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Unpacking the Impact of the European Court of Human Rights on Russia

ALEXEI TROCHEV

Abstract: The author explores how Russian government officials and judges interact with the European Court of Human Rights (ECtHR) and argues that the Russian judiciary may be the most ECtHR-friendly branch of Russian government. Russian judges increasingly refer to the jurisprudence of the ECtHR, despite facing a host of pressures to do otherwise. As a result, the Russian legal system's adherence to the standards of the 1950 convention is a complicated work in progress that develops in fits and starts and in which those in power wrestle with the question of their legal autonomy to limit the domestication of European human rights standards in Russia's governance.

Keywords: European Court of Human Rights, judicial independence, litigation, Russia, Supreme Court

The European Court of Human Rights (ECtHR), a judicial arm of the Council of Europe based in Strasbourg, France, is the most popular court in Russia today.¹ In this article, I explore how ordinary people, government officials, and judges in Russia interact with this supranational human rights tribunal. Since March 30, 1998, Russia has recognized both the compulsory jurisdiction of this transnational court and the right of individuals to sue Russia in this court for violations of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.² What violations did Russia commit in the past decade, as identified by the ECtHR? How does the process of transmitting the meaning of ECtHR judgments to Russian authorities work? How do Russia's courts respond to ECtHR interpretations of the 1950 convention and why? Do Russian judges read and draw on these decisions, or do they ignore or defy the decisions of the ECtHR? By addressing these questions, we can attempt to probe the dynamics of how law works or fails to work on the ground, as well as whether and how transnational legal institutions make a difference in societies in which "political officials and judges fail to uphold even the most basic principles of rule of law."³

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The observance of international human rights standards in nondemocracies like Russia is poor. However, this does not mean that we should not study what government officials and judges in nondemocratic regimes are actually doing when they face criticism coming from international legal institutions. What responses, if any, do key domestic actors have to the criticism of international institutions? Does this criticism make a difference in their behavior? Human rights activists tend to portray Russia's responses as noncompliance, somewhere between outright defiance and quiet ignorance.⁴ Many Russian government officials reply that this defiance is justified. They argue that the European community uses the ECtHR as a baton to monitor the implementation of the European Convention of Human Rights in Russia.⁵ To them, every loss in the Strasbourg court is a political scandal, be it the embarrassment over nonpayment of the meager 500-ruble child-care subsidy to mothers in the Voronezh Region or the major cover-up of large-scale human rights violations in Chechnya. Most ECtHR judgments undermine the key claim made by Vladimir Putin: that his regime brought law, order, and prosperity to Russia. The intensity of this political scandal will only escalate in the near future, largely because the ECtHR will hear more and more politically salient cases, including ones that involve torture and disappearances in Chechnya, YUKOS-related cases, and the large-scale deportations of Georgian citizens, among others. Russia's human rights ombudsman, Vladimir Lukin, and his colleagues scolded Russian officials for developing a "paranoia that the only wish of the rest of the world is to bite, destroy Russia."⁶ Not surprisingly, some of these officials began suggesting that only "public enemies" and "whiners-plunderers of the federal budget" go to the Strasbourg court, a tribunal that is seen either as plotting against Russia or as a biased, slow, ineffective court.⁷

The Kremlin today has made it a priority to stem the flow of potential complaints to the ECtHR and to do something about the complaints that have already been received by the court. Indeed, this priority appears to be the key rationale for the Russian Parliament's failure during Vladimir Putin's presidency to ratify the fourteenth protocol to the 1950 convention, a reform that would speed up the handling of cases by the Strasbourg court and result in more judgments against Russia.⁸ Putin's successor, President Dmitry Medvedev, is worried about the impact of this transnational litigation. He appears to realize that never-ending losses in the Strasbourg court may "undermine the legitimacy of the national position in the eyes of domestic constituents," something that he cannot afford in a time of deepening economic crisis.⁹ As soon as he became president in March 2008, he ordered his favorite think tank, the Institute of Contemporary Development (INSOR), to analyze the reasons behind the complaints against Russia in the Strasbourg court. The INSOR team found that 90 percent of these complaints arose due to technical deficiencies in the Russian judicial system.¹⁰ Medvedev took this somewhat simplistic advice seriously. He told the delegates of the All-Russian Congress of Judges that he was ready to consider "transformations" in the judicial system to make it "so effective that it would minimize the complaints to the international courts."¹¹

However, as I will argue, the Russian judiciary may be the most Strasbourg-friendly branch of Russian government. Paradoxically, the nondemocratic regime criticizes the "biased" Strasbourg court, but it appoints judges who draw on the judgments of this tribunal and on the standards of the 1950 convention to decide cases in their everyday administration of justice in Russia. Russian judges increasingly refer to the jurisprudence of the ECtHR despite Russia's losses in the Strasbourg court, the insistence of Russia's leaders that ECtHR decisions are "politicized," and the resistance among certain circles in the legal

academy to recognizing the binding force of ECtHR judgments on Russia's courts. Most often, judges choose to refer to the case law of the ECtHR when litigants bring the Strasbourg court's decisions to the attention of Russian judges. The institutional insulation of the judiciary, however weak, allows judges to cite the jurisprudence of the ECtHR in handling routine cases and protects such judges from being punished by politicians. However, references to the ECtHR judgments in Russia's court decisions have been slow to trickle down, not because Russian judges are innately anti-European or against human rights but because the Russian judiciary is a part of the network of public governance: it faces a host of much stronger domestic pressures, both internal (e.g., the influence of court chairs and overload) and external (e.g., pressure from or cozy relationships with law-enforcement agencies and government officials).¹² These pressures are on the rise in today's Russia, and they are likely to work against the willingness of judges to apply the 1950 convention, even though judges have never enjoyed as easy access to the judgments of the ECtHR as they do now. Therefore, the Russian legal system's adherence to the standards of the 1950 convention is a complicated work in progress that develops in fits and starts, and in which power holders wrestle with the question of their legal autonomy to limit the domestication of the European human rights standards in Russia's governance.

In this article, I first examine how ordinary Russians responded to the opportunity to complain to the ECtHR to show that today, the Strasbourg-based tribunal is the most popular court among Russians. Then, I discuss several cases in which the ECtHR ruled against Russia and show the areas of public policy in which the court found Russia to be in violation of the 1950 convention's standards. Next, I explore how and why the Russian government responded to litigation in the ECtHR by looking at the actual role of Russia's representative at the ECtHR in defending Russia's position inside and outside of the Strasbourg court. Finally, I provide an analysis of the extent to which the Russian judicial system uses and abuses the ECtHR jurisprudence to show the complicated but dynamically changing attitude of Russian judges toward the 1950 convention and the ECtHR.

Russians Overload the European Court

The 1993 Russian Constitution contains both a broad catalog of rights, borrowed from the 1950 convention, and an explicit provision allowing citizens to complain to international judicial bodies.¹³ This provision was inserted in 1993, after Russia's May 1992 application for Council of Europe membership. On February 28, 1996, Russia was admitted to the Council of Europe amid controversy over the war in Chechnya, the use of the death penalty, and other systemic deficiencies in Russia's legal system. Still, Russia was admitted in hopes that its integration into the European human rights protection system would improve its commitments to human rights and the rule of law. When it joined the Council of Europe, Russia promised to reform its criminal justice system; pass a new civil code; abolish the death penalty; ratify the 1950 convention, its protocols, and treaties of the Council of Europe; and recognize the right of individual application to and the compulsory jurisdiction of the ECtHR.¹⁴ Although Russia reneged on many of these promises, it ratified the 1950 convention in March 1998 and recognized the ECtHR's jurisdiction and individuals' right to complain to this tribunal.¹⁵ As with other member states, the ECtHR was to decide individual applications that satisfied three conditions: (1) the applicants had exhausted domestic remedies by complaining to Russian law-enforcement agencies and courts about violations of their rights, (2) the applicants filed their applications with the

ECtHR within six months of exhausting domestic remedies, and (3) the applicants relied on rights guaranteed by the 1950 convention.

Russians took note of this recognition and quickly overloaded the court. In 1999, the ECtHR received 972 applications against Russia, declared 348 of them inadmissible, and sent 4 to the Russian government. By the end of 2008, the court had some 27,246 pending applications against Russia, which made up more than a quarter (28 percent) of all pending applications on the ECtHR docket, and it had referred about 2,585 cases to the Russian government.¹⁶ The trends are clear: Russians increasingly sue their government in the ECtHR and overload the Strasbourg-based tribunal; the court, in turn, notifies the Russian government on a daily basis and asks it to respond to these complaints.

Public opinion surveys also show the growing attractiveness of the ECtHR. In September 2001, the VTsIOM polling agency reported that only 2–3 percent of Russians recognized the possibility of protecting their rights in the ECtHR. Only a year and a half later, the same agency reported that 19 percent of Russians reported that they were prepared to complain to the Strasbourg court.¹⁷ A poll by the Levada Center conducted in February 2007 reported a similar figure of 19 percent.¹⁸ According to another nationwide public opinion survey conducted by the VTsIOM in October and November 2007, 27 percent of Russians were prepared to complain to the ECtHR to protect their rights.¹⁹ The nationwide poll conducted by the Public Opinion Foundation in August 2008 confirmed this trend: 61 percent of respondents knew about their right to complain to the ECtHR, 29 percent were prepared to take their complaint to this court, and 68 percent believed that such a tribunal “where citizens could complain against their government in cases of violations of their rights” should exist.²⁰ These results occurred despite the fact that very few Russians actually know anything about the functioning of the Strasbourg-based court. In addition, Russians’ willingness to protect their rights in domestic courts has not improved during the same period, according to numerous public opinion surveys. In 1996, a survey of 3,000 Russians indicated that 41.3 percent said that they would turn to a court if any authority took a decision violating their rights; in April 2004, only 1 percent of those surveyed were prepared to challenge government actions in court.²¹ However, ordinary Russians’ distrust of the domestic judiciary can only partially explain the attractiveness of the ECtHR. After all, French and Italians have a higher respect for their national courts than the Russians do, yet the Strasbourg court continues to receive large numbers of applications from these countries. Moreover, attitudes alone do not determine human behavior: litigation rates in Russia have been consistently growing in parallel with growing distrust of courts. Why do many Russians turn to the ECtHR despite the minimal chance of getting their complaint accepted and the likelihood that the court will take several years to process their complaint?

Russia’s Losses in the Strasbourg Court

Applying to the ECtHR is an increasingly attractive option because its judgments order Russia to rectify the violations of individual rights not just on paper but also in practice. The judgments of the ECtHR usually involve two kinds of orders to Russia: to eliminate the conditions that gave rise to the violation of the 1950 convention and to pay compensation to the successful applicants. So far, the second kind of order has received the greatest amount of attention. In 2006, the ECtHR ordered Russia to pay a total of €1.376 million and 1.055 million rubles. In 2007, the court ordered Russia to pay a total of €4.3 million. And between January 2008 and March 2009, the Strasbourg-based tribunal ordered Russia to pay some €9.3 million to successful applicants.²² Therefore, the Strasbourg court

enjoys something that all other Russian courts lack: nearly complete enforcement of its judgments in terms of compensating those who won their cases.²³ Russia's authorities are proud of this record because it helps them cover the delays in eliminating the conditions that give rise to human rights violations and the resulting litigation boom in the ECtHR. Some of these conditions are rooted in the judicial system; others lie outside the judiciary. Eliminating them would take large amounts of funding, overhauling the legal framework, and changing the behavior and attitudes of government officials.

The court issued its first decision against Russia on May 7, 2002, in the case of *Burdov v. Russia*.²⁴ Since then, the number of judgments has increased exponentially, from just 2 judgments in 2002 to 244 in 2008. By May 1,

2009, there were a total of 745 judgments involving Russia as a defendant.²⁵ The court has discovered both that Russian legal norms did not conform to the standards of the 1950 convention and that actions of government officials in Russia violated the norms of the convention. Each year there are fewer fundamental

rights protected by the 1950 convention that the court has not found Russia to be violating.²⁶

The largest share (almost half) of ECtHR judgments against Russia concerns the non-execution of domestic court decisions in noncriminal cases, a problem common in other post-Soviet countries. The task of implementing domestic court decisions in these cases is a clear responsibility of the bailiff service under the Ministry of Justice. The Russian Finance Ministry and the federal treasury are responsible for enforcing the decisions of domestic courts in lawsuits against the government over pensions, child-care subsidies, and various compensation schemes to benefit Chernobyl workers, military personnel, the disabled, and so on. On several occasions, the ECtHR had to rule twice in the cases of the same applicants, who returned to complain that judgments of Russian courts in their favor had not been implemented, even after their first victory in Strasbourg.²⁷

About 15 percent of the Strasbourg court's judgments concerning Russia are about the excessive length of judicial proceedings, a problem similar to that faced by other member states of the Council of Europe. A number of judgments also found violations of the right to a fair trial, such as unlawful composition of courts; holding a trial with the accused absent; and using the system of supervisory review (*nadzor*) of judicial decisions, which allows the procurator or the higher domestic court to reopen the procedure even after a final and binding decision in favor of the person concerned has been passed and thus often causes delays in the judicial procedure. In the *Ryabykh* case, the ECtHR found that this supervisory review mechanism violated the principle of legal certainty contained in the 1950 convention.²⁸

Other ECtHR judgments against Russia deal with unlawful detention and expulsion of aliens or violations of privacy, freedom of expression, freedom of assembly, freedom of movement, property rights, and the right to education. Such judgments usually provide compensation for nonpecuniary damage in the range of €500 to €10,000, much less than the applicants demanded.²⁹ To the Western reader, these amounts may not mean much. However, to single mothers in the Voronezh region who depended for their survival on the child care subsidy of €10 a month and won their court cases in Russia for arrears in the subsidy only to see their court victories go unfulfilled, payments of any amount would be very helpful.³⁰

“The Strasbourg court enjoys something that all other Russian courts lack: nearly complete enforcement of its judgments in terms of compensating those who won their cases.”

What really distinguishes Russia from other countries in terms of ECtHR jurisprudence are ten dozen judgments that found Russia in violation of Article 2 (right to life) and Article 3 (prohibition of torture or inhuman or degrading treatment) of the 1950 convention. In most of these cases, the ECtHR found direct violations of these rights and determined that Russia failed to investigate abuses by the Russian authorities. Almost all cases about torture, killings, and disappearances in Chechnya belong to this category. The court repeatedly found that prison or jail conditions in other parts of Russia could also amount to inhuman treatment or torture.³¹ In the case of *Kalashnikov v. Russia*, the ECtHR found that the conditions in the detention center in Magadan amounted to degrading treatment.³² The court came to similar conclusions with regard to prisons or detention facilities in Barnaul, Chepets (Perm), Dmitrov, Ivanovo, Kaliningrad, Moscow, Nizhnii Novgorod, Novorossiisk, Novosibirsk, Orenburg, Volgograd, Rostov-on-Don, Sarapul (Udmurtiya), Severodvinsk, Sosnogorsk (Komi), St. Petersburg, Sviiazhsk (Tatarstan), Tsivilsk (Chuvashiia), Vladimir, and Volokolamsk.³³ The ECtHR treats overcrowding and unsanitary conditions in Russia's penal facilities as "structural" violations of the 1950 convention, which effectively means that the applicants lack an effective domestic remedy against these conditions because neither Russian courts nor procurators could improve these conditions.³⁴ In such cases, the ECtHR awards much higher amounts of nonpecuniary damage to applicants who prove that they suffered mental or psychological pain as a result of the violation of their rights (e.g., €120,000 in the case of *Mikheyev v. Russia*³⁵ and €180,000 in the case of *Ilascu v. Russia and Moldova*³⁶ for pecuniary and nonpecuniary damage). In 2008, Russia's Federal Service for the Enforcement of Punishments, an agency in charge of prisons, estimated that, on average, the detained persons and prisoners from each of the eighty-three regions of Russia send between five and ten complaints about the prison and jail conditions to the ECtHR every three months—this amounts to at least 1,600 complaints a year!³⁷

Torture and degrading treatment are not limited to the law-enforcement system, according to the ECtHR. In *Chember v. Russia*, the court found Russia in violation of Article 3 for allowing military officers in Astrakhan to use challenging physical exercise—350 knee bends for a soldier with known knee problems—as a means of punishing soldiers in the active military service. This is a routine practice in the Russian army, and superiors often use it to discipline soldiers. However, the court ruled that the 1950 convention requires that the physical exercise "should not go beyond the level above which it would put in danger the health and well-being of conscripts or undermine their human dignity," and it ordered Russia to pay €10,000 to the applicant, even though he did not ask for any compensation.³⁸ One can only imagine how many applications against hazing in the Russian army the ECtHR will receive after this judgment.³⁹

On numerous occasions, the European Court also found that applicants in cases of torture or degrading treatment were denied an effective domestic remedy for their complaints: Russia's law-enforcement agencies failed to investigate these complaints effectively, and Russian courts simply endorsed investigators' opinions that "no evidence of torture or ill-treatment was found."⁴⁰ Naturally, police investigators and procurators have almost no incentive to conduct a thorough investigation of these complaints, rather than covering up cases of ill treatment of detainees and prisoners. As a result, the performance of law-enforcement agencies only feeds ordinary Russians' willingness to send their complaints to the Strasbourg court.

