

PROTECTING RIGHTS IN STRASBOURG: DEVELOPING A RESEARCH AGENDA FOR ANALYZING INTERNATIONAL LITIGATION FROM RUSSIA

Freek van der Vet

Freek van der Vet is a researcher at the Aleksanteri Institute, University of Helsinki, Finland. Address for correspondence: Aleksanteri Institute, P.O. Box 42 (Unioninkatu 33), FI-00014 University of Helsinki, Finland. freek.vandervet@helsinki.fi.

The Russian Federation has the most cases pending before the European Court of Human Rights in Strasbourg. Recent studies on the rule of law in Russia indicate that Russians are vigorously litigating before domestic courts and national human rights institutions, despite low levels of trust in the judicial system. Yet, is claim making inside the country the cause of the burgeoning caseload pending before the Court? This review essay evaluates the different types of judgments and claims coming from Russia and maps out recent literature on the various types of litigation with the European Court of Human Rights. In particular, it puts forward a research agenda for studying the actors behind litigation and the types of cases they bring to the Court. Furthermore, the essay proposes how we might analyze some of these complaints before the ECtHR from a sociolegal perspective.

Keywords: European Court of Human Rights; European Convention on Human Rights; Public Interest Litigation; Rule of Law; Implementation; Russian Federation

After the Cold War, the Council of Europe (CoE)—Europe’s main international human rights institution—had to cope with the integration of former socialist Eastern European countries. To handle the growing flow of applications from these recently overturned legal systems, the CoE set up a new European Court of Human Rights (hereafter, ECtHR or “the Court”) in 1998, granting citizens the right to lodge individual complaints before the Court under Protocol No. 11 (Madsen 2007:155). The Court’s establishment created a regional forum where claimants could confront their state after failing to receive a remedy before domestic courts, alleging that their state has violated their rights as guaranteed under the European Convention on Human Rights (henceforth “the Convention”). The ECtHR is responsible for provoking thousands of policy changes in the 47 member states of the CoE (Stone Sweet and Keller 2008), but it has also become a popular instrument whereby citizens seek remediation through litigation.

Russian complaints with the ECtHR in particular evoke two general observations. First, some legal cultures are more litigious than others (Greer 2013). Among the Council of Europe's member states, Russia holds top place in the list of countries with pending applications. A second often-repeated observation is that the Russian government only partially implements the Court's rulings. For instance, the CoE's Committee of Ministers (CoM) often criticizes the Russian state for carrying out investigations of violations ineffectively at the domestic level. Especially in judgments concerning the second violent conflict in the Chechen Republic, the Court's judgments have only slowly been implemented beyond the payment of financial compensation (Committee of Ministers 2007; Issaeva, Sergeeva, and Suchkova 2011; Lapitskaya 2011). Courtney Hillebrecht (2012) terms this selective practice as "à la carte compliance"; some Russian lawyers classify it as a "tax on impunity" (Van der Vet 2013). Despite numerous applications from Russians, hopes of receiving a favorable judgment from the ECtHR appear unjustified, given that most complaints (more than 98 percent) never result in a favorable decision. High inadmissibility rates are common among member states and are not exclusively related to Russia. Moreover, a typical Russian application takes four to seven years to process at the Court. These rather bleak prospects of receiving a judgment—often following a prolonged legal process at home—does not appear to prevent Russian litigants from pursuing justice at the ECtHR.

I examine this problem by first reviewing the recent literature on Russian litigation before the Court and by defining the various types of cases lodged by Russians.¹ Second, I analyze some of Russia's responses to the Court's rulings. In a third section, I branch out to argue that to fully understand the effects of international litigation we need to analyze the intentions and strategies of the actors behind litigation instead of solely depending on legal analyses of the products of litigation, the ECtHR's case law. I conclude by suggesting that the study of international human rights litigation would benefit from engagement with social scientific literature on the dynamics of human rights practice (Merry 2006) and with studies on cause lawyering (McCann 2006; Sarat and Scheingold 2005).

THE ECtHR IN THE RUSSIAN FEDERATION: THREE TYPES OF JUDGMENTS

Previous research suggests that Russians view the Court as a powerful site for the pursuit of justice that has failed at home (Trochev 2009). Certainly, the Court has a strong symbolic value in that it may counter any domestic court's decision or provide financial compensation to the individual applicant. Laura Henry (2012) stresses this as part of a larger social trend: Russians, in general, favor making legal claims before courts over participation in political party activities, as litigation appears nonpolitical. Little doubt exists over the litigiousness of Russian citizens in Strasbourg: by

¹ Parts of this review essay are based on the introduction to the author's doctoral dissertation "Finding Justice at the European Court of Human Rights: The Dynamics of Strategic Litigation and Human Rights Defense in the Russian Federation," University of Helsinki, 2014.

December 2013, 16.8 percent (16,813 out of 99,900) of the total complaints pending before the ECtHR are applications against the Russian Federation (European Court of Human Rights 2014). However, looking at the number of applications per capita, with 0.86 applications per 10,000 citizens, Russia naturally scores lower in comparison with several southeast European countries, for instance Romania (11). The Russian caseload consists of, broadly, three types of cases: repeat cases, high-profile cases, and strategic litigation cases.

