



CIDDHU

Article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:

A Solution to the Systematic Non-Application of the Convention by the Federation of Russia?

Memorandum prepared for and in partnership with:

SUTYAJNIK

Written by:

Mélissa Beaulieu-Lussier

Claudine Bouvier

Catherine Rozon

Philippe Tousignant

Under the supervision of:

Mirja Trilsch

15 December 2010

INTRODUCTION	3
SECTION 1: THE SCOPE AND MEANING OF ARTICLE 1	6
A. The use of Article 1 for admissibility purposes: the territorial and extra-territorial application of the Convention.....	6
B. Use of Article 1 in the ECHR’s jurisprudence (merits stage).....	7
i. The binding nature of the Convention.....	8
ii. Positive obligations stemming from Article 1 and the notion of inherence.....	8
C. The underlying object and purpose of the Convention	10
i. Definition of the principle of effectiveness	10
ii. Reference to the principle of effectiveness by the ECHR and the States	10
SECTION 2: APPLICATION OF THE CONVENTION BY THE RUSSIAN FEDERATION	13
A. The Russian judicial system.....	14
i. Description of the Russian judicial system	14
ii. Relevant domestic laws.....	14
B. Russia’s international obligations	15
i. International and regional human rights conventions.....	15
ii. The principle of <i>pacta sunt servanda</i>	16
C. The non-application of the European Convention by Russia.....	17
i. Systemic violations of the Convention.....	17
ii. The unwillingness of the State to apply the Convention	19
SECTION 3: ADDRESSING SYSTEMIC VIOLATIONS BEFORE THE ECHR	21
A. Article 1: Ensure the effectiveness of the Convention.....	21
B. Independent application of Article 1	23
i. Autonomy of Article 1: a review of the ECHR’s case law	24
ii. Distinction between <i>Galaeva</i> and other cases involving Article 1	25
C. The pilot judgement procedure	28
i. Violation of Article 6(1) in the case of <i>Galaeva v. Russia</i>	30
ii. Using the pilot judgment procedure in <i>Galaeva v. Russia</i>	31
SECTION 4: PROCEDURAL QUESTIONS	32
A. The possibility to invoke an article or to conclude on a violation of an article not cited in the initial complaint	32
i. Presenting arguments with respect to an article not cited in the original application.....	33
ii. Article 1	35
CONCLUSION.....	36
BIBLIOGRAPHY	38

INTRODUCTION

In recent decades, the international recognition and the realisation of human rights have substantially evolved. The guarantee of human rights has steadily increased, and citizens of countries from around the world have been given access to justice and have had the chance to challenge the policies of their own countries before international instances and forums. Following the horrors of World War II, States vowed to create safeguards for the protection of human rights. The first step was taken in 1948 with the adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations. Since then, many systems for the protection of human rights were established on different levels: international, regional and national. The Council of Europe established what has become one of the most efficient regional systems for the protection of human rights. This system is centered on the European Convention for the Protection of Human Rights and Fundamental Freedoms¹ (the Convention). In order to ensure that the States respect their obligations under the Convention, a Commission and a Court were created. In the early 1990s the Commission was abolished, and the European Court of Human Rights (ECHR) handles the totality of human rights cases under the Convention and its Protocols. The decisions rendered by the Court must be applied by Member States. The Committee of Ministers of the Council of Europe has the responsibility to ensure the compliance of States with these judgements. Initially, the Council of Europe was solely composed of Western European countries. Over time, many Eastern European countries joined the Council, especially after the collapse of the Soviet Union. Due to the enlargement of the Council of Europe, the number of applications to the ECHR quickly grew, thereby weakening the efficiency of the Court.

¹ *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 UNTS 221 at 223, Eur TS 5.

The Russian Federation joined the Council of Europe on 28 February 1996.² Having adhered to the Convention, Russia must respect and ensure the enjoyment of the rights and freedoms guaranteed therein. Unfortunately, in practice, Russia has not always respected its international commitments. In fact, the ECHR has rendered 862 judgements³ against Russia. Despite the large number of decisions which should have guided the Russian government toward improving its judicial system, this State still has problems in ensuring the rights and freedoms of its citizens.

The present memorandum addresses several questions that were raised by Sutyajnik, a Russian nongovernmental human rights organization, in a request made to the International Clinic for the Defence of Human Rights of UQAM (CIDDHU). One of Sutyajnik's mandates is to prepare and litigate cases before the ECHR.⁴ Sutyajnik asked the CIDDHU to research on issues related to two specific cases, namely *Galaeva v. Russia*⁵ and *Mikhaelova v. Russia*.⁶

The memorandum addresses six specific questions: (1) what is the scope and meaning of Article 1 of the European Convention of Human Rights? (2) what is the scope and content of the existing case law on Article 1 of the Convention? (3) can Article 1 be invoked in cases of outright refusal by national authorities to apply the Convention in a domestic context? (4) what are the possible avenues that could be pursued? (5) how could the pilot judgement procedure be used for Article 6 of the Convention (other than in the manner it was applied in the *Burdov (n°2)* case)? (6) would it be possible to plead the violation of an article not previously cited in a pending application to the ECHR?

² Council of Europe, "Council of Europe in brief / 47 countries, one Europe /Russian Federation (member)", online : Council of Europe,

<<http://www.coe.int/aboutCoe/index.asp?page=47pays1europe&l=en>>.

³ European Court of Human Rights: Public Relations Unit, "The European Court of Human Rights: Country Fact Sheets 1959-2009" (2010), at p. 65-66, online: Council of Europe <http://www.echr.coe.int/NR/rdonlyres/C2E5DFA6-B53C-42D2-8512034BD3C889B0/0/FICHEPARPAYS_ENG_MAI2010.pdf>.

⁴ Sutyajnik, "Sutyajnik: the nongovernmental organization", online <<http://sutyajnik.org/>>.

⁵ *Galaeva v. Russia (Preliminary application)*.

⁶ *Mikhailova v. Russia (Preliminary application)*, No 46998/08, [2008] ECHR.

The memorandum is divided into four sections. The first section entitled: “The scope and meaning of Article 1”, addresses question (1), mentioned above, and clarifies what guarantees stem from Article 1, and how the ECHR has used this provision in the past. The second section relates to: “The application of the Convention by the Russian Federation”, and addresses question (2), by looking into the problems associated with the implementation of the Convention by Russia. The third section is entitled: “Addressing systemic violations before the ECHR”, and relates to questions (3) and (4) mentioned above. Its principle argument is that Article 1 of the Convention may be invoked on its own. Even though the jurisprudence of the ECHR does not, *a priori*, allow applicants to invoke Article 1 independently, the memorandum suggests some new avenues which may be pursued. Despite the fact that the memorandum was requested mainly in relation to the *Galaeva* and the *Mikhailova* cases, it argues that Article 1 may be used in the context of other cases. The argument concerning Article 1 lends itself to being used on a wider scale of cases, bearing in mind that the ECHR is in a process of reforming the Convention in order to render it more effective. In this context, the third section also offers a response to question (5), and explains how the pilot judgement procedure could be employed with regard to Article 6 of the Convention. Finally, in the fourth section of the memorandum pertaining to procedural issues, we will examine specific conditions for submitting additional content in an initial application to the ECHR.

SECTION 1: THE SCOPE AND MEANING OF ARTICLE 1

A. *The use of Article 1 for admissibility purposes: the territorial and extra-territorial application of the Convention*

Article 1 of the Convention stipulates that: “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention”. This article requires States Parties to respect the obligations set out in the Convention with regard “to everyone within their jurisdiction”. However, the ECHR has never found a violation of Article 1 in its abundant case law. Rather, the latter has focussed on the territorial and extraterritorial application of the Convention.

The ECHR has defined three different ways of applying Article 1 in relation to the terms “within their jurisdiction”. First, when a violation occurs on the national territory of a State Party to the Convention, this State is responsible for this violation.⁷ Second, when a violation occurs on a territory where a State Party has assumed governmental powers or authority, the State is also bound to respect and protect the rights laid down in the Convention. As indicated by the ECHR in *Bankovic and Others v. Belgium and Others* (2001):

“the responsibility of a Contracting Party was capable of being engaged when as a consequence of military action (lawful or unlawful) it exercised effective control of an area outside its national territory”⁸

Moreover, the ECHR stated in *Loizidou v. Turkey* (1996)⁹ and in *Cyprus v. Turkey* (2001),¹⁰ that if the violations occurred on the territory of a State Party to the Convention or on a territory where this State exercises a *de facto* control (equivalent to the one it exercises on its own territory), then the State in question may be held responsible for

⁷ Oliver De Schutter, “Globalization and jurisdiction: Lessons from the European Convention on Human Rights” (2005) CHRGI Working Paper No. 9, < [http://www.chrgj.org/publications/docs/wp/DeSchutter Globalization and Jurisdiction.pdf](http://www.chrgj.org/publications/docs/wp/DeSchutter%20Globalization%20and%20Jurisdiction.pdf) > at p. 10.

⁸ *Bankovic and Others v. Belgium and Others (Admissibility)* (2001), no. 52207/99, XII E.C.H.R. at para. 70.

⁹ *Loizidou v. Turkey* (1996), VI E.C.H.R at para. 52.

¹⁰ *Cyprus v. Turkey* (2001), IV E.C.H.R at paras. 77-80.

those violations¹¹. Third, organs of the State who act beyond the national territory or territory assimilated to national territory, remain bound by the Convention and must ensure the rights set out in it when they exercise effective control.¹² As stated in *Issa and Others v. Turkey* (2004):

“ a State may [...] be held accountable for violation of the Convention rights and freedoms of persons who are in the territory of another State but who are found to be under the former State’s authority and control through its agents operating-whether lawfully or unlawfully-in the latter State [...]. Accountability in such situations stems from the fact that Article 1 of the Convention cannot be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory of another State, which could not perpetrate on its own territory¹³.”