Stemming the flow of potential complaints to the ECtHR and doing something about the applications that the court has already received have become top priorities for the Kremlin.

The risk that this supranational tribunal would thoroughly investigate the merits of these complaints against torture and make them visible abroad pushes Russian authorities to minimize this risk through a variety of means, which I will subsequently discuss.

Russia's Reaction to the Litigation in the European Court

Once the European Court of Human Rights registers an application against one of its member states, it determines whether the application is *manifestly ill-founded* (e.g., if the complainant failed to exhaust domestic remedies, missed the six-month limit for complaining to the ECtHR, or relied on rights not guaranteed by the 1950 convention). Most applications fall into this category. If the ECtHR finds that the application is well founded, the court notifies the accused government and asks it to respond to the merits of the case. (The applicant later has an opportunity to reply to the government's arguments.) The court has the authority to ask any Council of Europe member state for assistance deciding cases, which the member state is obliged to provide in good faith. For example, the court may ask a government to provide additional documents, conduct inquiries, arrange fact-finding missions, provide friendly settlement with the complainants, and so on.

In the case of Russia, the ECtHR communicates about these matters with the office of Russia's representative at the court. The office's main job is to inform the rest of the central government apparatus, including Russia's top courts and the procurator general, about all aspects of the litigation in Strasbourg, from the admissibility of applications to the implementation of ECtHR judgments.⁴¹ Therefore, this office serves as a key source of information about the ECtHR for top Russian government officials and is, in large part, responsible for shaping their perceptions of the tribunal.

Initially, this office was housed in the administration of the Russian president. From November 1999 until March 2007, it was headed by Pavel Laptev, a former procurator and legal expert in the Russian parliament.⁴² It took Laptev several years to formalize the relationship between his office and other executive agencies, whose cooperation was crucial for defending Russia in the ECtHR litigation and enforcing ECtHR judgments. Using his privileged status of being a part of the presidential administration, Laptev managed to persuade several ministers (e.g., Internal Affairs, Defense, and Finance), the head of the Judicial Bailiff Service, and the procurator general to issue detailed instructions to their subordinates about treating Laptev's requests for help seriously. These instructions helped Laptev to insist that bureaucratic sabotage of his requests would be punished.⁴³ In March 2007, Putin subordinated the office of Russia's ECtHR representative to the Justice Ministry and replaced Laptev with Veronika Milinchuk, a criminal law expert in the procurator general's office.⁴⁴ Putin appointed Milinchuk deputy justice minister at the request of Vladimir Ustinov, who became the justice minister in June 2006, after having served as procurator general.⁴⁵ Many viewed this as a demotion of the office in terms of Russia's bureaucratic hierarchy, even though the representative's salary was increased. The status of the presidential administration is higher than that of any ministry. However, the presidential administration appeared to be exhausted by the burden of losing case after case in Strasbourg, and the Kremlin decided to transfer this responsibility to the Justice Ministry. As a result, Russia's representative at the European Court now serves at the pleasure of the justice minister, who can be replaced at any time by the president and therefore lacks any incentive to build this office in the long term. Putin's successor, Dmitry Medvedev, appointed a new justice minister, Aleksandr Kononov, in May 2008, and a new repre-

sentative at the ECtHR, Georgy Matyushkin, in August 2008.⁴⁶ Unlike his predecessors, Matyushkin made his career as a private lawyer in the 1990s, worked with Konovalov in the Volga Federal District, and has never worked in the procuracy. Because it is too early to assess Matyushkin's reaction to the signals coming from the ECtHR⁴⁷ and because Milinchuk's stay at the office of Russia's representative at the court was too short,⁴⁸ the rest of this section examines what Laptev did when he received notices of applications against Russia from the European Court.

Initially, Laptev's office tried to cooperate with the Strasbourg court in full: it had enough resources, time, and energy to take every correspondence with the court seriously. Laptev advertised the work of the ECtHR in Russia, published the judgments of the court in Russian, and praised the court in his speeches and writings.⁴⁹ On many occasions, after receiving materials from Strasbourg about potential violations of the 1950 convention, he persuaded Russian appellate judges to quash lower court decisions that the ECtHR hinted might be in violation of the 1950 convention. For example, in *Taykov v. Russia*, which concerned non-payment of a pension, Laptev contacted the chairperson of the Ivanovo regional court, the governor of the Ivanovo Region, and the head of the region's pension fund and successfully urged them to pay the compensation of 94,000 rubles to the complainant.⁵⁰ Laptev even convinced the procurator general's office to press lower-level procurators to investigate the cases of those who petitioned the ECtHR, including applicants from Chechnya.⁵¹

However, when facing an avalanche of applications against Russia, responding to the growing amount of material coming from the ECtHR, and dealing with the exponential rise of Russia's losses in the court, Laptev chose to criticize the court and present it as a slow and ineffective tribunal.⁵² It is possible that his superiors in the Kremlin made this choice for him by evaluating his performance based on the number of admissible applications against Russia removed from the ECtHR docket. It is also possible that his office was simply unable to cope with the overload caused by the attractiveness of the Strasbourg court to Russian applicants. In any case, by 2005, Laptev's priority was to settle cases by offering financial compensation to the complainants both to report to the Kremlin that his office prevented potential losses by Russia in the ECtHR and to report to the court that his office helped to lighten the caseload. Settling cases is possible, according to Laptev, only in cases that do not involve criminal law. His settlement strategy worked in some cases: by 2005, Russia had settled some 100 cases, according to Laptev, and paid compensation to those who agreed to withdraw their applications from the ECtHR.⁵³ Most of these settlements involved straightforward complaints against delays in implementing Russian court decisions that were issued in favor of pensioners, single mothers, Chernobyl cleanup workers, and so on. Russian courts issued thousands of such decisions in the 1990s, but the federal and regional governments refused to enforce them, citing the lack of funds.⁵⁴ Securing money for settlement thus was in itself a heroic achievement on Laptev's part. Russia's federal budget does not have a line for funding these settlements; it only has a line for enforcing ECtHR judgments. To Laptev's credit, these settlement funds ended up in the bank accounts of the actual applicants, not in the pockets of government officials and their cronies.

However, the majority of Laptev's proposals to settle in exchange for the withdrawal of applications against Russia failed; as he admitted himself, "very often the complainant refuses to settle in hopes to receive a larger amount of compensation from the European Court."⁵⁵ Their hopes were well founded; starting in December 2006, the ECtHR asked Laptev's office to consider paying €3,000 when trying to settle with pensioners, whose

applications against the nonimplementation of domestic court decisions in their favor were found admissible by the Strasbourg court. Laptev objected, claiming that such large amounts of compensation would amount to “unjustified enrichment” of the complaining pensioners and would increase the flow of complaints to Strasbourg.⁵⁶

Laptev further infuriated the ECtHR when he tried to settle the *Aleksentseva and others* case.⁵⁷ This case involved thirty Chernobyl cleanup workers from the town of Shakhty in the Rostov region who were awarded compensation by the local court for the damage to their health caused by their work at the site of the Chernobyl nuclear accident. This disability compensation, however, was not paid, and the workers took their case to Strasbourg in May 2002. In January 2003, Laptev informed the court that Russia admitted the violation of the 1950 convention in this case, that the compensation to all applicants was paid out in full, and that Russia was prepared to compensate nonpecuniary damage to all of the workers in exchange for the withdrawal of their application from the docket of the ECtHR. In September 2003, the court accepted Laptev’s promises and dismissed the case, even though the applicants disagreed.⁵⁸ They refused to settle in exchange for the promise of compensation of between €1,500 and €3,000 (depending on the length of the delay in paying the disability compensation) and continued complaining to the ECtHR.⁵⁹ In early 2006, Laptev reported that this group of applicants received no nonpecuniary compensation at all because of their stubbornness: the ECtHR had dismissed their applications once and for all, he claimed, and Russia had no obligation to compensate them because they refused to settle.⁶⁰ The ECtHR proved him wrong. In March 2006, the court reinstated all of the applications in this case and declared them admissible on the grounds that Russia failed to pay compensation for nonpecuniary damage to the applicants.⁶¹ Laptev’s office objected to this reinstatement.⁶² At the same time, it managed to settle with ten applicants from this group and it paid their moral harm compensation in December 2006.⁶³ The applicants who did not agree to settle finally won their case in the Strasbourg court in January 2008.⁶⁴ This saga taught the court not to accept Russia’s promises without monitoring their implementation. However, it also shows that the mere threat of litigation in Strasbourg might make some parts of Russian bureaucracy friendlier to litigants and to judicial decisions in their favor.⁶⁵ In the end, government officials had to visit the disabled Chernobyl cleanup workers, to see their living conditions and to offer some help.

In cases involving criminal law, the ECtHR repeatedly found Russia guilty of noncooperation with the court and ruled that Russia violated Article 34 (hindering an individual application) and Article 38 (hindering the ECtHR’s examination of a case) of the 1950 convention.⁶⁶ Understandably, Russia’s representative at the ECtHR may simply be overwhelmed by the court’s ever-growing number of requests caused by the flood of petitions against Russia. The most prevalent example of noncooperation is the use of coercion by the authorities against applicants and their representatives, including lawyers and non-governmental organizations, both domestic and international.⁶⁷ Russia’s human rights ombudsman, Vladimir Lukin, listed numerous examples of coercion and intimidation and concluded that Russian law failed to protect the Article 34 rights of two categories of applicants: those who were detained or imprisoned and those who suffered in Chechnya.⁶⁸ Russia’s Federal Service for the Enforcement of Punishments was quick to rebut Lukin’s conclusions by arguing that the prison officials assisted prisoners and detainees in writing complaints to the Strasbourg-based tribunal and promptly, within fifteen-to-twenty days, processed requests coming from Russia’s Representative at the ECtHR.⁶⁹ However, this

pattern of noncooperation between the court and Russia is on the rise, as twenty-three ECtHR judgments issued in 2008 indicate. In four of these judgments, the Strasbourg court determined that the government authorities threatened the applicants and blocked their correspondence with the court, thus violating Article 34 of the 1950 convention.⁷⁰ Moreover, in nineteen judgments issued the same year (mostly in cases coming from Chechnya), the court declared that Russia violated Article 38 of the convention by failing to provide the investigation files and other documents requested by the court.⁷¹

It is not clear whether Laptev's office or Kremlin officials give actual orders to street-level bureaucrats to threaten or harass applicants and their lawyers, block their mail to the ECtHR, and so on.⁷² More likely, these attempts represent an initiative by local postal officials⁷³ or police officers, particularly in the North Caucasus, where the federal center appears to have little influence over law-enforcement agencies.⁷⁴ Indeed, on many occasions, Russia has failed to send pending criminal investigation files to the ECtHR when the court requested these materials.⁷⁵ Laptev claimed that fulfilling such requests would violate Article 161 of the Russian Code of Criminal Procedure. According to the Russian government, this article precludes the submission of certain documents from a pending investigation file in order to protect the rights and lawful interests of the participants in the criminal proceedings and to avoid prejudicing the investigation.⁷⁶ The ECtHR disagreed and ruled that the provisions of Article 161 did not "preclude disclosure of the documents from a pending investigation file, but rather set out a procedure for and the limits of such a disclosure." Moreover, Russia could ask the ECtHR to keep the investigation file secret "for legitimate purposes, such as the protection of national security and the private life of the parties, as well as the interests of justice."⁷⁷ The court even chose to keep the investigation file secret in the case of the 2002 Moscow theater hostage-taking crisis.⁷⁸

Legal arguments aside, this trend of growing noncooperation reflects the inability of the central government to force rank-and-file investigators to produce relevant materials for investigation files for the ECtHR. Between January 2008 and March 2009, the Russian Ministry of Internal Affairs (MVD), responsible for policing, processed 138 cases connected to applications to the ECtHR. Matyushkin, Russia's representative at the ECtHR, criticized the speed and the quality of materials sent to him by the MVD and managed to persuade Minister Rashid Nurgaliev to set up a special task force within the ministry, which would control the quality of MVD's responses to the cases received from Matyushkin's office.⁷⁹ According to the procurator general's office, it received 375 requests connected to applications to the ECtHR in 2005, 754 such requests in 2007, and 551 requests in the first half of 2008.⁸⁰ The transfer of the office of Russia's representative at the Strasbourg court to the Justice Ministry also drastically reduced the office's capacity to compel procurators to send it investigation files. Moreover, Ustinov, who was procurator general from 1999 to 2006 and allowed noncooperation between the procuracy and the ECtHR to flourish during that time, currently serves as the presidential representative in the southern federal district that includes all of the North Caucasus. Ustinov is widely expected to entrench more resistance toward the Strasbourg court among the law-enforcement agencies in that part of Russia. This resistance is likely to persist despite the recent authorization of the Russia's representative at the ECtHR to demand "urgent" responses from government agencies.⁸¹ In sum, it is unlikely that the court will see more cooperation from Russia in handling complaints against abuses perpetrated by the Federal Security Service (FSB), police, or procuracy.

In the short run, this noncooperation may delay the proceedings in Strasbourg and result in fewer judgments against Russia, as the court will be forced to send repeated requests to the Russian government and wait. In the long run, however, the court will rely more heavily on information from applicants and from the mass media, and Russia will receive more unfavorable judgments from Strasbourg. Growing noncooperation will also generate more distrust between the ECtHR and Russia. One standard prescription to fight both noncooperation and abuses of human rights is to hold government officials accountable through the judicial review of their actions. How Russian courts respond to both ECtHR judgments and orders from the Kremlin to stem the flow of complaints to the Strasbourg court is, therefore, the subject of the next section.

