

222 Note 2. Article 13 provides: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority." It is noted that this appendix does not contain particular reference to the procedural guarantees resulting from substantive rights, such as Articles 2 and 3.

223 See for instance, Conka v. Belgium. Judgment of 5 February 2002. Paragraphs 64 et seq.

- this notably requires that it be able to prevent the execution of measures which are contrary to the Convention and whose effects are potentially irreversible;

- the “authority” referred to in Article 13 does not necessarily have to be a judicial authority, but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy it provides is indeed effective;

- the “effectiveness” of a “remedy” within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant; but it implies a certain minimum requirement of speediness.

2. In the recent past, the importance of having such remedies with regard to unreasonably long proceedings has been particularly emphasised,[224] as this problem is at the origin of a great number of applications before the Court, though it is not the only problem.

3. The Court is confronted with an ever-increasing number of applications. This situation jeopardises the long-term effectiveness of the system and therefore calls for a strong reaction from contracting parties.[225] It is precisely within this context that the availability of effective domestic remedies becomes particularly important. The improvement of available domestic remedies will most probably have quantitative and qualitative effects on the workload of the Court:

- on the one hand, the volume of applications to be examined ought to be reduced: fewer applicants would feel compelled to bring the case before the Court if the examination of their complaints before the domestic authorities was sufficiently thorough;

- on the other hand, the examination of applications by the Court will be facilitated if an examination of the merits of cases has been carried out beforehand by a domestic authority, thanks to the improvement of domestic remedies.

4. This recommendation therefore encourages member states to examine their respective legal systems in the light of the case-law of the Court

---

224 Kudla v. Poland. Judgment of 26 October 2000.

225 See Declaration of the Committee of Ministers of the Council of Europe of 14 May 2003 “Guaranteeing the long-term effectiveness of the European Court of Human Rights.”

and to take, if need be, the necessary and appropriate measures to ensure, through legislation or case-law, effective remedies as secured by Article 13. The examination may take place regularly or following a judgment by the Court.

5. The governments of member states might, initially, request that experts carry out a study of the effectiveness of existing domestic remedies in specific areas with a view to proposing improvements. National institutions for the promotion and protection of human rights, as well as non-governmental organisations, might also usefully participate in this work. The availability and effectiveness of domestic remedies should be kept under constant review, and in particular should be examined when drafting legislation affecting Convention rights and freedoms. There is an obvious connection between this recommendation and the recommendation on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the Convention.

6. Within the framework of the above, the following considerations might be taken into account.

The Convention as an integral part of the domestic legal order

7. A primary requirement for an effective remedy to exist is that the Convention rights be secured within the national legal system. In this context, it is a welcome development that the Convention has now become an integral part of the domestic legal orders of all states parties. This development has improved the availability of effective remedies. It is further assisted by the fact that courts and executive authorities increasingly respect the case-law of the Court in the application of domestic law, and are conscious of their obligation to abide by judgments of the Court in cases directly concerning their state (see Article 46

of the Convention). This tendency has been reinforced by the improvement, in accordance with Recommendation Rec(2000)2,[226] of the possibilities of having competent domestic authorities re-examine or reopen cer-

[226] Recommendation Rec(2000)2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, adopted on 19 January 2000, at the 694th meeting of the Ministers' Deputies.

tain proceedings which have been the basis of violations established by the Court.

8. The improvement of domestic remedies also requires that additional action be taken so that, when applying national law, national authorities may take into account the requirements of the Convention and particularly those resulting from judgments of the Court concerning their state. This notably means improving the publication and dissemination of the Court's case-law (where necessary by translating it into the national language(s) of the state concerned) and the training, with regard to these requirements, of judges and other state officials. Thus, the present recommendation is also closely linked to the two other recommendations adopted by the Committee of Ministers in these areas.[227]

Specific remedies and general remedy

9. Most domestic remedies for violations of the Convention have been set up with a targeted scope of application. If properly construed and implemented, experience shows that such systems of “specific remedies” can be very efficient and limit both the number of complaints to the Court and the number of cases requiring a time-consuming examination.

10. Some states have also introduced a general remedy (for example before the Constitutional Court) which can be used to deal with complaints which cannot be dealt with through the specific remedies available. In some member states, this general remedy may also be exercised in parallel with or even before other legal remedies are exhausted. Some member states add the requirement that the measure being challenged would grossly infringe constitutional rights and that a refusal to deal with the appeal would have serious and irreparable consequences for the appellant. It should be pointed out that states which have such a general remedy tend to have fewer cases before the Court.

---

227 Recommendation Rec(2002)13 of the Committee of Ministers to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights (adopted on 18 December 2002 at the 822nd meeting of the Ministers' Deputies), as well as Recommendation Rec(2004)4 of the Committee of Ministers on the European Convention on Human Rights in university education and professional training, adopted on 12 May 2004 at the 114th Session of the Committee of Ministers.

11. This being said, it is for member states to decide which system is most suited to ensuring the necessary protection of Convention rights, taking into consideration their constitutional traditions and particular circumstances.

12. Whatever the choice, present experience testifies that there are still shortcomings in many member states concerning the availability and/or effectiveness of domestic remedies, and that consequently there is an increasing workload for the Court.

Remedies following a "pilot" judgment

13. When a judgment which points to structural or general deficiencies in national law or practice ("pilot case") has been delivered and a large number of applications to the Court concerning the same problem ("repetitive cases") are pending or likely to be lodged, the respondent state should ensure that potential applicants have, where appropriate, an effective remedy allowing them to apply to a competent national authority, which may also apply to current applicants. Such a rapid and effective remedy would enable them to obtain redress at national level, in line with the principle of subsidiarity of the Convention system.

14. The introduction of such a domestic remedy could also significantly reduce the Court's workload. While prompt execution of the pilot judgment remains essential for solving the structural problem and thus for preventing future applications on the same matter, there may exist a category of people who have already been affected by this problem prior to its resolution. The existence of a remedy aimed at providing redress at national level for this category of people might allow the Court to invite them to have recourse to the new remedy and, if appropriate, declare their applications inadmissible.

15. Several options with this objective are possible, depending, among other things, on the nature of the structural problem in question and on whether the person affected by this problem has applied to the Court or not.

16. In particular, further to a pilot judgment in which a specific structural problem has been found, one alternative might be to adopt an ad hoc approach, whereby the state concerned would assess the appropriateness of introducing a specific remedy or widening an existing remedy by legislation or by judicial interpretation.

17. Within the framework of this case-by-case examination, states might envisage, if this is deemed advisable, the possibility of reopening proceedings similar to those of a pilot case which has established a violation of the Convention, with a view to saving the Court from dealing with these cases and where appropriate to providing speedier redress for the person concerned. The criteria laid out in Recommendation Rec(2000)2 of the Committee of Ministers might serve as a source of inspiration in this regard.

18. When specific remedies are set up following a pilot case, governments should speedily inform the Court so that it can take them into account in its treatment of subsequent repetitive cases.

19. However, it would not be necessary or appropriate to create new remedies, or give existing remedies a certain retroactive effect, following every case in which a Court judgment has identified a structural problem. In certain circumstances, it may be preferable to leave the cases to the examination of the Court, particularly to avoid compelling the applicant to bear the further burden of having once again to exhaust domestic remedies, which, moreover, would not be in place until the adoption of legislative changes.

Remedies in the case of an arguable claim of unreasonable length of proceedings

20. The question of effective remedies is particularly topical in cases involving allegations of unreasonable length of proceedings, which account for a large number of applications to the Court. Thus the Court has emphasised in the Kudla v. Poland judgment of 26 October 2000 that it is important to make sure there is an effective remedy in such cases, as required by Article 13 of the Convention. Following the impetus given by the Court in this judgment, several solutions have been put forward by member states in order to provide effective remedies allowing violations to be found and adequate redress to be provided in this field.

Reasonable length of proceedings

21. In their national law, many member states provide, by various means (maximum lengths, possibility of asking for proceedings to be speeded up) that proceedings remain of reasonable length. In certain member states, a maximum length is specified for each stage in criminal, civil and administra-

tive proceedings. The integration of the Convention into the domestic legal systems of member states, particularly the requirement of trial within a reasonable time, as provided for in Article 6, has reinforced and completed these national law requirements.

Preventing delays, accelerating proceedings

22. If time limits in judicial proceedings – particularly in criminal proceedings – are not respected or if the length of proceedings is considered unreasonable, the national law of many member states provides that the person concerned may file a request to accelerate the procedure. If this request is accepted, it may result in a decision fixing a time limit within which the court – or the prosecutor, depending on the case – has to take specific procedural measures, such as closing the investigation or setting a date for the trial. In some member states, courts may decide that the procedure has to be finished before a certain date. Where a general remedy exists before a Constitutional Court, the complaint may be submitted**,** under certain circumstances, even before the exhaustion of other domestic remedies.

Different forms of redress

23. In most member states, there are procedures providing for redress for unreasonable delays in proceedings, whether ongoing or concluded. A form of redress which is commonly used, especially in cases already concluded, is that of financial compensation. In certain cases, the failure by the responsible authority to issue a decision within the specified time limit means that the application shall be deemed to have been granted. Where the criminal proceedings have exceeded a reasonable time, this may result in a more lenient sentence being imposed.

Possible assistance for the setting-up of effective remedies

24. The recommendation instructs the Secretary General of the Council of Europe to ensure that the necessary resources are made available for proper assistance to member states which request help in setting up the effective remedies required by the Convention. It might take the form, for instance, of surveys carried out by expert consultants on available domestic remedies, with a view to improving their effectiveness.

6) The Constitution of the Russian Federation (extract)

Translation is from http://www.constitution.garant.ru

Chapter 1. The fundamentals of the constitutional system

<…>

Article 15

1. The Constitution of the Russian Federation shall have the supreme juridical force, direct application and shall be used on the whole territory of the Russian Federation. Laws and other legal acts adopted in the Russian Federation shall not contradict the Constitution of the Russian Federation.

2. The bodies of state authority, bodies of local self-government, officials, private citizens and their associations shall be obliged to observe the Constitution of the Russian Federation and laws.

3. Laws shall be officially published. Unpublished laws shall not be used. Normative legal acts concerning human rights, freedoms and duties of man and citizen may not be used, if they are not officially published for general knowledge.

4. The universally-recognised norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation establishes other rules than those envisaged by law, the rules of the international agreement shall be applied.

<…>

Chapter 2. Rights and freedoms of man and citizen

Article 17

1. In the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of man and citizen according to the univer-

sally recognised principles and norms of international law and according to the present Constitution.

