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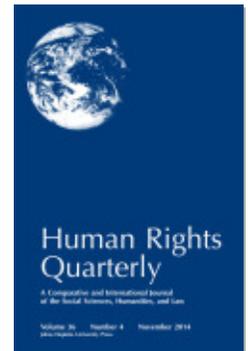
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## **Russian NGOs and the European Court of Human Rights: A Spectrum of Approaches to Litigation**

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Human Rights Quarterly, Volume 36, Number 4, November 2014, pp.  
844-868 (Article)

Published by The Johns Hopkins University Press  
DOI: [10.1353/hrq.2014.0048](https://doi.org/10.1353/hrq.2014.0048)



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# Russian NGOs and the European Court of Human Rights: A Spectrum of Approaches to Litigation

Lisa McIntosh Sundstrom\*

## ABSTRACT

This article begins to build a typology of litigation efforts by Russian NGOs at the European Court of Human Rights (ECtHR). It finds that the varied political and professional backgrounds of activists, as well as their international partnerships, shape how they approach the ECtHR. Despite similar training in ECtHR litigation, NGOs vary in their philosophies and goals of litigation. The author explores these variations by examining the cases of three leading Russian human rights NGOs in submissions to the ECtHR, comparing their approaches and suggesting explanations for differences among them.

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The author wishes to thank the Social Sciences and Humanities Research Council of Canada for funding the research for this article, as well as the many Russian participants in the research project. In addition, she thanks Amanda Cheong, Yana Gorokhovskaia, Lynn Hancock, and Anna Shapovalova for their tremendous research assistance.

## I. INTRODUCTION

Much recent attention has been devoted to the increasing burden that cases originating from Russia are creating for the European Court of Human Rights (ECtHR). Until 2014, Russia was the largest source country for applications to the ECtHR; in 2014, it fell to third place behind Ukraine and Italy. Despite new procedural rules that reduced Russian pending cases dramatically from a high of over 40,000 in 2011, Russian cases still constituted a significant proportion of cases pending before a court decision body as of June 2014, at 11,650 (13.7 percent of all cases).<sup>1</sup> The broad-stroke reasons for this large number of Russian cases are clear: the country has by far the largest population in the Council of Europe (CoE), and there are plenty of human rights violations occurring in combination with a seriously flawed legal system. In fact, there are a number of other countries that have higher per capita rates of pending cases than Russia: for example, the numbers from 2012 indicated a rate of approximately 0.75 pending cases per 10,000 population in Russia, while Ukraine's rate was 1.72 cases per 10,000 population, Serbia's was 6.77, and Romania's was 3.18.<sup>2</sup>

But in addition to the sheer number of Russian cases being submitted to the ECtHR, an interesting phenomenon is that the number being submitted is increasing over time, and we have an underdeveloped understanding of why this is the case. This is partly a universal phenomenon across CoE member states. Until recently, presidents of the Court warned that the ECtHR system was in danger of complete collapse unless the caseload management could be brought under control.<sup>3</sup> Indeed, the caseload problem was brought at least partly under control in 2011 through a new "pilot judgment" procedure that allows repetitive cases of identical kinds of violations to all be settled in a single Court ruling, and a new Protocol 14 that increases the efficiency of Court filtration of repetitive or unmeritorious cases.<sup>4</sup> Scholars have identified a looming crisis for the Court as a result of ballooning numbers of case applications. Some have attributed this rise to the new post-Communist member states and the individual application process introduced by Protocol 11 of

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1. European Court of Human Rights, *Pending Applications Allocated to a Judicial Formation* (30 June 2014), available at [http://www.echr.coe.int/Documents/Stats\\_pending\\_month\\_2014\\_BIL.pdf](http://www.echr.coe.int/Documents/Stats_pending_month_2014_BIL.pdf); EUROPEAN COURT OF HUMAN RIGHTS, ANNUAL REPORT 2011, at 152–53 (2012), available at [http://www.echr.coe.int/Documents/Annual\\_report\\_2011\\_ENG.pdf](http://www.echr.coe.int/Documents/Annual_report_2011_ENG.pdf).
  2. EUROPEAN COURT OF HUMAN RIGHTS, ANALYSIS OF STATISTICS 2012 (2013), available at [http://www.echr.coe.int/Documents/Stats\\_analysis\\_2012\\_ENG.pdf](http://www.echr.coe.int/Documents/Stats_analysis_2012_ENG.pdf).
  3. Steven Greer, *What's Wrong with the European Convention on Human Rights?* 30 HUM. RTS Q. 680, 687 (2008).
  4. EUROPEAN COURT OF HUMAN RIGHTS, FACTSHEET: PILOT JUDGMENTS (July 2013), available at [http://www.echr.coe.int/Documents/FS\\_Pilot\\_judgments\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf); Protocol 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Amending the Control System of the Convention, *opened for signature* 13 May 2004, Eur. T.S. 194, (*entered into force* 1 June 2010).

the European Convention on Human Rights (ECHR) in 1998.<sup>5</sup> However, Lisa Conant has shown persuasively that this increase in case applications is unrelated to the 1998 reform (the greatest surge occurred before 1998) and has, in fact, been occurring in consolidated democratic CoE member states with trends similar to those in the new post-Communist member states.<sup>6</sup> According to Rachel Cichowski, this development in the European context is significantly related to the emergence and growth of public interest litigation by civil society organizations such as environmental or women's groups.<sup>7</sup>

Litigation by Russian citizens at the European Court reflects and is a significant component of this wider pattern. Russian citizens are clearly becoming more aware of the availability of the ECtHR mechanism through the mass media, word of mouth, and, to some extent, through the educational efforts of Russian nongovernmental organizations (NGOs) and foreign donors. Public opinion polls have tracked an upward trend in Russians' awareness of their ability to appeal to the Court over time, so that by 2008, 61 percent of respondents to a Public Opinion Foundation poll knew of their right to do so.<sup>8</sup> ECtHR case records show that the vast majority of Russian applicants are unrepresented by any lawyer or NGO and are, in fact, simply seeking resolution of their own private problems without any apparent concern for broader legal precedents.<sup>9</sup> But we can also see signs that a norm of public interest litigation is growing among a select group of lawyers and NGOs in Russia. This article traces the efforts of three of the most active NGOs in Russia engaging in systematic litigation at the ECtHR, and provides a tentative framework to explain what motivates them to make use of the ECtHR and shapes their goals and approaches to litigation.

A focus on Russia in studying these questions is fruitful for both theoretical and practical reasons. In a theoretical sense, scholars are greatly interested in mechanisms through which norms are transferred from international to local contexts, and a frequent focus for human rights scholarship is the socialization of international human rights norms into new domestic contexts.<sup>10</sup> In a practical sense, the ECtHR and, more broadly, the CoE have

5. Laurence R. Helfer, *Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime*, 19 EUR J. INT'L L. 125, 126–27 (2008).

6. Lisa Conant, *Attack of the Clones? Non-Compliance and the Litigation Explosion Before the European Court of Human Rights* (Paper presented at the Conference of the American Political Science Association, Toronto, Canada) 11 (2009).