The Impact of ECtHR Judgments on Russia's Courts

Assessing how Russia's judiciary responds to ECtHR judgments and pressures from the Kremlin is a difficult task. The sheer number of judges (37,000) and courts (2,600) and their territorial and structural diversity makes it difficult to enforce any guidelines, not just ones about implementing the 1950 convention or limiting the flood of applications to the ECtHR. Russia's courts have now attempted to delay the flood of complaints to Strasbourg by setting up a new effective remedy system and declaring that Russians would be allowed to bring their cases to the ECtHR only after exhausting this new remedy. In essence, effective remedy allows Russians to try one more time to protect their rights in domestic courts. In September 2008, after about a year of drafting, the Russian Supreme Court (RSC) introduced a bill that would set up an effective remedy system against the excessive length of judicial proceedings and the nonimplementation of judicial decisions. Under this new system, courts of general jurisdiction are supposed to handle cases in these areas and award compensation.⁸² This bill was inspired by the successful Italian example: Italy established such a remedy after it lost numerous cases in the ECtHR because of slow administration of justice and delays in implementing judicial decisions.⁸³ The Russian bill brought new concepts to the judicial system there, such as a "reasonable" length for judicial proceedings, which would include both the pretrial investigation and posttrial enforcement phases. Cases dealing with this issue make up about 60 percent of applications against Russia in the Strasbourg court. This bill may make a difference if the following four conditions are met:

1. The future of this bill must become certain. In spring of 2009, the Cabinet of Ministers, headed by Vladimir Putin, officially refused to support this bill for various reasons. The Ministry of Finance opposes the bill because it makes the ministry an automatic defendant and gives it the burden of proving the absence of an unreasonable court delay. Both the Russian Constitutional Court (RCC) and the Russian Supreme Arbitrazh (Commercial) Court (RSAC) also oppose the bill because they do not want the Supreme Court to handle lawsuits against slow proceedings in these tribunals, and the RSAC, which is headed by Medvedev's close friend, is drafting its own effective remedy bill.⁸⁴
2. Even if adopted in a modified version, the bill must be implemented and funded in full. Law-enforcement agencies, which are in charge of pretrial investigations, and the Justice Ministry's bailiff service, which is in charge of enforcing court decisions, must cooperate with the courts. The authors of the bill estimate that the courts would hear about 7,000 lawsuits against lengthy trials and nonenforcement of court decisions every year, at an annual cost of 655 million rubles.⁸⁵

3. Judges who handle these cases must treat victims' rights seriously and apply ECtHR jurisprudence to determine the violation of rights. If judges fail to do this, the bill may have much less impact than expected.
4. The government must cooperate in making this remedy truly effective; these new court decisions will not be substantially different than previous decisions that the government failed to implement, forcing victorious litigants to complain to the Strasbourg court.

Unfortunately, the bill lacks teeth: courts and law-enforcement agencies that resist the changes and officials responsible for the nonenforcement of judicial decisions face no punishment under the bill. Therefore, there is a chance that this newly proposed effective remedy, if adopted, may simply become yet another hurdle for Russians to overcome before complaining to the ECtHR. In addition, the bill does not address the problem of courts overburdened with caseloads, a primary cause of excessively lengthy court proceedings, although it does give the Supreme Court more ways to discipline recalcitrant judges. To some lower court judges, the bill appears as yet another top-down initiative directed by judicial bosses who have lost touch with reality.⁸⁶

In theory, Russia's courts can dispense justice the way the ECtHR demands to protect human rights effectively.⁸⁷ The 1993 Russian Constitution entrenches both due process rights and high standards of fair trial, as well as the binding force of "generally recognized principles and norms of international law."⁸⁸ Russia's courts can therefore serve as a viable alternative to the ECtHR: they can help alleviate structural violations of the 1950 convention by applying the norms of the convention, issuing clearer orders on compensation, detaining fewer suspects, reviewing complaints against police and prison officials more effectively, and punishing public officials who fail to comply with international human rights standards. Indeed, RSC Chairman Vyacheslav Lebedev frequently praised the ECtHR and openly warned that judges' high rates of approval of pretrial detention would lead to a surge of lawsuits against Russia in the ECtHR.⁸⁹ The RSC has issued guidelines to the ordinary courts about the necessity of applying the norms of the 1950 convention and following the rulings of the ECtHR,⁹⁰ and many lower courts have followed suit. For example, according to human rights activists, the chair of the Nizhnii Novgorod Oblast Court perceives the ECtHR as a reference point, and the chair of the Kamchatka Oblast Court also urged lower-court judges to draw on the Strasbourg court judgments.⁹¹ In addition, the chairman of the Belgorod Oblast Court publicly admitted that the ECtHR inspired him to recommend that lower courts fine defendants for delays in complying with court decisions. He proudly added that, by resolving all potential applications at home, the courts of his region never failed Russia in Strasbourg.⁹²

However, the Russian judicial system's capacity to eliminate the structural violations of the 1950 convention and even to obey the directives of the Supreme Court is limited for three key reasons. First, courts are part and parcel of the network of public governance, and judges may have few incentives to disrupt the status quo and speak the truth to power at the request of the ECtHR. The Strasbourg court is far away, whereas law-enforcement personnel are always nearby. Elena Mizulina, one of the drafters of the 2001 Code of Criminal Procedure, conducted a year-long monitoring study of the code's implementation and concluded that "courts feel gigantic pressure from their peers, procurators, investigators, and FSB."⁹³ The decentralization of the judicial system, which has left some local and appellate judges with stronger loyalties to local law-enforcement officials than to the

top courts, also neither provides incentives for judges to follow European human rights standards nor increases their risks of being punished when they fail to apply ECtHR case law or the 1950 convention.

Second, court decisions do not figure highly in the power map of Russia. The judiciary will surely not be the most important actor in the struggles against human rights abuses in Chechnya. Public officials' and private individuals' widespread noncompliance with judicial decisions is one indicator of this judicial powerlessness. As Medvedev publicly acknowledged throughout his first year in office, half of all judicial decisions in noncriminal cases remain unenforced.⁹⁴ Some court decisions are bought, and others are made under obvious pressure from important figures in the government or private sector. On many occasions, judges feel this pressure through explicit orders or implicit signals from the court chairs, important court officials in charge of maintaining a host of vital functions in the judicial hierarchy.⁹⁵ Although the ECtHR has ruled that the court chairs' arbitrary interference in judicial decision making violates the 1950 convention, even a court chair who has repeatedly interfered with judges' decision making in her court has faced no sanctions.⁹⁶ In fact, the role of court chairs in Russia's judicial system has increased during Putin's presidency.

Third, judges in the overloaded commercial courts and the justice of the peace courts simply may not have the time and resources to read and understand ECtHR case law and its commentary.⁹⁷ This may also mean that judges in the overloaded courts are less likely to pay attention to orders and guidelines from the top courts that create more work. For example, the ECtHR and all three of Russia's top tribunals require courts to issue thoroughly reasoned decisions, whether these are dismissals of lawsuits, interim judgments, injunctions, or decisions on the merits of cases. Often, however, judges fail to fully explain their reasoning in their decisions—a clear violation of both the 1950 convention⁹⁸ and Russian judicial procedure outlined by the federal Constitutional Court, the Supreme Court, and the RSAC.⁹⁹ Even today, many influential judges insist that judicial reasoning is not mandatory and should be written only if the parties demand its inclusion in the judgment.¹⁰⁰ Still, many other judges in arbitrazh courts study, cite, and apply the 1950 convention as interpreted by the Strasbourg court.

Courts can best achieve progress in respecting the 1950 convention in the area of judicial procedure, from the moment of receiving a lawsuit until issuing a final judgment—a domain that judges effectively control and for which they do not depend on the cooperation of other government agencies. Even here, however, progress is uneven. Russian courts are obliged to apply the 1950 convention, as interpreted by the ECtHR, as explicitly stated in the law on the ratification of the European Convention. At the level of legal doctrine, the issue of whether the jurisprudence of the Strasbourg court is part of the Russian legal system remains controversial.¹⁰¹ However, there is little evidence that Russian judges pay attention to these theoretical debates. Moreover, the RSC does not encourage citation of law commentaries in judicial decisions. A much more interesting issue is how Russian judges respond to the avalanche of ECtHR judgments; do they ignore it or attempt to internalize the ECtHR's interpretations?¹⁰² If judges do apply the standards of the 1950 convention to protect rights at home, this may stem the flow of complaints to the Strasbourg court.

The ECtHR in the Practice of the Constitutional Court

The RCC displays the most stable and positive attitude towards the ECtHR within the Russian judicial system.¹⁰³ In the view of Valerii Zorkin, the chief justice of the RCC, the

decisions of the European Court of Human Rights are binding on the Russian courts as long as they express “generally recognized principles and norms of international law.”¹⁰⁴ In its judgments, the RCC routinely examines and frequently refers case law to the ECtHR. The RCC refers to jurisprudence concerning not only Russia, but also other member states of the 1950 convention and, thus, underscores the universal binding effect of the decisions. Opinions about the real impact of the Strasbourg court’s decisions on the jurisprudence of the RCC are divided. RCC judges never tire of insisting that their court “refers to arguments based on international law not only to underscore the correctness of the legal positions worked out on the basis of the Constitution, but also to explain the idea and the meaning of the text of the Constitution and for defining the constitutional meaning of the contested legal provision.”¹⁰⁵ Sometimes, the ECtHR jurisprudence serves as the “last straw” in helping secure the majority opinion on a divided bench and in resisting political pressure.¹⁰⁶ Some RCC decisions are clearly based on ECtHR jurisprudence and the 1950 convention.¹⁰⁷ However, in other decisions the RCC refers to ECtHR cases vaguely, without conferring any substantial added value, and even misinterprets the argumentation of the Strasbourg court.

Consider how the RCC dealt with the system of supervisory review (*nadzor*) of court decisions, a subject of frequent criticism from the ECtHR.¹⁰⁸ As previously mentioned, the ECtHR has frequently found Russia’s system of supervisory review of judicial decisions in violation of the principle of legal certainty guaranteed by the 1950 convention. The supervisory review allows the procurator or the higher domestic court to reopen a procedure even after a final and binding decision in favor of the person concerned has been passed. Russians do not have a clear idea of how to reform the supervisory review system. Each of the judicial procedure statutes—the 2001 Code of Criminal Procedure, the 2001 Code of Administrative Transgressions, the 2002 Civil Procedure Code, and the 2002 Arbitrazh Procedure Code—kept the supervisory review, although each narrowed its application in different ways. The 2001 Code of Criminal Procedure banned the possibility of a supervisory review of acquittals or judgments in favor of the accused. However, in May 2005, acting on the complaint of Russia’s human rights ombudsman, the RCC declared this ban unconstitutional.¹⁰⁹ The RCC argued that such a ban failed to balance the rights of the victim and the rights of the accused and that reopening a case was not excluded if there was “evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.”¹¹⁰ Therefore, the RCC ruled that there had to be a possibility of a supervisory review of a judicial decision even if it was detrimental to the accused. For Russia, this judgment will have very negative consequences, as acquittals are statistically extremely rare: in 2007–8, the acquittal rate was 0.8 percent.¹¹¹ The authorities always try to reach a guilty verdict; procurators are routinely punished for allowing acquittals. It is to be expected that a broad interpretation of the notion of “fundamental defect in the previous proceedings, which could affect the outcome of the case” might bring new cases to Strasbourg. Interestingly, it was only in 2002 that the RCC declared a provision in the old Code of Criminal Procedure unconstitutional because it allowed reopening criminal cases without special preconditions.¹¹² In all of these cases, the RCC referred to the European Convention and to ECtHR judgments. In February 2007, the RCC ordered courts to limit the discretionary use of the supervisory review procedure and told the Russian parliament to bring this procedure in line with the ECtHR interpretation of international legal standards, including the principle of legal certainty.¹¹³ Without providing a clear recipe for reforming the supervisory procedure, the RCC boldly

declared that from now on Russians could complain to the Strasbourg court only after the completion of the supervisory stage of their litigation.¹¹⁴ The Supreme Court quickly responded by submitting to the parliament amendments to the Civil Procedure Code in which the Supreme Court further narrowed the supervisory review procedure but preserved its own power to exercise it.¹¹⁵ The amendments became law in December 2007 and further narrowed the use of supervisory review.¹¹⁶ The Supreme Court again quickly ordered the lower courts to limit the exercise of the supervisory review procedure to make it compatible with the principle of legal certainty, a principle that the ECtHR used to declare supervisory review incompatible with the 1950 convention.¹¹⁷ It remains to be seen whether the ECtHR will approve the effort of Russia's top tribunals. Clearly, however, the supervisory review system of court decisions is here to stay, and the Russian government will face more losses in the Strasbourg court because of Russian courts' widespread use of the system.¹¹⁸ Using supervisory review in 2007, courts of general jurisdiction handled 185,800 criminal cases (160,000 in 2006) and 153,400 civil cases (161,000 in 2006);¹¹⁹ arbitrazh courts handled 17,455 cases (16,525 cases in 2006);¹²⁰ and the RSC heard 1,438 criminal cases (1,979 in 2006), 237 civil cases (166 in 2006), and 574 administrative transgressions cases (274 in 2006). The Presidium of the RSC heard an additional 348 criminal cases (441 in 2006) and 10 civil cases (7 in 2006).¹²¹ Judicial statistics for 2008 show a 30 percent decline in the number of cases with which the supervisory review system dealt—a signal that the Russian judiciary may be listening to the ECtHR.¹²² Following Medvedev's suggestion to consider transforming the judicial system, made at the Congress of Judges in December 2008, the RSC contemplated abolishing supervisory review in exchange for introducing a full-blown appellate review system in the courts of general jurisdiction, the system that is already in place for reviewing the decisions of arbitrazh courts and justices of the peace.¹²³

The ECtHR in the Decision Making of the RSC and the Lower Courts of General Jurisdiction

Unlike the RCC, the 116-member RSC only rarely deals with the 1950 convention or with ECtHR judgments. According to a 2004 survey, of almost 4,000 judgments, the RSC mentioned the European Convention in only 12 cases: 8 decisions hinted at the conformity of domestic legal norms with the convention, and 4 decisions quoted the arguments put forward by the litigants before the Supreme Court.¹²⁴ A similar survey, conducted at the end of 2006, found 24 judgments referring to the convention and ECtHR judgments.¹²⁵ By the end of 2008, there were only a dozen more such judgments.¹²⁶ The RSC tends to draw on the 1950 convention and the ECtHR judgments to uphold acquittals, to impose more lenient punishments, to increase payments to the Chernobyl cleanup workers, and to cancel deportation orders.¹²⁷ The most elaborate application of European human rights standards occurred in the case of Olga Talanovskaya, from Krasnodar Krai, who had been acquitted in a money-laundering case and subsequently was awarded a one million ruble compensation award by local courts for being illegally charged. The procurator of the Krasnodar Krai, a stronghold of former Procurator General Vladimir Ustinov, succeeded in using the supervisory review procedure and persuading the Presidium of the Krasnodar Krai Court to quash this award. Talanovskaya appealed the case to the RSC, while the Krasnodar Procuracy objected to her complaint and even sent an officer from the General Procuracy to argue the case. The RSC took Talanovskaya's side, upholding the damages and criticizing the Presidium of the Krasnodar Krai Court's abuse of the supervisory review system by

citing the ECtHR judgment in the *Ryabykh* case at great length.¹²⁸ Clearly, in this case, the ECtHR reasoning helped the RSC to withstand pressure from the procuracy.

This unwillingness to use the European human rights standards persists despite the following:

1. Many judges actually have been to Strasbourg to observe the work of the ECtHR and have taken part in various international meetings on human rights in Russia and abroad.
2. ECtHR judgments are readily available in Russian in various databases, official collection of laws, academic journals, and compilations, and on the Web site of the office of Russia's representative at the European Court.
3. The RSC is aware of most of the applications found admissible by the ECtHR through memos received from the representative at the ECtHR.