2. Fundamental human rights and freedoms are inalienable and shall be enjoyed by everyone from the day of birth.

3. The exercise of the rights and freedoms of man and citizen shall not violate the rights and freedoms of other people.

<…>

Article 19

1. All people shall be equal before the law and courts.

2. The State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of limitations of human rights on social, racial, national, linguistic or religious grounds shall be banned.

3. Men and women shall enjoy equal rights and freedoms and have equal possibilities to exercise them.

<…>

Article 46

1. Everyone shall be guaranteed judicial protection of his rights and freedoms.

2. Decisions and actions (or inaction) of bodies of state authority and local self-government, public associations and officials may be appealed against in court.

3. Everyone shall have the right to appeal, according to international treaties of the Russian Federation, to international bodies for the protection of human rights and freedoms, if all the existing internal state means of legal protection have been exhausted.

<…>

Article 55

1. The listing in the Constitution of the Russian Federation of the fundamental rights and freedoms shall not be interpreted as a rejection or derogation of other universally recognized human rights and freedoms.

2. In the Russian Federation no laws shall be adopted canceling or derogating human rights and freedoms.

3. The rights and freedoms of man and citizen may be limited by federal law only to the extent necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State.

<…>

Chapter 7. Judicial power

<…>

Article 125

1. The Constitutional Court of the Russian Federation consists of 19 judges.

2. The Constitutional Court of the Russian Federation upon requests of the President of the Russian Federation, the Council of the Federation, the State Duma, one fifth of the members of the Council of the Federation or of the deputies of the State Duma, the Government of the Russian Federation, the Supreme Court of the Russian Federation and the Higher Arbitration Court of the Russian Federation, the bodies of legislative and executive power of the subjects of the Russian Federation shall consider cases on the correspondence to the Constitution of the Russian Federation of:

a) federal laws, normative acts of the President of the Russian Federation, the Council of the Federation, the State Duma, the Government of the Russian Federation;

b) the constitutions of republics, charters, and also the laws and other normative acts of subjects of the Russian Federation adopted on issues under the jurisdiction of the bodies of state authority of the Russian Federation

or under the joint jurisdiction of the bodies of state authority of the Russian Federation and the bodies of state authority of the subjects of the Russian Federation;

c) treaties concluded between the bodies of state authority of the Russian Federation and the bodies of state authority of the subjects of the Russian Federation, treaties concluded between the bodies of state authority of the subjects of the Russian Federation;

d) international treaties and agreements of the Russian Federation which have not come into force.

3. The Constitutional Court of the Russian Federation shall resolve disputes on jurisdiction:

a) between the federal bodies of state authority;

b) between the bodies of state authority of the Russian Federation and the bodies of state authority of the subjects of the Russian Federation;

c) between the higher bodies of state authority of the subjects of the Russian Federation.

4. The Constitutional Court of the Russian Federation, upon complaints about violations of constitutional rights and freedoms of citizens and upon court requests shall check, according to the rules fixed by federal law, the constitutionality of a law applied or subject to be applied in a concrete case.

5. The Constitutional Court of the Russian Federation, upon the requests of the President of the Russian Federation, the Council of the Federation, the State Duma, the Government of the Russian Federation, the bodies of the legislative power of the subjects of the Russian Federation, shall give its interpretation of the Constitution of the Russian Federation.

6. Acts or their provisions recognised as unconstitutional shall become invalid; international treaties and agreements not corresponding to the Constitution of the Russian Federation shall not be liable to enforcement and application.

7. The Constitutional Court of the Russian Federation, upon the request of the Council of the Federation, shall provide a conclusion on the observance of the fixed procedure for advancing charges of treason or of another grave crime against the President of the Russian Federation.

Article 126

The Supreme Court of the Russian Federation shall be the supreme judicial body for civil, criminal, administrative and other cases under the jurisdiction of regular courts, shall carry out judicial supervision over their activities according to procedural forms envisaged in federal law and provide explanations on issues of court proceedings.

Article 127

The Higher Arbitration Court of the Russian Federation shall be the supreme judicial body for settling economic disputes and other cases examined by courts of arbitration, shall carry out judicial supervision over their activities according to procedural forms envisaged in federal law and provide explanations on the issues of court proceedings.

7) Federal Constitutional Law of the Russian Federation no. 1-FKZ of 31 December 1996 On the Judicial System of the Russian Federation (extract)

Translation is from William E. Butler, Jane E. Henderson (eds.), *Russian Legal Texts. The Foundation of a Rule-of-Law State and a Market Economy* (London: Simmons & Hill Publishing Ltd, the Hague: Kluwer Law International, 1998), 142

Chapter 1. General Provisions

<…>

Article 3. Unity of Judicial System

The unity of the judicial system of the Russian Federation shall be ensured by means of:

…application by all courts of the Constitution of the Russian Federation, federal constitutional laws, federal laws, generally recognized principles and norms of international law and international treaties of the Russian Federation, and also the constitutions (or charters) and other laws of the subjects of the Russian Federation.

8) Federal Law of the Russian Federation no. 101-FZ of 15 July 1995 On the International Treaties of the Russian Federation (extract)

Translation is from William E. Butler, Jane E. Henderson (eds.), *Russian Legal Texts. The Foundation of a Rule-of-Law State and a Market Economy* (London: Simmons & Hill Publishing Ltd, the Hague: Kluwer Law International, 1998), 770-771, 780-781

Section I. General Provisions

<…>

Article 5. International Treaties of Russian Federation in Legal System of Russian Federation

1. International treaties of the Russian Federation shall, together with the generally-recognized principles and norms of international law, be an integral part of its legal system in accordance with the Constitution of the Russian Federation.

2. If other rules have been established by an international treaty of the Russian Federation than those provided for by a law, then the rules of the international treaty shall apply.

3. The provisions of officially published international treaties of the Russian Federation which do not require the publication of intra-State acts for application shall operate in the Russian Federation directly. Respective legal acts shall be adopted in order to effectuate other provisions of international treaties of the Russian Federation.

<…>

Section II. Conclusion of International Treaties of Russian Federation

<…>

Article 22. Special Procedure for Expression of Consent to Bindingness of International Treaties for Russian Federation

If an international treaty contains rules requiring the change of individual provisions of the Constitution of the Russian Federation, the decision concerning consent to its bindingness for the Russian Federation shall be possible in the form of a Federal Law only after making the respective amendments to the Constitution of the Russian Federation or a revision of its provisions in the established procedure.

9) Federal Law of the Russian Federation no. 54-FZ of 30 March 1998 On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols Thereto

Translation is from http://www.garant.ru

Article 1.

To ratify the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 complete with the amendments introduced by Protocols thereto no. 3 of 6 May 1963, no. 5 of 20 January 1966 and no. 8 of 19 March 1985 and the addenda contained in Protocol no. 2 of 6 May 1963 (hereinafter referred to as the Convention) and Protocols thereto no. 1 of 20 March 1952, no. 4 of 16 September 1963, no. 7 of 22 November 1984, no. 9 of 6 November 1990, no. 10 of 25 March 1992 and no. 11 of 11 May 1994 signed on behalf of the Russian Federation in the city of Strasbourg on 28 February 1996, subject to the following reservations and statements:

"The Russian Federation in accordance with Article 64 of the Convention declares that the provisions of Items 3 and 4 of Article 5 do not preclude the application of the following regulations of the legislation of the Russian Federation:

the temporary application of the procedure for arrest, retention in custody and apprehension of persons suspected of committing a crime as authorized by Paragraph 2 of Item 6 of Section 2 of the Constitution of the Russian Federation of 1993 and established under Part 1 of Article 11, Part 1 of Article 89, Articles 90, 92, 96, 96.1, 96.2, 97, 101 and 122 of the Criminal Procedure Code of RSFSR of 27 October 1960 complete with further amendments and addenda;

Articles 51-53 and 62 of the Disciplinary Charter of the Armed Forces of the Russian Federation approved by the Decree of the President of the Russian Federation no. 2140 of 14 December 1993 providing for servicemen's arrest and retention at the guardhouse as a measure of disciplinary punishment to be imposed according to extrajudicial procedure upon ser-

vicemen — soldiers, sailors, sergeants, sergeant-majors, ensign and warrant officers — based on Item 2 of Article 26 of the Law of the Russian Federation On the Status of Servicemen of 22 January 1993.

The validity of that reservation is limited to a period that may be required for the introduction in the legislation of the Russian Federation of amendments to fully remove any discrepancies in the above provisions with those of the Convention";

"The Russian Federation in keeping with Article 25 of the Convention acknowledges the competence of the European Commission for Human Rights to receive applications (complaints) from any person, non-governmental organization or group of persons who assert that they are the victims of a violation by the Russian Federation of their rights set forth in the Convention and the said Protocols thereto, in cases when the supposed violation has taken place after the entry into effect of those contractual acts as applicable to the Russian Federation.";

"The Russian Federation in keeping with Article 46 of the Convention acknowledges *ipso facto* and in the absence of a special agreement the jurisdiction of the European Court for Human Rights to be binding as regards the issues of interpretation and application of the Convention and Protocols thereto in cases of supposed violation by the Russian Federation of the provisions of those contractual acts when a supposed violation has taken place after their entry into effect as applicable to the Russian Federation.".

Article 2.

To provide in the federal budget as from 1998 for the necessary increase in expenses for the maintenance of the federal judicial system and the penitentiary system, the bodies of justice of the Russian Federation, bodies of the prosecutor's office of the Russian Federation and internal security bodies of the Russian Federation with the objective of bringing law-enforcement practice into full accord with the commitments of the Russian Federation ensuing from its participation in the Convention and Protocols thereto.

President of the Russian Federation B. Yeltsin
Moscow, Kremlin.

10) Regulation no. 5 of 10 October 2003 Adopted by the Plenum of the Supreme Court of the Russian Federation On the Application by Courts of General Jurisdiction of the Generally-recognized Principles and Norms of International Law and the International Treaties of the Russian Federation

Translation is from http://www.supcourt.ru/EN/resolution.htm

The generally-recognized principles and norms of international law and the international treaties under Item 4 of Article 15 of the Constitution of the Russian Federation are a component part of Russia's legal system.

Federal law no. 101-FZ dated 15 July 1995 On the International Treaties of the Russian Federation stipulates that the Russian Federation, advocating the observance of treaty obligations and common norms, confirms its commitment to the basic principle of international law — the principle of fair implementation of international obligations.