7. RACHEL A. CICHOWSKI, *THE EUROPEAN COURT AND CIVIL SOCIETY: LITIGATION, MOBILIZATION AND GOVERNANCE* 8–9 (2007).

8. Alexei Trochev, *All Appeals Lead to Strasbourg?* 17 DEMOKRATIZATSIYA 148 (2009).

9. Grigorii Dikov, *Rossiiskie Zhaloby v. Evropeiskom Sude—Praktika Po Nepriemlemym Delam* [Russian Applications in the European Court—Practice from Inadmissible Cases], Polit.Ru (4 Dec. 2009), available at <http://www.polit.ru/analytics/2009/11/18/dikov.html>; European Court of Human Rights, HUDOC Database of ECHR Case Law, available at <http://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC&c>.

10. THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink eds., 1999); THE PERSISTENT POWER OF HUMAN RIGHTS: FROM

been conceived as institutions to promote common standards of human rights and democracy throughout the member states of greater Europe. Their stated goal is to “foster the effective observance of human rights, and assist member states in the implementation of Council of Europe human rights standards” so that violations become extremely rare.<sup>11</sup> As such, the role that activists play as agents promoting human rights norms domestically is important to investigate. Human rights NGOs and lawyers are ostensibly key forces for promoting implementation of CoE human rights standards in member states, particularly since the CoE has no real enforcement capabilities of its own.

What is likely to lead particular activists to turn to the ECtHR with human rights cases, as opposed to focusing on other mechanisms for human rights activism? First, one might expect that a couple of aspects of activists’ longstanding behavioral patterns and perspectives are strongly linked to their use of the ECtHR. A possible contributing factor is a long history of interactions with international organizations. One would expect that those NGOs that have for many years reached out to European regional organizations like the CoE the Organization for Security and Co-operation in Europe (OSCoE), or global organizations such as the United Nations, would be more likely to turn to the ECtHR as a mechanism. Another hypothesis is that a history of activism in the dissident movement, reaching back to Soviet times, would bias activists towards “suing” the Russian government as a result of seeing the government as an adversary, rather than opting to work in cooperation and dialogue with the state to try to improve its conduct in various policy areas. These longstanding dissidents may hold a shaming and punitive focus in their human rights activism, while those who became human rights activists through personal history in the post-Soviet period may be prone to a more pragmatic and cooperative approach to human rights improvements and policy change. One would also expect to find a strong correlation between usage of the ECtHR and having received specific training from other organizations on how to send case applications to the ECtHR. Finally, it seems likely that there may be learning occurring among activists: that they hear about other activists’ successes at the ECtHR and decide to pursue the same mechanism themselves.

This article emerges from a study in which the author conducted forty-five semi-structured field interviews during three research trips between October 2009 and July 2010 with Russian human rights NGO activists, lawyers who had filed cases with the ECtHR, staff of Russian regional Human Rights

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COMMITMENT TO COMPLIANCE (Thomas Risse, Stephen C. Ropp & Kathryn Sikkink eds., 2013); SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE (2006); Merris Amos, *Transplanting Human Rights Norms: The Case of the United Kingdom’s Human Rights Act*, 35 HUM. RTS. Q. 386 (2013).

11. Council of Europe Commissioner for Human Rights, *Mandate* (17 Sept. 2010), available at <http://www.coe.int/web/commissioner/mandate;jsessionid=39CA7E82F420E98F21239FF9C52476BC>.

Ombudsmen's offices, staff of the Russian Constitutional Court, and staff lawyers of the ECtHR, as well as staff from other relevant divisions of the CoE. The locations of the Russian field research were Moscow, St. Petersburg, and Ekaterinburg, since these locations are home to NGOs that have particularly active interactions with the ECtHR and the CoE. The author also visited Strasbourg to conduct interviews with CoE staff members, including at the ECtHR. In addition, it was possible to research other NGOs involved in ECtHR litigation in other locations through the case records of the ECtHR and contacts mentioned by interviewees. In many cases these NGOs had valuable website materials that documented their activities, priorities, and philosophies of activism, which supplemented the interview data on Russian NGOs' use of the ECtHR.

The next two sections of the article paint a brief overall picture of the extent of NGO representation in Russian cases at the ECtHR and highlight the crucial role that specific training plays in prompting NGO activists to use the Court as a mechanism for pursuing human rights. The remainder of the article examines in detail the work of the three Russian NGOs that have been most active in using the ECtHR mechanism in order to develop a preliminary typology of NGO approaches to using the Court. This typology begins to illuminate patterns of relationships among activists' backgrounds, their philosophies of working with the ECtHR, and how these factors shape their litigation activities. Before delving into the case studies, it is helpful to take a brief look at the overall picture of Russian ECtHR cases in which NGOs are involved.

## II. THE EVOLVING PICTURE OF RUSSIAN NGO LITIGATION AT THE ECtHR

Grigory Dikov, a staff lawyer at the ECtHR, points out that the vast majority of cases from all CoE states, including Russia, are deemed inadmissible at the initial single-judge or committee consideration level of the Court, and never see light in the public record.<sup>12</sup> Indeed, the percentage of cases declared inadmissible from Russia averaged 98 percent between 1999 and 2010, which was not unusual; among all CoE member states through 2010, the proportion of inadmissible cases was 96 percent.<sup>13</sup> By 2013, however, the number of rejected cases had decreased to 64 percent.<sup>14</sup>

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12. Dikov, *supra* note 9.

13. EUROPEAN COURT OF HUMAN RIGHTS, STATISTICS ON JUDGMENTS BY STATE, 1959–2010, at 20–22 (2011), available at [http://www.echr.coe.int/Documents/Stats\\_violation\\_1959\\_2010\\_ENG.pdf](http://www.echr.coe.int/Documents/Stats_violation_1959_2010_ENG.pdf).

14. EUROPEAN COURT OF HUMAN RIGHTS, ANALYSIS OF STATISTICS 2013, at 49 (2014), available at [http://www.echr.coe.int/Documents/Stats\\_analysis\\_2013\\_ENG.pdf](http://www.echr.coe.int/Documents/Stats_analysis_2013_ENG.pdf).

Dikov found in an analysis of 250 randomly selected rejected cases from 2009 that only three applications were submitted by organizations, while all others came from individual applicants. Of those, lawyers represented only forty-nine applicants. A huge proportion of applicants were pensioners (ninety-nine) and prisoners (fifty-three).<sup>15</sup> Meanwhile, an analysis of Russian cases that were ruled admissible or partially admissible and resulted in court decisions between June 2001 (when the first decision appeared in *Burdov v. Russia*) and October 2010 revealed that 171 out of 530 cases (32 percent) involved official NGO representation.<sup>16</sup> Lloyd Mayer, in a study of ECtHR cases involving NGO representation between 2000 and 2009 from all CoE member states found that, by far, Russian cases were most likely to involve NGOs as representatives, applicants, or interveners: during those years approximately 19 percent of decisions concerning Russia involved NGOs, while on average across the CoE only 4 percent of all ECtHR decisions involved NGOs.<sup>17</sup> In reality, this undercounts the number of instances in which NGOs may actually be working closely on the cases, since in many instances (such as those assisted by the International Protection Centre), NGOs will delegate their clients' cases to individual lawyers, and thus an NGO name never appears in the records.<sup>18</sup> It also does not reflect the additional influence that NGOs exert on cases by training individual independent lawyers on how to submit successful cases to the ECtHR. It must also be noted that, unfortunately, ECtHR judgments present us with a lagged pool of information, as it takes several years for a case to proceed from application to court decision; so if learning is taking place among NGOs, the available case records present us with a somewhat outdated picture of NGO mobilization.