First, most of the cases coming from Russia are considered repeat applications (Leach 2007). Besides the litigiousness of Russian citizens, two internal challenges within the Court account for this surge of repeat applications: first, the way the Court has failed to make a narrower selection of applications in the past, and second, most cases coming from the 47 member states are so-called clone cases (Leach 2009:727). Clone cases are applications that concern issues on which the Court previously made decisions, and they come from most member countries, not just from Russia (Leach 2007). Because of their repetitive character, they may have limited impact on the scope of the Convention. Sperling (2009:269) argues that because no adequate legal reforms have been made to prevent the repetition of certain violations, clone cases will continue to come in from Russia.

Second, besides clone cases, Russia has been faced with high-profile claims that fetch widespread media attention. Such cases include the various claims of infamous oligarch Mikhail Khodorkovskii, who complained before the Court about his right to a fair trial during the many corruption proceedings against him. In his first complaint, Khodorkovskii and his lawyers claimed that the trial against him and his 14-year prison sentence were politically motivated and would, therefore, violate Article 18 of the Convention. The democratic political opposition and members of civil society in particular deemed the trial against Khodorkovskii to be politically motivated and campaigned for many years for his release. In their view, he was imprisoned as a result of his involvement in financing democratic political parties, such as *Soiuz Pravykh Sil* (Union of Rightist Forces) and the Democratic Party *Yabloko* (White 2006). However, the ECtHR disagreed: besides finding several violations in the lengthy court proceedings and access to legal representation, the Court ruled that there was no political motivation behind the first trial, as there was sufficient evidence against Khodorkovskii to bring him to trial.²

A third group of applications originates from the work of litigation projects. These cases are primarily lodged by a group of three NGOs and less so by individual applicants (Mayer 2011). NGO litigation differs from individual claim making for three reasons. First, these organizations often represent a larger group of claimants that have suffered the same systemic violations (Hodson 2011). Second, NGOs that repeatedly lodge claims have the opportunity to tinker with the broader societal impacts that litigation might have (Galanter 1974). Third, they are often involved in

² Khodorkovskiy v. Russia, App. No. 5829/04, Eur. Ct. H.R. (2011), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-104983>.

transnational networks of legal specialists, which enhances their capacity to bring large numbers of cases before the Court (Van der Vet 2012).

Beginning in the early 2000s, several Russian human rights NGOs have included litigation projects in their campaigns, employing lawyers who litigate on behalf of victims of grave atrocities. For example, the human rights society Memorial began collaborating with the London-based European Human Rights Advocacy Centre, giving legal aid to victims of the second conflict in the Chechen Republic (1999–2009). Earlier studies predicted that the increasing number of Chechen applications would be a challenge to the Court (Goldhaber 2007). But, while these cases have not lost their urgency, cases from Chechnya are not the sole reason for the strenuous relation between the Court and the Russian Federation.³ The overall majority of the cases won by these NGOs between 2005 and 2014 concern the complaints of relatives of people who disappeared after unacknowledged detention. Through their international litigation on such cases, these NGOs were able to expand the scope of the European Convention, especially by determining under which circumstances a disappearance can be considered a violation of the right to life (Article 2) (Barrett 2009; Van der Vet 2012). Another branch of NGOs, such as the Yekaterinburg-based organization *Sutiazhnik*,⁴ aims to expand the knowledge of Russian judges on the European Convention and the citation of ECtHR case law in domestic judgments (Burkov 2007; McIntosh Sundstrom 2012:258). Lisa McIntosh Sundstrom reports that “an important additional pressure on judges was provided by a 2003 resolution of the Plenum of the Supreme Court of Russia that clearly instructed judges on their obligations to know and apply ECtHR case law to their own cases” (2012:258). Initially, due to a lack of a Russian language translation of ECtHR judgments in the Court’s HUDOC database, domestic judges had limited opportunities to familiarize themselves with the Court’s case law (McIntosh Sundstrom 2012). In April 2014, the Court partly removed this obstacle by launching a Russian version of HUDOC, with a growing number of translations (RAPSI 2014).

The Russian government has various responses to these judgments. Some judgments provoke more national criticism than others, especially when the Court criticizes the conduct of higher national courts, such as the Constitutional Court of the Russian Federation.

RUSSIA RESPONDS TO THE COURT

The ECtHR is a powerful international court that acts as a platform for resolving domestic struggles and individual complaints against the state. Its judgments are, however, also a source of increasing nuisance for the various CoE member states, including Russia and the UK. The ECtHR is certainly a powerful instrument for confronting the state for relatively weak actors such as NGOs.

³ Arguably, despite the tragic violations in Chechen applications that demand international attention and remedy, they have become, for the Court, repetitive.

⁴ *Sutiazhnik* means someone who likes to sue in order to obtain something, to achieve benefits for themselves.