International treaties are one of the most important means of promoting international cooperation; they facilitate the expansion of international connections involving the participation of state and non-state organizations, including the participation of those subject to national law, including natural persons. International treaties play a paramount role in protecting human rights and basic freedoms. To this end, it is necessary to further improve judicial activities relating to the implementation of regulations of international law at the intrastate level. For the purpose of insuring the correct and uniform application of international law by courts of law in administering justice the Plenum of the Supreme Court of the Russian Federation resolves to provide the following clarifications:

1. The Russian Federation recognizes and guarantees the rights and freedoms of man and citizen in keeping with the generally-recognized principles and norms of international law and pursuant to the Constitution of the Russian Federation (Item 1 of Article 17 of the Constitution of the Russian Federation). Under Item 1 of Article 46 of the Constitution everyone shall be guaranteed the protection of his or her rights and liberties in a court of law. Bearing in mind the above mentioned and the provisions of Item 4 of Article

15, Item 1 of Article 17, and Article 18 of the Constitution of the Russian Federation, the rights and liberties of man in conformity with the generally-recognized principles and norms of international law, as well as the international treaties of the Russian Federation shall have direct effect within the jurisdiction of the Russian Federation. They shall determine the meaning, content and application of the laws, and the activities of the legislative and executive branches and local governments, and shall be secured by the judiciary. The generally-recognized principles of international law shall imply the basic imperative norms of the international law accepted and recognised by the international community of States as a whole, the deviation from which is inadmissible. The generally-recognized principles of international law, in particular, comprise the principle of universal respect for human rights and the principle of fair implementation of international obligations. The generally-recognized norm of international law shall imply the rule of conduct accepted and recognised as legally mandatory by the international community of States as a whole. The content of the said principles and norms of international law may be laid down, in particular, in the documents of the United Nations and its specialized agencies.

2. The international treaties of the Russian Federation together with the generally-recognized principles and norms of international law shall be a constituent part of its legal system (Item 1 of Article 5 of the Federal Law "On the International Treaties of the Russian Federation"). The effective international treaties signed by the USSR in respect to which the Russian Federation continues to exercise the USSR's international rights and obligations as a State-successor of the USSR are also a constituent part of the legal system of the Russian Federation. Pursuant to Item "a" of Article 2, of the Federal Law "On the International Treaties of the Russian Federation," the international treaty shall imply an international treaty signed by the Russian Federation with a foreign State (or States) or with an international organisation in writing and regulated by international law regardless of whether such a treaty is contained in one or several interrelated documents and irrespective of its specific name (e.g. convention, pact, treaty, etc.). The international treaties of the Russian Federation shall be concluded on behalf of the Government of the Russian Federation (intergovernmental agreement), and on behalf of federal executive governmental bodies (interagency agreements).

3. In accordance with Item 3 of Article 5 of the Federal Law “On the International Treaties of the Russian Federation,” the terms and conditions of the officially published international treaties of the Russian Federation requiring no adoption of intrastate acts for their application shall have direct effect in the Russian Federation. To implement other provisions of its international treaties the Russian Federation shall enact appropriate legal acts. The elements whereby a direct application of provisions of an international treaty of the Russian Federation is deemed impossible, comprise, in particular, indications, contained in the treaty, regarding obligations of Member-States to amend the national laws of these states. In hearing civil, criminal or administrative cases the court directly applies such an international treaty of the Russian Federation which became effective and mandatory for the Russian Federation and when its provisions do not require adoption of intrastate acts for their application and are capable of giving rise to rights and obligations for national law entities (Item 4 of Article 15 of the Constitution of the Russian Federation, Items 1 and 3 of Article 5 of the Federal Law “On the International Treaties of the Russian Federation,” Item 2 of Article 7 of the Civil Code of the Russian Federation).

4. In deciding whether the treaty norms of international law can be applied, the courts should realise that the international treaty enters into force in accordance with the procedure and on the date provided for in the treaty itself or agreed upon by the States which have taken part in negotiations. If there is no such stipulation or arrangement the treaty enters into force as soon as the consent of all States participating in negotiations is expressed for the treaty to be mandatory for them (Article 24, Vienna Convention on the Law of Treaties, 1969). The courts shall bear in mind that the international treaty would be subject to application provided that the Russian Federation expressed its consent through competent governmental bodies for the international treaty to be mandatory to it by one of the actions listed in Article 6 of the Federal Law “On the International Treaties of the Russian Federation” (by signing the treaty; exchanging the documents establishing it; ratifying the treaty; approving the treaty; adopting the treaty; acceding to the treaty; by any other way agreed upon by the treaty parties), and under the condition that this treaty has entered into force for the Russian Federation (e.g., the Convention for the Protection of Human Rights and Fundamental Freedoms was ratified by the

Russian Federation by Federal Law no. 54-FZ dated 30 March 1998 and entered into force for the Russian Federation on 5 May 1998, the day of deposition of the instrument of ratification to the Secretary General of the Council of Europe under Article 59 of the Convention). Proceeding from the substance of Items 3 and 4 of Article 15 of the Constitution of the Russian Federation, Item 3 of Article 5 of the Federal Law "On the International Treaties of the Russian Federation" the courts themselves can apply those effective international treaties which were officially published in the Legislative Acts Collection of the Russian Federation or in the Bulletin of International Treaties in the manner established by Article 30 of the above mentioned Federal Law. International treaties of the Russian Federation of an interagency nature are published according to the decision of federal bodies of executive authorities on behalf of which such treaties were signed, in official publications of these bodies. The international treaties of the USSR mandatory for the Russian Federation as a State-successor of the USSR have been published in official publications of the Supreme Soviet of the USSR, Council of Ministers (Cabinet of Ministers) of the USSR. The texts of these treaties have also been published in collections of international treaties of the USSR, but this publication was not official. Official information of the Ministry of Foreign Affairs of the Russian Federation on the entry into force of the international treaties signed on behalf of the Russian Federation and of the Government shall be subject to publication in accordance with the same procedure used for the international treaties (Article 30 of the Federal Law "On the International Treaties of the Russian Federation").

5. International treaties which have a direct and immediate effect in the legal system of the Russian Federation shall be applied by the courts including military ones, in resolving civil, criminal and administrative cases, in particular: in considering civil cases, provided that the international treaty of the Russian Federation has set out other rules than the Russian Federation legislation regulating the relations brought to court for consideration; in trying civil and criminal cases, provided that the international treaty of the Russian Federation has set out other rules of court proceedings than the Civil Procedural or Criminal Procedural Law of the Russian Federation; in trying civil and criminal cases, provided that the international treaty of the Russian Federation regulates relations, including the ones with foreign individuals which were

brought to court for trial (e.g., in judging the cases listed in Article 402 of the Civil Procedural Code of the Russian Federation, appeals on the execution of decisions taken by foreign courts, complaints against decisions on extradition of individuals charged with a crime or convicted by a court of a foreign State); in trying cases on administrative offences, provided that the international treaty of the Russian Federation stipulates other rules than those set forth by the legislation on administrative infractions. Draw the attention of courts to the fact that consent for an international treaty is mandatory for the Russian Federation should be expressed in the form of a federal law, provided that this treaty stipulates other rules than the federal laws (Item 4 of Article 15 of the Constitution of the Russian Federation, Items 1 and 2 of Article 5, Article 14, Item 1 "a" of Article 15 of the of the Federal Law "On the International Treaties of the Russian Federation," Item 2 of Article 1 of the Civil Procedure Code of the Russian Federation, Item 3 of Article 1 of the Criminal Procedure Code of the Russian Federation).

6. International treaties with norms providing for indications of criminal offences shall not be applied by courts directly because such treaties stipulate directly the obligation of States to ensure the implementation of obligations set out by the treaty by making certain offences punishable by internal (national) law (e.g., the Uniform Convention on Drugs, 1961, International Convention against Taking Hostages, 1979, the Convention for the Suppression of Unlawful Seizure of Aircraft, 1970). According to Article 54 and Subitem "o" of Article 71 of the Constitution of the Russian Federation and Article 8 of the Criminal Code of the Russian Federation, a person who has committed an offence having all elements of a crime set out by the Criminal Code of the Russian Federation is subject to criminal liability in the Russian Federation. In this connection, the international legal norms stipulating component elements of crimes shall be applied by courts of the Russian Federation in those circumstances when the norm of the Criminal Code of the Russian Federation stipulates directly the need to apply the international treaty of the Russian Federation (e.g., Articles 355 and 356 of the Criminal Code of the Russian Federation).

7. By virtue of Item 4 of Article 11 of the Criminal Code of the Russian Federation the issue of criminal liability of diplomatic representatives of foreign States and other citizens enjoying immunity in the event of committing

an offence — in the territory of the Russian Federation is resolved in accordance with the norms of international law (in particular, pursuant to the UN Convention on Privileges and Immunities, 1946, UN Convention on Privileges and Immunities of Specialized Agencies, 1947, Vienna Convention on Diplomatic Relations, 1961, Vienna Convention on Consular Relations, 1963). The category of individuals enjoying immunity includes, for instance, heads of diplomatic missions, members of missions having diplomatic rank and family members thereof, if they are not citizens of the host country. Other persons enjoying immunity comprise, in particular, heads of States, governments, heads of foreign policy agencies of States, staff members of diplomatic missions in charge of administrative and technical services of the mission, family members thereof, families living together with the said persons provided they are not citizens of the host State and not residing there permanently as well as other persons enjoying immunity in keeping with generally-recognized principles and norms of the international law and the international treaties of the Russian Federation.

8. The rules of the effective international treaty of the Russian Federation, the consent on the mandatory nature of which was issued in the form of a federal law shall be given priority against the laws of the Russian Federation. The rules of the effective international treaty of the Russian Federation, the consent on the mandatory nature of which was issued in the form of a federal law shall be given priority against the regulatory acts published by a governmental body that has signed the treaty (Item 4 of Article 15, Articles 90, 113 of the Constitution of the Russian Federation).

9. In administering justice the courts shall bear in mind that pursuant to the substance of Item 4 of Article 15 of the Constitution of the Russian Federation, Articles 369, 379, Item 5 of Article 415 of the Criminal Procedure Code of the Russian Federation, Articles 330, 362-364 of the Civil Procedure Code of the Russian Federation, an incorrect application by the court of the generally-recognized principles and norms of international law and the international treaties of the Russian Federation may serve as a reason to repeal or amend a court act. Incorrect application of a norm of international law may occur in the event that a court failed to apply the norm of the international law subject to application or, on the contrary, the court has applied the norm of

international law which was not subject to application or when the court misinterpreted the norm of international law.

10. Clarify to courts that the interpretation of the international treaty should be done in accordance with the Vienna Convention on the Law of Treaties of 23 May 1969 (Section 3; Articles 31-33). In accordance with Subitem “b” of Item 3 of Article 31 of the Vienna Convention, in interpreting the international treaty, one should, together with its context, take into account the follow-up practice of the treaty which establishes the agreement of its members with regard to its interpretation.