The large proportion of NGO-involved decisions and the fact that most initial applications are unrepresented by NGOs or lawyers suggests that, at least on the face of things, NGO involvement in case applications leads to increased success for applicants in having their cases declared admissible (which is the most arduous hurdle, as indicated above) and winning them (much less arduous, since nearly all cases admitted to the Court are ruled in favor of the applicant).<sup>19</sup> However, one of the reasons why NGO-represented

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15. *Id.*

16. Author's database created from European Court of Human Rights, HUDOC Database, *supra* note 9.

17. Lloyd Hitoshi Mayer, *NGO Standing and Influence in Regional Human Rights Courts and Commissions*, 36 BROOKLYN J. INT'L L. 911, 923–26 (2011).

18. Interview with Oksana Preobrazhenskaya, Manager of Strasbourg Office of the International Protection Centre, Strasbourg (22 July 2010); Interview with Staff Lawyer, Secretariat of the European Court of Human Rights, Strasbourg (20 July 2010) [hereinafter ECtHR Secretariat Staff Lawyer Interview].

19. EUROPEAN COURT OF HUMAN RIGHTS, 50 YEARS OF ACTIVITY: THE EUROPEAN COURT OF HUMAN RIGHTS: SOME FACTS AND FIGURES 15 (2010), available at [http://www.echr.coe.int/Documents/Facts\\_Figures\\_1959\\_2009\\_ENG.pdf](http://www.echr.coe.int/Documents/Facts_Figures_1959_2009_ENG.pdf). In general, between 1959 and 2009, over 83 percent of all case judgments found at least one violation of the Convention by the respondent state; in Russia's case, the figure is 95 percent.

cases are relatively more successful is due to selection bias: NGOs are experienced with the cases and only accept cases that they believe have strong merit for admissibility.<sup>20</sup> Moreover, individual case applicants often do not seek legal representation until after their case is at the stage of communication (where it has not been dismissed at the committee level) and is being considered further for admissibility, at which point the Court staff demand that unrepresented applicants seek legal representation and send applicants a list of known lawyers and NGOs who represent ECtHR cases in the applicant's region.<sup>21</sup>

Despite these selection biases among NGO-represented cases, staff lawyers at the ECtHR as well as Russian NGO activists themselves have observed that there is distinct learning occurring among activists and a turn towards more ECtHR litigation among human rights NGOs.<sup>22</sup> Part of the reason for the increasing number of NGO-involved judgments is that NGOs are involved in nearly all recent cases that deal with the most egregious human rights violations—those related to Articles 2, 3, and 5 of the ECHR<sup>23</sup> in areas like Chechnya and other areas of the Northern Caucasus—and these cases are often assigned in a priority line for speedy examination by the Court since they involve danger to life and limb; thus, they constitute a large number of the Russian case decisions emerging from the Court in recent years.<sup>24</sup>

### III. TRAINING AS A CRUCIAL FACTOR

An important contributing factor to the increasing frequency of Russian NGO involvement in ECtHR cases is that over the past decade, Western donors have sponsored a considerable amount of training for Russian NGOs and lawyers in how to access and submit case applications to the ECtHR. According to one CoE official who is familiar with the organization's cooperation activities, the CoE had organized training for 700 lawyers (advocates), 700 prosecutors, 300 NGOs, and seventy-five police officers in Russia.<sup>25</sup> Notably, this funding was all provided through grants from other international donors—primarily the European Commission, as well as others such as the Canadian International Development Agency—since the Cooperation Directorate of the CoE has only a very small budget of its own. The official

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20. ECtHR Secretariat Staff Lawyer Interview, *supra* note 18.

21. *Id.*

22. *Id.*; Interview with Kirill Koroteev, Russian Human Rights Lawyer, Strasbourg (19 July 2010).

23. European Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* 4 Nov. 1950, 213 U.N.T.S. 221, Eur. T.S. No. 5 (*entered into force* 3 Sept. 1953). Articles 2, 3, and 5 of the Convention address, respectively, the "right to life," the "prohibition of torture," and the "right to liberty and security."

24. ECtHR Secretariat Staff Lawyer Interview, *supra* note 18.

25. Interview with Council of Europe Official, Strasbourg (21 July 2010).

stated that this was actually an extremely small number of trainings, given the population and size of Russia, and that the CoE had been relatively unsuccessful in forming an effective organizational structure for such trainings in Russia compared to the other eleven CoE member states in which it had worked (former Yugoslavia, Turkey, and Albania, as well as former states of the Soviet Union).

Although the CoE official involved in these cooperation activities considered the effort in Russian trainings to have been meager, evidence from NGOs and lawyers using the Court indicated that training of human rights activists on how to submit cases through the ECtHR was a crucial catalyst to organizations' decisions to pursue human rights through this mechanism. All of the organizations encountered in the project that were making use of the Court had received formal ECtHR training, whether from the CoE or from other experts such as Russian lawyers experienced in ECtHR litigation. In most cases, lawyers working within NGOs led such trainings. For example, the International Protection Centre, headed by Karinna Moskalkenko, who was the pioneer of ECtHR litigation and whose affiliated lawyers continue to represent a large number of case applicants at the ECtHR, has run two annual programs, funded by the MacArthur Foundation and the National Endowment for Democracy (NED), to train lawyers, NGO activists, and Russian Human Rights Ombudsmen's staff.<sup>26</sup> The MacArthur-funded program, which ended after nine years in 2010, trained twenty to twenty-five people (mostly lawyers) per year intensively in the use of the ECtHR mechanism; the NED-funded program trained a smaller number of lawyers and officials twice per year by bringing them directly to Strasbourg. There are also numerous other experienced Russian lawyers leading trainings around the country on how to submit cases to the ECtHR as well as on implementation of ECtHR case law into the Russian legal system and bureaucratic ministries. Some of the lawyers on staff in Russian case divisions at the European Court have themselves conducted trainings, whether for NGOs or hosted by the CoE's Legal and Human Rights Capacity Building Division.<sup>27</sup> Moscow Helsinki Group has also conducted large numbers of trainings throughout their networks of Helsinki Watch groups across the country.<sup>28</sup>

There are also occasional Russian semi-governmental trainings in these matters. The umbrella structure of the Russian Ombudsman for Human Rights is one notable source of such trainings, and there is considerable variation across regional ombudsmen's offices in their degree of familiarity with and

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26. Preobrazhenskaya Interview, *supra* note 18.