Furthermore, the expression “within their jurisdiction” also refers to matters of nationality and residence (*ratione personae*). According to Van Dijk and Van Hoof, these words do not imply any limitation as to nationality or residence whether individuals have their residence inside or outside the territory of that State.¹⁴ Therefore, States must guarantee to everyone within their jurisdiction the rights and freedoms set out in the Convention.

B. Use of Article 1 in the ECHR’s jurisprudence (merits stage)

In addition to issues related to admissibility, Article 1 has also been examined by the Court at the merits stage. The ECHR has applied Article 1 of the Convention in conjunction with other articles as a basis for establishing the positive obligations emanating from these articles. In effect, Article 1 is the cornerstone of all obligations incumbent upon the States with respect to the rights and freedoms in the Convention.

¹¹ *Globalization and jurisdiction: Lessons from the European Convention on Human Rights*, supra note 7, at p. 12.

¹² *Ibid.*

¹³ *Issa and Others v. Turkey* (2004), no. 31821/96, E.C.H.R. at para. 69; see also *Illascus and Others v. Moldova and Russia* (2004), no. 48787/99, VII E.C.H.R at para. 392.

¹⁴ Van Dijk, P., Van Hoof, G.J., Heringa, A. W and al., *Theory and practice of the European Convention on Human Rights*, 3rd ed. (The Hague, Boston: Kluwer Law International, 1998) at p. 3.

i. The binding nature of the Convention

The Convention, like any other international treaty, is binding upon all States Parties. They must therefore respect Article 1, which stipulates that the High Contracting Parties shall secure the rights and freedoms set out in the Convention. During the drafting of the Convention, the European States chose the expression “shall secure”, instead of “undertake to secure”, in order to emphasize the binding nature of Article 1.¹⁵ The idea behind this choice of words was to ascertain the binding character of the Convention, so as to avoid only a declaratory character. The ECHR endorsed the notion that Article 1 is binding on States Parties in the case of *Ireland v. United Kingdom* (1978):

“By substituting the words "shall secure" for the words "undertake to secure" in the text of Article 1 (art. 1), the drafters of the Convention also intended to make it clear that the rights and freedoms set out in Section I would be directly secured to anyone within the jurisdiction of the Contracting States.”¹⁶

The Convention was drafted with the idea of creating a binding instrument, in order to help to protect fundamental rights and reinforce democracy in Europe.¹⁷ As the ECHR stated in the case *Soering v. United Kingdom* (1979):

“In interpreting the Convention, regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms [...]. Thus, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective [...]. In addition, any interpretation of the rights and freedoms guaranteed has to be consistent with the general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society.”¹⁸

ii. Positive obligations stemming from Article 1 and the notion of inherence

The Judges at the ECHR have opted for a binary approach with regard to the obligations which stem from Article 1 of the Convention. On the one hand, they have recognised positive obligations, which they have defined as obligations for “national

¹⁵ Council of Europe, “Preparatory Work on Article 1 of the European Convention on Human Rights” Documents, vol. 5 Doc. Cour (77) 9 (1950) at p. 66.

¹⁶ *Ireland v. United Kingdom* (1978), 25 E.C.H.R. (Ser. A) at para. 239.

¹⁷ “Preparatory Work on Article 1 of the European Convention on Human Rights”, *supra* note 15, at p. 68.

¹⁸ *Soering v. United Kingdom* (1989), 161 E.C.H.R. (Ser. A) at para. 87.

authorities [to take] measures for protecting the applicant's rights".¹⁹ On the other hand, the correlative negative obligations essentially require States to refrain from interfering in the exercise of the rights guaranteed by the Convention and its Protocols. In actual fact, negative obligations have frequently been seen as arising from the text of the Convention itself; however the same cannot be said in relation to positive obligations.²⁰ The notion of positive obligations originally emerged in the 1960s, in the Belgian linguistic case (1968),²¹ and was followed-up by the case of *Marckx v. Belgium* (1979).²² Since then, the ECHR has constantly expanded the category of positive obligations and has added new elements thereto.²³ This double obligation, which has made the Convention a stronger legal instrument, is rooted in Article 1. As pointed out in *Jacobs and White*:

“there is, on one hand, the negative obligation which requires Contracting Parties not to infringe the rights protected in the Convention. There is also, on the other hand, the positive obligation to ensure in that the rights protected by the Convention are guaranteed to those within the jurisdiction of Contracting Parties.”²⁴

This means that States which have ratified the Convention have the obligation to prevent any breach of the rights protected by this instrument and to guarantee these rights as well. The positive obligations that derive from Article 1 can therefore be considered as safeguarding the effectiveness and the success of the Convention.²⁵

Bearing in mind that States have to fulfil the obligations arising from Article 1, the ECHR has regularly ruled on Article 1 in conjunction with others articles of the Convention, in order to demonstrate that States have the responsibility to fulfil their obligations under the Convention. The ECHR has frequently assessed the violation of a specific right in terms of the violation of a positive obligation stemming from Article 1.

¹⁹ *Lopez Ostra v. Spain* (1994), 303C E.C.H.R. (Ser. A) at para. 55.

²⁰ Jean-François Akandji-Kombe, *Un guide pour la mise en œuvre de la Convention européenne des Droits de l'Homme : Précis sur les droits de l'homme, no 7* (Strasbourg: Conseil de l'Europe, 2006) at p. 5, online : Council of Europe <<http://echr.coe.int/NR/rdonlyres/37798829-2A4F-4737-9D56-E3BD989940B4/0/DG2FRHRHAND072006.pdf>>.

²¹ *Case “relating to certain aspects of the laws on the use of languages in education in Belgium”* (1968), 6 E.C.H.R. (Ser. A), at para. B7.

²² *Marckx v. Belgium* (1979), 31 E.C.H.R. (Ser. A) at para. 24.

²³ *Un guide pour la mise en œuvre de la Convention européenne des droits de l'Homme, supra note 20*, at p. 6.

²⁴ Clare Ovey and Robin White, *Jacobs and White, The European Convention on Human Rights*, 4th ed. (New York: Oxford University Press, 2006) at p. 86.

²⁵ *Un guide pour la mise en œuvre de la Convention européenne des Droits de l'Homme, supra note 20*, at p. 8.

For example, in the case of *McCann and others c. United-Kingdom* (1995) the ECHR decided, for the first time, that a violation of Article 2 could be found in conjunction with Article 1 of the Convention :

“The Court confines itself to noting, like the Commission, that a general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life under this provision (art. 2), read in conjunction with the State's general duty under Article 1 (art. 2+1) of the Convention to ‘secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention’, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State.”²⁶

This approach was also used by the ECHR with respect to other articles of the Convention, such as Article 3 (which prohibits torture and inhuman or degrading treatment or punishment). For instance, in the case of *Assenov and others v. Bulgaria* (1999), Article 1 was invoked in conjunction with Article 3, in order to define the positive obligations of the State with respect to this provision:

“The Court considers that, in these circumstances, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to ‘secure to everyone within their jurisdiction the rights and freedoms in [the] Convention’, requires by implication that there should be an effective official investigation.”²⁷

However, the ECHR seems to have changed its practice as of 2004, in the judgement of *Moreno Gomez v. Spain*, where it ruled against Spain regarding the latter’s failure to comply with its positive obligations to guarantee the rights under Articles 2 and 8 of the Convention (which respectively relate to the right to life and the right to respect for private and family life), yet without making an explicit reference to Article 1. This change demonstrates that the positive obligations of States are now considered as a recognized feature of the rights guaranteed by the Convention and that there no longer is a need to explicitly invoke Article 1.²⁸ It appears that, during the last ten years, the

²⁶ *McCann and others c. United-Kingdom* (1995), 324 E.C.H.R. (Ser. A) at para. 161.

²⁷ *Assenov and others v. Bulgaria* (1999), no. 31195/96, VIII E.C.H.R. at para. 102.

²⁸ *Moreno Gómez v. Spain* (2004), no. 4143/02, X E.C.H.R. at para. 62.

ECHR's jurisprudence has treated the positive obligations (that used to derive from Article 1) as being inherent to the substantive rights contained in the Convention.²⁹

C. The underlying object and purpose of the Convention

In addition to issues of admissibility and the notion of positive obligations arising from Article 1, the latter provision has also been used to ensure the effectiveness of the Convention. This is consistent with the object and purpose underlying Article 1. The principle of effectiveness will be elaborated below, in the context of the application of the Convention and the increasing importance it has been given by the ECHR in its case law.

i. Definition of the principle of effectiveness

One of the most important principles in human rights law is that legal systems, whether domestic or international, protect those rights in an effective manner. According to the Oxford English Dictionary, an effective (system) is one that produces the “desired or intended result”.³⁰ Accordingly, the “desired or intended result” of a legal system should refer to the concrete protection of the rights of individuals and communities. Moreover, even though the realisation of rights in a domestic context may differ greatly from their realisation in an international context, States are bound to ensure the rights established in their domestic jurisdiction as well as the rights set out in international conventions when they have accepted to be bound by them.

ii. Reference to the principle of effectiveness by the ECHR and the States

Even though States have the obligation to implement the rights enumerated in the Convention, they have a certain degree of discretion as to how they will incorporate them in their domestic systems. The most important condition in this respect is that domestic

²⁹ Stéphanie Pavageau, “Les obligations positives dans les jurisprudences des Cours européenne et interaméricaine des droits de l’homme”(2005) 6 *International Law, Revista Colombiana de Derecho Internacional* at pp. 215-217; Frederic Sudre, *Droit européen et international des droits de l’Homme* (Paris : PUF, 2008) at p. 164.