The Russian Federation, as a Member-State of the Convention for the Protection of Human Rights and Fundamental Freedoms recognises the jurisdiction of the European Court on Human Rights as mandatory with respect to interpretation and application of the Convention and Protocols thereof in the event of an assumed breach by the Russian Federation of provisions of these treaty acts when the assumed breach has taken place after their entry into force in respect to the Russian Federation (Article 1 of the Federal Law “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereof” no. 54-FZ of 30 March 1998). That is why the application by courts of the said Convention should take into account the practice of the European Court on Human Rights to avoid any violation of the Convention for the Protection of Human Rights and Fundamental Freedoms.

11. The Convention for the Protection of Human Rights and Fundamental Freedoms has a mechanism of its own which includes the compulsory jurisdiction of the European Court on Human Rights and systematic monitoring of the execution of the decisions of the Court by the Committee of Ministers of the Council of Europe. In accordance with Item 1 of Article 46 of the Convention these decisions with regard to the Russian Federation adopted finally shall be mandatory for all State bodies of the Russian Federation including for the courts. The implementation of the decisions related to the Russian Federation presumes, if necessary, the obligation on the part of the State to take measures of a private nature aimed at eliminating the violation of human rights stipulated by the Convention and the impact of these violations on the applicant as well as measures of a general nature to prevent repetition of such violations. The courts within their scope of competence

should act so as to ensure the implementation of obligations of the State stemming from the participation of the Russian Federation in the Convention for the Protection of Human Rights and Fundamental Freedoms. If the court in hearing a case has established the circumstances that contributed to the violation of the rights and liberties of citizens guaranteed by the Convention, the court has the right to issue its ruling (or decision) which would draw the attention of relevant organisations and officials to the circumstances and facts of the violation of the rights and liberties requiring that necessary measures be taken.

12. The courts in administering justice shall take into account that by virtue of Item 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms everyone has the right to court proceedings within a reasonable time period. In calculating the said time period on criminal cases the court proceedings shall cover both the pre-trial investigation procedure and the court proceedings as such. According to the legal positions worked out by the European Court on Human Rights the calculation of the time period starts at the time when the person is charged with an offence or apprehended, or put into custody, or other measures of procedural enforcement have been taken, and ends when a sentence has entered into force or the criminal case or criminal prosecution was stopped. The calculation of the term of court proceedings on civil cases, in accordance with Item 1 of Article 6 of the Convention, begins at the time when the lawsuit has been filed and ends when the court act has been executed. Thus, pursuant to Article 6 of the Convention, the execution of a court decision is viewed as a component of "court proceedings". With this in mind, when considering the issues of trial postponement, deferral, modification of the mode and procedure of court decision execution and when considering complaints on bailiffs' action, the courts shall take into account the need to comply with the requirements of the Convention on the Execution of Court Decisions within a reasonable time period. In establishing to what extent the time period of court proceedings was reasonable, attention should be paid to the complexity of the case, behaviour of the applicant (claimant, defendant, suspect, accused), and conduct of the State represented by relevant bodies.

13. When considering civil and criminal cases the courts should bear in mind that pursuant to Article 47 of the Constitution of the Russian Federa-

tion nobody can be denied the right of consideration of his or her case by the court and by the judge to whose jurisdiction it is referred to by virtue of law. Under Item 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms everyone when his or her civil rights and responsibilities are defined or in considering any criminal charge brought against him or her has the right to be tried by a court established in accordance with the law. Taking into consideration decisions of the European Court on Human Rights with regard to the judicial system of the Russian Federation, this rule extends not only to judges of federal courts and justices of the peace, but also to the members of the jury represented by citizens of the Russian Federation included into the list of the jurors and called up to administer justice in accordance with the procedure established by the law.

14. The courts, in deciding issues relating to the extension of a term of custody, should take into account that under Item 3 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms every person arrested or apprehended has the right to a court trial within a reasonable time limit or to be released before the trial. In accordance with the legal positions of the European Court on Human Rights, in establishing the time period the accused is to be kept in custody, the calculation of the term starts as of the day the accused (the defendant) was put into custody and ends as of the day when the judgement was passed by the trial court. It should be taken into account that a substantiated suspicion against a person put into custody for having committed an offence serves as a necessary condition for the arrest to be lawful. At the same time such a suspicion cannot be the only reason for a protracted detention in custody. There must be other circumstances that could justify the isolation of an individual from society. Such circumstances may include the possibility that the suspect or the accused may continue criminal activities or escape from pre-trial investigation or court prosecution or else falsify the evidence on the criminal case, or conspire with witnesses.

The circumstances indicated should be real, well-founded, i.e. be proved by credible evidence. In the event of extension of detention in custody the courts should indicate the specific circumstances justifying the extension of such a term and give evidence proving the existence of such circumstances.

15. When taking a decision whereby the accused is put into custody as a measure of restraint or the term for detention in custody is extended, in considering complaints against unlawful actions of officials of the bodies conducting preliminary investigation, the courts should take into account the need to observe the rights of persons kept in custody specified by Articles 3, 5, 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In taking a decision on an appeal to release from custody or complaint against the prolongation of the duration of detention in custody the court has to take into account the provisions of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms according to which nobody should be subject to torture and inhuman or degrading treatment or punishment. In the practice of application of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court on Human Rights, "inhuman treatment" refers to cases when such treatment, as a rule, is of a deliberate nature, extends over several hours or when as a result of such a treatment the person has suffered real physical damage or undergone serious physical or psychological suffering.

One should bear in mind that under Article 3 of the Convention and requirements contained in decisions of the European Court on Human Rights the conditions of detention of the accused in custody should be compatible with respect for human dignity. Treatment degrading human dignity is considered to be, in particular, treatment that provokes in the individual a feeling of fear, anxiety and one's own inferiority. At the same time the individual should not be caused deprivation and suffering in a greater degree than the level of suffering which is inevitable in case of deprivation of freedom while the health and well-being of the individual should be guaranteed taking into account the practical requirements of the detention regime. The above-mentioned level is assessed on the basis of specific circumstances, in particular, the duration of unlawful treatment of a person, and the nature of the physical and psychological circumstances of such treatment. In certain cases the sex, age and health conditions of an individual who was subject to inhuman or dignity-degrading treatment are taken into account.

16. In case difficulties arise in interpreting the generally-recognized principles and norms of international law, and the international treaties of the Russian Federation, the courts should be advised to use acts and decisions

of international organisations, including the UN bodies and its specialized agencies and also to address in this case the Legal Department of the Ministry of Foreign Affairs of the Russian Federation, the Ministry of Justice of the Russian Federation (e.g., to clarify the issues relating to the duration of validity of the international treaty, the composition of the treaty Member-States, and the international practice of its application).

17. To recommend to the Judicial Department under the Supreme Court of the Russian Federation: in co-ordination with the Commissioner of the Russian Federation to the European Court on Human Rights to inform judges on the practice of the European Court on Human Rights, especially with regard to decisions regarding the Russian Federation by distributing authentic texts and their Russian translations; to provide the judges, on a regular and timely basis, with authentic texts and official translations of the international treaties of the Russian Federation and other acts of international law.

18. To recommend that the Russian Academy of Justice, when organizing education processes for training, retraining and upgrading courses for judges and staff-members of the court apparatus, pay special attention to the study of the generally-recognized principles and norms of international law and the international treaties of the Russian Federation, to analyse on a regular basis the sources of international and European law, to publish necessary practical booklets, comments, monographs and other academic, methodological and scientific literature.

19. To entrust the Judicial Chambers on Civil and Criminal Cases, the Military Chamber of the Supreme Court of the Russian Federation and also the Russian Academy of Justice with the preparation of proposals on adding to the already adopted decisions of the Plenum of the Supreme Court of the Russian Federation relevant provisions on application of the generally-recognized principles and norms of international law and the international treaties of the Russian Federation.

President, Supreme Court of the Russian Federation V. M. Lebedev

Plenum Secretary, Justice of the Supreme Court of the Russian Federation V. V. Demidov

11) Internet-site “Studying the European Convention”

This online resource was created for citizens, human rights activists and organizations that are using the Convention’s tools in their domestic litigation efforts. This resource provides those who wish to apply the Convention in national forums with (1) all national legislation on the issue, (2) translated international documents, (3) translations and summaries of the ECHR case-law (major cases), (4) translations and summaries of selected ECHR judgments against the Russian Federation, (5) Russian courts judgments of different levels and jurisdictions that have invoked the Convention, (6) relevant books and law journal articles on the issue, (7) online audio and video lectures, (8) consultations, and more. The author is Anton Burkov, kandidat iuridicheskikh nauk (Tiumen’ State University), LL.M (University of Essex), Ph.D candidate in law (University of Cambridge), staff attorney and programme coordinator at the NGO Sutyajnik. The author is grateful to the Urals Centre for Constitutional and International Protection of Human Rights of the NGO Sutyajnik for providing informational and technical support in developing this online project. He also expresses his gratitude to other NGOs and educational institutions for their informational support of this online resource, which has proved to be very useful to people.