This unwillingness of Russia's top judges to apply ECtHR standards sends a signal to lower-court judges to ignore the Strasbourg-based tribunal. For example, in September 2005, Viktor Zhuikov, then deputy chairman of the RSC, instructed lower courts not to apply the ECtHR judgment in the *Pravednaya v. Russia* case to identical disputes over indexation of pensions. Zhuikov's opinion repeated almost word for word an earlier instruction of the Russian Pension Fund Agency that the ECtHR judgment in the *Pravednaya* case applied only to the original applicant.¹²⁹ Such a narrow application of the ECtHR judgment, reflecting domestic courts' and pension fund agency officials' unwillingness to apply the standards developed by the ECtHR, created a strong incentive for the aggrieved pensioners to sue Russia in Strasbourg.¹³⁰

Anecdotal reports from lawyers suggest that judges in Tyumen Oblast and Chukotka Okrug have ruled that ECtHR judgments have no legal force in Russia; that judges in Tver Oblast have ignored all references to the ECtHR; and that judges in Moscow and Murmansk Oblast had a counsel who mentioned the 1950 convention physically removed from the courthouses.¹³¹ For example, in March 2006, the Rostov Oblast Court ruled in a case of the health compensation award to one Chernobyl cleanup worker that the complainant could not draw on the jurisprudence of the ECtHR because the Russian Civil Procedure Code (art. 11) did not mention judicial precedent as a source of law that bound Russia's courts.¹³² Around the same time, the St. Petersburg City Court concluded that even if the 1950 convention bound the Russian Federation, it bound the whole state but not any Russian government agencies or courts in particular.¹³³ Even after visiting the European Court in 2008, the chairman of the Tyumen Oblast Court still insisted that the "recommendations" of the ECtHR were binding on Russia only when they did not contradict Russian legislation.¹³⁴

Occasionally, at the request of Russia's representative at the Strasbourg court, the RSC sends out circular letters about the importance of applying ECtHR judgments. Although these letters have no formal legal binding force under Russian law, the RSC insists that they have such a force for lower courts, and the Council of Europe encourages the RSC to distribute these letters as an effective way of informing the judiciary about ECtHR judgments. The RSC urges courts to strictly observe statutory time limits set by the Code of Criminal Procedure for investigation and trial in general,¹³⁵ as well as for judicial review of the legality of compulsory psychiatric confinement,¹³⁶ and to write clear decisions in the cases of the Chernobyl cleanup workers.¹³⁷ Again, the ECtHR often admonishes Russia for excessively lengthy trials, and some courts respond to these letters effectively. For

example, the chairman of the Sverdlovsk Oblast Court promptly ordered lower courts to analyze the ECtHR judgment in the *Rakevich* case and to apply it in every case of contested confinement to a psychiatric hospital.¹³⁸ He also warned judges to speed up handling of all cases to eliminate the possibility that they would be reviewed in Strasbourg. His impatience was partly explained by the fact that Sutyajnik, a local human rights nongovernmental organization, had been very active in sending successful applications to the Strasbourg court.¹³⁹ The Lipetsk Oblast Court ordered lower courts to apply ECtHR judgments, to ask the detained about the conditions of their detention at the beginning of every court hearing, and to inquire about overcrowding in the detention centers at the detention hearings.¹⁴⁰ At least one local court in Lipetsk followed these instructions and cited Article 2 of the 1950 convention and ECtHR judgments in the case of a person who had been beaten by the police while held in detention.¹⁴¹ Courts in the Bashkortostan, Mari El, and Komi republics, and in Nizhni Novgorod and Samara, also follow these RSC circular letters and refer to ECtHR decisions and the 1950 convention.¹⁴²

However, as the decisions of courts in St. Petersburg in the case of *Shtukaturov v. Russia* show, the application of these circular letters is not uniform.¹⁴³ Moreover, between 2005 and 2008, the detention rate remained consistently high: judges approved nine out of ten prosecutorial detention requests and nearly all requests for extending the length of detention.¹⁴⁴ Human Rights Ombudsman Lukin complained to Medvedev that such a high detention rate was a recent phenomenon in the criminal justice field, rather than a Soviet legacy, and that sometimes courts automatically approved detention requests.¹⁴⁵ Thus far, the growing number of ECtHR judgments against Russia in unlawful detention cases does not appear to have made a difference in the overall practice of Russia's courts in this area, even though a number of influential judges agree with the Strasbourg court and insist on minimizing the use of detention.¹⁴⁶ However, their insistence is futile because many judges face strong incentives to cooperate with law-enforcement agencies, rather than supervising the legality of those agencies' actions.

Not all judges choose to cooperate with the demands of law-enforcement agencies, however. For example, in 2006, the Prokhladnenskii District Court in the Kabardino-Balkariya Republic acquitted the accused in six "fake" drug-trafficking cases, in which undercover law-enforcement officials provoked the sale of illicit substances, and blasted the police for not combating real traffickers.¹⁴⁷ The court announced the first two acquittals without knowing about the ECtHR's judgment in the *Vanyan v. Russia* case, in which such provocations by the Moscow police officials were found to be in violation of the 1950 convention.¹⁴⁸ The chairman of the Prokhladnenskii Court admitted that it was very difficult to acquit innocent people of these supposed crimes without knowing about this ECtHR judgment, because his court was criticized for being too soft on the drug traffickers. He stressed how helpful the *Vanyan* judgment was for judges trying to oversee the legality of law enforcement agencies' actions.¹⁴⁹ Courts in Nizhny Novgorod, Stavropol Krai, and St. Petersburg also have referred to the *Vanyan* case in handling drug-trafficking cases.¹⁵⁰ Note that the RSC first drew on the *Vanyan* case only in October 2007, well after these decisions of local courts.¹⁵¹

The influence of ECtHR judgments on the jurisprudence of Russian courts in freedom of speech cases is also uneven.¹⁵² On the one hand, freedom of speech and of mass media has been declining in Russia throughout the past decade, as documented by various indicators. Courts have often been involved in this process by convicting journalists, editors,

and bloggers for defamation and hate speech; closing down media outlets; and similar actions.¹⁵³ Many of these cases eventually ended up in Strasbourg.¹⁵⁴ On the other hand, in 2005 the RSC issued a detailed edict on how to handle libel and defamation cases; the edict included numerous references to the 1950 convention and the ECtHR.¹⁵⁵ Local courts in the Altai, Kareliya, and Karachaevo-Cherkess republics, as well as in Amur, Belgorod, Vladimir, Kaluga, Pskov, Saratov, and Sverdlovsk oblasts and in Krasnoyarsk Krai refer to the ECtHR cases in their freedom of speech cases.¹⁵⁶ For example, the Koriashma City Court in the Arkhangelsk Oblast dismissed the libel suit brought by the city mayor against his rival during the mayoral election campaign by drawing on the 2005 RSC edict and ECtHR judgments.¹⁵⁷ Some courts applied the 1950 convention even prior to this RSC edict.¹⁵⁸ For example, in early 2003, the Novosibirsk Oblast Court dismissed the libel lawsuit against a newspaper by drawing on ECtHR judgments.¹⁵⁹

Overall, the practice of the 2,500 lower courts is difficult to assess, as their rulings are usually not published. More research is needed to assess the impact of ECtHR judgments on the decision making of Russian courts. A new law requiring publication of most court decisions and making them available to anyone, which will take effect in July 2010, is a step in the right direction.¹⁶⁰ Moreover, it is in line with the 1950 convention. As the ECtHR ruled in *Ryakib Biryukov v. Russia*, all court decisions and their reasoning must be made available to the public.¹⁶¹ Still, this preliminary analysis of judicial decision making has shown that Russian judges refer to the 1950 convention in a growing number of cases, especially when a judge is willing to learn more about the ECHR and litigants base their argumentation on the relevant norms.¹⁶² Russian judges who choose to draw on the ECtHR judgments tend to do so when they try to resist pressure from the executive branch, and they are not punished for this resistance—they remain on the bench. However, there is a lively debate among judges on whether they need to apply the 1950 convention in the cases they handle. Some judges refuse to apply the convention, whereas others apply it on a regular basis.¹⁶³ However, this debate may help move Russian judges away from judicial formalism toward judicial creativity in human rights cases. More active insistence of the RSC on applying the European human rights standards would help continue this trend.

The ECtHR in the Practice of the Arbitrazh Courts

The RSAC heads the system of 117 *arbitrazh* courts in charge of disputes between businesses and between businesses and the government. These are very busy courts, yet many fewer Russians appear to complain to the Strasbourg court about these tribunals than about other courts.¹⁶⁴ Yet RSAC judges recognize that this pattern may be temporary and have therefore made the “prevention of wholesale appeals of the arbitrazh court decisions in the ECtHR” one of their priorities.¹⁶⁵ The RSAC is sure that the ECtHR’s growing jurisprudence in the area of tax law is quickly becoming known to Russian tax lawyers, who, in turn, help Russian businesses flood this tribunal with their complaints.¹⁶⁶ The arbitrazh courts tend to handle disputes involving larger financial amounts than the other courts do. However, these tribunals, like the rest of the judiciary, face pressure from regional governments, tax authorities, and private corporations. Both scholarly analysis and the media document close-knit ties between certain arbitrazh judges and influential government and private actors.¹⁶⁷ Thus, many businesses will have both the incentive and the resources to complain against the government in the Strasbourg-based tribunal. Arbitrazh judges in the regions are aware of this. For example, the Eighteenth Appellate Arbitrazh Court in

Chelyabinsk drew on the ECtHR jurisprudence and ruled against the Chelyabinsk Oblast Tax Inspectorate by declaring that when, under the pretexts of revenue-raising expediency and financial crisis, the tax authorities treat businesses as tax cheaters, they are imposing illegal tax penalties and contributing to the “formation of queues of taxpayers” complaining to the ECtHR.¹⁶⁸

Although the question of whether the edicts of the RSC Plenum are binding on the arbitrazh courts remains unresolved, the binding nature of any pronouncements made by the RSAC on these courts is uncontested. The RSAC has circulated “information letters” concerning the interpretation of the right to property in light of the 1950 convention,¹⁶⁹ in which it summarized the jurisprudence of the ECtHR on Article 6 and Article 1, protocol no. 1 of the 1950 convention.¹⁷⁰ Since 1999, RSAC judges regularly publish the summaries of relevant ECtHR judgments and supply their own commentary.¹⁷¹ Although there is no legal basis for such “information letters” and such commentaries are simple legal opinions, these letters are often used to convey information and they have a large impact on judicial practice. Lower arbitrazh court judges prefer this way of spreading the knowledge about the ECtHR as this practice, first, makes clear that the 1950 convention and ECtHR judgments are binding on the Russian courts¹⁷² and, second, is focused on the specific category of lawsuits involving property rights.¹⁷³ Moreover, both former and current chief justices of the RSAC have scolded judges for providing weak judicial reasoning,¹⁷⁴ and references to the ECtHR judgments may help the judges ensure that their rulings are upheld on appeal.

The RSAC also draws on the 1950 convention and on ECtHR judgments in its own decisions.¹⁷⁵ For example, the RSAC reversed the decision of the Moscow City Arbitrazh Court and ruled that the 1950 convention protected the rights of corporations in addition to the rights of individuals, thus opening the way to apply this protection in disputes over business reputation and libel cases.¹⁷⁶ The lower courts followed suit. For example, the Volgo-Vyatsky Cassation Arbitrazh Court drew on ECtHR judgments to uphold a libel lawsuit brought by a private firm against the regional governor, who accused the firm of stealing public property.¹⁷⁷

Judging by the published decisions of the arbitrazh courts, references to the ECtHR are more frequent in the arbitrazh courts than in the ordinary courts. Arbitrazh judges are not unlike other Russian judges in their hesitation to mention the ECtHR in their decisions even if the litigants are drawing on the Strasbourg court judgments in their legal claims, but this hesitation is slowly fading. According to an RSAC database that lists more than five million arbitrazh court decisions, prior to 2005 there were only seven judicial decisions that drew on the 1950 convention.¹⁷⁸ Four of them were authored by Aleksei Kirillov, a judge on the Arbitrazh Court of the Tatarstan Republic, and the fifth was written by L. A. Sakaeva, a judge on the Arbitrazh Court of the Bashkortostan Republic. All five decisions referred to the 1950 convention in resolving tax disputes.¹⁷⁹ The remaining two decisions came from the Northwest Cassation Arbitrazh Court, located in St. Petersburg. In both decisions, this court (judges Vetoshkina, Korpusova, Khokhlov, Kadulin, Konyaeva, and Sergeeva) drew on the 1950 convention and the ECtHR jurisprudence and ordered lower courts to hear lawsuits against tax authorities and powerful St. Petersburg Governor Valentina Matvienko, a personal friend of Putin.¹⁸⁰ However, by the beginning of 2009, the same database contained several thousand arbitrazh court decisions that mentioned the 1950 convention

and ECtHR judgments; these decisions from courts of all rungs and regions concerned a variety of cases on property rights, due process, tax disputes, and licensing.¹⁸¹

Most often, arbitrazh judges use the judgments of the ECtHR in lawsuits brought by businesses against the government, precisely in such disputes in which one would expect the government pressure on judges to be the highest. Among these lawsuits, two categories of cases are most frequent: first, when businesses miss the statutory three-month period for bringing complaints against fines and tax penalties and ask the courts to hear their complaints¹⁸² and when businesses ask the courts to lower the fines and tax penalties. The arbitrazh courts often allow such complaints and lower or cancel fines and tax penalties by referring to the 1950 convention and the ECtHR. In June 2005, the chairman of the Moscow City Arbitrazh Court, Oleg Sviridenko, publicly announced that judges should allow such complaints on the basis of ECtHR judgments.¹⁸³ The trial-level arbitrazh courts in the following areas repeatedly refer to ECtHR judgments in such tax disputes ranging from meager sums to significant amounts:¹⁸⁴

- Bashkortostan (judges Akhmetova, Aspanov, Sakaeva, and Simakhina);
- Khakassiya (judges Ishchenko, Khabibulina, Parfenteva, and Silishcheva);
- Dagestan (judge Batyraev);
- Tatarstan (judges Kirillov and Nafiev);
- Magadan (judges Adarkina, Baido, Kushnirenko, and Stepanova);
- Udmurtiya (judges Butorina, Smaeva, and Zorina);
- Orenburg (judges Serdyuk and Tsyapkina);
- Arkhangelsk (judges Bekarova, Kalashnikova, and Nikitin);
- Khanty-Mansiisk (judges Kushcheva and Mingazetdinov); and
- Tomsk (Judge Mukhamedzhanova).

Among the appellate-level arbitrazh courts, the Ural Cassation Arbitrazh Court, whose jurisdiction includes the seven Russian regions in the Urals area, applies the 1950 convention and ECtHR judgments most actively in a variety of cases, most of which are tax disputes decided in favor of taxpayers. According to the Konsultant Plyus database, this court relied on the 1950 convention for the first time in December 2000, when it rejected an appeal by the Kurgan Oblast Tax Inspectorate to increase the fine on a small-business owner who failed to provide cash register receipt.¹⁸⁵ By April 2007, this tribunal drew on European human rights standards in at least 125 decisions, more often than all other appellate-level arbitrazh courts taken together.¹⁸⁶ Its activism may be explained in part by the organizational culture of this tribunal and the fact that this court is based in Ekaterinburg, which is home to one of the best law schools in Russia.