³⁰ Oxford Dictionaries, “English Dictionary Definition of “effective””, online: oxford dictionaries <http://oxforddictionaries.com/view/entry/m_en_gb0256960#m_en_gb0256960>.

implementation assures an operative protection for these rights and freedoms. States have to ensure that everybody under their jurisdiction is given the possibility to seek a remedy before a national judicial authority in relation to an alleged violation of a right or freedom contained in the Convention. When it is impossible to seek such a remedy, the effectiveness of the Convention is jeopardized *de facto* because the protection of such rights and freedoms are most effective in domestic systems.³¹ This principle of subsidiarity was stated by the Court in the case of *Z. and Others v. United Kingdom*, in 2001:

“The Court emphasises that the object and purpose underlying the Convention, as set out in Article 1, is that the rights and freedoms should be secured by the Contracting State within its jurisdiction. It is fundamental to the machinery of protection established by the Convention that the national systems themselves provide redress for breaches of its provisions, the Court exerting its supervisory role subject to the principle of subsidiarity.”³²

Therefore, the States must foremost make sure that their domestic legislation is in conformity with the Convention as mentioned in the *Explanatory Report on Protocol No. 14* to the Convention: “States have a duty to monitor the conformity of their legislation and administrative practice with the requirements of the Convention and the ECHR’s case-law.”³³

The effectiveness of the rights and freedoms guaranteed under the Convention was of utmost concern to the former European Commission, and it remains a serious concern for the ECHR.³⁴ As stated in the case of *Airey v. Ireland* (1979): “[t]he Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective”.³⁵ The interpretation and the application of the Convention must respond to this directive of effectiveness. Additionally, the implementation of the Convention within

³¹ Council of Europe, “Explanatory Report to Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention”, CETS no. 194, (2009), at para. 15, online: Council of Europe <<http://conventions.coe.int/Treaty/FR/Reports/Html/194.htm>>, at para. 15.

³² *Z. and Others v. United Kingdom* (2001), no. 29392/95, V E.C.H.R. at para. 103.

³³ *Explanatory Report to Protocol No. 14 of the Convention*, *supra* note 31, at para. 15.

³⁴ Frederic Sudre, *La convention européenne des droits de l'Homme* (Paris : Presse universitaire de France, 2004) at p. 31.

³⁵ *Airey v. Ireland* (1979), A32 E.C.H.R. (Ser. A) at para. 24.

the national jurisdiction “is one of the most effective means of reducing the need for recourse to Strasbourg.”³⁶

Unfortunately, significant differences exist in the levels of domestic implementation of the Convention among the member States of the Council of Europe. It can be argued that the ECHR has become inundated and perhaps even overwhelmed by applications alleging violations of one or more of the rights under the Convention. At present, there are about 100,000 pending applications before a decision body of the ECHR.³⁷ Many cases that are submitted to the ECHR are, in many ways, a repetition of previously adjudicated cases,³⁸ but which touch upon problems that have not been properly addressed under domestic law. In fact, there are only a small number of applications that raise complex legal questions and that require an intervention by the Court. However, the failure by States to give effect to the Convention at the national level leads victims to seek recourse at the ECHR.

This situation poses a significant threat to the effectiveness of the Convention and of its enforcement by the ECHR. Member States of the Council of Europe are well aware of this situation, and have attempted to address it in 2010, during a meeting at Interlaken, Switzerland. In the end, representatives of all 47 States Parties to the Convention issued a joint declaration, also known as the “Interlaken Declaration”.³⁹ The States Parties reiterated the importance of the effectiveness of the Convention system and expressed their support to the principle of subsidiarity. The application of this principle implies a better division of tasks between the States and the ECHR in order to ensure the effective implementation of the Convention: “This principle, which is implicitly enshrined in Articles 1, 13 and 35 of the Convention, means that the obligation to apply the guarantees

³⁶ *The European Convention on Human Rights*, *supra* note 24, at pp. 84-85.

³⁷ Council of Europe, “50 Years of Activity, The European Court of Human Rights, Some Facts and Figures” (2010), online: ECHR <<http://www.echr.coe.int/NR/rdonlyres/ACD46A0F-615A-48B9-89D6-8480AFCC29FD/0/FactsAndFiguresENAvril2010.pdf>> at p. 4.

³⁸ Alastair Mowbray “The Interlaken Declaration: The Beginning of a New Era for the European Court of Human Rights?” (2010) 10 *Human Rights Law Review* 519.

³⁹ High Level Conference on the Future of the European Court of Human Rights : *Interlaken Declaration*, 19 February 2010, online : <http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/europa/euroc.Par.0133.File.tmp/final_en.pdf>.

of the Convention lies primarily with the national authorities”.⁴⁰ In other words, the “Interlaken Declaration” recognized the primary role of national authorities in the effective implementation of the Convention. In order to ensure that national courts fulfil their responsibilities, States Parties to the Convention must fully comply with the ECHR judgments, as well as take into account the entire case law of the ECHR (even cases in which they were not involved as a party) and create new domestic remedies, when necessary.⁴¹

Even though Article 1 of the Convention has primarily been used in determining the admissibility of cases, its meaning goes well beyond defining what is “within the jurisdiction” of States, and defining substantive positive obligations for States Parties. Article 1 states one of the key purposes of the Convention, namely to render its guarantees effective. This particular feature of Article 1 shall be developed in the following sections, which address the issue of dealing with systematic violations of the Convention that occur in a State Party.

SECTION 2: APPLICATION OF THE CONVENTION BY THE RUSSIAN FEDERATION

The current section will demonstrate a systemic non-application of the Convention by the Russian judicial authorities, in which the case of *Galaeva v. Russia* (2009) will be used as a primary example, among many others. The *Galaeva* case involved an application made by Marina Ivanovna Galaeva, who wanted to adopt her grandchild, who was in an orphanage. Her first attempt at adoption was rejected by the Russian authorities due to her poor living conditions. By the time she managed to have her living conditions improved, Russian authorities had allowed the child to be adopted by a British family. This international adoption was allowed based on falsified documents, which had supposedly been signed by Ms. Galaeva and the child’s biological father, according to

⁴⁰ Council of Europe, *Reforming the Convention on Human Rights, a Work in Progress* (Strasbourg: Edition Council of Europe, 2009) at p. 486.

⁴¹ *Interlaken Declaration*, *supra* note 39, at para. B4.

which they renounced their parental rights. Ms. Galaeva's application to the ECHR alleged violations of Articles 1, 6, 8 and 13 of the Convention.

A. The Russian judicial system

In order to demonstrate a systemic non-application of the Convention by the Russian judicial authorities, it is imperative to shed light on the Russian judicial system. To do so, the present subsection will first briefly describe the Russian judicial system and then examine a number of relevant laws.

i. Description of the Russian judicial system

According to Leandro Despouy, the Special Rapporteur of the United Nations on the Independence of Judges and Lawyers, "the structure of the [Russian] judicial system is determined by the Constitution and by the 1993 Federal Constitutional Law on Judicial System".⁴² The two most important courts in Russia are the Constitutional Court and the Supreme Court. According to Article 125 of the Russian Constitution,⁴³ the Constitutional Court of the Russian Federation is competent to rule upon the constitutionality of all applicable laws. It is also responsible for settling conflicts between different levels of government. For its part, the Supreme Court is "the supreme judicial body for civil, criminal, administrative and other cases under the jurisdiction of common court", according to Article 126 of the Constitution. The Supreme Court's judgments serve as precedents for lower courts of the judiciary.

ii. Relevant domestic laws

Russia is a monist country, meaning that international law is applicable in domestic law without the adoption of an implementing law by the Parliament. Article 15(4) of the

⁴² Human Rights Council, "Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Addendum, Mission to the Russia Federation", HRCOR, 11th Sess., 23 March 2009, UN Doc. A/HRC/11/41/Add.2, at para. 12.

⁴³ The Constitution of the Russian Federation, 12 December 1993, online: <<http://www.constitution.ru/en>>.

1993 Russian Constitution authorizes the direct application of international law in domestic law. It further states that international law takes priority over federal laws, regional laws as well as regulations:

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

Numerous provisions of the Russian Constitution reiterate Russia’s commitment to human rights. For example, Article 2 of the Russian Constitution declares that “Man, his rights and freedoms are the supreme value. The recognition, observance and protection of the rights and freedoms of man and citizen shall be the obligation of the State.” Moreover, Article 17 recognizes that the rights of every human being are inalienable. Article 18 provides that “the rights and freedoms of man and citizen shall be directly operative. They determine the essence, meaning and implementation of laws, the activities of the legislative and executive authorities, local self-government, and shall be ensured by the administration of justice.” Moreover, Articles 19 to 44 enumerate specific rights and freedoms, such as the right to life and the right to the inviolability of private life. Finally, Articles 45 and 46 of the Constitution require that the Russian State ensure that these rights are not violated.

B. Russia’s international obligations

In addition to the domestic human rights guarantees, Russia is bound by different international treaties which are meant to strengthen its obligations toward its citizens. This section will explore Russia’s commitment to different international human rights regimes and its general obligation under international law to live up to this commitment.

i. International and regional human rights conventions

The Russian Federation signed the European Convention on Human Rights on 28 February 1996 and ratified it on 5 May 1998.⁴⁴ Moreover, Russia ratified both the

⁴⁴ “Council of Europe in brief / 47 countries, one Europe /Russian Federation (member)”, *supra* note 2.