Especially since the conflict in Ukraine, the CoE has hardened its stance against the Russian Federation. On April 10, 2014, in an unusual act of opposition, the Parliamentary Assembly of the Council of Europe (PACE) suspended the voting rights of the Russian Federation in an attempt to sanction the country for its annexation of Crimea. This suspension stipulates that Russia has lost its representation in the PACE and its ability to operate in election monitoring missions until January 26, 2015. The only other time that the PACE took such a position against Russia was when it suspended the country's application for membership to the CoE in 1996 due to military activities in the Chechen Republic. Pamela Jordan (2003), however, found that the CoE's stance on the Chechen conflicts was rather disingenuous. It sent Russia mixed messages in 1999 after the country launched its antiterrorist operation in Chechnya, when it first suggested that Russia had the right to intervene in the Chechen Republic to protect Russian citizens but later criticized Russia's course of action (Jordan 2003:683). Jordan (2003:684) also argues that by sending a mission to Chechnya to monitor the human rights situation there the CoE decided to abandon taking more radical measures, such as expelling Russia from the Council.

Overall, however, the ECtHR's judgments have been a source of domestic criticism against the interference of international institutions. This issue arises not only in Russia. The United Kingdom and Turkey are examples of other countries where politicians often see the Court as meddling in domestic affairs.⁵ These countries have often chosen to pay financial compensation but resisted further implementation, such as reopening domestic investigations, issuing apologies, or starting truth and reconciliation proceedings (Hillebrecht 2012). Some Russian officials have voiced their criticism of the Court in recent years. Especially following the case *Konstantin Markin v. Russia*,⁶ a debate began concerning the ECtHR's influence on Russia's domestic affairs. In this case, Konstantin Markin, a radio intelligence operator in the Russian army who was divorced with three children, was denied parental leave by the Russian military on the grounds that such a leave can only be granted to female personnel. Eventually, Markin brought his case to the Constitutional Court of the Russian Federation, claiming that denial of parental leave is unconstitutional, violating the principle of equality between men and women. The Constitutional Court, in response, rejected his application in 2009, arguing that by signing a military contract he had abandoned some of his civil liberties. After bringing his case to Strasbourg, the Grand Chamber of the ECtHR ruled in Markin's favor and argued that the denial of parental leave was a violation of Article 14 (prohibition of discrimination) and Article 8 (right to private and family life) of the Convention. The ECtHR's ruling provoked a critique from Valerii Zor'kin, president of the Constitutional Court (Zor'kin 2010). In

⁵ See for instance the dispute between the United Kingdom and the Court on the voting rights of prisoners in two recent cases (*Hirst v. the United Kingdom* [No.2], App. No. 74025/01, Eur. Ct. H.R. [2005], <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70442>; *Greens and M.T. v. the United Kingdom*, App. Nos. 60041/08 and 60054/08, Eur. Ct. H.R. [2010], <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101853>).

⁶ *Konstantin Markin v. Russia*, App. No. 30078/06, Eur. Ct. H.R. (2012), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109868>.

his written response, Zor'kin criticized the ECtHR for meddling into what he saw as domestic affairs. Soon thereafter, speaker of the Federation Council Aleksandr Torshin proposed a bill that would limit the influence of the ECtHR on Russia's jurisdiction and Constitution (Russia Today 2011).

The complaints before the Court are opportunities for individuals and NGOs to seek leverage in their domestic campaigns (Van der Vet 2014). The ECtHR has become a stage upon which the individual can confront the state. Viewing the Court in such way opens up several additional avenues for inquiry into complaint making.

DEVELOPING TWO SOCIAL-LEGAL RESEARCH AGENDAS: IMPACT AND AGENCY

This section proposes two research agendas that will go beyond legal studies of the Court's case law: first, an analysis of the effects of litigants' strategies on the claim-making process; and second, an analysis of the social life and impact of the Court's judgments. Social scientists and sociolegal researchers should claim space to examine the actors that operate behind claim making. They could analyze (a) how Russians perceive the ECtHR and their motivation to take their complaints to the international level and (b) how the ECtHR might have an impact on Russia's legal culture and litigious consciousness. Such a perspective would enrich the literature on Russian law by examining how claim making in the Russian Federation reflects the development of the rule of law (Hendley 2009; Henry 2012; Kurkchian 2009).

ANALYZING THE ACTORS BEHIND LITIGATION

Analyses of the ECtHR have given insight into the creative nature of the Convention system (Mowbray 2005), the involvement of human rights experts in the reform of the Convention system (Madsen 2007), and its shifting stance vis-à-vis the Russian Federation (Bowring 2009; Leach 2007). Besides analyzing the fruits of litigation—the judgments—I argue here that the actors behind litigation often put their stamp on the case. Arguably, all litigants have their own expectations about the impact of their complaints with the ECtHR, be it financial compensation or recognizing their claims of human rights violations. The ECtHR judgments are those cases that made it through the selection process of lawyers and the ECtHR and have failed to find recourse before domestic courts. People can only apply to the Court when their complaint is based on the European Convention, when they have exhausted all domestic remedies, and when they file an application no later than six months after a domestic higher court's final judgment. NGOs and lawyers often handle applications with sufficient evidence and that are illustrative of a systemic human rights problem (Van der Vet 2012). Individuals who receive a final judgment in their application belong to the 1–2 percent of applications that make it through the selection process and are, therefore already, a “privileged” group.