27. ECtHR Secretariat Staff Lawyer Interview, *supra* note 18; Council of Europe Official, Interview, *supra* note 25.

28. These groups were founded initially in the 1970s to monitor the USSR's compliance with the Helsinki Final Act's human rights principles. See Moscow Helsinki Group, *History*, available at <http://www.mhg.ru/english/18E4796>.

enthusiasm for the CoE and the ECtHR as a route to improving human rights in Russia. In the more enthusiastic category, one example was the office of the Regional Ombudsman in Sverdlovsk Oblast. Anna Demeneva, one of the staff specialists working with this ombudsman, previously worked for the NGO Sutyazhnik, which is well-known for its cases against various government agencies in the oblast. In her work for Sutyazhnik, Demeneva submitted and won a number of ECtHR cases, as well as writing a Kandidat dissertation on the judicial consequences of ECtHR decisions for the Russian Federation.<sup>29</sup> She taught numerous seminars for Russian lawyers, prosecutors, and judges as part of the CoE's training project described above.

Among the participants interviewed in the course of research, all NGOs that had submitted ECtHR case applications had received some kind of formal training on using the ECtHR mechanism. Yet none of the interviewed independent lawyers who worked outside NGOs had received such training. Five such lawyers were identified from the ECtHR database of all of its past Russian case decisions. All of those lawyers had, in fact, discovered and made their way to the ECtHR on their own through reading legal publications, or through word of mouth from fellow lawyers.

One interesting example of a hybrid of independent lawyer and NGO activist is Dmitrii Bartenev, who became renowned in the Russian legal community for winning precedent-setting human rights cases at the ECtHR for people with mental disabilities as well as gays and lesbians.<sup>30</sup> He first began to learn about the ECtHR mechanism by virtue of his employment with an international human rights NGO called the Mental Disability Advocacy Centre and his simultaneous position as a lecturer in international public law at St. Petersburg State University, where he began to read more about international human rights courts. Only later, as a result of his access through employment with an NGO, was he invited to attend training seminars specifically on using the ECtHR.<sup>31</sup>

Interviewees accorded significant importance to the training they had received in ECtHR litigation in prompting their decision to apply to the Court and improving their expertise in order to submit ultimately successful applications. For example, Sergei Beliaev, leader of Sutyazhnik, which is well

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29. Anna Valentinovna Demeneva, *Luridicheskie Posledstviia Postanovlenii Evropeiskogo Suda po Pravam Cheloveka Dlia-Rossiiskoi Federatsii* [Judicial Consequences of Resolutions of the European Court of Human Rights for the Russian Federation] (Kandidat nauk dissertation, Urals State Judicial Academy, 2009); Interview with Anna Demeneva, Consultant, Apparatus of the Sverdlovsk Oblast Ombudsman for Human Rights, Ekaterinburg (5 Nov. 2009).

30. Two of the most famous recent case rulings in which he has been a legal representative are *Shtukaturov v. Russia* (psychiatric confinement and incapacitation proceedings) and *Alekseyev v. Russia* (the Moscow Gay Pride parade case). See European Court of Human Rights, HUDOC Database of ECtHR Case Law, *supra* note 9.

31. Interview with Dmitrii Bartenev, Attorney at Law and Senior Legal Monitor, Mental Disability Advocacy Centre, St. Petersburg (16 June 2010).

known for its approach of engaging in “strategic litigation” both domestically and in the ECtHR to set legal precedents on particular points of law, linked their usage of the ECtHR quite concretely to a 1997 human rights conference in Krakow, Poland. At that conference, he met Marjorie Farquharson, who at the time was a specialist on human rights in Russia and Ukraine at the CoE. Later that year, even before Russia became an eligible party to the ECtHR, Farquharson brought a team of experts to Ekaterinburg to train human rights activists on the European Court. Beliaev stated:

Those first steps, that initiative, naturally, were from their side. But to this day the European Convention and the European Court have not fallen from our attention. First, it seemed interesting to us; second, promising; and third, the majority of our activists were lawyers, we especially attracted them, since the main thing we were doing was legal help to citizens—their rights regarding employers, local bureaucrats, the politics, etc.<sup>32</sup>

Sutyazhnik was a pioneer of ECtHR litigation in Russia, and its lawyers have gone on to train others. Another example is the Komi division of Memorial, located in the city of Syktyvkar (separate from the Memorial-European Human Rights Advocacy Centre (EHRAC) partnership described below). Komi Memorial had initiated a large number of cases in the ECtHR, eight of which led to Court decisions. Moscow Helsinki Group’s trainings in the ECtHR process were key to this development.<sup>33</sup> Komi Memorial’s leader, Igor Sazhin, stated:

MHG led the first seminars. I remember clearly, MHG came to Syktyvkar and told all the NGOs about what the European Court is like and how to submit appeals to it . . . then I became acquainted with Poles in the Helsinki Foundation for Human Rights . . . and traveled several times to the European Court with their support . . . and as an end result we began to work quite intensively with the Court, to help people formulate and submit applications.<sup>34</sup>

Thus, training by existing experts seems to be key in leading Russian NGO activists to begin using the ECtHR mechanism as a way to pursue human rights justice. But once NGOs begin working through litigation, their strategic outlooks and areas of focus can differ dramatically despite similar training. The next section of the article delves into the cases of the top three Russian litigating NGOs (in terms of number of successful cases) at the ECtHR. The three have somewhat different aims and tactics in their use of ECtHR cases, and different historical routes to use of this mechanism, despite their shared long-term goal of improving Russia’s implementation of

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32. Interview with Sergei Beliaev, President, Sutyazhnik, Ekaterinburg (6 Nov. 2009).

33. Interview with Igor Sazhin, Chair of Division, Komi Memorial Human Rights Commission (29 Oct. 2009).

34. *Id.*

human rights principles. Through examining each of them in some detail, we can begin to build a typology of approaches to ECtHR litigation, find clues to the important causal factors that spark use of this mechanism, and document the impacts of their work on the ground in Russia.

#### IV. CASE STUDIES: KEY LITIGATING NGOS

##### A. International Protection Centre

The International Protection Centre (IPC) was founded by Moskalkenko in 1996. Moskalkenko is now internationally renowned for her work on many important ECtHR cases, including the second decision involving Russia as the respondent state, *Kalashnikov v. Russia* (concerning inhumane detention conditions), and the more recent cases of business oligarch Mikhail Khodorkovskiy (*Khodorkovskiy v. Russia*) and scientist Igor Sutyagin (*Sutyagin v. Russia*). Moskalkenko came to work in international human rights litigation most directly as a lawyer (*advokat*) extending back to the Soviet era, and, in this respect, the history of the IPC is quite different from those of the other two NGOs discussed below, which began with human rights advocacy as their core mandate. As Moskalkenko put it, “I think that actually I always worked in . . . ‘protection of human rights.’ This was a typical *advokat*’s activity, this approach of always trying to achieve justice, reaching right up to the final stage—I always had that approach.” Even in the Soviet era, she argued, “[I knew that] if you keep banging in one direction, you will prove that this and that are facts, and at some point they will listen.”<sup>35</sup>

When Moskalkenko began to find in the 1990s that judges in domestic courts were becoming, as she put it, “free from the law,” she became desperate to find other legal mechanisms. She recalled from her memories of international law courses that “there was some kind of thing internationally, perhaps at the UN, so I started to search for something, and as a result I landed in Birmingham at a course on European human rights law.”<sup>36</sup> That was in 1994, and there she learned about the ECtHR and its primary case law. However, Russia was not yet a member of the CoE and thus not subject to the ECtHR, so Moskalkenko decided to focus in the meantime on the UN Human Rights Committee’s complaints process, since Russia had ratified the First Optional Protocol to the UN Covenant on Civil and Political Rights, which allows individual citizens of state parties to submit complaints for

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35. Interview with Karinna Moskalkenko, International Protection Centre, Moscow (30 Oct. 2009).