To sum up this preliminary analysis, references to the 1950 convention and to ECtHR judgments are still rare in the arbitrazh courts. However, the number of these references is growing rapidly, particularly in tax disputes between businesses and the government. By drawing on the ECtHR jurisprudence, arbitrazh judges protect rights of businesses against the tax authorities and law-enforcement agencies, who, in Medvedev's words, "create nightmares for businesses."¹⁸⁷ This, of course, makes the Strasbourg court even more popular in the eyes of taxpayers, because references to the 1950 convention often allow judges to lower or cancel tax penalties. Judges increasingly draw on European human rights standards despite the growing caseload of the arbitrazh courts and despite the Kremlin's rhetoric about what it sees as the biased ECtHR. As I have shown, most

of the arbitrazh judges who rely on the 1950 convention and the ECtHR judgments were appointed by Putin, yet these judges face no sanctions from the Kremlin for their reliance on the convention or the ECtHR. This puzzle of Putin's judicial reform deserves more attention from scholars: why hire judges who rule against the government and champion legal principles that undermine the ruling regime? It is clear that businesses derive direct benefits when they mention the 1950 convention in their lawsuits against tax authorities, but more research is needed to explore what motivates judges in deciding whether to embrace, scrutinize, or ignore Strasbourg-based legal arguments.

Conclusion

How did the Russians respond to the European Court of Human Rights in the past decade? Ordinary Russians flooded the ECtHR in such great numbers that this supranational tribunal is bound to become a supercassation court for Russia. Government officials tried their best to stem the flood of complaints to this court to avoid embarrassment at home and abroad. Their efforts, by and large, were futile, as indicated by the growing number of judgments against Russia for violating the same law multiple times. These efforts failed because the European Court demanded a radical overhaul of public governance (both laws and informal practices) in the law-enforcement, penitentiary, and judicial systems, something that Russian leaders were both unwilling and unable to do so. Russian judicial bosses have proved more willing to support the ECtHR with words than with deeds, even though they have clear statutory authorization to apply ECtHR judgments. Despite increased knowledge of ECtHR case law and frequent contact with the Strasbourg court, Russia's top courts are unwilling to follow the ECtHR's order to give up the supervisory review system. They resist not because they dislike international human rights law but because the supervisory review gives them more power and protects their institutional standing vis-à-vis lower courts and other political actors. Moreover, the decentralization of the judicial system, in which some local judges have stronger loyalties to local law-enforcement officials than to the appellate courts, neither provides incentives for judges to follow the European human rights standards nor increases their risk of being punished for failure to apply ECtHR case law or the 1950 convention. As I have shown, courts in different regions treat the 1950 convention and the ECtHR differently, and this variation does not seem to depend on how affluent or how democratic a region is.

Nevertheless, the impact of the Strasbourg court's judgments on Russia is hard to exaggerate. Symbolically, it remains the most powerful court in the eyes of many Russians: week after week, the mass media informs them that the ECtHR routinely rules against the Russian government and that the government promptly pays out compensation awarded by this tribunal to all successful applicants. This remains true, although very few government officials are actually punished for committing the human rights violations, as identified by the Strasbourg tribunal.¹⁸⁸ Moreover, the mere threat of litigation from the ECtHR forces government officials to take care of complainants, even if they do so half-heartedly, on a case-by-case basis, and only when following orders from the top. Responding to losses in Strasbourg, Russia witnessed a flurry of legislative activity, as well as increased funding for the prison system and the judicial branch. Russian judges increasingly draw on the decisions of the Strasbourg court despite their growing caseload and despite the accusations that these decisions are biased and anti-Russian. Many of these judges were appointed by Putin but choose to embrace the 1950 convention and the ECtHR, both of

which create constant headaches for Russia's leadership. My preliminary analysis shows that the Russian courts draw on the ECtHR to support both their independence from law enforcement authorities and their judicial power in the sense of requiring government agencies to carry out judicial decisions. More research, focused on organizational cultures of specific executive agencies and courts, and on the motivations of individual judges, is needed to explain this Strasbourg-friendly judicial decision making in the context of the anti-Strasbourg stance of the ruling regime.

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NOTES

1. The Council of Europe was established by the Treaty of London, which was signed on May 5, 1949, by ten European states. Now the Council of Europe has forty-seven member-states, including nearly all of the countries of Europe. The European Court of Human Rights (ECtHR) began operating in 1959 and should be distinguished from the European Court of Justice in Luxembourg, which interprets EU treaties and applies EU laws across its member states.

2. All member-states of the Council of Europe must ratify the 1950 agreement. "European Convention for the Protection of Human Rights and Fundamental Freedoms," November 4, 1950, 213, *United Nations Treaty Series*, 222. Russia ratified the convention on March 30, 1998, and passed a respective law on ratification. "Федеральный закон от 30 марта 1998 года № 54-ФЗ 'О ратификации Конвенции о защите прав человека и основных свобод и Протоколов к ней,'" *Sobranie zakonodatelstva RF*, no. 14 (1998): item 1514.

3. Helen Keller and Alec Stone Sweet, "The Reception of the ECHR in National Legal Orders," in *A Europe of Rights: The Impact of the ECHR on National Legal Systems*, ed. Helen Keller and Alec Stone Sweet, 13 (New York: Oxford University Press, 2008).

4. Kirill Koroteev, "The European Factor in Russian Justice," *Open Democracy News Analysis*, June 26, 2008, <http://www.opendemocracy.net/node/45245/pdf> (accessed April 20, 2009); and Olga Shepeleva, "Ispolnenie reshenii Yevropeiskogo suda po pravam cheloveka (ESPCh) v Rossii," October 2008, <http://www.mhg.ru/files/008/20111.doc> (accessed March 30, 2009).

5. Boris Yamshanov, "Zhenskii podkhod k Strasburgu," *Rossiiskaya gazeta*, March 23, 2007, <http://www.rg.ru/2007/03/23/strasburg.html> (accessed March 30, 2009).

6. "Smazka dlya koleasa," *Moskovskie novosti*, February 26, 2006; and Valdimir Shishlin, "Strasburgsky sud: Predvzyatost ili obektivnost?" *Interfax*, April 20, 2009, <http://www.interfax.ru/print.asp?sec=1448&id=75347> (accessed April 21, 2009).

7. Nataliya Amanova, "Oplot yevropeiskoi demokratii," *Rodnaya gazeta*, June 4, 2007; "Zheleznyi zhanaves' Yevropeiskogo suda," *Parlamentskaya gazeta*, October 11, 2007; "Vragi mogut podnachivat," *Vedomosti*, June 30, 2008, <http://www.vedomosti.ru/newspaper/article.shtml?2008/06/30/152981> (accessed March 30, 2009); "Strasbourg Court Seen as Biased," *Moscow Times*, March 2, 2009, 3; and Interfax, "Senior Russian Senator Lambasts European Court of Human Rights," Johnson's Russia List, March 23, 2009, <http://www.cdi.org/russia/johnson/2009-58-29.cfm> (accessed April 21, 2009).

8. Svetlana Sukhova, "The Duma Will Be Criticized in Strasbourg," *Nezavisimaya gazeta*, January 25, 2007, <http://www.wps.ru/en/pp/story/2007/01/26.html> (accessed March 30, 2009).

9. Robert O. Keohane, Andrew Moravcsik, and Anne-Marie Slaughter, "Legalized Dispute Resolution: Interstate and Transnational," *International Organization* 54, no. 3 (June 2000): 457–88. These authors argue that even if governments do not ultimately comply with the decisions of international courts, "a negative legal judgment may increase the salience of an issue and undermine

the legitimacy of the national position in the eyes of domestic constituents.” *Ibid.*, 467.

10. Lyudmila Romanova, “Institut otpepli,” *Smart Money*, July 28, 2008.

11. “Vystuplenie Prezidenta RF D.A.Medvedeva na VII Vserossiiskom sezde sudei,” December 2, 2008, <http://www.kremlin.ru/text/appears/2008/12/210020.shtml> (accessed April 20, 2009).

12. For an argument in favor of studying courts as an element of the modern administrative state network, rather than as a separate branch of government, see Edward L. Rubin, “Independence as a Governance Mechanism,” in *Judicial Independence at the Crossroads: An Interdisciplinary Approach*, ed. Stephen Burbank and Barry Friedman (Thousands Oaks, CA: Sage, 2002), 56–100. Although Rubin’s argument deals with the U.S. context, it equally applies to countries like Russia, where separation of powers is very limited in the practice of governance.

13. “Russian Constitution,” *Rossiiskaya gazeta*, January 21, 2009, Article 46.3: “In conformity with the international treaties of the Russian Federation, everyone shall have the right to turn to interstate organs concerned with the protection of human rights and liberties when all the means of legal protection available within the state have been exhausted.”

14. Under the 1950 convention, the *right to individual application* to the ECtHR means the right of an individual to “apply to the ECtHR” with a complaint against the member state of the Council of Europe. This article uses the terminology of the 1950 convention and calls complaints to the ECtHR “applications” and complainants “applicants.”

15. For an analysis of Russia’s accession process to the Council of Europe, see Pamela Jordan, “Russia’s Accession to the Council of Europe and Compliance with European Human Rights Norms,” *Demokratizatsiya*, 11 no. 2 (2003): 281–96; and Angelika Nußberger, “The Reception Process in Russia and Ukraine,” in Keller and Sweet, *A Europe of Rights*, 603–10.

16. “The European Court of Human Rights: Annual Report 2008,” ECtHR, <http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Reports/Annual+Reports/> (accessed April 21, 2009).

17. “Press-vypusk ‘Sudebnaya zashchita,’” VTsIOM, April 22, 2004, <http://wciom.ru/arkhiv/tematicheskii-arkhiv/item/single/121.html> (accessed March 30, 2009).

18. Aleksandr Sidyachko, “Zheleznyi занавес v mozgakh,” *Gazeta*, February 15, 2007, <http://www.gzt.ru/society/2007/02/14/220022.html> (accessed March 30, 2009).

19. “Otchet po rezultatam obshcherossiiskogo massovogo oprosa grazhdan Rossii po teme ‘Otsenka deyatelnosti sudov v Rossiiskoi Federatsii,’” VTsIOM, November 2007, 29, <http://wciom.ru/novosti/otkrytye-proekty/ocenka-deyatelnosti-sudov-v-rf.html> (accessed March 30, 2009).

20. “Strasburgskii sud i rossiiskie grazhdane,” *Fond Obshchestvennoe mnenie*, August 7, 2008, <http://bd.fom.ru/report/map/d083122> (accessed March 30, 2009).

21. Peter H. Solomon Jr. and Todd S. Foglesong, *Courts and Transition in Russia* (Boulder, CO: Westview Press, 2000), 82; and Aleksandra Samarina, “Sudam doveryaet lish kazhdyi sotyi,” *Nezavisimaya gazeta*, April 21, 2004, 2.

22. “Svoi Strasbourg,” *Vedomosti*, April 28, 2009; and Darya Pylnova and Dmitry Shkrylev, “Yevroschetchik,” *Novaya gazeta*, April 15, 2009, <http://www.novayagazeta.ru/data/2009/039/00.html> (accessed April 21, 2009).

23. “Strasburgskaia shkola,” *Vedomosti*, July 9, 2008, A1.

24. *Burdov v. Russia*, 59498/00 (2002), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

25. My own calculation, adding the 643 judgments issued between May 2002 and December 31, 2008, to the 102 judgments issued between January and April 2009. See “The European Court of Human Rights: Annual Report 2008” and database of the ECtHR judgments at <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009). For examples of judgments in which the ECtHR found no violations of the European Convention, see *Bordovskiy v. Russia*, 49491/99 (2005), judgment, second section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *Nikitin v. Russia*, 50178/99 (2004), judgment, second section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *Zhigalev v. Russia*, 54891/00 (2006), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *Fadin v. Russia*, 58079/00 (2006), judgment, third section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>

-en (accessed April 30, 2009); *Anandovskiy v. Russia*, 24015/02 (2006), judgment, third section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *Klimentyev v. Russia*, 46503/99 (2006), judgment, fifth section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *Zaytsev v. Russia*, 22644/02 (2006), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *AO Plodovaya Kompaniya v. Russia*, 1641/02 (2007), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *Chepelev v. Russia*, 58077/00 (2007), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *Volkov v. Russia*, 64056/00 (2007), judgment, second section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *Protsenko v. Russia*, 13151/04 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

26. "Violation by Article and by Country, 1998–2008," ECtHR, http://www.echr.coe.int/NR/rdonlyres/3F2BBA18-AC1F-496A-A23B-4F460191671C/0/Tableau_de_violations_2008_ENG.pdf (accessed March 30, 2009). The ECtHR has not found Russia in violation of articles 4 (prohibition of slavery/forced labor), 7 (no punishment without law), or 12 (right to marry) of the 1950 convention.

27. *Wasserman v. Russia (No. 2)*, 21071/05 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *Kukalo v. Russia (No. 2)*, 11319/04 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); and *Burdov v. Russia (No. 2)*, 33509/04 (2009), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

28. *Ryabykh v. Russia*, 52854/99 (2003), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

29. For example, the ECtHR ordered Russia to pay €10,000 to the Moscow branch of the Salvation Army for failing to reregister the organization. The Salvation Army had asked for €50,000. *Moscow Branch of the Salvation Army v. Russia*, 72881/01 (2006), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

30. The ECtHR issued more than sixty judgments in cases that originated from Voronezh Oblast over the nonimplementation of domestic court decisions in the social benefits cases. Ilya Sivoldaev, "Voronezh ne dogonish . . .," May 16, 2008, <http://irhrg.ru/?q=node/247> (accessed March 30, 2009); and Ekaterina Butorina, "Neispolnitelnaya vlast," *Vremya novostei*, December 5, 2006, <http://www.vremya.ru/2006/224/51/167102.html> (accessed March 30, 2009).

31. The Justice Ministry is in charge of the prison system, and the Ministry of Internal Affairs is in charge of the detention centers. The Federal Security Service (FSB) also has a limited number of detention centers.

32. *Kalashnikov v. Russia*, 47095/99 (2002), judgment, third section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

33. For the ECtHR judgments, see Nußberger, "The Reception Process in Russia and Ukraine," 639.

34. See, for example, *Babushkin v. Russia*, 67253/01 (2007), judgment, third section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

35. *Mikheyev v. Russia*, 77617/01 (2006), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

36. *Ilascu v. Russia and Moldova*, 48787/99 (2004), judgment, grand chamber, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

36. "Konventsiiya o zashchite prav i svobod i realizatsiya ee trebovaniy v UIS Rossiiskoi Federatsii cherez resheniya Yevropeiskogo Suda po pravam cheloveka," *Vedomosti ugolovno-ispolnitelnoi sistemy*, no. 6 (2008).

37. "Konventsiiya o zashchite prav i svobod i realizatsiya ee trebovaniy v UIS Rossiiskoi Federatsii cherez resheniya Yevropeiskogo Suda po pravam cheloveka," *Vedomosti ugolovno-ispolnitelnoi sistemy*, no. 6 (2008).

38. *Chember v. Russia*, 7188/03 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

39. For more information on the widespread nature of hazing in the Russian military, see Françoise Daucé and Elisabeth Sieca-Kozłowski, eds., *Dedovshchina in the Post-Soviet Military: Hazing of Russian Army Conscripts in Comparative Perspective* (Stuttgart: Ibidem Verlag, 2007).

40. See, for example, *Nadrosov v. Russia*, 9297/02 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

41. “Указ Президента РФ от 29.03.1998 N 310 ‘Об Уполномоченном Российской Федерации при Европейском суде по правам человека’” [Decree of the President of the Russian Federation no. 310 (March 1998; outlining the roles and responsibilities of Russia’s Representative at the ECtHR)], *Sobranie zakonodatelstva RF*, no. 14 (1998): item 1540, and subsequent amendments.