A first group of applicants are those that “fail” to result in a final judgment. While most studies focus on the official decisions by the Chamber Court, Grigorii Dikov's study (2009) analyzes the majority of cases that are rejected by the Committee of the Court. The Court disposed most of these applications during the admissi-

bility stage based on administrative errors. The author compares his own data with an official report published in 2008 by Center for Political Technologies (Tsentr politicheskikh tekhnologii) in Moscow. Dikov found that only 3 of the 250 cases in his dataset were brought before the Court by lawyers and that the majority of these applications were filed by men who were either prisoners or connected to the Ministry of the Interior or the Ministry of Defense. Dikov (2009) furthermore explains why these applications fail: in the majority of these cases, applicants chose to appoint nonprofessional representatives, which ostensibly resulted in a low success rate for their applications; another reason may be that these claims do not concern violations of political and civil rights granted by the Convention. Within this category fall those cases that do result in a judgment but are clones of earlier cases on which the ECtHR already made a decision. Vladislav Starzhenetskii (2012) found that Russian judgments are often clones and cluster around several human rights issues. The first of these issues concerns the nonenforcement of judgments and excessive length of domestic legal proceedings (Article 6). A second group of complaints is related to the overcrowding of prison cells, denial of medical care to inmates, and insufficient sanitary facilities in penal institutions (Article 3). A third breach concerns issues surrounding the right to property (Article 1 of Protocol No. 1 to the Convention) (Starzhenetskii 2012).

A second group comprises successful citizen applications that became high-profile cases and pilot judgments. The pilot-judgment procedure of the Court addresses repeat applications by requesting that the respondent state eliminate a structural problem.⁷ The first judgment against Russia, *Burdov v. Russia*,⁸ led to *Burdov v. Russia (No. 2)*,⁹ a pilot judgment. The ECtHR issues pilot-judgment procedures in cases that concern widely experienced violations. In these judgments, the Court stipulates in greater clarity which steps the respondent states should make in order to prevent future similar violations. Anatolii Burdov worked in the cleanup operations following the Chernobyl disaster in 1986. Because he worked in an area with nuclear emissions, he was entitled to social benefits. In his first complaint to the ECtHR, he claimed that the Russian authorities had failed to pay those benefits on time. In the second complaint, the ECtHR took up the *Burdov v. Russia* case again to deal with a growing number of similar cases on the nonenforcement of domestic judgments concerning social benefits. It turned out that Burdov continued to assist other people with lodging similar complaints before the Court (Kovler 2012).

⁷ "The Pilot-Judgment Procedure," information note issued by the Registrar of the European Court of Human Rights (2009) (http://www.echr.coe.int/Documents/Pilot_judgment_procedure_ENG.pdf). In addition, except in pilot judgments, the ECtHR rarely formulates in clear terms which reforms the respondent state should make in order to prevent future violations. Some have argued for using the example of the Inter-American Court of Human Rights, as this tribunal stipulates in greater detail how its judgments should be executed (Koroteev 2010; Sandoval 2012).

⁸ *Burdov v. Russia*, App. No. 59498/00, Eur. Ct. H.R. (2002), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60449>.

⁹ *Burdov v. Russia (No. 2)*, App. No. 33509/04, Eur. Ct. H.R. (2009), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90671>.

A third group comprises applications lodged by NGOs and activist lawyers. The study of Russian litigation before the ECtHR would benefit from a closer look at the sociolegal literature on cause-lawyering or public interest litigation (Hershkoff 2009; McCann 2006; Sarat and Scheingold 2006a). In particular, the strategic litigation of NGOs rests on an interpretation of law that acknowledges the gap between “law by the books” and “law on the ground” (Hershkoff, n.d.). They often lodge strategic cases in order to incite social change or alter law enforcement practices. Activists in general operate within a spectrum of interests and needs. They have to, first, negotiate their commitment to the needs of victims and human rights; second, meet the requirements of foreign funders that often have their own agenda; and third, perform their work in an often violent and politically restrictive context (Abu-Lughod 2013:158–159). International lawyers operate within a similar field.

International litigation differs from domestic litigation for three reasons. First, in her study on NGO litigation before the Court, Loveday Hodson argues that much of our understanding of complaints with the ECtHR rests on a narrow assumption of the individualistic nature of complaining; we assume that most cases have been brought by individuals pursuing justice. According to her, this perspective is inadequate when studying NGOs (Hodson 2011). NGOs often represent a large number of applicants. Second, Hodson (2013:268) reveals that most successful claims made under Article 2 (the right to life) and Article 3 (prohibition of torture) of the Convention are brought by NGOs. The NGO claims from Russia seem to reflect this trend, as most of these complaints focus on violations of fundamental human rights (Mayer 2011; McIntosh Sundstrom 2012; Van der Vet 2012). Finally, as opposed to the individual applicant, an NGO often nurtures strategic goals for a collection of complaints (Cichowski 2011; Sarat and Scheingold 2006b). NGOs are often selective in the cases they represent (Bukovská 2008; Van der Vet 2014), and their litigation is strategic in the sense that it goes beyond seeking individual remedies for victims (Hershkoff 2009). Instead, their strategic litigation aims to mend law-enforcement practices, expand the scope of the European Convention, push for new legislation, or address systemic violations (Hershkoff, n.d.).