36. *Id.*

investigation by the Committee and demands that states report back regarding steps taken to provide a remedy for any found violations.<sup>37</sup> Moskalkenko founded the IPC in 1996 to work initially through the UN Committee. This mechanism worked as a training ground for Moskalkenko while she waited for Russia to become subject to the ECtHR's rulings in 1998. Her center's work was supported by several foreign donors, including the Open Society Institute and the Ford Foundation.

In August 1998, Moskalkenko submitted her first application to the ECtHR. The number of cases that her organization has represented increased dramatically from year to year, beginning with fewer than ten cases submitted in 1998, then up to twenty-five in 1999. By 2010 there were over 200 IPC cases in the ECtHR pipeline, awaiting decisions. Moskalkenko stated that the first two cases decided in 2002 concerning prisoners' rights were "bestsellers," receiving wide news coverage and celebration among prisoners who were serving in terrible conditions. They also elicited considerable response from the Russian government, which had "previously thought that all of this is nonsense (*erunda*), which is why they allowed our center to bloom and grow, why they didn't expect what has resulted from it."<sup>38</sup> As a result of the first few cases on detention conditions, prisoners across Russia began to distribute the center's address among one another, and waves of letters began to arrive at the IPC, seeking assistance with applications. Moskalkenko remarked that her center's staff no longer would even allow her to appear on radio or television to speak about her work, because each time she does this, another mountain of letters requesting assistance arrives in the mail.

Thus, Moskalkenko did not come to the ECtHR via a background of deep dissidence against the Soviet regime, nor with a longstanding background in the human rights NGO community. She is a lawyer, and the specific agenda of her organization is to litigate human rights cases at the international level (now solely focused on the ECtHR as the strongest binding mechanism) and to train other lawyers in how to do the same. The IPC does not have any broader political advocacy program, and it thus differed from all other NGOs encountered during the research.

There are varying paths to human rights litigation among the lawyers who have worked for the IPC. Curiously, some of the affiliated lawyers may be more fundamentally passionate about human rights than Moskalkenko herself is. This is not to deny that Moskalkenko cares deeply about human rights, but she came to human rights concerns through her practice as an *advokat*, rather than becoming an *advokat* due to a formative concern about

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37. Optional Protocol to the International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., art. 1, 4, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976).

38. Moskalkenko Interview, *supra* note 35.

human rights. Elena Liptser is certainly in the latter category. She is the daughter of the famous Russian human rights activist Lev Ponomarev, who was a Soviet-era dissident and one of the leaders of the Democratic Russia (*DemRossiya*) pro-democracy movement in the late Soviet period. She stated:

You understand, from my father there is a kind of inheritance. That is, I helped him when he was in DemRossiya. . . . I was constantly somehow supporting and helping his initiatives. And at a certain point I developed an interest precisely in jurisprudence and wanted to obtain another degree and change the direction in which I was exerting my efforts.<sup>39</sup>

Yet others developed in the opposite direction, and came to be inspired by human rights and international legal mechanisms through the process of working at the IPC. Oksana Preobrazhenskaya, who later became the director of the IPC's offices in both Strasbourg and Moscow, began working in Moskalkenko's center in 2001 after graduating from a police institute in Ukraine. After just a few months at the center, she stated, "I had clarified one thing for myself: that to work on human rights with the European Court—that is my thing, and that I need to obtain a corresponding [legal] education in order to feel fully qualified in this area."<sup>40</sup>

The IPC's approach to ECtHR cases is explicitly not "strategic litigation." Moskalkenko explained:

We have the principle of helping everyone. . . . We rejected the strategic motivation from the very beginning, although we were not able to hold out that rejection for long, since a moment came when we realized that a selection is necessary and we will indeed work on selected cases. . . . When we say that we help everyone, it does not mean that we take on all of the thousands of cases. We take on dozens or at most hundreds of cases . . . but we answer everyone and send everyone recommendations. . . . In doing this, we explain that we cannot take on your case right now, but if you carry out our recommended steps and if your case is communicated [at the ECtHR], you can turn to us again. So even if the case seems to us quite banal and repetitive or if we cannot find the time [*prostoto net ni ruk, ni nog*], we at least still help them.

While she stated that the IPC does not engage in strategic litigation, she also admitted:

Nonetheless, sometimes there are cases that are from a legal point of view, from a legal position very "tasty" [*vkusnyel*]; one wants to work on them and write about them. So currently we have a priority on judges' cases and it is important for us to defend judges. . . . If we can manage to take them through into new case law, then judges will feel that they are more protected.<sup>41</sup>

39. Interview with Elena Liptser, Liptser, Stavitskaia and Partners law firm, Moscow (27 Oct. 2009).

40. Preobrazhenskaya Interview, *supra* note 18.

41. Moskalkenko Interview, *supra* note 35.

Besides cases involving judges, Moskalenko stated that her organization's other specialty is torture cases, which they have never refused. They have also worked on some cases of violations due to antiterrorist operations in Chechnya, but now largely defer to Memorial to work on such cases. In looking at the list of the IPC's cases already decided by the ECtHR (which were filed between 1998 and 2005), it is clear that most of the cases have dealt with detention and prison conditions, physical abuse during arrest or in detention, and trial procedures.<sup>42</sup> But overall, both Moskalenko and Preobrazhenskaya emphasized that the organization has no particular dominant specialization.

## B. Russian Justice Initiative

Whereas the IPC was the first organization to send Russian cases to the ECtHR, the Russian Justice Initiative (RJI) has sent the largest number of cases to the Court. RJI is technically a daughter organization of a Dutch NGO with the same name, although the Dutch foundation has no staff, and the Dutch head organization was established as a way to hold grant funds without having to work through the onerous tax laws for NGOs established in Russia.<sup>43</sup> The organization has physical offices with staff in Moscow and Nazran, Ingushetia, with the Nazran office entailing a formally separate Russian NGO called Pravovaia Initsiativa (Rights Initiative).