The internet resource “Studying the European Convention” is available at the web-site http://www.sutyajnik.ru/rus/echr/school

Bibliography

Literature

1. Alternative NGO Report on the Observance of the International Covenant on Civil and Political Rights (ICCPR) by the Russian Federation, (from 1997 to 2002), http://www.memo.ru/hr/news/doklnpo/eng;
2. Author's interview with Ilya Poluyakhtov, an associate at the Linklaters CIS law firm. 20 August 2004;
3. Author's interview with Vladislav Bykov, a lawyer for the Glasnost Defence Foundation, 20 August 2004;
4. Author's interviews with Marjorie Farquharson and Kristina Pencheva, 2 September 2004;
5. Author's interview with Marjorie Farquharson, 23 June 2004;
6. Author's interview with Sergey Beliaev, 19 and 26 August 2004;
7. Author's interview with Evgenii Finkov, 3 September 2004;
8. Demian Bakhrakh, Anton Burkov, "Sudebnie Acty kak Istochniki Administrativnogo Prava," *Zhurnal Rossiiskogo Prava* 2 (2004), http://www.sutyajnik.ru/rus/library/articles/2004/bahrah_burkov_akti_pravosudia.html;
9. "Basmannoe Pravosudie. Uroki Samooborony. Posobie dlia Advokatov," http://www.ip-centre.ru/books/Basmannoe.pdf;
10. Rudolf Bernhardt et al., "Report on the Conformity of the Legal Order of the Russian Federation with Council of Europe Standards," *Human Rights Law Journal* 15:7 (1994);
11. Vladislav Bykov, Dmitrii Shishkin, "Statia 10 Evropeiskoi Konventsii o Zashchite Prav Cheloveka v Grazhdanskikh Processakh o Zashchite Dobrogo Imeni," in Georgii Vinokurov, Andrei Rikhter and Vladimir Chernishov, eds., *Obrashcheniia v Evropeiskii Sud po Pravam Cheloveka: Rukovodstvo dlia Zhurnalistov* (Moskva: Institut Problem In-

formatsionnogo Prava, 2004), http://www.medialaw.ru/publications/books/book45/33.html;

12. *Black's Law Dictionary with Pronunciations: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, (St. Paul, Minnesota: West Publishing Co., 1998);
13. Kevin Boyle, "National Implementation of International Human Rights Commitments." (Lecture given at the General Seminar on International Human Rights Law, LL.M programme, University of Essex, England, 2003-2004);
14. Anton Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zaschite Prav Cheloveka v Sudakh Rossii* (Ekaterinburg: Izdatel'stvo Ural'skogo Universiteta, 2006), http://www.sutyajnik.ru/rus/library/sborniki/echr6/echr6.pdf;
15. Anton Burkov, "Implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms in Russian Courts," *Russian Law: Theory and Practice* 1 (2006), http://www.sutyajnik.ru/articles/92.html
16. Gennadii Danilenko, "Implementation of International Law in CIS States: Theory and Practice," *European Journal of International Law* 10:1 (1999), http://www.ejil.org/journal/Vol10/No1/100051.pdf;
17. Gennadii Danilenko, "Primenenie Mezhdunarodnogo Prava vo Vnutrennei Pravovoi Sisteme Rossii: Praktika Konstitutsionnogo Suda," Gosudarstvo i Pravo 11 (1995);
18. Anna Demeneva, "Uridicheskie Posledstviia Postanovlenii Evropeiskogo Suda po Pravam Cheloveka dlia Rossiiskoi Federatsii" (Yekaterinburg: Ural'skaia Gosudarstvennaia Uridicheskaia Akademiia, 2004), http://www.sutyajnik.ru/rus/library/sborniki/demeneva_LLM_dissertation.html;
19. Anna Demeneva, "Evropeiskii Sud: Panatsea ot Vsekh Bed?" in Anton Burkov, ed., *Sudebnaia Zashchita Prav Grazhdan v Ee Naibolee Effectivnikh Formakh,* (Ekaterinburg: Ural'skii Universitet, 2003), http://www.sutyajnik.ru/rus/library/sborniki/sud_zaschita.pdf;
20. Anna Demeneva, "Psikhiatry ne Zlodei, no dazhe Smiritel'naia Rubashka ne Dolzhna Lishat' Cheloveka Prav," *Uridicheskii Vestnik,* Sep-

tember 2002, http://www.sutyajnik.ru/rus/library/articles/2004/psihiatri_ne_zlodei.html;

21. Anna Demeneva, “Zashchita Prava na Rassmotrenie Dela Sudom, Sozdannim na Osnovanii Zakona: Praktika Primeneniia Stat’i 6 Konventsii o Zashchite Prav Cheloveka i Osnovnikh Svobod v Rossiiskom Sudebnom Protsesse,” in Anton Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zaschite Prav Cheloveka v Sudakh Rossii* (Ekaterinburg: Izdatel’stvo Ural’skogo Universiteta, 2006), http://www.sutyajnik.ru/rus/library/sborniki/echr6/echr6.pdf;
22. Anna Demeneva, Anton Burkov, eds., *Konstitutsiia Rossii: 10 Let Primeneniia* (Ekaterinburg: Izdatel’stvo Ural’skogo Universiteta, 2004), http://www.sutyajnik.ru/rus/library/sborniki/konst_10_let_primen/constitution_sutyajnik_10.pdf;
23. *Doklad Obshchestvennogo Ob’’edineniia Sutyajnik o Polozhenii s Pravami Cheloveka v Sverdlovskoi Oblasti* (Ekaterinburg: Informatsionnoe Agentstvo Sutyajnik-Press, 2004), http://www.sutyajnik.ru/rus/library/hr_reports/hr_2003_in_cv_obl_by_sut.html;
24. David Harris, Michael O’Boyle, Chris Warbrick, *Law of the European Convention on Human Rights* (London, Dublin, Edinburgh: Butterworths, 1995);
25. Manja Hussner, “The Incorporation of International Human Rights Treaties into the Russian System of Law,” in Andreas Umland, ed., *The Implementation of the European Convention on Human Rights in Russia: Philosophical, Legal, and Empirical Studies (Proceedings of an International Conference Held at Yekaterinburg on 6-7 April 2001)* (Stuttgart: *ibidem*-Verlag, 2004);
26. Mark Janis, “Russia and the ‘Legality’ of Strasbourg Law,” *European Journal of International Law* 8:1 (1997);
27. Mark Janis, Richard Kay, Anthony Bradley, *European Human Rights Law: Text and Materials. Second Edition*. (New York: Oxford University Press, 2000);
28. Jeffrey Kahn, “A Marriage of Convenience: Russia and the European Court of Human Rights,” *Radio Free Europe/Radio Liberty, Prague, Czech Republic. Russian Political Weekly: A Weekly Review of News and Analysis of Russian Domestic Politics*, 19 June 2002;

29. Kollektiv Avtorov Ural'skogo Tsentra Konstitutsionnoi i Mezhdunarodnoi Zashchity Prav Cheloveka, "Problemy Sootvetstviia Pravoprimenitel'noi Praktiki Sudov Obshchei Iurisdiktsii Evropeiiskim Standartam Prava na Spravedlivoe Sudebnoe Razbiratel'stvo Dela v Razumnii Srok," in *Primenenie Mezhdunarodnikh Dogovorov v Oblasti Prav Cheloveka v Pravovoi Sisteme Rossiiskoi Federatsii* (Ekaterinburg: Ural'skaia Gosudarstvennaia Uridicheskaia Akademiia, 2003), http://www.sutyajnik.ru/rus/library/sborniki/usla_2003.pdf;
30. "V. Lebedev: v Rossiiskoi Sudebnoi Sisteme Otkrity Vakansii Primerno 5000 Sudei," http://www.lawportal.ru/news/news.asp?newsID=4909;
31. Igor' Lukashuk, "Russia's Conception of International Law," *The Parker School Journal of East European Law* 2:1 (1995);
32. Mikhail Mitiukov et al., eds., Obshchepriznannie Printsipy i Normy Mezhdunarodnogo Prava, Mezhdunarodnie Dogovory v Praktike Konstitutsionnogo Pravosudiia: Materialy Vserossiiskogo Soveshchaniia (Moskva: Mezhdunarodnie Otnosheniia, 2004);
33. Karina Moskalenko, "Khodorkovskii Ischet Sudebnoi Zaschiti v Evrope," http://www.hro.org/editions/control/hodorkovski/2004/01/19.php;
34. Alastair Mowbray, "European Convention on Human Rights: Developments in Tackling the Workload Crisis and Recent Cases," *Human Rights Law Review* 3:1 (2004);
35. "Open Letter of the NGO Sutyajnik on the Set-up of the Qualification Collegium of Judges in Sverdlovsk Oblast," *The Urals Human Rights Website*, 17 May 2002, http://www.humanrights.by.ru/justice/op_kvkol.shtm;
36. Clare Ovey, Robin White, *Jacobs and White, the European Convention on Human Rights*, (Oxford: Oxford University Press, 2002);
37. Ivan Ovcharuk, "Sud'ia Dolzhen Znat' Vse," *News Agency Uralpolit.Ru*, 30 August 2004, http://www.uralpolit.ru/regions/svr/30-08-2004/page_29757.html;
38. Vladimir Peisikov, "Annual Report of the Russian Academy of Justice for 2001," http://www.abanet.org/ceeli/special_projects/jtc/russia_report_2001.html;
39. Alexei Rarog, "Pravovoe Znachenie Raz''iasnenii Plenuma Verkhovnogo Suda RF," *Gosudarstvo i Pravo* 2 (2001);

40. "Russia Has Been Saved from a Possible Defeat in Strasbourg," *News Agency Sutyajnik-Press*, 29 June 2004, http://www.sutyajnik.ru/rus/news/2004/07/29.html;
41. Marat Salikov, "Mezhdunarodnoe Pravo i Zashchita Prav Cheloveka Rossiiskim Konstitutsionnim Sudom," in Andreas Umland, ed., *The Implementation of the European Convention on Human Rights in Russia: Philosophical, Legal, and Empirical Studies (Proceedings of an International Conference Held at Yekaterinburg on 6-7 April 2001)* (Stuttgart: *ibidem*-Verlag, 2004);
42. "Social Control over the Judiciary," *News Agency Sutyajnik-Press*, 2 July 2004, http://www.sutyajnik.ru/rus/news/2004/07/2.html;
43. Oleg Tiunov, "O Primenenii Konstitutsionnim Sudom Norm Mezhdunarodnogo Prava," in *Pervaia Nauchno-Prakticheskaia Konferentsiia po Voprosam Primeneniia Norm Mezhdunarodnogo Prava Rossiiskimi Pravookhranitel'nimi Organami*, 7–9 Fevralia 1996 (Moskva, 1996);
44. Top 500 World Universities (1-100), http://ed.sjtu.edu.cn/rank/2004/top500(1-100).htm;
45. Boris Topornin, ed., *Sudebnaia Praktika kak Istochnik Prava* (Moskva: Institut Gosudarstva i Prava Rossiiskoi Academii Nauk, 1997);
46. Boris Topornin et al., *Sudebnaia Praktika kak Istochnik Prava* (Moskva: Iurist, 2000);
47. Vladimir Tumanov and Lev Entin, ads., *Kommentarii k Konventsii o Zashchite Prav Cheloveka i Osnovnikh Svobod i Praktike ee Primeneniia* (Moskva: Norma, 2002);
48. Vladimir Tumanov et al., eds., *Evropeiskii Sud po Pravam Cheloveka. Izbrannie Resheniia* (Moskva: Norma, 2000);
49. Georgii Vinokurov, Andrei Rikhter, Vladimir Chernishov, eds., *Evropeiskii Sud' po Pravam Cheloveka i Zashchita Svobody Slova v Rossii: Pretsedenty, Analiz, Rekomendatsii* (Moskva: Institut Problem Infomatsionnogo Prava, 2004), http://www.medialaw.ru/article10/ 7/2.htm;
50. "Vstat'! Sud Idet (Interview with the Chief Justice of the Russian Supreme Court)," *Rossiiskaia Gazeta*, 29 June 2004, http://www.rg.ru/2004/06/29/lebedev.html;
51. Web-site of the Constitutional Court of the Russian Federation, http://www.ksrf.ru;