42. *Ibid.*

43. “Order of the Minister of Internal Affairs of the Russian Federation no. 804 of December 3, 2004,” *Law Russia.ru*, December 3, 2004, http://lawrussia.ru/texts/legal_484/doc484a395x923.htm (accessed April 21, 2009); “Order of the Minister of Defense of the Russian Federation no. 333 of September 5, 2006,” *Besplatnaya pravovaya baza dannykh*, <http://www.the-law.ru/node/9443> (accessed April 21, 2009); Order of the Minister of Finance of the Russian Federation no. 225 of July 14, 2006, *BestPravo.ru*, <http://www.bestpravo.ru/fed2006/data02/tex12388.htm> (accessed April 21, 2009); Order of the Head of the Federal Judicial Bailiff Service of the Russian Federation no. 37 of March 31, 2006, unpublished document; “Order of the Procurator General of the Russian Federation no. 170 of October 17, 2007,” *Zakonnost*, no. 12 (2007): 49–51.

44. “Указ Президента РФ от 20.03.2007 N 369 ‘О Лаптеве П.А.’,” Decree of the President of the Russian Federation no. 369 (March 20, 2007; dismissing Laptev), <http://document.kremlin.ru/doc.asp?ID=038574> (accessed March 30, 2009); “Указ Президента РФ от 20.03.2007 N 371 ‘Об Уполномоченном Российской Федерации при Европейском суде по правам человека,’” Decree of the President of the Russian Federation no. 371 (March 20, 2007; appointing Milinchuk), <http://document.kremlin.ru/doc.asp?ID=038533>; and “Указ Президента РФ от 20.03.2007 N 370 ‘Вопросы обеспечения деятельности Уполномоченного Российской Федерации при Европейском суде по правам человека,’” Decree of the President of the Russian Federation no. 370 (March 20, 2007; transferring the office to the Justice Ministry), <http://document.kremlin.ru/doc.asp?ID=038530> (accessed March 30, 2009).

45. “Указ Президента РФ от 23.06.2006 N 646 ‘О Министре юстиции Российской Федерации,’” Decree of the President of the Russian Federation no. 646 (June 23, 2006; appointing Ustinov), <http://document.kremlin.ru/doc.asp?ID=034297> (accessed March 30, 2009).

46. “Указ Президента РФ от 12.05.2008 N 736 ‘О Министре юстиции Российской Федерации,’” Decrees of the President of the Russian Federation no. 736 (May 12, 2008), <http://document.kremlin.ru/doc.asp?ID=045775> (accessed April 20, 2009; appointing Kononov); “Указ Президента РФ от 03.07.2008 N 1032 ‘О Милинчук В.В.’,” Decree of the President of the Russian Federation no. 1032 (July 3, 2008; dismissing Milinchuk) <http://document.kremlin.ru/doc.asp?ID=045775> (accessed April 20, 2009); and “Указ Президента РФ от 05.08.2008 N 1179 ‘Об Уполномоченном Российской Федерации при Европейском суде по правам человека – заместителе Министра юстиции Российской Федерации,’” Decree of the President of the Russian Federation no. 1179 (August 5, 2008; appointing Matyushkin), <http://document.kremlin.ru/doc.asp?ID=047358> (accessed March 30, 2009).

47. Matyushkin maintains a regularly updated Web site for the Justice Ministry with translated summaries of judgments and decisions of the ECtHR. “*Pretsedentnaya praktika Yevropeiskogo Suda po pravam cheloveka*,” Ministry of Justice, <http://www.minjust.ru/ru/ECJ/precedent> (accessed April 10, 2009). He also managed to persuade Medvedev to authorize Russia’s representative at the ECtHR both to demand “urgent” responses from the government agencies to requests coming from the Strasbourg court and to invite any expert to testify on the government’s side during litigation in the ECtHR. “Указ Президента РФ от 14.12.2008 N 1771 ‘О внесении изменений в Положение об Уполномоченном Российской Федерации при Европейском суде по правам человека—заместителе Министра юстиции Российской Федерации, утвержденное Указом Президента Российской Федерации от 29 марта 1998 г. N 310,’” Decree of the President of the Russian Federation, no. 1771 (December 14, 2008), <http://document.kremlin.ru/doc.asp?ID=49552> (accessed March 30, 2009).

48. Milinchuk replaced all of Laptev’s staff. Her newly appointed subordinates had to learn how

to communicate with the ECtHR from scratch. In line with the procuracy's established pattern of automatic appeal of all acquittals, Milinchuk appealed many unfavorable ECtHR judgments to the Grand Chamber of the ECtHR.

49. See, for example, Pavel Laptev, "Pravovaya sistema Rossii yevropeiskie pravovye standarty," *Otechestvennye zapiski*, 2003, no. 2 (2003), <http://www.strana-oz.ru/?numid=11&article=454> (accessed March 30, 2009).

50. *Taykov v. Russia*, 48498/99 (2000), decision, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009). The story is reported in "Monitoring obrashchenii sud iz stran SNG i Pribaltiki," Institute of Problems of Information Law, <http://www.medialaw.ru/article10/8> (accessed March 30, 2009).

51. Kirill Koroteev, interview with the author, October 22, 2008.

52. See Laptev's interviews: "Internet-kohferentsiya," *Garant*, April 18, 2005, <http://www.garant.ru/iconf/report/35.htm> (accessed March 30, 2009); and "Ne delaite iz Yevrosuda fetish!" *Politicheskii Zhurnal*, January 16, 2006, <http://www.politjournal.ru/index.php?action=Articles&id=96&tek=4872&issue=139> (accessed March 30, 2009).

53. "Ne delaite iz Yevrosuda fetish!"

54. However, the ECtHR repeatedly found this pretext to violate the 1950 convention, ordered Russia to enforce these court decisions, and awarded moral harm compensation to the applicants.

55. "Ne delaite iz Yevrosuda fetish!"

56. "Pavel Laptev: Pensionery i roditeli vybivayut kompensatsii s pomoshchyu Yevropeiskogo Suda," *IA Den*, March 16, 2007, <http://www.dayudm.ru/lenta.php?id=19746> (accessed March 30, 2009).

57. *Aleksentseva and 28 others v. Russia*, 75025/01 (2003), decision, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *Aleksentseva and 28 others v. Russia*, 75025/01 (2006), decision, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); and *Aleksentseva and others v. Russia*, 75025/01 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

58. *Ibid.*

59. Polina Efimova, "Evropeiskii sud ostavil likvidatorov naedine s Rossiiskim Pravitelstvom," *Kommersant-Yug Rossii*, September 5, 2003.

60. "Ne delaite iz Yevrosuda fetish!"

61. *Aleksentseva and 28 others v. Russia* (2006).

62. See Yu. Yu. Berestnev and M. M. Vinogradov, "Praktika Yevropeiskogo Suda po pravam che-loveka: printsip pravovoi opredelennosti ili *quod licet jovi, non licet bovi*?" *Rossiiskaya yustitsiya*, no. 11 (2006). For the rebuttal, see Aidar Sultanov, "Pravovaya opredelennost i spravedlivost ili 'Yupiter, ty serdishsya, znachit, ty ne prav . . .,'" *Zakon*, no. 9 (2007).

63. As a result, the ECtHR dismissed these applications from the docket in April and June 2007. See *Saplenkov v. Russia*, 8190/02 (2007), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); and *Gennadiy Kot v. Russia*, 76542/01 (2007), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

64. *Aleksentseva and others v. Russia* (2008).

65. A number of the ECtHR judgments indicate that this threat works. Russian authorities moved swiftly to eliminate the violations of the 1950 convention after receiving notices of applications from the ECtHR. See *Lyudmila Aleksentseva v. Russia*, 33706/05 (2007), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); and *Shpakovskiy v. Russia*, 41307/02 (2005) judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

66. The ECtHR views the Article 34 right as having status different from the substantive rights protected by the 1950 convention and does not require domestic remedies to be exhausted for the cases. See *Klyakhin v. Russia*, 46082/99 (2003), admissibility decision, second section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009). I am grateful to Kirill Koroteev for bringing this to my attention.

67. A few examples of nongovernmental organizations that have been subject to coercion include

Memorial, Tsentr sodeistviya mezhdunarodnoi zashchite, and Komitet "Grazhdanskoe sodeistvie" (all Moscow-based); Interights and European Human Rights Advocacy Centre (both London-based); and Stichting Russian Justice Initiative (in the Netherlands).

68. Vladimir Lukin, *Annual Report of the Human Rights Ombudsman 2006* (Moscow: Office of the Human Rights Ombudsman, 2006), 133–43, http://www.ombudsman.gov.ru/doc/ezdoc/06text_eng.doc (accessed March 30, 2009).

69. "Konventsiiya o zashchite prav i svobod i realizatsiya ee trebovaniy v UIS Rossiiskoi Federatsii cherez resheniya Yevropeiskogo Suda po pravam cheloveka," *Vedomosti ugolovno-ispolnitelnoi sistemy*, no. 6 (2008).

70. *Shtukaturov v. Russia*, 44009/05 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *Mechenkov v. Russia*, 35421/05 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *Ryabov v. Russia*, 3896/04 (2008), judgment, first section, ECtHR <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); and *Ponushkov v. Russia*, 30209/04 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

71. See, for example, *Maslova and Nalbandov v. Russia*, 839/02 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); and *Mezhidov v. Russia*, 67326/01 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

72. In *Ryabov v. Russia* (see n70), Laptev did ask the justice ministry to investigate the relationship between the complainant and his lawyers; ministry officials, together with police officers, tried but failed to come up with evidence of wrongdoing.

73. Vladimir Terletskii, "So Strasburgom svyazi net," *Nezavisimaya gazeta*, May 27, 2008.

74. Brian D. Taylor, "Putin's 'Historic Mission': State-Building and the Power Ministries in the North Caucasus," *Problems of Post-Communism* 54, no. 6 (2007): 3–16.

75. Ole Solvang, "Russia and the European Court of Human Rights: The Price of Non-Cooperation," *Human Rights Brief* 15, no. 2 (2008): 14–17, <http://www.wcl.american.edu/hrbrief/15/2solvang.pdf> (accessed March 30, 2009).

76. "Actions of the Security Forces in the Chechen Republic of the Russian Federation: General Measures to Comply with the Judgments of the European Court of Human Rights," memorandum, part III, Department for the Execution of Judgments of the ECtHR (information document, Committee of Ministers of the Council of Europe, no. 33, September 11, 2008), <https://wcd.coe.int/ViewDoc.jsp?id=1340139> (accessed March 30, 2009).

77. *Imakayeva v. Russia*, 7615/02 (2009), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

78. *Chernetsova and others v. Russia*, 27311/03. This case has not been decided yet. For a summary of the litigation, see Alan Holiman, "The Case of *Nord-Ost*: Dubrovka and the Search for Answers," *Europe-Asia Studies* 61, no. 2 (2009): 302–5.

79. "V MVD Rossii proshlo soveshchanie s uchastiem Upolnomochennogo Rossiiskoi Federatsii pri Yevropeiskom Sude po pravam cheloveka," Ministry of Internal Affairs, April 7, 2009, <http://mvd.f.ru/news/25474> (accessed April 21, 2009).

80. "On the Interaction of the Procurator-General of the Russian Federation with the Representative of the Russian Federation at the European Court of Human Rights," General Procuracy of the Russian Federation, July 23, 2008, <http://genproc.gov.ru/news/news-8198> (accessed March 30, 2009).

81. Decree of the President of the Russian Federation no. 1771 (see n47).

82. "On the Introduction of the Draft Law 'On the State Compensation of Harm, Caused by Violation of the Right to Speedy Trial and of the Right to Speedy Enforcement of Final Judicial Decisions,'" Edict of the Plenary Assembly of the Supreme Court of the Russian Federation, no. 16, September 26, 2008, http://www.supcourt.ru/vscourt_detale.php?id=5491 (accessed April 30, 2009).

83. In Italy, this reform was effective in reducing the number of applications to the ECtHR. Leonid Nikitinskii, "Tikho: Slushaetsya Rossiya," *Novaya gazeta*, May 10, 2007; and Grigorii Nekhoroshev, "Zakon obyazhet rossiyan 'ne vynosit sor iz izby,'" *DP.Money*, July 16, 2007, <http://www>

.dp.ru/msk/news/politics/2007/07/16/228429 (accessed March 30, 2009).

84. For the cabinet's refusal to support the bill, see "Conclusion of the Government of the Russian Federation on the Draft Law 'On the State Compensation of Harm, Caused by Violation of the Right to Speedy Trial and of the Right to Speedy Enforcement of Final Judicial Decisions,'" February 27, 2009, Federalnoe Sobranie Rossiiskoi Fedratsii, [http://asozd2b.duma.gov.ru/main.nsf/\(ViewDoc\)?OpenAgent&work/dz.nsf/ByID&66BA198DD188C11AC325756A002628D6](http://asozd2b.duma.gov.ru/main.nsf/(ViewDoc)?OpenAgent&work/dz.nsf/ByID&66BA198DD188C11AC325756A002628D6) (accessed April 21, 2009). For the RCC and RSAC's opposition to the bill, see "Novaya arbitrazhnaya arkhitektura," *EZh-Yurist*, April 30, 2009, <http://www.gazeta-yurist.ru/article.php?i=564> (accessed May 1, 2009).

85. "Explanatory Note to the Draft Law 'On State Compensation of Harm, Caused by the Violation of the Right to Speedy Trial and of the Right to Speedy Enforcement of Final Judicial Decisions,'" Supreme Court of the Russian Federation, September 26, 2008, http://www.supcourt.ru/vscourt_detale.php?id=5491 (accessed April 30, 2009).

86. Mikhail Pozdnyakov, "Vozmeshchat vred legche, chem predotvratit?" *EZh-Yurist*, October 17, 2008, <http://www.gazeta-yurist.ru/article.php?i=56> (accessed March 30, 2009).

87. For a similar argument, see Olga Shepeleva, "Sormovo vmesto Strasburga," *Gazeta.Ru*, July 9, 2008, http://www.gazeta.ru/comments/2008/07/08_a_2777267.shtml (accessed March 30, 2009).

88. "Russian Constitution," Article 15, 46–54, 123.

89. Ekaterina Butorina, "Zadacha dlya Minyusta," *Vremya novostei*, March 22, 2007, <http://www.vremya.ru/2007/49/4/174540.html> (accessed March 30, 2009).

90. "Questions relating to the application of the Constitution of the R.F. by the Courts in rendering judgments," Edict of the Plenary Assembly of the Russian Supreme Court, no. 8 (October 31, 1995), *Byulleten Verkhovnogo Suda RF*, no. 2 (1996): 1; "Execution of the Edict of the Plenary Assembly of the Supreme Court of the R.F. of 24 August 1993 'Prescribed periods for the decision on criminal and civil cases by the courts of the R.F.,'" Edict of the Plenary Assembly of the Russian Supreme Court, no. 79 (November 8, 1999), *Byulleten Verkhovnogo Suda RF*, no. 12 (1999): 2; "On the judicial application of the generally recognized principles and norms of international law and international treaties of the Russian Federation," Edict of the Plenary Assembly of the Russian Supreme Court, no. 5 (October 10, 2003), *Byulleten Verkhovnogo Suda RF*, no. 12 (2003): 3; "On judicial decision," Edict of the Plenary Assembly of the Russian Supreme Court, no. 23 (December 19, 2003), *Byulleten Verkhovnogo Suda RF*, no. 2 (2004): 2; "Judicial practice concerning the honour and dignity of citizens as well as their reputation of citizens and legal persons," Edict of the Plenary Assembly of the Russian Supreme Court, no. 3 (February 24, 2005), *Rossiiskaya gazeta*, March 15, 2005; and "On Changing and Supplementing Several Edicts of the Plenary Assembly of the RF Supreme Court," Edicts of the Plenary Assembly of the Russian Supreme Court, no. 6 (February 6, 2007), *Byulleten Verkhovnogo Suda RF*, no. 6 (2007): 3.