International Covenant on Economic, Social and Cultural Rights,⁴⁵ and the *International Covenant on Civil and Political Rights*,⁴⁶ on 16 October 1973. Both of these instruments entered into force in 1976. Furthermore, Russia acceded to the *Optional Protocol to the International Covenant on Civil and Political Rights* on 1 October 1991, through which Russia “recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant.”⁴⁷ Both of these covenants together with the optional protocol impose significant human rights commitments on the Russian State.

ii. The principle of *pacta sunt servanda*

The former Soviet Union acceded to the *Vienna Convention on the Law of Treaties* (1969)⁴⁸ on 29 April 1986. One of the most important rules in international law is that of *pacta sunt servanda*, which requires all States to perform their obligations in good faith.⁴⁹ In addition to being one of the cornerstones of the *Vienna Convention*, this rule is also reflected in customary international law.⁵⁰

This principle has also been reaffirmed in several international decisions. For instance, in the case of *Verein Gegen Tierfabriken Schweiz (VgT) v. Switzerland (no.2)* the ECHR stated:

“[T]he Court emphasises the obligation on States to perform treaties in good faith, as noted, in particular, in the third paragraph of the preamble, and in Article 26, of the 1969 Vienna Convention on the Law of Treaties.”⁵¹

⁴⁵ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 U.N.T.S. 3.

⁴⁶ *International Covenant on Civil and Political Rights*, 16 December 1966, 999 U.N.T.S. 171.

⁴⁷ *Optional Protocol to the International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force 23 March 1976.

⁴⁸ *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 U.N.T.S. 331.

⁴⁹ *Ibid.*, art. 26.

⁵⁰ J.L. Kunz, “The Meaning and the Range of the Norm *Pacta Sunt Servanda*” (1945) 39 AJIL 180.

⁵¹ *Verein Gegen Tierfabriken Schweiz (VgT) v. Switzerland (no.2)* (2009), no. 32772/02, at para. 87.

Similarly, in the case of *Bosphorus Hava Yollari Turizm Ve Ticaret Anonim Sirketi v. Ireland* (2005), it was held that:

“The Convention has to be interpreted in the light of any relevant rules and principles of international law applicable in relations between the Contracting Parties (Article 31 § 3 (c) of the Vienna Convention on the Law of Treaties, and *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI), which principles include that of *pacta sunt servanda*.”⁵²

According to article 27 of the *Vienna Convention*, the provisions of a State’s domestic law cannot be invoked as a justification for the latter’s failure to fulfil its obligations under a treaty. Consequently, Russia’s commitments under international human rights law, particularly in the context of the European human rights regime, and its compliance therewith, must be assessed in the light of articles 26 and 27 of the *Vienna Convention*.

C. The non-application of the European Convention by Russia

The purpose of this section is to demonstrate that the situation which presents itself in the *Galaeva* case is but an example of a larger problem in Russia, namely that of a systematic non-application of the Convention by the Russian judicial system. In fact, we will show that this systematic practice involves such a large number of cases that it reveals a structural problem, which in turn leads to a systemic violation of the Convention. When ruling on a systemic violation, the ECHR will consider the number of violations of the Convention, as well as the State’s capacity to sanction or put an end to such violations. As stated in the case of *Yuriv Nikolayevich Ivanov v. Ukraine* (2010):

“The Court notes that the above-mentioned factors were all within the control of the State, which has failed so far to adopt any measures aimed at improving the situation, despite the Court’s substantial and consistent case-law on the matter.”⁵³

i. Systemic violations of the Convention

In deciding whether there has been a systemic violation of the Convention, the ECHR takes into account “the recurrent and persistent nature of the underlying problems”⁵⁴ as

⁵² *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v. Ireland* (2005), no. 45036/98, VI E.C.H.R. at para 150.

⁵³ *Yuriv Nikolayevich Ivanov v. Ukraine* (2009), no. 40450/04, at para. 85.

well as “the large number of people affected by them”.⁵⁵ For example, in the aforementioned case of *Yuriv Nikolayevich Ivanov v. Ukraine*, the ECHR indicated that:

“The systemic character of the problems identified in the present case is further evidenced by the fact that approximately 1,400 applications against Ukraine, which concern, fully or in part, the above problems, are currently pending before the Court and the number of such applications is constantly increasing.”⁵⁶

Similarly, in the case of Russia, the high number of claims which were transmitted to the ECHR provides important evidence of systemic violations of the Convention. The first judgement rendered by the ECHR against Russia was delivered in 2002, in the case of *Burdov v. Russia*.⁵⁷ Since then, the ECHR has rendered 862 judgements concerning Russia; and in 815 of these judgments, Russia was held responsible for a violation of the Convention. Furthermore, 36 083 decisions of inadmissibility have been rendered, and 33 568 applications are currently pending for a total of 70 651 applications filed since 1996. Moreover, the ECHR has found violations of: the right to a fair trial in 475 cases, the right to life in 115 cases, the right to security and liberty in 265 cases, the right to property in 386 cases, and the right to physical integrity in 211 cases.⁵⁸ Moreover, these figures do not take into account human rights violations that did not result in an application to the ECHR.

The important number of cases that were brought before the ECHR against Russia reflects a systematic non-application of the Convention by Russian courts, which amounts to violations of the Convention. This conclusion is further supported by the fact that only a small number of judgements adjudicated by Russian courts actually make reference to the ECHR case law. In 2008, the Russian Supreme Court made reference to ECHR cases in only twelve judgments.⁵⁹ This reflects numerous structural problems, which affect both Russian judges and lawyers. Even though some Russian attorneys are aware of the content of the ECHR’s case law, it is only accessible in unofficial translation

⁵⁴ *Ibid.*, at para. 81.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, at para. 85.

⁵⁷ *Burdov v. Russia* (2002), no. 59498/00, 2002-III E.C.H.R..

⁵⁸ “The European Court of Human Rights: Country Fact Sheets 1959-2009”, *supra* note 3, at pp. 65-66.

⁵⁹ Alexei Trochev, *All Appeals Lead to Strasbourg? Unpacking the Impact of the European Court of Human Rights on Russia*, Legal Studies Research Paper Series, no. 1082, (Milwaukee: University of Wisconsin, 2010) at p. 159.

into Russian and only few textbooks are available to them.⁶⁰ Moreover, when arguments are made before Russian courts, which are based on the Convention either implicitly or explicitly, there is typically no reference or analysis of the Convention in the ensuing decision. Sometimes Russian judges are hesitant to refer to the Convention, for fear of coming to an incorrect conclusion.⁶¹ At other times, when judges make reference to the Convention, they do not interpret it correctly.⁶² Finally, it is common for Russian judges to simply ignore arguments made to them by attorneys, which are explicitly based on the Convention.⁶³ As a result, there is a systematic non-application of the Convention by the Russian judicial system, which leads Russian citizens to have recourse to the ECHR for redress. Russians tend to consider the ECHR as a Court of “fourth instance”, that is, a Court of final appeal, which is actually contrary to the principle of subsidiarity of the Convention. This principle refers to “the fundamental role which national authorities, i.e. governments, courts and parliaments, must play in guaranteeing and protecting human rights at the national level.”⁶⁴ As a result, the Russian judicial system undermines the effectiveness of the ECHR.

ii. The unwillingness of the State to apply the Convention

In order to demonstrate that there is a systemic problem, it must be shown that the violations are, as the ECHR puts it, “neither prompted by an isolated incident nor attributable to the particular turn of events” in a given case.⁶⁵ In other words, it should be demonstrated that the non-application of the Convention is due to the State. In Russia, the non-application of the Convention does not stem from this country’s lack of capacity. Rather, it stems from the unwillingness of Russian judicial authorities to apply the Convention. For example, many of the judges of the Supreme Court have had the

⁶⁰ Anton Burkov, *The Current and Potential Usefulness of Regulations Made by the Plenum of the Supreme Court of the Russian Federation in Securing the Implementation of the European Convention on Human Rights by Russian Courts*, (Doctoral degree, Wolfson College, 2009) .[hereinafter: *The Implementation of the European Convention in Russia*] at p. 201.

⁶¹ *Ibid.*, at pp. 139 and 201.

⁶² *Ibid.*.

⁶³ *Ibid.*.

⁶⁴ *Interlaken Declaration*, *supra* note 39, at para. PP6.

⁶⁵ *Broniowski v. Poland* (friendly settlement) (2004), no. 31443/96, E.C.H.R. 2005-IX, at para. 89.

opportunity to go to Strasbourg and to observe directly how the ECHR works. Moreover, the case-law of the ECHR is available in the Russian language, not widely spread, but still available and Russian judges are made aware of all admissible petitions through a notification that they receive from the authorities in Strasbourg.⁶⁶

It is important to recall that the State has the obligation to create the necessary incentives to fully implement the Convention, as well as to ensure the application of the subsidiarity principle. However, in the case of Russia, the facts indicate a lack of such incentives. According to Alexei Trochev, there are three main reasons which can explain the lack of implementation of the Convention by judges.

“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.”⁶⁷

Second, there appears to be a lack of respect from Russian political authorities toward the Russian judicial system.⁶⁸ The lack of capacity of national courts to enforce their own judgements derives from poor governmental support. As a result:

“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.”⁶⁹

Third, Russian judges do not seem to have the resources or the time needed to take the ECHR’s case law into account.⁷⁰ Even though guidelines were created by the Supreme Court to show how to use ECHR case law, the lower courts do not seem to respect these guidelines.⁷¹ Furthermore, “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.”⁷²

⁶⁶ *All Appeals Lead to Strasbourg?*, *supra* note 59, at p. 160.

⁶⁷ *Ibid.*, at p. 157.

⁶⁸ *Ibid.*, at p. 149.

⁶⁹ *Ibid.*, at p. 157.

⁷⁰ *Ibid.*

⁷¹ *Implementation of the European Convention in Russia*, *supra* note 60, at p. 189.

⁷² *All Appeals Lead to Strasbourg?*, *supra* note 59, at p. 157.

In sum, the Federation of Russia has the political and the financial capacity to systematically apply the Convention in its judicial system. In other words, Russian courts could redress several human rights violations which imply rights contained in the Convention. What this proves is a systemic violation of the Convention.