Human Rights Watch was integrally involved in the establishment of RJI. Diederik Lohman, Director of the Moscow office of Human Rights Watch (HRW) at the time, founded RJI in 2001 after years of observing horrendous human rights violations in Chechnya and elsewhere in the Northern Caucasus, which were not being investigated properly by Russian law enforcement institutions. When Russia became subject to the ECtHR, Lohman and an HRW intern came up with the idea that perhaps they should begin preparing cases to send to the Court, and began a small number of litigation activities that were first based within the Moscow HRW office.<sup>44</sup> By mid-2001, the large number of requests for legal aid that HRW was receiving was overwhelming the organization's internal capacity, and HRW staff decided that a separate NGO needed to be established to work on legal cases related to Chechnya. At that time, the ECtHR was a newly available mechanism for Russian citizens and the Court had not yet issued any decisions on Russia-sourced cases. Yet Lohman had been observing large numbers of ECtHR case decisions regard-

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42. Preobrazhenskaya Interview, *supra* note 18; European Court of Human Rights, HUDOC Database of ECtHR Case Law, *supra* note 9.

43. Interview with Vanessa Kogan, Executive Director, Russian Justice Initiative, Moscow (3 Nov. 2009).

44. *Id.*; Russian Justice Initiative, *About Us*, available at <http://www.srji.org/en/about/>.

ing similar kinds of violations against Turkish Kurds, and thought that similar cases originating from Russia might result in victories before the Court.<sup>45</sup>

Initially RJI focused only on cases originating in Chechnya, but in 2007 its leaders decided to expand their activities to other areas of the North Caucasus. The organization focuses its efforts on cases of torture, disappearance, and extrajudicial execution (Articles 2 and 3 of the ECHR).<sup>46</sup> By mid-2010, of the 171 NGO-represented cases and over 530 total cases on which the ECtHR had rendered judgments, RJI had submitted nearly ninety.<sup>47</sup> By December 2013, a total of over 400 cases concerning grave human rights abuses in the North Caucasus had been submitted to the ECtHR, and of those, RJI was representing nearly 290 of the case applicants. At last count at the end of 2013, RJI had received decisions on 149 such cases.<sup>48</sup> As such, RJI is an enormously important actor in the context of ECtHR cases emerging from the North Caucasus region.

Unlike other NGOs submitting cases to the ECtHR, RJI was an organization founded for the express and sole purpose of submitting cases to that Court. In an interview, RJI's Executive Director, Vanessa Kogan, pointed out how this makes RJI's human rights activism different from that of many other human rights groups in Russia:

It does mean that . . . it's a very specific language that you use around violations. It all has to do with specific Articles of the Convention. . . . It just means that for our clients, it can be harder to reach them in terms of what it means to go to the Court, what they can expect, what the Court can and cannot do, and sort of where the limits of the process are too. It's hard for them to understand, and it's hard for us to understand too because we've discovered more and more now that although there's a growing body of case law against Russia, we aren't making enough progress in terms of bringing about systematic changes on the ground. So it definitely has its pluses and minuses but I think it has been overwhelmingly successful.<sup>49</sup>

This very specific mandate of RJI's work makes it strikingly different from longstanding Russian human rights organizations like Memorial, discussed below. While Memorial has historically and to this day engaged in public protests and criticism of the government in the media and on the international stage, RJI, until recently, worked relatively quietly, methodically submitting hundreds of individual cases to the ECtHR. Kogan pointed out that the advantages of this approach are the advancement of case law on disappearances in the ECtHR, which could be extended to similar cases

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45. Kogan, Interview, *supra* note 43.

46. ECHR *supra* note 23; Russian Justice Initiative, *About Us*, *supra* note 44.

47. Author's database, *supra* note 16.

48. Russian Justice Initiative, *Legal Work*, available at <http://www.srji.org/en/legal/>.

49. Kogan, Interview, *supra* note 43.

in the future, as well as material compensation to assist individual victims. However, she also articulated drawbacks to the quiet approach:

The Russian government, I would say, has gotten very used to accommodating us. They obviously don't like us, but when we sit and do our work quietly and we get the judgments—they're used to it now. And we're not raising our voices and making a fuss. That is in our interest, but also in the Russian government's interest. . . . It's in our interest because we don't want them to start bothering us and we have had incidents in the past—it hasn't always been as quiet as it is now. But what we're faced with now is a situation where we have this growing body of case law and part of our mandate is to bring about systematic change and to prevent further abuses and to bring about reform of practice and law and different spheres.<sup>50</sup>

Kogan is hinting here at a possible “inflationary” effect of ECtHR judgments over time. That is, while the first swath of decisions issued by the Court against Russia might have been effective on their own at shaming the government and, in some cases, inducing changes to judicial procedures and effectiveness of criminal investigations, after hundreds of judgments the government may be increasingly desensitized to the Court's rulings and cease to care about the activities of litigating NGOs.

To that end, by 2009, RJI was gradually beginning to work on more advocacy for implementation of ECtHR rulings in terms of general measures demanded by the Court's decisions, for reforming procedures or legislation. In late 2009, the organization hired a new full-time staff person to work on implementation and try to develop channels of dialogue with the CoE's Committee of Ministers (CM) (the CoE political body responsible for oversight of the implementation of ECtHR rulings).<sup>51</sup> In 2011, RJI, in cooperation with Human Rights Watch, launched a Moscow diplomatic working group comprising diplomats in Moscow and Strasbourg in order to focus on strategies for improving Russia's implementation of ECtHR judgments, which hears reports on progress from human rights groups like RJI, Memorial, and EHRAC. Also in 2011, RJI presented analyses of implementation progress in Chechen cases to the CM, and claimed that this led to the CM's follow-up discussion of several of these cases at its meetings that year.<sup>52</sup>

In conversation, Kogan admitted that there were other drawbacks to the strategy of litigating at the ECtHR, in addition to the limitations of winning court cases only to have the Russian government fail to implement systemic changes that would prevent future violations. She stated that RJI has observed that Chechen residents have become much less willing to submit

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50. *Id.*

51. *Id.*

52. RUSSIAN JUSTICE INITIATIVE, *RUSSIAN JUSTICE INITIATIVE: TEN YEARS 2001–2011*, at 13 (2012), available at <http://www.srji.org/files/reports/2011.pdf>.

applications to the ECtHR, partly due to several known cases of harassment or disappearance of case applicants. Among RJI's clients, several have been threatened, beaten up, or detained for short periods, with the perpetrators stating that the intimidation would stop if they withdrew their ECtHR case. In the most extreme case, one of RJI's clients, who had submitted a case regarding the disappearance of his son, disappeared himself approximately three months following his case submission. These incidents contributed to a change in case demand over time. While in the early 2000s, the Nazran office had a line extending out the office door of complainants wishing to submit cases, by 2009, that flow had slowed to a trickle and RJI more often had to persuade applicants to submit their cases to the Court.<sup>53</sup>

Staff members of RJI's Nazran office had also suffered some intimidation, ranging from unnecessarily delayed passport issuance to pursuit by unmarked vehicles.<sup>54</sup> In February 2011, the Moscow office itself had its Ministry of Justice registration as a legal organization revoked due to non-submission of a necessary report, and the Ministry thereafter refused RJI's three attempts at re-registration.<sup>55</sup> Subsequently, in 2012, RJI lost two appeals of the registration refusal in local Moscow courts, and ended up having to acquiesce to the removal of its legal registration in Russia.<sup>56</sup> As an alternative, fortunately, the leaders of RJI had previously created another Russia-based parallel organization called "Astreya," and RJI continues to operate on Russian soil through Astreya.<sup>57</sup> However, prior to these difficulties, Kogan stated, because of the relatively quiet nature of submitting cases as opposed to loud public advocacy, the Moscow office of RJI had experienced no real harassment or apparent special surveillance from Russian government authorities. She noted that there were ongoing debates within the organization about the wisdom of increasing advocacy efforts to encourage improved implementation, both within Russia through the mass media, and on the international stage through talks or public events with the CoE or other international organizations. Some staff were concerned about the increased risk to which the organization and employees would be exposing themselves, and whether or not the potential gains were worth the risk.