The analysis of human rights complaints to the Court faces several difficulties. First, the study of human rights litigation can be rather delicate work, as it remains hidden from the public eye. Another difficulty is that the complaints are not readily available except directly from the applicant or their legal representative. However, analyzing the actors that inform the litigation process can give greater insight into the intended impact and strategic nature of international litigation.

REASSESSING IMPLEMENTATION: APPLICANTS AND SOCIAL CONTEXT

The burgeoning caseload before the Court raises questions about the future of the Court within Europe and its impact on the national level. Scholars have questioned whether the Court should provide remediation for individual victims or, rather, become a European constitutional court that would be more selective in the cases it hears but ultimately have more power over governments to guarantee human rights

protection (Greer 2013; Greer and Wildhaber 2012; Wildhaber 2011). Steven Greer (2013) found that social scientists have not shown much interest in examining the Convention system. He states that “studies of the Council of Europe and the ECtHR remain overwhelmingly dominated by lawyers and jurists with their traditional concern for normative and procedural issues and a disappointing lack of professional interest in the wider picture” (Greer 2013:150–151). He then proposes a sociolegal research agenda for studying the impact of the European Court of Human Rights through country-specific case studies.

Studying impact matters for understanding how governments cope with international criticism about their human rights record. In her recent study Hillebrecht (2014) reframes the question “Why does Russia not implement the Court’s judgments?” to “Why does Russia implement judgments at all?” She gives two explanations for this “à la carte compliance” (Hillebrecht 2012): First, Russia is trying to deflect international criticism by partially implementing the judgments and paying financial compensation. Second, and more fascinatingly, Hillebrecht argues that by executing part of the ECtHR’s judgments Russia creates a platform on which it can criticize the conduct of the CoE and the ECtHR (Hillebrecht 2014). The practice of admitting that a human rights violation has taken place but simultaneously criticizing the legal categorization is a common counternarrative used by governments against critical human rights reports or the judgments of international courts: for example, “the event happened, but it was not genocide” (Cohen 1996). Accordingly, the judgments of the European Court are not only a criticism against Russia, but partial implementation can also become a platform for Russia to criticize the influence of international courts on its domestic policies. In this sense, the implementation of human rights is not a one-way linear process but an interaction (Saari 2009).

Impact can also go beyond the implementation of individual judgments or the mending of national legislation: the ECtHR’s judgments can work as leverage for domestic campaigns by human rights organizations or impact processes of transitional justice—how societies cope in the aftermath of violent conflict through truth commissions or trials (Roht-Arriaza 2006). In the Chechen cases, other NGOs have picked up the ECtHR’s judgments to advocate for the prosecution of perpetrators and the establishment of an electronic database of violations (Van der Vet 2013). For local newspapers, the ECtHR provides an opportunity for resistance. Eleanor Bindman (2013) argues that while Russian discourse is predominantly critical towards the Court, some newspapers seize the Court’s Chechen judgments as grounds for writing critical articles on the government. The ECtHR’s judgments are, therefore, not an endpoint for the individual claimant, but a successful claim can grow into sustained claims from other actors (McIntosh Sundstrom 2012; Van der Vet 2013).

A second complication arises when we look at the litigation process from the perspective of the victim or applicant. The distance between the applicant and their legal representative can be greater as some of the litigation projects do not have their offices in the same country as the victims (Bukovská 2008; Hodson 2011). Relatedly, the distance between the lived experience of the victim and the abstract machinery and language of an international court can be great. Human rights practitioners who “stand

in the middle” have an important part to play in the translation of human rights from the institutional level to the community level (Merry 2006). As to the social context of the applicant, conflicts can arise between the intentions of the legal representative and those of the victim and his family (Bukovská 2008). In his study on relatives of the disappeared in Nepal, Simon Robins (2011, 2012) found that while legal councilors often have dominant normative ideas about providing legal remedy to the individual, the impact of a disappearance confronts the family of the disappeared and his community in ways that exceed individual damages. Their communities might not perceive the disappearance as a violation of human rights but believe a person’s disappearance to be connected to his collaboration with terrorists; this belief can have a significant impact on how the rest of the community treats the family of the disappeared (Robins 2011). Indeed, these societal consequences of human rights violations are difficult to measure and possibly even harder to remedy.

The problem of distance raises vital questions in the study of complaint making: who is actually making the complaint and influencing its outcome? How can we assess how these judgments affect the lives of an individual applicant or the community they live in (Bukovská 2008)? Besides the legal representatives, other actors may have a say in the selection of cases. Foreign funders often influence, for better or worse, the human rights issues an NGO works with (McIntosh Sundstrom 2006). During the early 2000s a number of scholars assessed the impact of foreign funders on the building of civil society and democracy in Russia (Hemment 2004; Henderson 2003; McIntosh Sundstrom 2006). Particularly, McIntosh Sundstrom (2006) pointed out that the values of these funders are often mismatched with the realities and needs of NGOs on the local level. Despite the fact that in the current political climate it has become increasingly controversial to mention foreign funding for Russia’s NGO sector, litigation projects are still partially dependent on international support (Van der Vet 2014). In these circumstances, assessing impact can become complicated.