SECTION 3: ADDRESSING SYSTEMIC VIOLATIONS BEFORE THE ECHR

In the preceding two sections, we have explained the content of Article 1 of the Convention and the way Russia implements the Convention. Against this background, this section will examine a series of arguments that could be submitted to the ECHR in favour of employing Article 1, on its own, to address the systematic non-application of the Convention by Russia. First, a demonstration will be made as to why Article 1 has been violated in the *Galaeva* case. Even though a violation of Article 1 was mentioned in the original application to the ECHR, no arguments were developed in this regard. Second, as an alternative argument, we will argue that there is a systemic violation of Article 6 of the Convention, to such an extent that the ECHR should use the pilot judgement procedure in order to obligate the Russian Federation to find a concrete and effective remedy to the lack of application of the Convention resulting in a violation of Article 6 (1).

A. Article 1: Ensure the effectiveness of the Convention

The Russian Federation systematically does not implement the Convention. The direct consequence of a systemic non-application of the Convention by Russia is a lack of its effectiveness. As mentioned earlier, the primary goal while drafting Article 1 of the Convention was to render the rights under Section I effective, rather than only illusory.⁷³ Obviously, when there is a systemic violation of the Convention, the central purpose of Article 1 is violated.

⁷³ “Preparatory Work on Article 1 of the European Convention on Human Rights”, *supra* note 15, at p. 68.

Article 1 sets out the obligation for States to implement the Convention in order to ensure its effectiveness.⁷⁴ It expresses the main objective and purpose of the Convention, which is to secure the substantive rights and freedoms guaranteed therein and ensure the “general spirit of the Convention, an instrument designed to maintain and promote the ideals and values of a democratic society”, as stated in *Soering v. United-Kingdom* (1989).⁷⁵ Therefore, when States systematically omit to consider the Convention, they do not ensure the rights contained in the Convention, which results in a violation of Article 1.

Furthermore, ensuring that individuals have the possibility to invoke the Convention before national courts is central to respecting the underlying objectives of Article 1.⁷⁶ In Russia’s case, the lack of awareness and application of the Convention by judges also raises concerns under Article 1.⁷⁷ One fundamental positive obligation that results from Article 1, is that the State must actively take measures designed to fulfill its obligations under the Convention in order to respect their positive obligations resulting from Article 1 as the key to the effectiveness of human rights protection in Europe. Therefore, the non-application of the Convention results in a breach of Article 1 because it compromises the effectiveness of the Convention.

Another practical manner for ensuring the effectiveness of the Convention is through its evolutionary interpretation by the ECHR, which means “that the Convention is interpreted in light of present day conditions [and] that it evolves through the interpretation of the Court.”⁷⁸ The ECHR embraced this principle for the first time in the case of *Tyrer v. United Kingdom* (1978).⁷⁹ It is more frequently used in the context of Article 8 of the Convention, which refers to the right to respect for private and family life, since this article concerns matters that are more likely to be affected by changes in

⁷⁴ *Explanatory Report to Protocol No. 14 of the Convention*, *supra* note 31, at para. 15.

⁷⁵ *Soering v. United Kingdom*, *supra* note 18, at para. 87.

⁷⁶ *Supra*, section 2.C.i..

⁷⁷ *Supra*, section 2.C.i..

⁷⁸ Luzius Wildhaber, “The European Court of Human Rights in action” (2004) 21 *Ritsumeikan Law Review* 83, at p. 84.

⁷⁹ *Tyrer v. United Kingdom* (1978), 26 E.C.H.R. (Ser. A) at para. 31.

society, as pointed out in the case of *Marckx v. Belgium* (1979).⁸⁰ The ECHR has decided to take into consideration two aspects in order to determine whether it should adopt an evolutionary interpretation of the Convention, and therefore revise its case-law, namely scientific developments (in general), and legal developments (in the domestic law of States Parties). It has even been argued that “a failure by the Court to maintain a dynamic and evolutionary approach would risk rendering it a bar to reform or improvement.”⁸¹

The case of Russia presents a need for the ECHR to employ an evolutionary interpretation regarding Article 1 in order to restore the Convention’s full potential and strength. The binding character of the Convention is the central element of the European Human Rights regime. States are thus bound to fulfill their obligations under the Convention, which includes the duty to take positive measures in response to violations of any of the Convention rights. Where this duty is systematically disregarded, the object and purpose of the Convention are violated. The ECHR thus needs to take the appropriate steps in order to ensure the effectiveness of the Convention in the case of Russia. The repeated adjudication of individual cases is not an adequate solution to a structural problem. Accordingly, the time has come for the ECHR to redress this situation by declaring that Article 1 has been violated, independently of any other substantive rights contained in the Convention.

B. Independent application of Article 1

In the *Galaeva* case, Article 1 of the Convention could be invoked independently, rather than only in conjunction with other articles thereof, in order to denounce the systemic violations of the Convention. The idea behind this argument is to use Article 1 which contains the obligations and the meaning that underlie the whole Convention in order to find a durable and concrete solution to a wide-scale violation of the Convention. We assume that, in contrast, an ECHR judgement based only on specific articles of the Convention will not remedy the systematic non-application of this instrument.

⁸⁰ *Marckx v. Belgium*, *supra* note 22, at para. 53.

⁸¹ “The European Court of Human Rights in action”, *supra* note 78, at p. 84.

i. Autonomy of Article 1: a review of the ECHR's case law

In the past, both the European Commission and the ECHR have rendered decisions pertaining to the issue of whether Article 1 could be invoked and, if so, violated independently of other substantive rights or freedoms contained in the Convention. This issue was first dealt with in the judgement of *Ireland v. United Kingdom* (1978). In this case, the Irish government alleged that the government of the United Kingdom was responsible for acts of torture against presumed members of the Irish Republican Army (IRA), in violation of article 3 of the Convention. The government of Ireland also alleged a violation of Article 1, since the laws in force authorised or permitted violations of other rights guaranteed under the Convention resulting in a violation of the obligation of the United Kingdom to ensure the protection of those rights.⁸² In response to this argument, the European Commission stated that “Article 1 is not granting any rights in addition to those mentioned in Section I of the Convention, and cannot be the subject of a separate breach.”⁸³ However, the European Commission later requested the ECHR to pronounce itself on a possible violation of Article 1, asking:

“Does Article 1 of the Convention create any rights in addition to those defined in Section I and can it be the subject of a separate breach?”⁸⁴

The ECHR subsequently held that Article 1 was a provision “that attests the binding character of the Convention.”⁸⁵ Moreover, the Court subscribed to the argument brought forward by the British Government and the Commission that “Article 1 cannot be subject of a separate breach since it grants no rights in addition to those mentioned in Section I” of the Convention.⁸⁶ Therefore, the ECHR excluded Article 1 in its findings on violations of the Convention, based on the premise that this article was merely a general provision that did not require any separate ruling.⁸⁷

⁸² *Ireland v. United Kingdom*, *supra* note 16, at para. 236.

⁸³ *Ibid.*, at para. 147.

⁸⁴ *Ibid.*, at para. 8.

⁸⁵ “Preparatory Work on Article 1 of the European Convention on Human Rights”, *supra* note 15, at p.67.

⁸⁶ *Ireland v. United Kingdom*, *supra* note 16, at paras. 238-239.

⁸⁷ *Ibid.*, at paras. 238-241.

This finding was reiterated in other decisions, such as, *Danini v. Italy*, which was decided in 1993 by the former European Commission:

“As regards the complaint based on Article 1 of the Convention, the Commission recalls that, as this Article contains an entirely general obligation, it should not, even if invoked at the same time and in conjunction with other Articles, be seen as a provision which can be the subject of a separate breach.”⁸⁸

Moreover, in *Streletz, Kessler and Krenz v. Germany* (2001), the ECHR, referring to *Ireland v. United Kingdom* (1978), indicated that “the applicants’ complaint cannot be raised under Article 1 of the Convention, which is a framework provision that cannot be breached on its own.”⁸⁹

The ECHR never took into consideration other arguments than those presented in *Ireland v. United Kingdom* (1978), concerning the framework character of Article 1. Although it recognizes the lack of effective application of the Convention in some States Parties, it maintains that Article 1 does not grant any additional rights. Until now, the ECHR has never considered ruling on Article 1 in order to condemn a State’s lack of respect of the Convention as such (rather than of individual articles) and thus to denounce practices that resulted in a lack of effectiveness of the Convention.

ii. Distinction between Galaeva and other cases involving Article 1

The current position of the Court on the autonomy of Article 1 is primarily based on its assessment in *Ireland v. United Kingdom* (1978). However, this case was decided over 30 years ago. Europe has witnessed major political and legal transformations since then. About twenty-five countries have joined the Council of Europe and have ratified the Convention over the last ten years. At present, some of them still face problems when it comes to give full effect to the Convention in their national legislation. The Court is increasingly faced with applications alleging violations of the Convention due to a general lack of enforcement of the rights and obligations arising from the Convention. Therefore, Article 1 should be invoked by itself in order to address the lack of implementation of the Convention, taking into account the character of Article 1 as laid

⁸⁸ *Danini v. Italy* (1996), 87-B Eur. Comm. H.R. D.R. 24, at p. 32.

⁸⁹ *Streletz, Kessler and Krenz v. Germany* (2001), no. 34044/96, II E.C.H.R. at para. 112.

out above. Even though the ECHR stated that Article 1 could not be used independently, but only in conjunction with other articles, an argument based on the evolutionary interpretation of the Convention can be made in this regard, whereby Article 1 may be invoked independently when the effectiveness of the Convention as a whole and the rights and freedoms it guarantees are at stake.

In *Ireland v. United Kingdom* (1978), the ECHR stated that:

“Article 1 is drafted in reference to the provisions contained in Section I and thus comes into operation only when taken in conjunction with them; a violation of Article 1 follows automatically from, *but adds nothing to*, a breach of those provisions; hitherto, when the Court has found such a breach, it has never held that Article 1 has been violated.”⁹⁰(Emphasis added).