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53. Kogan, Interview, *supra* note 43.

54. *Id.*

55. *Russia Boots Out Biggest NGO*, RIA NOVOSTI ONLINE, 12 Mar. 2012, available at <http://en.rian.ru/russia/20120312/172109488.html>.

56. Russian Agency for Legal and Judicial Information (RAPS), *Sud Zapretil Odnoi iz Krupneishikh Inostrannykh Organizatsii Rabotat' v RF* [Court Banned one of the Largest Foreign Organizations from Working in the RF], RAPSINews.RU, 18 Dec. 2012, available at [http://rapsinews.ru/judicial\\_news/20121218/265826602.html](http://rapsinews.ru/judicial_news/20121218/265826602.html).

57. Freek van der Vet, *Human Rights in Russia Going Beyond the Perils of Activism*, BALTIC-WORLDS 58, 8 Jan. 2013, available at <http://balticworlds.com/going-beyond-the-perils-of-activism/>.

### C. Memorial-EHRAC

Memorial is a venerable Russian organization, with a history that reaches back to the late 1980s. It was initiated as an informal group of dissidents who organized themselves like many other “informals” (*neformaly*), once this was allowed under perestroika, originally with a mandate to construct memorials and collect archives of victims of political repression in the Soviet Union.<sup>58</sup> In 1992, when registration as an NGO became possible, the collection of regional groups registered as a “union of regional organizations,” and soon divided up into multiple branches of activity, including the Memorial Human Rights Center, which is the branch that works on ECtHR cases.<sup>59</sup> ECtHR litigation work began in 2002 through a close partnership with founders of the EHRAC. EHRAC is a center, until recently affiliated with London Metropolitan University (now with Middlesex University), which was established in 2003 with European Commission support.<sup>60</sup> EHRAC works on Russian, Georgian, and, more recently, Azerbaijani and Armenian cases at the Court. By most recent count, EHRAC has taken on 310 cases from those four countries.<sup>61</sup> Two of its key leaders are Philip Leach and Bill Bowring, both law professors who have become passionately involved in ECtHR cases in over the past decade.

By June 2014, the Memorial-EHRAC program had submitted 242 Russian cases to the European Court and obtained judgments on ninety-three of them, which makes them very close to RJI in the quantity of cases submitted.<sup>62</sup> The program focuses principally on violations of human rights in the areas of: extrajudicial executions, disappearances, and torture in Chechnya; environmental human rights protection; ethnic discrimination; detention procedures and conditions; and unfair criminal and civil justice system proceedings.

Kirill Koroteev is a Russian lawyer who has been involved in steering Memorial-EHRAC's cases since 2003.<sup>63</sup> He was a lawyer for approximately thirty initial cases that flowed through Memorial to the ECtHR, and continues to submit a steady stream of ECtHR cases today, both as an independent lawyer and representing Memorial.<sup>64</sup> According to Koroteev, the partnership

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58. KATHLEEN E. SMITH, *REMEMBERING STALIN'S VICTIMS: POPULAR MEMORY AND THE END OF THE USSR* 78–84 (1996).

59. Memorial International, *Iz Istorii Memoriala [From Memorial's History]*, available at <http://www.memo.ru/d/24.html>.

60. EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE (EHRAC), *EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE: TEN YEAR REVIEW, 2003–2013*, at 36 (2013), available at <http://www.mdx.ac.uk/Assets/EHRAC%2010%20YEAR%20REPORT%202013%20ENG%2006%20WEB-1.pdf>.

61. *Id.* at 4.

62. Memorial-EHRAC website, available at <http://ehracmos.memo.ru/page.php?page=11>.

63. EHRAC, *ANNUAL REPORT 2010*, at 29 (2011), available at <https://metranet.londonmet.ac.uk/fms/MRSite/Research/HRSJ/EHRAC/Publications/EHRAC%20AR%2010%20ONLINE.pdf>.

64. Koroteev, Interview, *supra* note 22.

with EHRAC was absolutely key to Memorial's effectiveness in taking cases to the Court:

I learned a lot from working with Philip Leach and Bill Bowring. . . . That was much more helpful than what I learned in university. . . . Day to day work with British lawyers helped a lot in learning how to do European Court cases, how to do the Convention. Drafting, analysis, structuring, presentation of arguments, what arguments should be and should not, procedure, case management, different kinds of things.<sup>65</sup>

EHRAC conducts trainings and mentoring like this for Russian lawyers and publishes and disseminates Russian-language training materials on submission of cases to the ECtHR. Memorial and EHRAC also submit regular reports to the CoE Committee of Ministers and Parliamentary Assembly on Russian human rights violations and the state of Russian government implementation of the measures demanded in ECtHR decisions.<sup>66</sup> Some of the staff lawyers in the ECtHR secretariat in Strasbourg have had close interactions with Memorial through engagements conducting trainings and workshops for lawyers affiliated with the organization or previously employed providing services such as translation for them.<sup>67</sup> As such, Memorial has developed extraordinarily strong expertise in navigating the ECtHR and its associated monitoring and oversight bodies.

What are Memorial's reasons for choosing to litigate through the ECtHR in cases of human rights violations? Memorial's history has not typically involved engagement with formal legal institutions; instead, the organization's original activists, many of whom remain prominent in the organization's leadership, came from a dissident culture that traditionally distanced itself from any collaboration with the state. During its genesis, factions within the movement struggled in a debate between approaches of "confrontation" or "conciliation."<sup>68</sup> Thus, the statement of Memorial's Executive Director, Tatiana Kasatkina, regarding why Memorial turned to use of the ECtHR mechanism, is not surprising:

What did we want to accomplish? We understand beautifully that the European Court can be overflowing with our cases, they can stamp and stamp them, but for us what is important is the result, and result not only meaning that there

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65. *Id.*

66. COUNCIL OF EUROPE, COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS, LEGAL REMEDIES FOR HUMAN RIGHTS VIOLATIONS IN THE NORTH-CAUCASUS REGION (2010), available at [http://www.assembly.coe.int/committeedocs/2010/20100531\\_caucasus\\_e.pdf](http://www.assembly.coe.int/committeedocs/2010/20100531_caucasus_e.pdf) (accessed 25 Oct. 2011); Freek Van der Vet, *Seeking Life, Finding Justice: Russian NGO Litigation and Chechen Disappearances Before the European Court of Human Rights*, 13 HUM. RTS. REV. 303 (2012).