52. Web-site of the Consultant Plus database, http://www.consultant.ru/online;
53. Web-site of the Supreme Court of the Russian Federation http://www.supcourt.ru;
54. Web-site of the Sverdlovsk Oblast Court, http://www.femida.e-burg.ru;
55. Web-site “Studying the European Convention,” http://www.sutyajnik.ru/rus/echr/school
56. Olga Zetlina, *Radio Liberty (Moscow)*, http://www.refugee.memo.ru/C325678F00668DC3/$ID/A269FF170869C960C3256E06007CE955;

Case-law

1. Airey v. Ireland. Judgment of 9 October 1979. Series A. no. 32;
2. Beliaev v. Sverdlovsk Oblast Duma. Judgment of 22 June 2004, http://www.sutyajnik.ru/rus/echr/rus_judgments/obl/beliaev_v_obl_duma_22_06_2004.html;
3. Beliaev v. Sverdlovsk Oblast Duma and the Judicial Department at the Supreme Court of the Russian Federation (Sverdlovsk oblast office) [cassation]. Judgment of 23 October 2003 in Anton Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zaschite Prav Cheloveka v Sudakh Rossii* (Ekaterinburg: Izdatel'stvo Ural'skogo Universiteta, 2006), 244-246, http://www.sutyajnik.ru/rus/library/sborniki/echr6/echr6.pdf;
4. Berg v. Verkh-Isetskii RUVD. Judgment of 1 November 2002;
5. Burkov v. Verkh-Isetskii RUVD. Judgment of 4 September 2002, http://www.sutyajnik.ru/rus/cases/judgments/burkov_v_ruvd_4_09_2002.html;
6. Burdov v. Russia. Judgment of 7 May 2002. Reports of Judgments and Decisions 2002-III;
7. Case Concerning Constitutional Review of a Number of Acts of Moscow and Moscow oblast, Stavropolskii Krai, Voronezh Oblast and the city of Voronezh which Regulate an Order of the Registration of Citizens Arriving for Permanent Residence at Mentioned Regions. The Russian Constitutional Court. Judgment no. 9-P of 4 April 1996;
8. Case Concerning the Constitutional Review of Article 44 of the Criminal Procedure Code of the RSFSR and Article 123 of the Civil Procedure Code of the RSFSR. The Russian Constitutional Court. Judgment of 16 March 1998;
9. Case Concerning Compliance with the Regulation by the Yekaterinburg City Hall on the Order of Holding Direct Actions in the City of Yekaterinburg with the Charter of Sverdlovsk oblast. Judgment of 25 January 2002;

10. Case of Urchenko. Decision of the Presidium of the Supreme Court no. 447п02пр of 4 December 2002, http://www.sutyajnik.ru/rus/echr/rus_judgments/sup_court/judg_with_case_law.htm;
11. Castells v. Spain. Judgment of 23 April 1992. Serial A. no. 236;
12. Conka v. Belgium. Judgment of 5 February 2002;
13. Fedotova v. Russia. Admissibility decision of 1 April 2004;
14. Fedotova v. Russia. Judgment of 13 April 2006;
15. Fedorov v. Department of Social Security of Pskov. Judgment no. 2-1612/2003 of 18 October 2003, http://www.sutyajnik.ru/rus/echr/rus_judgments/distr/fedorov_pscov _gor_sud_28_10_2003.html;
16. Grandrath v. Federal Republic of Germany. Decision of Committee of Ministers. 29 June 1967. 10 Yearbook (1967);
17. Golosnova v. Ural State Teacher's Training University (Uralskii Gosudarstvennii Pedagogicheskii Universitet). Judgment of 2 September 2002, in Anna Demeneva, Anton Burkov, eds., *Konstitutsiia Rossii: 10 Let Primeneniia* (Ekaterinburg: Izdatel'stvo Ural'skogo Universiteta, 2004), 168-171, http://www.sutyajnik.ru/rus/library/sborniki/konst_10_let_primen/constitution_sutyajnik_10.pdf;
18. Hadjianastassiou v. Greece. Judgment of 16 December 1992. Series A. no. 252;
19. Handyside v. UK. Judgment of 7 December 1976. Serial A. no. 24;
20. Hiro Balani v. Spain. Judgment of 9 December 1994. Series A. no. 303-B;
21. Ireland v. UK. Judgment of 18 January 1978. 2 E.H.R.R. no. 25;
22. Iversen v. Norway. Decision of 17 December 1963. 6 Yearbook (1963);
23. Judgment of the Constitutional Court of the Russian Federation of 17 November 1998;
24. Judgment of the Constitutional Court of the Russian Federation of 23 November 1999;
25. Judgment of the Constitutional Court of the Russian Federation of 16 May 2000;
26. Judgment of the Constitutional Court of the Russian Federation of 27 June 2000;
27. Judgment of the Constitutional Court of the Russian Federation of 25 January 2001;

28. Judgment of the Constitutional Court of the Russian Federation of 12 March 2001;
29. Judgment of the Constitutional Court of the Russian Federation of 30 July 2001;
30. Judgment of the Constitutional Court of the Russian Federation of 13 December 2001;
31. Judgment of the Constitutional Court of the Russian Federation of 15 January 2002;
32. Judgment of the Constitutional Court of the Russian Federation of 24 January 2002;
33. Judgment of the Constitutional Court of the Russian Federation of 19 June 2002;
34. Judgment of the Constitutional Court of the Russian Federation of 17 July 2002;
35. Judgment of the Constitutional Court of the Russian Federation of 30 October 2003;
36. Judgment of the Constitutional Court of the Russian Federation of 24 February 2004;
37. Kalashnikov v. Russia. Judgment of 15 July 2002. Reports of Judgments and Decisions 2002-VI;
38. Kraska v. Switzerland. Judgment of 19 April 1993. Series A. no. 254-B;
39. Kolotkov v. the Government of the Russian Federation Judgment of 13 March 2003 no. ГКПИ 03-97, http://www.sutyajnik.ru/rus/echr/rus_judgments/sup_court/13_03_2003_art14.html;
40. Kudla v. Poland. Judgment of 26 October 2000;
41. Labour Union of Moscow Police v. the Ministry of Internal Affairs Judgment of 16 November 2000 no. ГКПИ 00-1195, http://www.sutyajnik.ru/rus/echr/rus_judgments/sup_court/16_11_2000_art_4.html;
42. Leyla Sahin v. Turkey. Judgment of 29 June 2004;
43. Lingens v. Austria, Judgment of 8 July 1986. Serial A. no. 103;
44. Marckx v. Belgium. Judgment of 13 June 1979. Series A. no. 31;
45. Ministry of Justice [Sverdlovsk oblast department] v. Russian Labour Party [Sverdlovsk oblast branch]. Judgment of 29 July 2004, http://www.sutyajnik.ru/rus/cases/judgments/obl_sud_minust_v_rpt_29_07_2004.html;

46. Oberschlick v. Austria. Judgment of 23 May 1991. Series A. no. 204;
47. Oberschlick v. Austria (no. 2). Judgment of 1 July 1997. Reports 1997-IV;
48. Posokhov v. Russia. Judgment of 4 March 2003. Reports of Judgments and Decisions 2003-IV;
49. Rakevich v. Russia. Judgment of 28 October 2003;
50. Ruiz Torija v. Spain. Judgment of 9 December 1994. Series A. no. 303-A;
51. Sannikov v. Veselo Zhivem Newspaper, ZAO RIA Lozman. Judgment of 20 December 2002 in Anton Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zaschite Prav Cheloveka v Sudakh Rossii* (Ekaterinburg: Izdatel'stvo Ural'skogo Universiteta, 2006), 220-229, http://www.sutyajnik.ru/rus/library/sborniki/echr6/echr6.pdf;
52. Skakunov v. Sverdlovsk Oblast Duma. Judgment of 16 November 2000;
53. Sporrong and Lonnroth v. Sweden. Judgment of 23 September 1982. Series A. no. 52;
54. Ten Muslim Women v. the Ministry of Internal Affairs (Hijab case). Judgment of 5 March 2003 no. ГКПИ 03-76, http://www.sutyajnik.ru/rus/echr/rus_judgments/sup_court/5_03_2003_platki.html;
55. Thlimmenos v. Greece. Judgment of 6 April 2000. ECHR 2000-IV;
56. Topiro v. Ministry of Justice, OAO Saldinskii Metallurgical Factory, The Mining and Smelting Labour Union of Russia (district court). Judgment of 25 April 2001, http://www.sutyajnik.ru/rus/echr/rus_judgments/distr/topiro_25_04_2001.htm;
57. Topiro v. Ministry of Justice, OAO Saldinskii Metallurgical Factory, The Mining and Smelting Labour Union of Russia (Sverdlovsk oblast court – a court of cassation). Judgment of 12 July 2001, http://www.sutyajnik.ru/rus/echr/rus_judgments/obl/topiro_obl_12_07_01.htm;
58. Van de Hurk v. the Netherlands. Judgment of 19 April 1994. Series A. no. 288;
59. Van der Mussele v. Belgium. Judgment of 23 November 1983. Series A. no. 70;
60. Vodianikova v. Nasha Zhizn Newspaper and Osenniaia. Judgment of 28 January 2002, in Anton Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zaschite Prav Cheloveka v Sudakh Rossii* (Ekaterinburg: Iz-

datel'stvo Ural'skogo Universiteta, 2006), 210-220, http://www.sutyajnik.ru/rus/library/sborniki/echr6/echr6.pdf;

61. Yekaterinburg City Hall v. Beliaev, News Agency Region-Inform, News Paper Oblastnaia Gazeta. Judgment of 1 June 2004, in Anton Burkov, ed., *Primenenie Evropeiskoi Konventsii o Zaschite Prav Cheloveka v Sudakh Rossii* (Ekaterinburg: Izdatel'stvo Ural'skogo Universiteta, 2006), 229-242, http://www.sutyajnik.ru/rus/library/sborniki/echr6/echr6.pdf