This statement implicitly acknowledges the possibility that, in some cases, finding a violation of Article 1 may be possible when this “adds something to” the other findings of the ECHR. Article 1 may not have added anything to the violation of Article 3 in the case *Ireland v. United Kingdom* (1978) or in those cases that have referred to it thereafter. Admittedly, the lack of remedies or protective laws has meanwhile been addressed through the concept of positive obligations inherent in all Convention rights. However, the case of *Galaeva* is different because it represents a systemic violation of the Convention, which cannot be addressed adequately or entirely through the application of the concept of positive obligations.

It is undeniable that all States Parties to the Convention have the responsibility to implement it in their domestic system, even though this may be complex and arduous. When the Convention is not properly implemented, this results in a systemic violation of the Convention by the State in question, and brings about a violation of Article 1. As previously mentioned, with respect to the principle of subsidiarity, the ECHR reiterates that the protection of human rights must foremost be ensured in the domestic jurisdiction of member States; the ECHR is not a court of “fourth instance”. When considering that

⁹⁰ *Ireland v. United Kingdom*, *supra* note 16, at paras. 238-239.

“the main aim of international human rights law is to 'bring human rights home’”,⁹¹ it becomes clear that structural problems leading to repeated violations of the Convention must be addressed within the concerned State itself.

However, in the light of statistics, some countries are struggling more than others to implement the Convention in their domestic law, such as Russia. In fact, neither Russian judges nor Russian lawyers regularly rely on the Convention in practice, even though this instrument should be given primacy over domestic Russian laws, as per Article 15(4) of the Russian Constitution.⁹² Also, given the fact that the Supreme Court of Russia essentially ignores issues related to the rights and freedoms contained in the Convention,⁹³ a growing number of applications are lodged with the ECHR. Every year, the number of applications has increased. In 1998, there were 116 applications. In 2009, this number reached 13,666, for a total of 70 561.⁹⁴ The number of rulings against Russia is among the highest of all States Parties to the Convention. This clearly reflects a systemic problem, which cannot be resolved if the ECHR continues to render judgments based on substantive rights guaranteed by specific article of the Convention, rather than on the effective application of this instrument, as reflected in article 1 thereof.

Put otherwise, by only ruling on an individual violation of a specific substantive right, without pronouncing itself on whether Article 1, which “contains an entirely general obligation”,⁹⁵ has been violated independently, the ECHR finds itself in a vicious cycle. Since the systematic violation of the Convention is a recurrent problem, a new approach must be relied upon, which implies finding a violation of Article 1 independently. Such an evolutionary interpretation of the Convention by the ECHR will remedy this ongoing situation.

⁹¹ Anton Burkov, “Impact of the Convention for the Protection of Human Rights and Fundamental Freedoms on the Russian Legal System”, in: EURussia Centre, *EU-Russia Legal Co-operation*, The EU-Russia Centre Review, Issue 14 (May 2010), 30 [hereinafter: “Impact of the Convention on the Russian Legal System”], at p. 31.

⁹² *Implementation of the European Convention in Russia*, *supra* note 60, at p. 176.

⁹³ “Impact of the Convention on the Russian Legal System”, *supra* note 91, at p. 35.

⁹⁴ “50 Years of Activity, The European Court of Human Rights, Some Facts and Figures”, *supra* note 38, at p. 10

⁹⁵ *Theory and practice of the European Convention on Human Rights*, *supra* note 14, at p. 17.

It is therefore time for the ECHR to render a judgment based on the independent violation of Article 1 in order to restore its original meaning which is to ensure the effectiveness of the Convention. If the ECHR wants to assure the success of the European system for the protection of human rights in countries that have varying judicial traditions and priorities, Article 1 offers a solution to problems of systematic violations of the Convention. By making a finding of an independent violation of Article 1, the ECHR will send a strong signal to countries that do not adapt their judicial systems to the Convention.

This is why it would be strategic to invoke Article 1 on its own in order to demonstrate and to remedy the systemic non-application of the Convention in Russia. Article 1 must thus be considered on its own, and no longer as a complementary provision which merely completes the obligations with respect to other rights.

C. The pilot judgement procedure

In addition to finding a violation of Article 1, we argue that the ECHR should use the pilot judgement procedure in the case of *Galaeva v. Russia*, thus allowing it to identify a systemic violation of Article 6(1) by the Russian State, and to determine how to bring this violation to an end.

This procedure has been endorsed by the Committee of Ministers which has asked the ECHR

“as far as possible, to identify, in its judgments finding a violation of the Convention, what it considers to be an underlying systemic problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist states in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments”⁹⁶.

For the Committee, the purpose of the pilot judgement procedure is to ensure the effectiveness of the ECHR by limiting the number of repetitive applications, meaning

⁹⁶ Council of Europe, Committee of Ministers, “Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem”, 114th sess., 12 May 2004.

applications stemming from a practice already held to be incompatible with the Convention in a previous case. In 2009, 50% of the admissible applications received by the ECHR fell in this category.⁹⁷

The aim of a pilot judgement is to give the State the opportunity to find a solution to a structural malfunctioning which is the cause of recurrent violations of the Convention. By doing so, the ECHR is able to limit the number of applications and to restore the subsidiary character of the Convention. For a judgement to be considered a pilot judgment, three conditions must be met. First, the ECHR must explicitly refer to the procedure in its judgment and its intention to use it.⁹⁸ Secondly, the ECHR must highlight the underlying problems which are the cause of systemic violations of the Convention by the concerned State. Finally, there must be some indication as to what measures the State must take in order to comply with the Convention.⁹⁹

The first pilot judgement was delivered in 2004, in the case *Broniowski v. Poland*. Since then, the ECHR has rendered five other pilot judgments, including one against Russia, *Burdov v. Russia* (*n*^o2). In the latter case, the ECHR found that the repeated non-enforcement of domestic decisions in Russia was a systemic problem resulting in a violation of Article 6(1) of the Convention.

In order to demonstrate the appropriateness of using the pilot judgment in the case *Galaeva v. Russia* concerning the violation of Article 6(1) of the Convention, it will be important to explain the source of the violation in the case of Mrs Galaeva. To this end, we will demonstrate that the specific type of violation of Article 6(1) is the result of a systemic problem and that the pilot judgement procedure is an effective means to address these violations.

⁹⁷ “Opinion of the Steering Committee for Human Rights”, in: Council of Europe, *Preparatory Contributions, High Level Conference on the Future of the European Court of Human Rights*, (Strasbourg: Council of Europe, 2010), p.15, online : Council of Europe <http://www.coe.int/t/dc/files/events/2010_interlaken_conf/Brochure_contributions_preparatoires_en.pdf>, at p. 16.

⁹⁸ Philip Leach, Helen Hardman and Svetlana Stephenson, “Can the European Court’s Pilot Judgement Procedure Help Resolve Systemic Human Rights Violations? *Burdov* and the Failure to Implement Domestic Court Decisions in Russia”, (2010) 10 Human Rights Law Review 346, at p. 351.

⁹⁹ *Ibid.*.

i. Violation of Article 6(1) in the case of *Galaeva v. Russia*

Article 6(1) – the right to a fair trial – is one of the key articles of the Convention. As the ECHR said in *Delcourt v. Belgium* (1970), “[i]n a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6 para. 1 would not correspond to the aim and the purpose of that provision”¹⁰⁰. In other words, Article 6(1) has been interpreted broadly, covering a number of more specific guarantees.

In the case of *Galaeva v. Russia*, the applicant, Mrs. Galaeva, alleges that her right to a fair trial was violated for two reasons: first, she argues that she did not have access to a court of law, which represents a violation of the right to have access to justice guaranteed by Article 6(1). As the ECHR asserts, “the fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings”¹⁰¹. However, the ECHR has recalled that the access to a tribunal is not an absolute right and that the State can limit this right if it has a legitimate purpose for doing so and if the limitations are proportional to the pursued purpose.

Secondly, in addition to the violation of her right to have access to a tribunal, the fact that the Supreme Court did not take into consideration Mrs. Galaeva’s legal arguments concerning the Convention constitutes a major breach of her rights under Article 6(1), which requires that the domestic courts give reasons for their judgements in both civil and criminal proceedings. Courts are not obliged to give detailed answers to every question, but if a submission is fundamental to the outcome of the case, the court must then specifically deal with it in its judgment.¹⁰² Thus, when a court renders a judgement, it has the obligation to address all legal arguments that are fundamental to the outcome of the decision. This ensures the transparency of the court proceedings, as it renders the legal reasoning behind a decision visible and comprehensible. In the case concerning Mrs. Galaeva, the only argument presented before the Supreme Court was based on the

¹⁰⁰ *Delcourt v. Belgium* (1970), 11 E.C.H.R. (Ser. A), at para. 25.

¹⁰¹ *Golder v. the United Kingdom* (1975), 18 E.C.H.R. (Ser. A), at para. 35.

¹⁰² Nuala Mole and Catharina Harby, *Right to a Fair Trial: A Guide on the Implementation of Article 6 of the European Convention on Human Rights, Human Rights Handbooks No. 3*, 2nd ed. (Strasbourg : Council of Europe, 2007), at p. 49.

Convention. However, this argument was not subsequently addressed in the Court's judgement. This situation clearly demonstrates the unwillingness of the Court to consider an argument based on the Convention. Despite the fact that Article 15(4) of the Russian Constitution stipulates that Russia's international commitment shall be fully integrated in its domestic jurisdiction, the Supreme Court ignored the argument, judging it irrelevant.

ii. Using the pilot judgment procedure in *Galaeva v. Russia*

Even though the ECHR has already rendered a pilot judgment against Russia concerning Article 6(1), this does not preclude the Court from rendering another pilot judgement in the case of *Galaeva* for two main reasons. First, the nature of the violation of article 6(1) in *Burdov v. Russia* differs from that of *Galaeva v. Russia*, in that they do not stem from the same systemic issue. Secondly, a pilot judgement from the ECHR would provide a solution to the malfunctioning of the judicial system concerning the systematic non-application of the Convention, brought to light by the case of Mrs. Galaeva.