91. Elena Chernenko, "A sudi gde?" *Russkii Newsweek*, February 10, 2009, <http://www.runewsweek.ru/society/27015> (accessed April 21, 2009); and Sergey Sotnikov, "Ob itogakh raboty sudov Kamchatskoi oblasti v 2007 godu," (speech, Milkovsky District Court of Kamchatka Krai, Russia, February 18, 2008), http://milkovsky.kam.sudrf.ru/modules.php?name=press_dep&op=dokl_detail&id=2 (accessed April 20, 2009).

92. T. Soboleva, "Uznali na press-konferentsii," *Belgorodskaya pravda*, December 17, 2008.

93. Elena Mizulina, "Povyshenie pravovoi osvedomlennosti grazhdan o rossiiskoi pravovoi sisteme: tseli, zadachi i sposoby realizatsii proekta," *Volga-Vashe pravo* (Astrakhan), July 27, 2006.

94. Sergei Belov, "Vse nachinaetsya s pristava," *Rossiiskaya gazeta*, May 30, 2008, <http://www.rg.ru/2008/05/30/president.html> (accessed March 31, 2009); and Dmitrii Medvedev, "Vystuplenie na VII Vserossiiskom sezde sudei," December 2, 2008, <http://www.kremlin.ru/text/appears/2008/12/210020.shtml> (accessed March 31, 2009).

95. Peter H. Solomon, Jr., "Informal Practices in Russian Justice: Probing the Limits of Post-Soviet Reform," in *Russia, Europe, and the Rule of Law*, ed. Ferdinand J. M. Feldbrugge, 79–91 (The Hague: Martinus Nijhoff, 2007).

96. *Moiseyev v. Russia*, 62936/00 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009). The case involved the frequent replacements of judges made by Olga Egorova, the chair of the Moscow City Court, during the trial

of the espionage case. Similar issues of Egorova's improper interference in another criminal trial were raised in *Kudeshkina v. Russia*, 29492/05 (2008), admissibility decision, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009). Egorova was reappointed to head the Moscow City Court for another six-year term at the end of 2008.

97. Official court statistics for arbitrazh courts are published at "Supreme Arbitrazh Court of the Russian Federation," Russian Supreme Arbitrazh Court, <http://www.arbitr.ru/news/totals/index.htm> (accessed April 10, 2009); official court statistics for the justice of the peace courts are published at "Official Statistics," Judicial Department of the Russian Supreme Court, http://www.cdep.ru/statistics.asp?search_frm_auto=1&dept_id=8 (accessed April 10, 2009).

98. See, for example, *Kuznetsov and Others v. Russia*, 184/02 (2007), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); and *Serov v. Russia*, 75894/01 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

99. Aidar Sultanov, "O probleme motivirovannosti sudebnykh aktov cherez prizmu postanovlenii Yevropeiskogo suda po pravam cheloveka," *Mezhdunarodnoe chastnoe i publichnoe pravo*, no. 2 (2008): 11–13.

100. See, for example, Aleksandr Shtornev, "K VII Vserossiiskomu Sezdu sudei," *Kreml. Org.*, November 21, 2008, <http://www.kreml.org/opinions/197783485> (accessed April 20, 2009). Shtornev is chair of the Vyborg District Court in St. Petersburg and a member of the Presidium of the Russian Council of Judges.

101. For an overview of the debate, see Nußberger, "The Reception Process in Russia and Ukraine," 603–75 (see n15).

102. Peter F. Krug, "Internalizing European Court of Human Rights Interpretations: Russia's Courts of General Jurisdiction and New Directions in Civil Defamation Law," *Brooklyn Journal of International Law* 32, no. 1 (2006): 1–65.

103. Alexei Trochev, *Judging Russia: The Role of the Constitutional Court in Russian Politics, 1990–2006* (New York: Cambridge University Press, 2008), 175–76 and 233–34.

104. Valerii Zorkin, "Konstitutsionnyi Sud Rossii v yevropeiskom pravovom pole," *Zhurnal rossiiskogo prava*, no. 3 (2005): 9.

105. Valerii Zorkin, "Rol konstitutsionnogo Suda Rossiiskoi Federatsii v realizatsii Konventsii o zashchite prav cheloveka i osnovnykh svobod," *Sravnitelnoe konstitutsionnoe obozrenie*, no. 1 (2006): 34; Oleg Tiunov, "O roli Konventsii o zashchite prav cheloveka i osnovnykh svobod i reshenii Yevropeiskogo suda po pravam cheloveka v praktike Konstitutsionnogo Suda RF," *Konstitutsionnoe pravo: vostochnoevropeskoe obozrenie*, no. 3 (2001): 96; Tamara Morshchakova, "Primenenie mezhdunarodnogo prava v konstitutsionnom pravosudii: itogi i perspektivy," *Konstitutsionnoe pravosudie*, no. 4 (2001): 119; Nikolai Vitruk, *Konstitutsionnoe pravosudie v Rossii (1991–2001 gg.)* (Moscow: Gorodets-izdat, 2001), 125–53; Boris Ebzeev, "Zashchita prav cheloveka v Konstitutsionnom Sude Rossiiskoi Federatsii," *Konstitutsionnoe pravosudie*, no. 1 (2003): 95–96; and Nikolai Bondar, "Konventsionnaya yurisdiksiya Yevropeiskogo suda po pravam cheloveka v sootnoshenii s kompetentsiei Konstitutsionnogo Suda RF," *Zhurnal rossiiskogo prava*, no. 6 (2006): 113–27.

106. Alexei Trochev, "Russia's Constitutional Spirit: Judge-Made Principles in Theory and Practice," in *Russia and Its Constitution: Promise and Political Reality*, ed. Gordon B. Smith and Robert Sharlet, 59 (Boston: Martinus Nijhoff, 2008).

107. See Decision 8–P (May 16, 2000; RCC), *Sobranie zakonodatelstva RF*, no. 21 (2000): item 2258; and Decision 1–P (January 25, 2001; RCC), *Sobranie zakonodatelstva RF*, no. 7 (2001): item 700.

108. See, for example, William Pomeranz, "Supervisory Review and the Finality of Judgments under Russian Law," *Review of Central and East European Law* 34, no. 1 (2009): 15–36.

109. Decision 5–P (May 11, 2005; RCC), *Sobranie zakonodatelstva RF*, no. 22 (2005): item 2194.

110. *Ibid.*

111. "Official Statistics," Judicial Department of the Russian Supreme Court.

112. Decision 13–P (July 17, 2002; RCC), *Rossiiskaya gazeta*, July 31, 2002.

113. See Decision 2–P, para. 2.1 (February 5, 2007; RCC), *Rossiiskaya gazeta*, February 14,

2007. For an analysis of this decision, see Pomeranz, “Supervisory Review and the Finality of Judgments under Russian Law.”

114. Decision 2–P, para. 9.3.

115. “On the Introduction of the Draft Amendments to the Civil Procedure Code of the Russian Federation,” Edict of the Plenary Assembly of the Russian Supreme Court, no. 4, February 6, 2007, http://www.supcourt.ru/news_detale.php?id=4705 (accessed March 31, 2009).

116. Federalnyi zakon Rossiiskoi Federatsii ot 4 dekabrya 2007 g. N 330-F3 “O vnesenii izmenenii v Grazhdanskii protsessualnyi kodeks Rossiiskoi Federatsii,” *Rossiiskaya gazeta*, December 8, 2007, <http://www.rg.ru/2007/12/08/gkodeks-dok.html> (accessed March 31, 2009).

117. “On the Application of Norms of the Civil Procedure by the Court of the Supervisory Instance in Connection with the Changes to the Civil Procedure Code,” Edict of the Plenary Assembly of the Russian Supreme Court, no. 2 (February 12, 2008), *Rossiiskaya gazeta*, February 16, 2008.

118. According to former RCC judge Tamara Morshchakova, abolishing the supervisory review system would require an overhaul of the judicial system and the introduction of a full-blown appellate review system in the courts of general jurisdiction. “Intervyu s Tamaroi Morshchakovoi. Chast 2,” *Polit.Ru*, December 15, 2008, <http://www.polit.ru/institutes/2008/12/15/sud.html> (accessed March 31, 2009).

119. “Official Court Statistics,” Judicial Department of the Russian Supreme Court.

120. “Rezultaty raboty arbitrazhnykh sudov,” Russian Supreme Arbitrazh Court, <http://www.arbitr.ru/news/totals> (accessed March 31, 2009).

121. “Dokumenty Verkhovnogo Suda,” Russian Supreme Court, http://www.vsrp.ru/vs_docs.php (accessed March 31, 2009).

122. “Official Court Statistics,” Judicial Department of the Russian Supreme Court, http://www.cdep.ru/statistics.asp?search_frm_auto=1&dept_id=8 (accessed April 21, 2009).

123. “Intervyu s Tamaroi Morshchakovoi. Chast 2”; and Elvira Pecheneva, “Sudy nakroet devyatyi val,” *Nizhegorodskie novosti*, April 13, 2009, <http://www.nnews.nnov.ru/news/2009/04/13/world/9wal> (accessed April 21, 2009).

124. Anton Burkov, *Primenenie Yevropeiskoi konventsii o zashchite prav cheloveka v sudakh Rossii* (Ekaterinburg, 2006); and Anton Burkov, *The Impact of the European Convention on Human Rights on Russian Law. Legislation and Application in 1996–2006* (Stuttgart: Ibidem Verlag, 2007).

125. Elena Pershakova, “Primenenie norm Yevropeiskoi konventsii i reshenii Yevropeiskogo suda po pravam cheloveka v praktike Verkhovnogo Suda Rossii,” Tsentri DEMOS, table 1, <http://demos-center.ru/images/1.pdf> (accessed March 31, 2009).

126. RSC decisions are available at “Dokumenty Verkhovnogo Suda,” Russian Supreme Court, http://www.supcourt.ru/vs_docs.php (accessed April 30, 2009).

127. See, for example, “Edict of the Presidium of the Russian Supreme Court No. 241–II07 of October 3, 2007,” *Byulleten Verkhovnogo Suda RF*, no. 3 (March 2008): 20–21; “Determination of the Civil Collegium of the Russian Supreme Court No. 13–B08–11 of December 26, 2008,” unpublished document; “Edict of the Russian Supreme Court No. 86–AД06–1 of March 29, 2006,” Supreme Court of the Russian Federation, http://www.supcourt.ru/stor_text.php?id=7366338 (accessed April 21, 2009).

128. “Determination of the Civil Collegium of the Russian Supreme Court No. 18–B08–55 of November 18, 2008,” Supreme Court of the Russian Federation, http://www.supcourt.ru/stor_text.php?id=20776512 (accessed April 21, 2009).

129. Letter of the Supreme Court of the Russian Federation no. 1673–5/obsh, September 12, 2005, GARANT legal database; *Pravednaya v. Russia*, 69529/01 (November 18, 2004), judgment, first section; Letter of the Russian Pension Fund Agency N KA–09–26/5848, June 7, 2005, “O pravovom znachenii postanovlenii Yevropeiskogo Suda po pravam cheloveka po zhalobe ‘Pravednaya protiv Rossiiskoi Federatsii,’” quoted in Aidar Sultanov, “Vliyanie na pravo Rossii Yevropeiskoi konventsii ‘O zashchite prav cheloveka i osnovnykh svobod’ i pretседentov Yevropeiskogo Suda po pravam cheloveka,” *Zhurnal rossiiskogo prava*, no. 12 (2007): 85–93.

130. The ECtHR referred to the *Pravednaya* case in twenty-three subsequent judgments against Russia and continued to monitor the implementation of this judgment throughout 2008. Experts estimate that there are about 10 million Russian pensioners who could potentially benefit from

this ECtHR judgment. Valery Rukobratsky and Inga Kapyrina, “Pribavka k pensii—iz Strasburga,” *Komsomolskaya Pravda*, March 15, 2005, <http://www.kp.ru/daily/23478/37732> (accessed April 21, 2009).

131. “Sibirskikh sudei Yevropeiskaya konventsii i prava cheloveka ‘ne kasayutsya,’” *IA Sutyajnik-Press*, October 25, 2006, <http://www.sutyajnik.ru/news/2006/10/587.html> (accessed March 31, 2009); and Olga Shepeleva, “Praktika rossiiskikh sudov: Factory vliyayushchie na primenenie norm Yevropeiskoi konventsii prav cheloveka i osnovnykh svobod i reshenii Yevropeiskogo suda po pravam cheloveka rossiiskimi sudami (predvaritelnye rezultaty analiza),” May 2007, http://www.legalclinic.ru/activity/education/0705_factors.doc (accessed March 31, 2009).

132. Cassation determination, 33-1798 (March 1, 2006; Rostov Oblast Court), ECtHR, http://rrpoi.narod.ru/chernobyl/spivak_26.01.htm (accessed March 31, 2009).

133. *Shtukaturov v. Russia*, 44009/05 (2007), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en/> (accessed April 30, 2009), para. 31–39, 141–48.

134. “Anatolii Sushinskikh: ‘Tyumentsy ne sudyatsya v Yevrosude,’” *Vslukh.Ru*, August 21, 2008, <http://www.vsluh.ru/news/politics/149115.html> (accessed March 31, 2009).

135. A circular letter from the deputy chairman of the RSC dated September 5, 2002, stresses the precedent value of *Kalashnikov v. Russia* and requests that all courts ensure strict compliance with the time limits set by the Code of Criminal Procedure for investigation and trial and prevent unjustified delays in proceedings.

136. A circular letter from the deputy chairman of the RSC dated August 31, 2004, draws attention to the strict observance of legal time limits for judicial review of the lawfulness of compulsory psychiatric confinement (*Rakevich v. Russia*).

137. A circular letter from the deputy chairman of the RSC dated March 1, 2007, no. 486–1/obshch, draws attention to the violations of the 1950 convention caused by the delays implementing court decisions in favor of the Chernobyl cleanup workers.

138. Sverdlovsk Oblast Court, “Spravka po rezultatam obobshcheniya praktiki rassmotreniya del o prinuditelnoi gositalizatsii grazhdanina v psikhiatricheskii statsionar (o prodlenii prinuditelnoi gositalizatsii) i prinuditelnom psikhiatricheskom osvidetelstvovanii,” Sverdlovsk Oblast Court, September 23, 2004, http://www.ekbobsud.ru/show_doc.php?id=15023 (accessed March 31, 2009).

139. ITAR-TASS, “Svyshe 8 tys.zhalob postupilo iz Rossii v Yevropeiskii Sud po pravam cheloveka,” *ITAR-TASS Ural*, February 20, 2006, <http://www.itartass.ur.ru/news/?id=18302> (accessed April 21, 2009).

140. The Lipetsk Oblast Court also ordered the inclusion of questions about the ECtHR in the list of questions for the examination taken by the candidates for the judicial office. “Lipetsk ravnyaetsya na Strasburg,” *Ogoniok*, August 28, 2006, <http://www.ogoniok.com/4960/7> (accessed March 31, 2009).

141. ECtHR judge Anatolii Kovler mentioned this case. Leonid Nikitinskii, “Tikho. Slushaetsya Rossiya,” *Novaya gazeta*, May 10, 2007.

142. Sergey Poduzov, “Ioshkar-Olinskii gorodskoi sud rukovodstvuetsya normami mezhdunarodnogo prava,” *Fond “Obshchestvennyi Verdikt,”* April 11, 2006, <http://www.publicverdict.org/ru/articles/articles/10110406> (accessed March 31, 2009); and “Syktyvkarskii sud: Militseiskie ‘bukhanki’ unizhayut dostoinstvo grazhdan, no ne yavliayutsya beschelovechnymi,” *Biznes-novosti Respubliki Komi*, June 6, 2008, <http://www.bnkomi.ru/data/news/1353> (accessed March 31, 2009).