CONCLUSION

This essay reviewed recent literature on human rights litigation before the ECtHR. In particular, it argued that to understand the effects of international litigation we need to analyze the intentions and strategies of the actors behind litigation. There are two reasons why: First, this will give us insight into the *intended* strategies of these actors on the impact of human rights litigation at the local level. Second, it will provide insights into the *unintended* consequences of human rights litigation and to what extent this type of human rights protection can provide remedies for the individual applicant and his or her community. As the ECtHR is concerned with its own power, impact, and wider future role in Europe, we might consider reflecting on the societal impact of its rulings, beyond the legal impact. As the violations heard by the Court are often systemic, studying how victims and their communities give meaning to their complaints with the Court becomes ever more significant.

The study of human rights litigation has further significance for the study of Russia and Eastern Europe. After the disintegration of the Soviet Union, East Euro-

pean states turned to the Council of Europe and ratified the European Convention on Human Rights in rapid succession. Most of these states, however, did not suspect at the time that the European Court would take a progressive role in guaranteeing human rights in its member states. With the rising caseload and the creation of the ECtHR, the Convention became a highly specialized legal practice and European human rights law became a profession (Madsen 2007). Thus, the integration of East European states and Russia into the Convention system developed parallel to the development of European human rights law as a whole. Consequently, studying the practice and implementation of international claim making in Russia also gives us a broader understanding of how litigation has developed as a professional practice in Europe as a whole.

REFERENCES

- Abu-Lughod, Lila. 2013. *Do Muslim Women Need Saving?*. Cambridge, MA: Harvard University Press.
- Barrett, Joseph. 2009. "Chechnya's Last Hope? Enforced Disappearances and the European Court of Human Rights." *Harvard Human Rights Journal* 22(1):133–143.
- Bindman, Eleanor. 2013. "Russia, Chechnya and Strasbourg: Russian Official and Press Discourse on the 'Chechen Cases' at the European Court of Human Rights." *Europe-Asia Studies* 65(10):1954–1977.
- Bowring, Bill. 2009. "Russia and Human Rights: Incompatible Opposites?" *Göttingen Journal of International Law* 1(2):257–278.
- Bukovská, Barbora. 2008. "Perpetrating Good: Unintended Consequences of International Human Rights Advocacy." *Sur – International Journal of Human Rights* 5(9):7–22.
- Burkov, Anton. 2007. *The Impact of the European Convention on Human Rights on Russian Law: Legislation and Application in 1996–2006*. Stuttgart, Germany: Ibidem-Verlag.
- Cichowski, Rachel A. 2011. "Civil Society and the European Court of Human Rights." Pp. 77–97 in *The European Court of Human Rights between Law and Politics*, edited by Jonas Christoffersen and Mikael Rask Madsen. Oxford: Oxford University Press.
- Cohen, Stanley. 1996. "Government Responses to Human Rights Reports: Claims, Denials, and Counterclaims." *Human Rights Quarterly* 18(3):517–543.
- Committee of Ministers. 2007. "Violations of the ECHR in the Chechen Republic: Russia's Compliance with the European Court's Judgments. Memorandum Prepared by the Secretariat of the DGII to Assist the Committee of Ministers' Supervision of the Execution of the European Court's Judgments (Article 46 of the ECHR)." Retrieved August 30, 2010 ([https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH\(2006\)32&Language=lanEnglish&Ver=rev2](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH(2006)32&Language=lanEnglish&Ver=rev2)).
- Dikov, Grigorii. 2009. "Rossiiskie zhaloby v Evropeiskom Sude: Praktika po nepriemlennym delam." *Polit.ru*, November 18. Retrieved November 24, 2011 (<http://www.polit.ru/article/2009/11/18/dikov/>).
- European Court of Human Rights. 2014. *Analysis of Statistics 2013*. Strasbourg: Council of Europe. Retrieved November 1, 2014 (http://www.echr.coe.int/Documents/Stats_analysis_2013_ENG.pdf).
- Galanter, Marc. 1974. "Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change." *Law & Society Review* 9(1):95–160.
- Goldhaber, Michael D. 2007. *A People's History of the European Court of Human Rights*. New Brunswick, NJ: Rutgers University Press.
- Greer, Steven. 2013. "Towards a Socio-Legal Analysis of the European Convention on Human Rights." Pp. 149–171 in *Making Human Rights Intelligible: Towards a Sociology of Human Rights*, edited by Mikael Rask Madsen and Gert Verschraegen. Oxford: Hart Publishing.
- Greer, Steven and Luzius Wildhaber. 2012. "Revisiting the Debate about 'Constitutionalising' the European Court of Human Rights." *Human Rights Law Review* 12(4):655–687.
- Hemment, Julie. 2004. "The Riddle of the Third Sector: Civil Society, International Aid, and NGOs in Russia." *Anthropological Quarterly* 77(2):215–241.