Law

1. Vienna Convention on the Law of Treaties;
2. Statute of the Council of Europe;
3. Convention for the Protection of Human Rights and Fundamental Freedoms;
4. Council of Europe. Committee of Ministers. Resolution ResDH(2004)46 concerning the judgment of the European Court of Human Rights of 4 March 2003 (final on 4 June 2003) in the case of Posokhov against the Russian Federation;
5. Recommendation Rec(2000)2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, adopted on 19 January 2000 at the 694th meeting of the Ministers' Deputies;
6. Recommendation Rec(2002)13 of the Committee of Ministers to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights, adopted on 18 December 2002 at the 822nd meeting of the Ministers' Deputies;
7. Recommendation Rec(2004)4 of the Committee of Ministers on the European Convention on Human Rights in university education and professional training, adopted on 12 May 2004 at the 114th Session of the Committee of Ministers;
8. Recommendation Rec(2004)5 of the Committee of Ministers to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights, adopted on 12 May 2004 at the 114th Session of the Committee of Ministers;
9. Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies, adopted on 12 May 2004 at the 114th Session of the Committee of Ministers;

10. Constitution of the Russian Federation of 12 December 1993;
11. Federal Law no. 3185-1 of 2 July 1992 “On Psychiatric Treatment;”
12. Federal Constitutional Law no. 1-FKZ of 28 April 1995 “On the Arbitration Courts in the Russian Federation;”
13. Federal Constitutional Law no. 1-FKZ of 31 December 1996 “On the Judicial System of the Russian Federation;”
14. Federal Law no. 101-FZ of 15 July 1995 “On the International Treaties of the Russian Federation;”
15. Federal Law no. 7-FZ of 8 January 1998 “On the Judicial Department at the Supreme Court of the Russian Federation;”
16. Federal Law no. 54-FZ of 30 March 1998 “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols Thereto;”
17. Federal Law no. 37-FZ of 2 January 2000 “On Lay Judges;”
18. Regulation by the Plenum of the Supreme Court of the Russian Federation no. 8 of 31 October 1995 “On Some Questions Concerning the Application of the Constitution of the Russian Federation by Courts;”
19. Informational Letter by the Chief Justice of the Supreme Arbitration Court of the Russian Federation no С1-7/СМП-1341 of 20 December 1999 “On the Main Provisions Applied by the European Court of Human Rights for the Protection of Property Rights and Right to Justice;”
20. Regulation by the Plenum of the Supreme Court of the Russian Federation no. 5 of 10 October 2003 on the Application by Courts of General Jurisdiction of the Generally-recognized Principles and Norms of International Law and the International Treaties of the Russian Federation;
21. Regulation by the Plenum of the Supreme Court of the Russian Federation no. 23 of 19 December 2003 ”On Court Decision;”
22. Regulation by the Plenum of the Supreme Court of the Russian Federation no. 2 of 20 January 2003 “On Some Questions Arising Concerning Adoption and Promulgation of the Civil Procedure Code of the Russian Federation.”

About the Author

Anton Burkov, holds a law degree (Urals State Law Academy), a *kandidat iuridicheskikh nauk* (Tiumen' State University), and an LL.M. (University of Essex, Chevening Scholar), and is currently a Ph.D. candidate in law (University of Cambridge, TNK-BP Kapitza Scholar). In 2001-2002, he completed the PILI/COLPI Public Interest Law Fellows Programme at Columbia University School of Law (New York). Since 1998 he has been practicing and teaching human rights law. During his nine years of practice as a human rights lawyer with the Urals Centre of Constitutional and International Human Rights Protection of the NGO Sutyajnik, Anton Burkov litigated cases in district and regional courts, the Supreme Court and the Constitutional Court of the Russian Federation. He took part in the case of Rakevich v. Russia. At the moment he serves as a legal representative in a number of cases before the European Court of Human Rights. Anton Burkov taught at the Urals State Law Academy and the Urals Institute of Economy, Management and Law, participated in many workshops as a trainer, presented papers at conferences, and published five books and more then 20 papers in major Russian law journals and in English-language law journals.

In 2000 Anton Burkov was awarded a city-wide legal prize: the "Profi-Yekaterinburg" in the area of "Jurisprudence". In 2001 he was awarded the highest legal prize in Russia, the "FEMIDA" award, "for contributions toward the creation of a democratic society and the development of state legal institutions." In 2002 he set up a human rights news agency, *Sutyajnik-Press*. The author's personal web-page is http://www.sutyajnik.ru/bal

Dr. Andreas Umland (Ed.)

SOVIET AND POST-SOVIET POLITICS AND SOCIETY

ISSN 1614-3515

This book series makes available, to the academic community and general public, affordable English-, German- and Russian-language scholarly studies of various *empirical* aspects of the recent history and current affairs of the former Soviet bloc. The series features narrowly focused research on a variety of phenomena in Central and Eastern Europe as well as Central Asia and the Caucasus. It highlights, in particular, so far understudied aspects of late Tsarist, Soviet, and post-Soviet political, social, economic and cultural history from 1905 until today. Topics covered within this focus are, among others, political extremism, the history of ideas, religious affairs, higher education, and human rights protection. In addition, the series covers selected aspects of post-Soviet transitions such as economic crisis, civil society formation, and constitutional reform.

SOVIET AND POST-SOVIET POLITICS AND SOCIETY

Edited by Dr. Andreas Umland

ISSN 1614-3515

1 *Андреас Умланд (ред.)*
Воплощение Европейской конвенции по правам человека в России
Философские, юридические и эмпирические исследования
ISBN 3-89821-387-0

2 *Christian Wipperfürth*
Russland – ein vertrauenswürdiger Partner?
Grundlagen, Hintergründe und Praxis gegenwärtiger russischer Außenpolitik
Mit einem Vorwort von Heinz Timmermann
ISBN 3-89821-401-X

3 *Manja Hussner*
Die Übernahme internationalen Rechts in die russische und deutsche Rechtsordnung
Eine vergleichende Analyse zur Völkerrechtsfreundlichkeit der Verfassungen der Russländischen Föderation und der Bundesrepublik Deutschland
Mit einem Vorwort von Rainer Arnold
ISBN 3-89821-438-9

4 *Matthew Tejada*
Bulgaria's Democratic Consolidation and the Kozloduy Nuclear Power Plant (KNPP)
The Unattainability of Closure
With a foreword by Richard J. Crampton
ISBN 3-89821-439-7

5 *Марк Григорьевич Меерович*
Квадратные метры, определяющие сознание
Государственная жилищная политика в СССР. 1921 – 1941 гг
ISBN 3-89821-474-5

6 *Andrei P. Tsygankov, Pavel A.Tsygankov (Eds.)*
New Directions in Russian International Studies
ISBN 3-89821-422-2

7 *Марк Григорьевич Меерович*
Как власть народ к труду приучала
Жилище в СССР – средство управления людьми. 1917 – 1941 гг.
С предисловием Елены Осокиной
ISBN 3-89821-495-8

8 *David J. Galbreath*
Nation-Building and Minority Politics in Post-Socialist States
Interests, Influence and Identities in Estonia and Latvia
With a foreword by David J. Smith
ISBN 3-89821-467-2

9 *Алексей Юрьевич Безугольный*
Народы Кавказа в Вооруженных силах СССР в годы Великой Отечественной войны 1941-1945 гг.
С предисловием Николая Бугая
ISBN 3-89821-475-3

10 *Вячеслав Лихачев и Владимир Прибыловский (ред.)*
Русское Национальное Единство, 1990-2000. В 2-х томах
ISBN 3-89821-523-7

11 *Николай Бугай (ред.)*
Народы стран Балтии в условиях сталинизма (1940-е – 1950-е годы)
Документированная история
ISBN 3-89821-525-3

12 *Ingmar Bredies (Hrsg.)*
Zur Anatomie der Orange Revolution in der Ukraine
Wechsel des Elitenregimes oder Triumph des Parlamentarismus?
ISBN 3-89821-524-5

13 *Anastasia V. Mitrofanova*
The Politicization of Russian Orthodoxy
Actors and Ideas
With a foreword by William C. Gay
ISBN 3-89821-481-8

14 *Nathan D. Larson*
Alexander Solzhenitsyn and the Russo-Jewish Question
ISBN 3-89821-483-4

15 *Guido Houben*
Kulturpolitik und Ethnizität
Staatliche Kunstförderung im Russland der neunziger Jahre
Mit einem Vorwort von Gert Weisskirchen
ISBN 3-89821-542-3

16 *Leonid Luks*
Der russische „Sonderweg“?
Aufsätze zur neuesten Geschichte Russlands im europäischen Kontext
ISBN 3-89821-496-6

17 *Евгений Мороз*
История «Мёртвой воды» – от страшной сказки к большой политике
Политическое неоязычество в постсоветской России
ISBN 3-89821-551-2

18 *Александр Верховский и Галина Кожевникова (ред.)*
Этническая и религиозная интолерантность в российских СМИ
Результаты мониторинга 2001-2004 гг.
ISBN 3-89821-569-5

19 *Christian Ganzer*
Sowjetisches Erbe und ukrainische Nation
Das Museum der Geschichte des Zaporoger Kosakentums auf der Insel Chortycja
Mit einem Vorwort von Frank Golczewski
ISBN 3-89821-504-0

20 *Эльза-Баир Гучинова*
Помнить нельзя забыть
Антропология депортационной травмы калмыков
С предисловием Кэролайн Хамфри
ISBN 3-89821-506-7

21 *Юлия Лидерман*
Мотивы «проверки» и «испытания» в постсоветской культуре
Советское прошлое в российском кинематографе 1990-х годов
С предисловием Евгения Марголита
ISBN 3-89821-511-3

22 *Tanya Lokshina, Ray Thomas, Mary Mayer (Eds.)*
The Imposition of a Fake Political Settlement in the Northern Caucasus
The 2003 Chechen Presidential Election
ISBN 3-89821-436-2

23 *Timothy McCajor Hall, Rosie Read (Eds.)*
Changes in the Heart of Europe
Recent Ethnographies of Czechs, Slovaks, Roma, and Sorbs
With an afterword by Zdeněk Salzmann
ISBN 3-89821-606-3

24 *Christian Autengruber*
Die politischen Parteien in Bulgarien und Rumänien
Eine vergleichende Analyse seit Beginn der 90er Jahre
Mit einem Vorwort von Dorothée de Nève
ISBN 3-89821-476-1

25 *Annette Freyberg-Inan with Radu Cristescu*
The Ghosts in Our Classrooms, or: John Dewey Meets Ceauşescu
The Promise and the Failures of Civic Education in Romania
ISBN 3-89821-416-8

26 *John B. Dunlop*
The 2002 Dubrovka and 2004 Beslan Hostage Crises
A Critique of Russian Counter-Terrorism
With a foreword by Donald N. Jensen
ISBN 3-89821-608-X