In 2009, the ECHR, in *Burdov v. Russia (n°2)*, determined that the overall lack of implementation of domestic judgements constituted a systemic violation of Article 6(1), holding that

“the violations found in the present judgment were neither prompted by an isolated incident, nor attributable to a particular turn of events in this case, but were rather the consequence of regulatory shortcomings and/or administrative conduct of the authorities in the execution of binding and enforceable judgments ordering monetary payments by State authorities.”¹⁰³

In reaction to this judgement, the Russian authorities took a number of measures. On 4 May 2010, new legislation entered into force in order to address the shortcomings identified by the ECHR. A federal law¹⁰⁴ was adopted in order to comply with the ECHR's decision and to introduce additional remedies at the national level. This law

¹⁰³ *Burdov v. Russia* (no. 2) (2009), no. 33509/04, at para 181.

¹⁰⁴ “Law On Compensation to Citizens for Violation of the Right to a Fair Trial within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time” as cited in Anton Burkov, “Compensation for Violation of the Right to a Fair Trial”, 9 August 2010, online: EURussia Centre, Weekly Column, < <http://www.eu-russiacentre.org/our-publications/column/compensation-violation-fair-trial.html>>.

created a compensatory remedy that can be invoked when there is an unreasonable delay between a judgement and its execution. Even though the Russian government therefore complied with the pilot judgement in *Burdov v. Russia*, this does not, however, mean that Russia has effectively secured all guarantees under article 6(1) of the Convention.

The measures taken by the Russian government do not have any influence on the case of Mrs. Galeava. The violation of Article 6(1) in this specific case does not concern an unreasonable delay in the judicial procedure or a failure to execute a domestic judgement. Therefore, the systemic issue relating to *Galaeva* was neither covered by *Burdov*, nor did the measures taken by Russia have any bearing on it. On the contrary, the systemic violation of Article 6 (1) persists. Not only is there a breach of the right to a fair trial that is symptomatic of a large scale problem, the authorities are also capable of addressing its root causes.

In conclusion, the case *Galaeva v. Russia* is a perfect example of a violation stemming from a systemic problem which the national authorities have the capacity to remedy. To ensure the effectiveness of the guarantees contained in Article 6(1), it is our recommendation that the ECHR use the pilot judgment procedure to demand that the Russian state take action.

SECTION 4: PROCEDURAL QUESTIONS

A. The possibility to invoke an article or to conclude on a violation of an article not cited in the initial complaint

In this section, our objective is to explain matters of procedure, more specifically the possibility to invoke an article that was not cited in an initial complaint, meaning in a complaint which has already been filed with the ECHR. In fact, the aim is to respond to concerns voiced by our partner organisation, who wishes to include certain articles, including Article 1, in the initial applications in *Galaeva v. Russia* and *Mikhailova v. Russia*. This section is divided into two parts. The first deals with the issue of making

reference to an additional substantive provision of the Convention. The second part deals with the inclusion of a reference to a separate and independent violation of Article 1 of the Convention.

i. Presenting arguments with respect to an article not cited in the original application

Petitioners have to include different elements in order to comply with the admissibility criteria set out in Articles 34 and 35 of the Convention so as to ensure that their complaint is admissible. The most important is to mention the specific articles of the Convention, and its Protocols, which are alleged to have been violated. In fact, due to the six months rule (discussed below), it is very difficult to add a reference to another article once the application is submitted. According to Article 35, the petition has to be filed within a period of six months from the date on which the final decision of the domestic courts was taken:

“[I]f an alleged violation of an Article of the Convention is not included at all in the initial application, it may be declared inadmissible for failing to comply with the six months rule. Practitioners would therefore be well advised to include all arguable points in the initial application.”¹⁰⁵

However, it is possible to add a reference to an article which was not included in the initial petition when the violation in question is one that is continuous in time. Thus, “[w]here the matter which the applicant complains about is continuing (such as a period of detention), the time limit will not start to run until the breach ceases to have a continuing effect.”¹⁰⁶ In such a scenario, an application could be lodged with the European Court several years after the violation first started.¹⁰⁷ Consequently, it is possible to claim the violation of an article not mentioned in the initial petition, only when the ensuing violation is ongoing or continuous; it must not merely be a consequence of the initial violation that occurred beforehand. In this respect, a “distinction must be drawn between a situation disclosing a situation of ongoing violation

¹⁰⁵ Philip Leach, *Taking a Case to the European Court of Human Rights*, 2nd ed. (Oxford, New York: Oxford University Press, 2005) at p. 36.

¹⁰⁶ *Ibid.*, at p. 151.

¹⁰⁷ *Ibid.*, at p. 152.

and the after-effect or consequence of a breach which occurred and ended at a particular point in time.”¹⁰⁸

In relation to the issue of whether it may be possible to add Article 13 of the Convention, relating to the right to an effective remedy, to the initial complaint which referred only to a violation of Article 6 of the Convention, pertaining to the right to fair trial, reference should be made to the ECHR judgement of *Kudla v. Poland* (2000). Prior to this judgment, “Article 6 (1) was deemed to constitute a *lex specialis* in relation to Article 13”,¹⁰⁹ and implied “the full panoply of judicial procedure, [which] are stricter than, and absorb, those of Article 13.”¹¹⁰ In other words, before this judgment, the ECHR did not deem it necessary to rule on Article 13 whenever it found a violation of Article 6 of the Convention.¹¹¹ However, the ECHR revised its position through its judgment in *Kudla v. Poland*. The Court stated that “the correct interpretation of Article 13 is that that provision guarantees an effective remedy before a national authority for an alleged breach of the requirement under Articles 6(1) to hear a case within a reasonable time.”¹¹² Accordingly, the Court has proceeded, on several occasions thereafter, to find a violation of Article 13, when Article 6 was violated, but not the contrary. For instance, in *Burdov v. Russia* (no. 2) (2004):

“the applicant did not allege the lack of effective domestic remedies in respect of his complaint (...) The Court observed nonetheless that alleged ineffectiveness of domestic remedies was being increasingly complained of before the Court (...) It therefore decided of its own motion to examine this question under Article 13 in the present case.”¹¹³

In sum, it is possible for the ECHR to conclude, on its own initiative, on a violation of Article 13 after having found a violation of Article 6(1), even though the original complaint did not include Article 13.

¹⁰⁸ Karen Reid, *A Practitioner’s Guide to the European Convention on Human Rights*, 2nd ed. (London : Thompson/Sweet & Maxwell, 2004) at p. 29.

¹⁰⁹ *Kudla v. Poland* (2000), no. 30210/96, 2000-XI E.C.H.R. at para. 146.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid.*, at para. 156.

¹¹³ *Burdov v. Russia* (no. 2), *supra* note 103, at para. 89.

However, the possibility to include another article in the initial petition is consequently limited. For instance, in the case of *Galaeva v. Russia*, Article 3 of the Convention was not invoked in the original complaint. In order to be able to include a reference to Article 3 of the Convention in the *Galaeva* case, it should be demonstrated that the applicants underwent severe psychological suffering, which is ongoing at present.

ii. Article 1

As previously mentioned, Article 1 differs from other articles of the Convention, in that it defines the obligation of all States Parties to secure the substantive rights and freedoms contained in the Convention. According to van Dijk and van Hoof:

“Article 1 of the Convention does not form part of Title I which contains the substantive provisions concerning the rights and freedoms. It precedes Title I and defines in a general way the obligation of the Contracting States to secure these rights and freedoms, specifying in particular the personal scope of protection: to everyone within their jurisdiction.”¹¹⁴

The addition of Article 1 in an initial petition has never been successfully attempted before. Also, there is neither scholarly literature nor jurisprudence referring to this matter. Nevertheless, it may be argued that the addition of a reference to article 1, alleging an independent violation thereof, could be possible for a number of reasons. Making such a claim after the initial petition has been filed would be possible because Article 1 does not refer to a specific right, but rather a framework provision which specifies the obligations for all States Parties to protect the rights contained in Section 1 of the Convention. Also, the inclusion of this article in a petition would serve the objective of condemning a State for not having respected the Convention as a whole, since the rights must foremost be protected in the national system. Thus, although it has never been done, petitioners should attempt to convince the ECHR that an independent violation of article 1 of the Convention could be added to the existing application.

¹¹⁴ *Theory and practice of the European Convention on Human Rights*, supra note 14, at p. 17.

CONCLUSION

The main objective of this memorandum was to provide accurate and detailed explanations with regard to Sutyajnik's research request, specifically with regard to inquiries concerning the *Galaeva* and *Mikhailova* cases, through the six questions mentioned in the introduction of this document.

However, some of the arguments that were developed in this document may be used in the context of other applications, because the memorandum embarks on new perspectives which were not envisaged in the initial mandate. The aforementioned argument, whereby Article 1 could be used independently from other provisions of the Convention, has never been advanced in this form. Traditionally, Article 1 was primarily used at the admissibility stage for jurisdictional matters. In fact, invoking Article 1 on its own has been explicitly denied by the case law of the European human rights organs because it supposedly "added nothing" to the violations. However, in light of the widespread difficulties relating to the implementation of the Convention, particularly with regard to Russia, we believe it is necessary to invoke Article 1 on its own in order to address severe issues of systemic violations of the Convention. Not only does pleading Article 1 add something to the legal argument, but it is the only means to adequately reveal the systematic non-application of the Convention. This argumentation offers the benefit of promoting and upholding the effectiveness of the Convention in the face of large-scale problems, as opposed to making findings of violations of specific substantive articles. Indeed, the case-by-case approach has proven not to be effective enough to solve Russia's problem. There appears to be no other way within the Convention's framework to address a systematic non-application of the Convention other than alleging a violation of Article 1.