- Henderson, Sarah L. 2003. *Building Democracy in Contemporary Russia: Western Support to Grassroots Organizations*. Ithaca, NY: Cornell University Press.
- Hendley, Kathryn. 2009. "'Telephone Law' and the 'Rule of Law': The Russian Case." *Hague Journal on the Rule of Law* 1(2):241–262.
- Henry, Laura A. 2012. "Complaint-Making as Political Participation in Contemporary Russia." *Communist and Post-Communist Studies* 45(3–4):243–254.
- Hershkoff, Helen. N.d. "Public Interest Litigation: Selected Issues and Examples." Retrieved January 9, 2013 ([http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/PublicInterestLitigation\[1\].pdf](http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/PublicInterestLitigation[1].pdf)).
- Hershkoff, Helen. 2009. "Public Law Litigation: Lessons and Questions." *Human Rights Review* 10(2):157–181.
- Hillebrecht, Courtney. 2012. "Implementing International Human Rights Law at Home: Domestic Politics and the European Court of Human Rights." *Human Rights Review* 13(3):279–301.
- Hillebrecht, Courtney. 2014. *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance*. Cambridge: Cambridge University Press.
- Hodson, Loveday. 2011. *NGOs and the Struggle for Human Rights in Europe*. Oxford: Hart Publishing.
- Hodson, Loveday. 2013. "Activating the Law: Exploring the Legal Responses of NGOs to Gross Rights Violations." Pp. 267–282 in *Making Human Rights Intelligible: Towards a Sociology of Human Rights*, edited by Mikael Rask Madsen and Gert Verschraegen. Oxford: Hart Publishing.
- Issaeva, Maria, Irina Sergeeva, and Maria Suchkova. 2011. "Enforcement of the Judgments of the European Court of Human Rights in Russia: Recent Developments and Current Challenges." *Sur – International Journal of Human Rights* 8(15):67–90.
- Jordan, Pamela A. 2003. "Does Membership Have Its Privileges?: Entrance into the Council of Europe and Compliance with Human Rights Norms." *Human Rights Quarterly* 25(3):660–688.
- Koroteev, Kirill. 2010. "Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya: The Approach of the European Court of Human Rights in Context." *Journal of International Humanitarian Legal Studies* 1(2):275–303.
- Kovler, Anatolii. 2012. "European Convention on Human Rights and Russia (Case-Law of the European Court of Human Rights: A Judge's View)." Presented at the Martens Summer School on International Law, July 19–August 3, Pärnu, Estonia.
- Kurkchiyan, Marina. 2009. "Russian Legal Culture: An Analysis of Adaptive Response to an Institutional Transplant." *Law & Social Inquiry* 34(2):337–364.
- Lapitskaya, Julia. 2011. "ECHR, Russia, and Chechnya: Two Is Not Company and Three Is Definitely a Crowd." *International Law and Politics* 43(2):479–548.
- Leach, Philip. 2007. "Strasbourg's Oversight of Russia: An Increasingly Strained Relationship." *Public Law* 4:640–654.
- Leach, Philip. 2009. "Opinion: On Reform of the European Court of Human Rights." *European Human Rights Law Review* 6:725–735.
- Madsen, Mikael Rask. 2007. "From Cold War Instrument to Supreme European Court: The European Court of Human Rights at the Crossroads of International and National Law and Politics." *Law & Social Inquiry* 32(1):137–159.
- Mayer, Lloyd Hitoshi. 2011. "NGO Standing and Influence in Regional Human Rights Courts and Commissions." *Brooklyn Journal of International Law* 36(3):911–946.
- McCann, Michael. 2006. "Law and Social Movements: Contemporary Perspectives." *Annual Review of Law and Social Science* 2:17–38.
- McIntosh Sundstrom, Lisa. 2006. *Funding Civil Society: Foreign Assistance and NGO Development in Russia*. Stanford, CA: Stanford University Press.
- McIntosh Sundstrom, Lisa. 2012. "Advocacy beyond Litigation: Examining Russian NGO Efforts on Implementation of European Court of Human Rights Judgments." *Communist and Post-Communist Studies* 45(3–4):255–268.
- Merry, Sally Engle. 2006. "Transnational Human Rights and Local Activism: Mapping the Middle." *American Anthropologist* 108(1):38–51.