27 *Peter Koller*
Das touristische Potenzial von Kam''janec'–Podil's'kyj
Eine fremdenverkehrsgeographische Untersuchung der Zukunftsperspektiven und Maßnahmenplanung zur Destinationsentwicklung des „ukrainischen Rothenburg"
Mit einem Vorwort von Kristiane Klemm
ISBN 3-89821-640-3

28 *Françoise Daucé, Elisabeth Sieca-Kozlowski (Eds.)*
Dedovshchina in the Post-Soviet Military
Hazing of Russian Army Conscripts in a Comparative Perspective
With a foreword by Dale Herspring
ISBN 3-89821-616-0

29 *Florian Strasser*
Zivilgesellschaftliche Einflüsse auf die Orange Revolution
Die gewaltlose Massenbewegung und die ukrainische Wahlkrise 2004
Mit einem Vorwort von Egbert Jahn
ISBN 3-89821-648-9

30 *Rebecca S. Katz*
The Georgian Regime Crisis of 2003-2004
A Case Study in Post-Soviet Media Representation of Politics, Crime and Corruption
ISBN 3-89821-413-3

31 *Vladimir Kantor*
Willkür oder Freiheit
Beiträge zur russischen Geschichtsphilosophie
Ediert von Dagmar Herrmann sowie mit einem Vorwort versehen von Leonid Luks
ISBN 3-89821-589-X

32 *Laura A. Victoir*
The Russian Land Estate Today
A Case Study of Cultural Politics in Post-Soviet Russia
With a foreword by Priscilla Roosevelt
ISBN 3-89821-426-5

33 *Ivan Katchanovski*
Cleft Countries
Regional Political Divisions and Cultures in Post-Soviet Ukraine and Moldova
With a foreword by Francis Fukuyama
ISBN 3-89821-558-X

34 *Florian Mühlfried*
Postsowjetische Feiern
Das Georgische Bankett im Wandel
Mit einem Vorwort von Kevin Tuite
ISBN 3-89821-601-2

35 *Roger Griffin, Werner Loh, Andreas Umland (Eds.)*
Fascism Past and Present, West and East
An International Debate on Concepts and Cases in the Comparative Study of the Extreme Right
With an afterword by Walter Laqueur
ISBN 3-89821-674-8

36 *Sebastian Schlegel*
Der „Weiße Archipel“
Sowjetische Atomstädte 1945-1991
Mit einem Geleitwort von Thomas Bohn
ISBN 3-89821-679-9

37 *Vyacheslav Likhachev*
Political Anti-Semitism in Post-Soviet Russia
Actors and Ideas in 1991-2003
Edited and translated from Russian by Eugene Veklerov
ISBN 3-89821-529-6

38 *Josette Baer (Ed.)*
Preparing Liberty in Central Europe
Political Texts from the Spring of Nations 1848 to the Spring of Prague 1968
With a foreword by Zdeněk V. David
ISBN 3-89821-546-6

39 *Михаил Лукьянов*
Российский консерватизм и реформа, 1907-1914
С предисловием Марка Д. Стейнберга
ISBN 3-89821-503-2

40 *Nicola Melloni*
Market Without Economy
The 1998 Russian Financial Crisis
With a foreword by Eiji Furukawa
ISBN 3-89821-407-9

41 *Dmitrij Chmelnizki*
Die Architektur Stalins
Bd. 1: Studien zu Ideologie und Stil
Bd. 2: Bilddokumentation
Mit einem Vorwort von Bruno Flierl
ISBN 3-89821-515-6

42 *Katja Yafimava*
Post-Soviet Russian-Belarussian Relationships
The Role of Gas Transit Pipelines
With a foreword by Jonathan P. Stern
ISBN 3-89821-655-1

43 *Boris Chavkin*
Verflechtungen der deutschen und russischen Zeitgeschichte
Aufsätze und Archivfunde zu den Beziehungen Deutschlands und der Sowjetunion von 1917 bis 1991
Ediert von Markus Edlinger sowie mit einem Vorwort versehen von Leonid Luks
ISBN 3-89821-756-6

44 *Anastasija Grynenko in Zusammenarbeit mit Claudia Dathe*
Die Terminologie des Gerichtswesens der Ukraine und Deutschlands im Vergleich
Eine übersetzungswissenschaftliche Analyse juristischer Fachbegriffe im Deutschen, Ukrainischen und Russischen
Mit einem Vorwort von Ulrich Hartmann
ISBN 3-89821-691-8

45 *Anton Burkov*
The Impact of the European Convention on Human Rights on Russian Law
Legislation and Application in 1996-2006
With a foreword by Françoise Hampson
ISBN 978-3-89821-639-5

FORTHCOMING (MANUSCRIPT WORKING TITLES)

Stephanie Solowyda
Biography of Semen Frank
ISBN 3-89821-457-5

Margaret Dikovitskaya
Arguing with the Photographs
Russian Imperial Colonial Attitudes in Visual Culture
ISBN 3-89821-462-1

Stefan Ihrig
Welche Nation in welcher Geschichte?
Eigen- und Fremdbilder der nationalen Diskurse in der Historiographie und den Geschichtsbüchern in der Republik Moldova, 1991-2003
ISBN 3-89821-466-4

Sergei M. Plekhanov
Russian Nationalism in the Age of Globalization
ISBN 3-89821-484-2

Robert Pyrah
Cultural Memory and Identity
Literature, Criticism and the Theatre in Lviv - Lwow - Lemberg, 1918-1939 and in post-Soviet Ukraine
ISBN 3-89821-505-9

Andrei Rogatchevski
The National-Bolshevik Party
ISBN 3-89821-532-6

Zenon Victor Wasyliw
Soviet Culture in the Ukrainian Village
The Transformation of Everyday Life and Values, 1921-1928
ISBN 3-89821-536-9

Nele Sass
Das gegenkulturelle Milieu im postsowjetischen Russland
ISBN 3-89821-543-1

Julie Elkner
Maternalism versus Militarism
The Russian Soldiers' Mothers Committee
ISBN 3-89821-575-X

Maryna Romanets
Displaced Subjects, Anamorphosic Texts, Reconfigured Visions
Improvised Traditions in Contemporary Ukrainian and Irish Literature
ISBN 3-89821-576-8

Alexandra Kamarowsky
Russia's Post-crisis Growth
ISBN 3-89821-580-6

Martin Friessnegg
Das Problem der Medienfreiheit in Russland seit dem Ende der Sowjetunion
ISBN 3-89821-588-1

Nikolaj Nikiforowitsch Borobow
Führende Persönlichkeiten in Russland vom 12. bis 20 Jhd.: Ein Lexikon
Aus dem Russischen übersetzt und herausgegeben von Eberhard Schneider
ISBN 3-89821-638-1

Martin Malek, Anna Schor-Tschudnowskaja
Tschetschenien und die Gleichgültigkeit Europas
Russlands Kriege und die Agonie der Idee der Menschenrechte
ISBN 3-89821-676-4

Christopher Ford
Borotbism A Chapter in the History of the Ukrainian Revolution
ISBN 3-89821-697-7

Taras Kuzio, Paul D'Anieri (Hrsg.)
Aspects of the Orange Revolution I: Regime Politics and Democratization in Ukraine
ISBN 3-89821-698-5

Bohdan Harasymiw, Oleh S. Ilnytzkyj (Hrsg.)
Aspects of the Orange Revolution II: Analyses of the 2004 Ukrainian Presidential Elections
ISBN 3-89821-699-3

Togzhan Kassenova
Cooperative Security in the Post-Cold War International System
The Cooperative Threat Reduction Process
ISBN 3-89821-707-8

Andreas Langenohl
Political Culture and Criticism of Society
Intellectual Articulations in Post-Soviet Russia
ISBN 3-89821-709-4

Marlies Bilz
Tatarstan in der Transformation, 1988-1994
ISBN 3-89821-722-1

Thomas Borén
Meeting Places in Transformation
ISBN 3-89821-739-6

Lars Löckner
Sowjetrussland in der Beurteilung der Emigrantenzeitung 'Rul', 1920-1924
ISBN 3-89821-741-8

Ekaterina Taratuta
The Red Line of Construction
Semantics and Mythology of a Siberian Heliopolis
ISBN 3-89821-742-6

Stina Torjesen, Indra Overland (Hrsg.)
International Election Observers in Azerbaijan
Geopolitical Pawns or Agents of Change?
ISBN 3-89821-743-4

Bernd Kappenberg
Zeichen setzen für Europa
Der Gebrauch europäischer lateinischer Sonderzeichen in der deutschen Öffentlichkeit
ISBN 3-89821-749-3

Series Subscription

Please enter my subscription to the series *Soviet and Post-Soviet Politics and Society*, ISSN 1614-3515, as follows:

❒ complete series OR ❒ English-language titles
❒ German-language titles
❒ Russian-language titles

starting with
❒ volume # 1
❒ volume # ___
❒ please also include the following volumes: #___, ___, ___, ___, ___, ___, ___
❒ the next volume being published
❒ please also include the following volumes: #___, ___, ___, ___, ___, ___, ___

❒ 1 copy per volume OR ❒ ___ copies per volume

Subscription within Germany:

You will receive every volume at 1st publication at the regular bookseller's price – incl. s & h and VAT.
Payment:
❒ Please bill me for every volume.
❒ Lastschriftverfahren: Ich/wir ermächtige(n) Sie hiermit widerruflich, den Rechnungsbetrag je Band von meinem/unserem folgendem Konto einzuziehen.

Kontoinhaber: _____Kreditinstitut: _____
Kontonummer: _____Bankleitzahl:_____

International Subscription:

Payment (incl. s & h and VAT) in advance for
❒ 10 volumes/copies (€ 319.80) ❒ 20 volumes/copies (€ 599.80)
❒ 40 volumes/copies (€ 1,099.80)
Please send my books to:

NAME_____DEPARTMENT_____
ADDRESS _____
POST/ZIP CODE_____COUNTRY _____
TELEPHONE _____EMAIL_____

date/signature_____

A hint for librarians in the former Soviet Union: Your academic library might be eligible to receive free-of-cost scholarly literature from Germany via the German Research Foundation. For Russian-language information on this program, see
http://www.dfg.de/forschungsfoerderung/formulare/download/12_54.pdf.

Please fax to: **0511 / 262 2201 (+49 511 262 2201)**
or mail to: ***ibidem***-Verlag, Julius-Leber-Weg 11, D-30457 Hannover,Germany
or send an e-mail: ibidem@ibidem-verlag.de

ibidem-Verlag
Melchiorstr. 15
D-70439 Stuttgart

info@ibidem-verlag.de

www.ibidem-verlag.de
www.edition-noema.de
www.autorenbetreuung.de