This approach is further justified from the point of view of an evolutionary interpretation of Article 1. This provision originally was interpreted by the ECHR as a framework article. Subsequently, it was seen as being inherent to all rights contained in Section 1 of the Convention. More recently, it was used to support the creation of the

pilot judgement procedure which, in the view of the ECHR, is a new way to improve the effectiveness of the Convention. In keeping on this evolutionary path, it would be logical for the next step to be the independent application of Article 1, given the fact that the ECHR is in a process of reforming the Convention in order to render it more effective.

Overall, this memorandum suggests an innovative approach to Article 1, which is to deal with the structural problems which threaten to undermine the fundamental objective and purpose of the Convention, that is, the effective protection of human rights. Hopefully, this document will provide information that will help to denounce systemic violations of the Convention.

BIBLIOGRAPHY

Articles / Books / Reports

Burkov, Anton: "Compensation for Violation of the Right to a Fair Trial", 9 August 2010, online: EURussia Centre, Weekly Column, < <http://www.eu-russiacentre.org/our-publications/column/compensation-violation-fair-trial.html>>

Burkov, Anton: *The Current and Potential Usefulness of Regulations Made by the Plenum of the Supreme Court of the Russian Federation in Securing the Implementation of the European Convention on Human Rights by Russian Courts*, (Doctoral degree, Wolfson College, 2009) 269 pages

Burkov, Anton: "Impact of the Convention for the Protection of Human Rights and Fundamental Freedoms on the Russian Legal System", in: EURussia Centre, *EU-Russia Legal Co-operation*, The EU-Russia Centre Review, Issue 14 (May 2010), 30

De Schutter, Oliver: "Globalization and jurisdiction: Lessons from the European Convention on Human Rights" (2005) CHRJ Working Paper No. 9, <[http://www.chrgj.org/publications/docs/wp/DeSchutter Globalization and Jurisdiction.pdf](http://www.chrgj.org/publications/docs/wp/DeSchutter%20Globalization%20and%20Jurisdiction.pdf)>

Human Rights Council: "Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Addendum, Mission to the Russia Federation", HRCOR, 11th Sess., 23 March 2009, UN Doc. A/HRC/11/41/Add.2

Kunz, Josef L.: "The Meaning and the Range of the Norm Pacta Sunt Servanda" (1945) 39 AJIL 180-197

Leach, Philip, *Taking a Case to the European Court of Human Rights*, 2nd ed. (Oxford, New York: Oxford University Press, 2005) 854 pages

Leach, Philip, Hardman, Helen and Stephenson, Svetlana: "Can the European Court's Pilot Judgement Procedure Help Resolve Systemic Human Rights Violations? *Burdov* and the Failure to Implement Domestic Court Decisions in Russia" (2010) 10 Human Rights Law Review 351

Mole, Nuala and Harby, Catharina: *Right to a Fair Trial: A Guide on the Implementation of Article 6 of the European Convention on Human Rights*, *Human Rights Handbooks No. 3*, 2nd ed. (Strasbourg : Council of Europe, 2007)

Mowbray, Alastair: "The Interlaken Declaration: The Beginning of a New Era for the European Court of Human Rights?" (2010) 10 Human Rights Law Review 519

Ovey, Clare and White, Robin: *Jacobs and White, The European Convention on Human Rights*, 4th ed. (New York: Oxford University Press, 2006)

Pavageau, Stéphanie: “Les obligations positives dans les jurisprudences des Cours européenne et interaméricaine des droits de l’homme”(2005) 6 International Law, Revista Colombiana de Derecho Internacional 215

Reid, Karen: *A Practitioner’s Guide to the European Convention on Human Rights*, 2nd ed. (London : Thompson/Sweet & Maxwell, 2004) , 648 pages

Sudre, Frederic : *La convention européenne des droits de l’Homme* (Paris : Presse universitaire de France, 2004) 128 pages

Sudre, Frederic, *Droit européen et international des droits de l’Homme* (Paris : PUF, 2008) 848 pages

Trochev, Alexei: *All Appeals Lead to Strasbourg? Unpacking the Impact of the European Court of Human Rights on Russia*, Legal Studies Research Paper Series, no. 1082, (Milwaukee: University of Wisconsin, 2010), p. 145-178

van Dijk, P., van Hoof, G.J., Heringa, A. W and al.: *Theory and practice of the European Convention on Human Rights*, 3rd ed. (The Hague, Boston: Kluwer Law International, 1998) 880 pages

Wildhaber, Luzius: “The European Court of Human Rights in action” (2004) 21 Ritsumeikan Law Review, p. 83-92

Case Law

Airey v. Ireland (1979), 32 E.C.H.R. (Ser. A)

Assenov and others v. Bulgaria (1999), no. 31195/96, VIII E.C.H.R.

Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v. Ireland (2005), no. 45036/98, VI E.C.H.R.

Broniowski v. Poland (friendly settlement) (2004), no. 31443/96, E.C.H.R. 2005-IX

Burdov v. Russia (2002), no. 59498/00, 2002-III E.C.H.R.

Burdov v. Russia (no. 2) (2009), no. 33509/04

Case “relating to certain aspects of the laws on the use of languages in education in Belgium”(1968), 6 E.C.H.R. (Ser. A)

Cyprus v. Turkey (2001), IV E.C.H.R

Danini v. Italy (1996), 87-B Eur. Comm. H.R. D.R. 24

Delcourt v. Belgium (1970), 11 E.C.H.R. (Ser. A)

Golder v. the United Kingdom (1975), 18 E.C.H.R. (Ser. A)

Illascus and Others v. Moldova and Russia (2004), no. 48787/99, VII E.C.H.R

Ireland v. United Kingdom (1978), 25 E.C.H.R. (Ser. A)

Issa and Others v. Turkey (2004), no. 31821/96, E.C.H.R.

Kudla v. Poland (2000), no. 30210/96, 2000-XI E.C.H.R.

Loizidou v. Turkey (1996), VI E.C.H.R.

Lopez Ostra v. Spain (1994), 303C E.C.H.R. (Ser. A)

Marckx v. Belgium (1979), 31 E.C.H.R. (Ser. A)

McCann and others c. United-Kingdom (1995), 324 E.C.H.R. (Ser. A)

Moreno Gómez v. Spain (2004), no. 4143/02, X E.C.H.R.

Soering v. United Kingdom (1989), 161 E.C.H.R. (Ser. A)

Streletz, Kessler and Krenz v. Germany (2001), no. 34044/96, II E.C.H.R.

Tyrer v. United Kingdom (1978), 26 E.C.H.R. (Ser. A)

Verein Gegen Tierfabriken Schweiz (VgT) v. Switzerland (no.2) (2009), no. 32772/02

Yuriy Nikolayevich Ivanov v. Ukraine (2009), no. 40450/04

Z. and Others v. United Kingdom (2001), no. 29392/95, V E.C.H.R.

Legislation

The Constitution of the Russian Federation, 12 December 1993, online:
<<http://www.constitution.ru/en>>

Treaties

Convention for the Protection of Human Rights and Fundamental Freedoms,
4 November 1950, 213 UNTS 221 at 223, Eur TS 5.

International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3

International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171

Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302

Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331

Other Sources

Akandji-Kombe, Jean-François: *Un guide pour la mise en œuvre de la Convention européenne des Droits de l'Homme : Précis sur les droits de l'homme*, no 7 (Strasbourg: Conseil de l'Europe, 2006) at p. 5, online : Council of Europe <<http://echr.coe.int/NR/rdonlyres/37798829-2A4F-4737-9D56-E3BD989940B4/0/DG2FRHRHAND072006.pdf>>

Council of Europe, “Council of Europe in brief / 47 countries, one Europe /Russian Federation (member)”, online : Council of Europe, <<http://www.coe.int/aboutCoe/index.asp?page=47pays1europe&l=en>>

Council of Europe, Committee of Ministers, “Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem”, 114th sess., 12 May 2004

Council of Europe, “Explanatory Report to Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention”, CETS no. 194, (2009), online: Council of Europe <<http://conventions.coe.int/Treaty/FR/Reports/Html/194.htm>>

Council of Europe, “Preparatory Work on Article 1 of the European Convention on Human Rights” Documents, vol. 5 Doc. Cour (77) 9 (1950)

Council of Europe, *Preparatory Contributions, High Level Conference on the Future of the European Court of Human Rights*, (Strasbourg: Council of Europe, 2010), online : Council of Europe <http://www.coe.int/t/dc/files/events/2010_interlaken_conf/Brochure_contributions_preparatoires_en.pdf >

Council of Europe, *Reforming the Convention on Human Rights, a Work in Progress* (Strasbourg: Edition Council of Europe, 2009) 764 pages

Council of Europe, “50 Years of Activity, The European Court of Human Rights, Some Facts and Figures” (2010), online: ECHR

<<http://www.echr.coe.int/NR/rdonlyres/ACD46A0F-615A-48B9-89D6-8480AFCC29FD/0/FactsAndFiguresENAvril2010.pdf>>

European Court of Human Rights: Public Relations Unit, “The European Court of Human Rights: Country Fact Sheets 1959-2009” (2010), at p. 65-66, online: Council of Europe <http://www.echr.coe.int/NR/rdonlyres/C2E5DFA6-B53C-42D2-8512034BD3C889B0/0/FICHEPARPAYS_ENG_MAI2010.pdf>

High Level Conference on the Future of the European Court of Human Rights : *Interlaken Declaration*, 19 February 2010, online : <http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/europa/euroc.Par.0133.File.tmp/final_en.pdf>

Sutyajnik, “Sutyajnik: the nongovernmental organization”, online <<http://sutyajnik.org/>>