143. *Shtukaturov v. Russia*, 44009/05 (2008), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en/> (accessed April 30, 2009).

144. Russian courts handle over a quarter of a million detention requests each year. See annual court statistics, http://www.cdep.ru/material.asp?material_id=330 (accessed April 21, 2009).

145. “Nachalo vstrechi Prezidenta RF Dmitriya Medvedeva s Upolnomochennym po pravam cheloveka Vladimirom Lukinym,” President of Russia, December 15, 2008, http://www.kremlin.ru/appears/2008/12/15/1739_type63376_210577.shtml (accessed March 31, 2009).

146. For example, the deputy chair of the Chelyabinsk Oblast Court, V. P. Smirnov, urged judges to reduce the use of detention and replace it with bail in order to comply with the 1950 convention. “Rukovoditeli oblastnogo suda vstretilis’ s zhurnalistami na press-konferentsii po itogam 2007 goda,” *Press-sluzhba Chelyabinskogo oblastnogo suda*, February 18, 2008, <http://www.chel-oblsud>

.ru/index.php?html=news&nid=233 (accessed April 21, 2009).

147. Oleg Guseinov, "Sprovotsirovali opera," *Gazeta Yuga*, January 25, 2007, <http://www.gazeta.yuga.ru/archive/2004/07.htm> (accessed March 31, 2009).

148. *Vanyan v. Russia*, 53203/99 (2005), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tpk197/search.asp?skin=hudoc-en> (accessed April 30, 2009). The ECtHR found a breach of the principle of equality of arms, because the commission of the offense had been procured by undercover agents of the state in the absence of any element suggesting the applicant's guilt.

149. Guseinov, "Sprovotsirovali opera."

150. "Edict of the Presidium of the Nizhny Novgorod Oblast Court No. 44y-289/07 of August 16, 2007," Nizhegorodskii Oblast Court, http://oblsud.nnov.sudrf.ru/modules.php?name=document&op=show_document&did=40 (accessed April 21, 2009); "Informatsionnoe pismo Prezidiuma Stavropolskogo kraevogo suda," Stavropol Krai Court, December 29, 2006, <http://www.stavsud.ru/kraysud/praktika/inf2201> (accessed March 31, 2009); "Sentence of the Nevsky Rayon Court of St. Petersburg of March 5, 2007," Pravovye konsultatsii po delam, svyazannym s narkotikami, http://www.hand-help.ru/documents/opravdatelnii_prigovor.doc (accessed April 21, 2009). The latter case was overturned on appeal, but the appellate court stopped short of declaring the ECtHR judgment not binding.

151. "Determination of the Russian Supreme Court No. 83-Д07-18 of October 22, 2007," Pravovye konsultatsii po delam, svyazannym s narkotikami, http://www.hand-help.ru/documents/provokaciya_2.doc (accessed April 21, 2009).

152. Anita Soboleva, ed., *Predely pravovogo prostranstva svobody pressy: Rossiiskie spory s uchastiem SMI v kontekste mirovoi praktiki* (Moskva: RIO "Novaia yustitsiya," 2008).

153. Andrei Rikhter, "Svoboda pečati: utrachennye vozmozhnosti," *Vedomosti*, June 8, 2006, <http://www.vedomosti.ru/newspaper/article.shtml?2006/06/08/107745> (accessed March 31, 2009); and Konstantin Katanyan, "Fakty ili mneniya," *Politicheskii zhurnal*, September 30, 2008, <http://www.politjournal.ru/index.php?action=Articles&dirid=96&tek=8250&issue=221> (accessed March 31, 2009).

154. See, for example, *Grinberg v. Russia*, 23472/03 (2005), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tpk197/search.asp?skin=hudoc-en> (accessed April 30, 2009); *Krasulya v. Russia*, 12365/03 (2007), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tpk197/search.asp?skin=hudoc-en> (accessed April 30, 2009); and *Chemodurov v. Russia*, 72683/01 (2007), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tpk197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

155. "Judicial Practice concerning the Honour and Dignity of Citizens as Well as Their Reputation of Citizens and Legal Persons," Edict of the Plenary Assembly of the Russian Supreme Court, no. 3 (February 24, 2005), *Rossiiskaya gazeta*, March 15, 2005.

156. Krug, "Internalizing European Court of Human Rights Interpretations." The Web site of the Moscow-based Institute of Problems of Information Law provides a collection of seventeen court decisions from these regions and an additional eighteen court decisions from local courts in six other regions between 2002 and 2004 that cited Article 10 of the 1950 convention (freedom of expression) without referring to ECtHR judgments. See Institute of Problems of Information Law, <http://www.medialaw.ru/article10/7/index.htm> (accessed March 31, 2009).

157. *Dementev v. Plekhov*, case no. 2-316 (December 24, 2008), decision, Koryazhma City Court, <http://sutyajnik.ru/documents/2610.html> (accessed March 31, 2009)

158. K. A. Ivanov, "Protection of Speech Criticizing the Government: A Comparative Analysis of Legislation and Jurisprudence of the Russian Federation, the USA and the ECtHR," in *Comparative Law: Science, Methodology and Academic Discipline*, vol. 2, 30-42 (Krasnoyarsk: IPK SFU, 2008), http://law.sfu-kras.ru/data/books/ocp_2.pdf (accessed March 31, 2009).

159. The case is reported in Viktor Antropov, "Pobeda svobody slova v oblastnom sude," *Novosibirskie novosti*, January 24, 2003.

160. Federalnyi zakon Rossiiskoi Federatsii, no. 262-FZ (December 22, 2008), "Ob obespechenii dostupa k informatsii o deyatel'nosti sudov v Rossiiskoi Federatsii," *Rossiiskaya gazeta*, December 26, 2008. This law takes effect in July 2010.

161. *Ryakib Biryukov v. Russia*, 14810/02 (2008), judgment, first section, ECtHR, <http://cmiskp>

.echr.coe.int/tkp197/search.asp?skin=hudoc-en (accessed April 30, 2009).

162. Burkov, *Primenenie Yevropeiskoi*; and *The Impact of the European Convention*. See also Shepeleva, “Praktika rossiiskikh sudov.”

163. “Rossiiskie sudi izuchayut praktiku Yevropeiskogo Suda po pravam cheloveka,” IA Sutyajnik-Press, January 28, 2009, <http://sutyajnik.ru/news/2009/01/1071.html> (accessed April 21, 2009).

164. See, for example, *Arshinchikova v. Russia*, 73043/01 (2007), judgment, third section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009); and *Zagorodnikov v. Russia*, 66941/01 (2007), judgment, first section, ECtHR, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 30, 2009).

165. Olga Pleshanova, “Arbitrazhnyi sud prosit \$1 mlrd na razgruzku,” *Kommersant*, March 27, 2006, <http://www.kommersant.ru/doc.aspx?DocsID=660930> (accessed March 31, 2009).

166. Lev Zinchenko, “Primenenie polozhenii Konventsii o zashchite prav cheloveka i osnovnykh svobod v nalogovykh sporakh,” *Vash nalogovyi advokat*, no. 10 (2007): 72–80; and S. I. Kalinin, “Ispolzovanie pravovykh pozitsii ESPCh po nalogovym sporam v rossiiskoi pravoprimenitelnoi praktike,” *Nalogoved*, no. 12 (2007), <http://www.buhi.ru/text/113393-1.html> (accessed March 31, 2009).

167. These linkages do not always result in biased or illegal court decisions. Kathryn Hendley, “Are Russian Judges Still Soviet?” *Post-Soviet Affairs* 23, no. 3 (2007): 240–74; Ariane Lambert-Mogiliansky, Konstantin Sonin, and Ekaterina Zhuravskaya, “Are Russian Commercial Courts Biased? Evidence from a Bankruptcy Law Transplant,” *Journal of Comparative Economics* 35, no. 2 (2007), 254–77; Olga Varlamova, “Sud po sosledstvu,” *Kommersant-Samara*, November 15, 2008; and Nataliya Kozlova, “Kvartira s vykhodom,” *Rossiiskaya gazeta*, May 21, 2008.

168. See “Decision of the Eighteenth Appellate Arbitrazh Court No. 18AII–1814/2009 of April 6, 2009,” Arbitrazh Courts of the Russian Federation, <http://www.arbitr.ru/bras> (accessed April 21, 2009). The Court drew on the ECtHR judgment in *Intersplav v. Ukraine*, 803/02, January 9, 2007, second section, <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (accessed April 21, 2009).

169. RSAC Information Letter, no. C1–7/CMP–1341 (December 20, 1999), “Basic Positions of the European Court on Human Rights for the Protection of the Right to Property and the Right to Court,” *Vestnik Vysshego Arbitrazhnogo Suda RF*, no. 2 (2000).

170. The RSAC mentions nine points: the private character of property rights, the balance between public and individual interests, the access to court, the decision on property rights by independent courts, the decision by impartial courts, the fairness of the judicial procedure, fair hearing, the reasonableness of time limits, and public procedure. *Ibid.*

171. Tatyana Neshataeva, “Pervoe reshenie ESPCh po imushchestvennomu sporu protiv Rossii: razmyshleniya, nekotorye vyvody,” *Vestnik Vysshego Arbitrazhnogo Suda RF*, no. 8 (2002): 141–44; and Tatyana Neshataeva, *Uroki sudebnoi praktiki o pravakh cheloveka. Yevropeiskii i rossiiskii opyt* (Moscow: Gorodets, 2007).

172. RSAC Judge Tatyana Andreeva insists that the existence of the ECtHR is necessary for Russia and other post-Soviet states. Irina Rogotneva, “S tochki zreniya prav i svobod,” *Vedomosti Novosibirskogo oblastnogo soвета narodnykh deputatov*, July 11, 2008, <http://vedomosti.sfo.ru/articles/?article=27253> (accessed March 31, 2009).

173. Valentina Tereshkova, “Primenenie reshenii Yevropeiskogo suda po pravam cheloveka v deyatelnosti arbitrazhnykh sudov Rossiiskoi Federatsii,” Tsentri DEMOS, <http://www.demos-center.ru/projects/6B3771E/70688C12/1167160792> (accessed March 31, 2009).

174. See, for example, the remarks of Anton Ivanov, chairman of the RSAC, during his meeting with Vladimir Putin. Ivanov, “Nachalo vstrechi s predsedatelem Vysshego Arbitrazhnogo Suda Antonom Ivanovym,” President of Russia, September 25, 2007, <http://www.kremlin.ru/text/appears/2007/09/145596.shtml> (accessed March 31, 2009).

175. See, for example, *Metsialiito Sankt-Peterburg v. Tax Ministry*, 13584/06 (2006), determination on transferring case for supervisory review, RSAC, December 19, 2006.

176. *Rodionov Publishing House v. Federal Anti-Monopoly Service* (2005), decision, Moscow City Arbitrazh Court, May 23, 2005, <http://www.ourcourt.ru/practice/moscow10/pr10081.htm> (accessed April 21, 2009). Corporations used this RSAC reversal to sue newspapers for the damages arising from the libelous publications. See, for example, the lawsuits brought by the Ramenskoe

Milk Plant against Regnum news agency and by Alfa-Bank against the newspaper *Kommersant*. The latter case is discussed by Peter Krug in his article “Internalizing European Court of Human Rights Interpretations.” (see n102).

177. Obzor sudebnoi praktiki Federalnogo arbitrazhnogo suda Volgo-Vyatskogo okruga, “Voprosy zashchity delovoi reputatsii yuridicheskikh lits i individualnykh predprinimatelei,” December 29, 2006, 3–4, http://www.arbitr.ru/pract/ac_prac (accessed March 31, 2009).

178. Russian Supreme Arbitrazh Court, Bank reshenii arbitrazhnykh sudov, <http://www.arbitr.ru/bras> (accessed March 31, 2009).

179. President Putin appointed Kirillov in 2003. See Decision A65–22225/2004–CA1–36, Arbitrazh Court of the Republic of Tatarstan, November 2, 2004; Decision A65–22446/2004–CA1–36, Arbitrazh Court of the Republic of Tatarstan, November 4, 2004; Decision A65–22366/2004–CA1–36, Arbitrazh Court of the Republic of Tatarstan, November 5, 2004; and Decision A65–23339/2004–CA1–36 Arbitrazh Court of the Republic of Tatarstan, November 10, 2004. See also Decision A–10813, Arbitrazh Court of the Bashkortostan Republic, October 23, 2001. All decisions are available at Russian Supreme Arbitrazh Court, Bank reshenii arbitrazhnykh sudov.

180. “Edict of the Northwest Cassation Arbitrazh Court No. A56-15718/03 of January 16, 2004,” Bank reshenii arbitrazhnykh sudov, <http://www.arbitr.ru/bras> (accessed April 21, 2009); and “Edict of the Northwest Cassation Arbitrazh Court No. A56–43975/03 of August 5, 2004,” Bank reshenii arbitrazhnykh sudov, <http://www.arbitr.ru/bras> (accessed April 21, 2009). Six additional decisions that mention the ECtHR in similar disputes were issued by this court before 2005 and are available in the legal database Konsultant Plyus, <http://www.consultant.ru> (accessed April 21, 2009).

181. A sample of the arbitrazh court decisions drawing on the 1950 convention and the ECtHR judgments is available at “Postanovleniya Arbitrazhnogo suda Severo-Zapadnogo okruga za period Fevral 2005—sentyabr 2006 (primeneniye st. 6 Konventsii o zashchite prav cheloveka),” *Sutyazhnik*, <http://sutyajnik.ru/documents/2170.html> (accessed April 10, 2009).

182. Under Article 198(4) of the Russian Arbitrazh Procedure Code, a complaint against illegal actions or decisions by government agencies may be brought to the arbitrazh court within three months of the moment when the individual or corporation learned about the violation of her rights and lawful interests. The court may accept a complaint brought beyond this period if it determines that the complainant missed this period for valid reasons.

183. “Protokol zasedaniya Nauchno-konsultativnogo soveta pri Federalnom arbitrazhnom sude Moskovskogo okruga,” Federal Arbitrazh Court of Moskovskiy Okrug, June 10, 2005, http://www.fasmo.arbitr.ru/fasmo/nks/protokoli_zasedaniya_nks_pri_fas_mo/334.html (accessed March 31, 2009). Putin appointed Sviridenko in April 2005. Decree of the President of the Russian Federation no. 428 (April 16, 2005).

184. Most of these judges were appointed by Putin. These court decisions are available online at the RSAC’s searchable database of decisions of the arbitrazh courts Bank reshenii arbitrazhnykh sudov. RSAC, <http://www.arbitr.ru/bras/> (accessed April 21, 2009).

185. “Edict of the Ural Cassation Arbitrazh Court No. Ф09–1622/2000–AK of December 1, 2000,” *Pravosudie*, http://pravosudie.biz/base6/data_lv/sudxsnfio.htm (accessed April 21, 2009).

186. According to a search conducted in April 2007 in the Konsultant Plyus legal database, the nine remaining cassation arbitrazh courts together mentioned the 1950 convention and the ECtHR in 25 decisions.

187. Dmitry Medvedev, “Speech at the Meeting on the Issues of Protecting Property Rights of Small and Medium Businesses,” President of Russia, July 31, 2008, <http://www.kremlin.ru/text/appears/2008/07/204827.shtml> (accessed April 21, 2009).

188. Nadezhda Krasilova, “Kazna zaplatit,” *Novye Izvestiya*, April 29, 2009, <http://www.newizv.ru/print/108580> (accessed April 29, 2009).