- Mowbray, Alastair. 2005. "The Creativity of the European Court of Human Rights." *Human Rights Law Review* 5(1):57–79.
- RAPSI. 2014. "ECHR Launches Russian Version of HUDOC Database." April 15. Retrieved June 2, 2014 (<http://www.rapsinews.com/news/20140415/271144690.html>).
- Robins, Simon. 2011. "Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal." *International Journal of Transitional Justice* 5(1):75–98.
- Robins, Simon. 2012. "Transitional Justice as an Elite Discourse: Human Rights Practice Where the Global Meets the Local in Post-Conflict Nepal." *Critical Asian Studies* 44(1):3–30.
- Roht-Arriaza, Naomi. 2006. "The New Landscape of Transitional Justice." Pp. 1–16 in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*. Cambridge: Cambridge University Press.
- Russia Today. 2011. "Duma Considers Law to Limit Influence of European Court on Russia's Legal System." June 20. Retrieved March 13, 2014 (<http://rt.com/politics/torshin-european-court-russia/>).
- Saari, Sinikukka. 2009. *Promoting Democracy and Human Rights in Russia*. London: Routledge.
- Sandoval, Clara. 2012. "What Should the European Court Learn from the Inter-American Court on Reparation?" *EHRAC Bulletin* 17. Retrieved August 9, 2012 (<http://www.londonmet.ac.uk/fms/MRSite/Research/HRSJ/EHRAC/Publications/2012%20EHRAC%20English%20Summer%20ONLINE-2.pdf>).
- Sarat, Austin and Stuart A. Scheingold. 2005. "The Dynamics of Cause Lawyering: Constraints and Opportunities." Pp. 1–34 in *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice*. Stanford, CA: Stanford University Press.
- Sarat, Austin and Stuart A. Scheingold. 2006a. *Cause Lawyers and Social Movements*. Stanford, CA: Stanford University Press.
- Sarat, Austin and Stuart A. Scheingold. 2006b. "What Cause Lawyers Do for, and to, Social Movements: An Introduction." Pp. 1–34 in *Cause Lawyers and Social Movements*, edited by Austin Sarat and Stuart A. Scheingold. Stanford, CA: Stanford University Press.
- Sperling, Valerie. 2009. *Altered States: The Globalization of Accountability*. New York: Cambridge University Press.
- Starzhenetskii, Vladislav. 2012. "Assessing Human Rights in Russia: Not to Miss the Forest for the Trees, a Response to Preclik, Schönfeld and Hallinan." *Review of Central and East European Law* 37(2–3):349–356.
- Stone Sweet, Alec and Helen Keller. 2008. "Introduction: The Reception of the ECHR in National Legal Orders." Pp. 3–28 in *A Europe of Rights: The Impact of the ECHR on National Legal Systems*, edited by Helen Keller and Alec Stone Sweet. Oxford: Oxford University Press.
- Trochev, Alexei. 2009. "All Appeals Lead to Strasbourg? Unpacking the Impact of the European Court of Human Rights on Russia." *Demokratizatsiya* 17(2):145–178.
- Van der Vet, Freek. 2012. "Seeking Life, Finding Justice: Russian NGO Litigation and Chechen Disappearances before the European Court of Human Rights." *Human Rights Review* 13(3):303–325.
- Van der Vet, Freek. 2013. "Transitional Justice in Chechnya: NGO Political Advocacy for Implementing Chechen Judgments of the European Court of Human Rights." *Review of Central and East European Law* 38(3–4):363–388.
- Van der Vet, Freek. 2014. "Holding On to Legalism: The Politics of Russian Litigation on Torture and Discrimination before the European Court of Human Rights." *Social & Legal Studies* 23(3):361–381.
- White, David. 2006. *The Russian Democratic Party Yabloko: Opposition in a Managed Democracy*. Aldershot, UK: Ashgate.
- Wildhaber, Luzius. 2011. "Rethinking the European Court of Human Rights." Pp. 204–229 in *The European Court of Human Rights between Law and Politics*, edited by Jonas Christoffersen and Mikael Rask Madsen. Oxford: Oxford University Press.
- Zor'kin, Valerii. 2010. "Predel ustupchivosti." *Rossiiskaia gazeta*, October 29. Retrieved July 11, 2012 (<http://www.rg.ru/2010/10/29/zorkin.html>).

ЗАЩИТА ПРАВ В СТРАСБУРГЕ: ПОСТАНОВКА ИССЛЕДОВАТЕЛЬСКИХ ЗАДАЧ, НЕОБХОДИМЫХ ДЛЯ АНАЛИЗА МЕЖДУНАРОДНЫХ СУДЕБНЫХ ИСКОВ, ИСХОДЯЩИХ ИЗ РОССИИ

Фрейк ван дер Вет

Фрейк ван дер Вет – исследователь в Александровском институте при Хельсинкском университете в Финляндии. Адрес для переписки: Aleksanteri Institute, P.O. Box 42 (Unioninkatu 33), FI-00014 University of Helsinki, Finland. freek.vandervet@helsinki.fi.

Большинство исков, рассматриваемых Европейским судом по правам человека в Страсбурге, поданы из Российской Федерации. Как показывают недавние исследования правопорядка в России, недоверие к судопроизводственной системе не мешает россиянам активно судиться как на местах, так и в общегосударственных инстанциях по правам человека. Однако можно ли утверждать, что рост числа исков в Европейский суд обусловлен спецификой российской судебной практики? В этом обзоре дается оценка разных типов вердиктов по российским искам и обсуждаются новые работы по различным типам судебных процессов в Европейском суде по правам человека. В частности, автор формулирует текущие задачи по изучению основных субъектов судебного разбирательства и типов дел, представляемых ими на рассмотрение Страсбургского суда. Помимо этого, в обзоре предлагаются способы анализа некоторых таких ходатайств в Европейский суд с социально-правовой точки зрения.

Ключевые слова: Европейский суд по правам человека; Европейская конвенция о правах человека; судебный иск в интересах неопределенного круга лиц; главенство права; правоприменение; Российская Федерация