67. ECtHR Secretariat Staff Lawyer Interview, *supra* note 18; Interview with Sergey Golubok, ECtHR Secretariat Staff Lawyer, Strasbourg (22 July 2010).

68. SMITH, *supra* note 58, at 84–88.

is a decision in favour of or against the applicant. We wanted to change the courts system in Russia, we wanted to force the courts system to work so that our program [of litigation] would no longer be needed. That was our primary task. Have we achieved that or not? We haven't achieved it. I would say that we've achieved very little with this program, although nonetheless there are a few positive results.<sup>69</sup>

Kasatkina's response emphasizes the need for the court cases to result in fundamental reform of the Russian system of justice, and her clear disappointment that her organization's litigation efforts have not resulted in such change. When challenged with the opinions of some other observers that, in fact, the Russian government is reacting to ECtHR rulings with some important legal reforms, she responded: "You know, I also looked at those changes, and for me it formed the impression that they need to answer something to the Committee of Ministers [of the CoE], so it's best to implement some kind of trivial changes to report."<sup>70</sup> Kasatkina's combination of ambitious aspirations for her organization with negative, even cynical assessments of the government's response closely reflects her dissident background.

Yet Kasatkina does seem to believe that the ECtHR case decisions and follow-up monitoring of the execution of judgments by the Committee of Ministers offer the potential for shaming that could lead to greater change in the government's human rights conduct. Towards the end of our conversation, she stated:

It seems to me, that nevertheless this machine must turn around, and therefore we were really counting on this ECtHR program. When the Council of Europe was talking about possibly excluding Russia, for us it was frightening, because we would lose a very effective mechanism. All the same, it allows us to whip Russia into shape and to tell the guys "we won't let you get away with it just like that."<sup>71</sup>

## V. TOWARDS A PRELIMINARY TYPOLOGY OF NGOS' ECTHR ACTIVISM

Examining these three sizeable actors among Russian NGOs submitting cases to the ECtHR raises some fascinating common features and differences. Among the similarities uniting the IPC, Memorial-EHRAC, and RJI, one of the most intriguing is that each of them has branches or integrally involved partner organizations outside Russia. This feature may partly explain why

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69. Interview with Tatiana Kasatkina, Executive Director, Memorial, Moscow (2 Nov. 2009).

70. *Id.*

71. *Id.*

these three organizations, relative to others in the Russian NGO community, have succeeded in submitting and winning the greatest number of cases at the ECtHR during the first decade of Russia's eligibility as a respondent state. One advantage is that, operationally, having overseas offices or partners with lawyers working full-time on cases means that Memorial-EHRAC and the IPC have simply possessed greater capacity to develop and submit large numbers of cases to the Court. This is not the case with RJI, which does not have ongoing operational assistance from its original international "parent" organization, Human Rights Watch, nor does it have any substantial office in the Netherlands despite its original status as a Dutch NGO. All three organizations have benefitted legally, at least until recently, from having international partner organizations. In particular, all of them have been able to attract donor funding and channel it through the international partners/branches, which vastly simplifies their financial procedures, rather than having to navigate Russia's overwhelmingly complex taxation and reporting laws for domestic NGOs. Unfortunately, this advantage of international partners has rapidly turned into a significant disadvantage in the past couple of years, with increasing Russian government restrictions on foreign NGOs' ease of registration in Russia (as indicated by RJI's re-registration trials) and the passage of a law, in effect since November 2012, which requires that any Russian NGOs receiving international funding must register with the Justice Ministry and label themselves in all public communications as being "foreign agents."<sup>72</sup> Memorial Human Rights Centre is one of the over 1000 Russian NGOs that has been charged with violating that law.<sup>73</sup> Memorial, represented by Koroteev, has since engaged in ongoing appeals through Russian courts to fight the foreign agent designation. Moreover, in February 2013, Memorial, along with ten other Russian human rights organizations, filed an application at the ECtHR, challenging the foreign agents law as a violation of ECHR principles of freedom of association and expression.<sup>74</sup>

RJI and the IPC are similar in that all of their human rights work has been devoted to case litigation. Memorial, in contrast, has its EHRAC partnership program as only one branch of its vast human rights organization. If Russia

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72. Ellen Barry, *Foreign-Funded Nonprofits in Russia Face New Hurdle*, N.Y. TIMES, 12 July 2012, available at <http://www.nytimes.com/2012/07/03/world/europe/russia-introduces-law-limiting-aid-for-nonprofits.html>; Ellen Barry, *As "Foreign Agent" Law Takes Effect in Russia, Human Rights Groups Vow to Defy It*, N.Y. TIMES, 21 Nov. 2012, available at [http://www.nytimes.com/2012/11/22/world/europe/rights-groups-in-russia-reject-foreign-agent-label.html?\\_r=0](http://www.nytimes.com/2012/11/22/world/europe/rights-groups-in-russia-reject-foreign-agent-label.html?_r=0).

73. Timothy Heritage, *Russia's Oldest Rights Group Fights "Foreign Agent" tag*, REUTERS, 24 May 2013, available at <http://www.reuters.com/article/2013/05/24/us-russia-memorial-idUSBRE94N0HK20130524>.

74. Natalya Kraynova, *Koroteev: On June 23 HRC "Memorial" to Challenge Court Refusal on "Foreign Agent" Ruling*, CAUCASIAN KNOT, 17 June 2014, available at <http://eng.kavkaz-uzel.ru/articles/28446/>; *Human Rights Defenders Complain to ECtHR About law on Foreign Agents*, CAUCASIAN KNOT, 8 Feb. 2013, available at <http://eng.kavkaz-uzel.ru/articles/24785/>.

were suddenly to retract its membership in the CoE, Memorial would, no doubt, revert to all of its parallel work that has been going on for decades, while RJI and the IPC might well dissolve if they could not find an alternative international legal mechanism. Moreover, while Moskalenko is well known in Russia due to news reporting on the cases she has won at the ECtHR, she has not engaged in a great deal of public advocacy internationally or with the Russian government to try to change Russian human rights practices in a more political manner. In this sense, the IPC has been similar to RJI in keeping a somewhat low profile and focusing on individual cases. Yet at heart, RJI grew out of a longstanding human rights advocacy organization, and thus its recent shift into more explicit public advocacy work flows logically from its organizational genesis. In this sense, it is the IPC that is truly the outlier among these three organizations.

Beyond these similarities uniting various combinations of these three NGOs, there do also seem to be important distinctions in the goals that each of the three organizations seek to achieve through ECtHR litigation. They all share the long-term goal of reforming Russia's justice system and government policies in order to improve protection of citizens' basic rights and freedoms. But in the shorter term, they differ in their goals as well as tactical approaches to achieving their shared long-term goal. Their near-term goals seem to be closely tied to the organizations' historical roots. In the case of the IPC, as Moskalenko stated, the goal is to achieve justice for individuals who have had their rights violated in a system where domestic courts are currently incapable of providing just remedies. This view of the purpose of ECtHR litigation is clearly linked to her longstanding life's work as an *advokat*. For Memorial-EHRAC and, to a certain extent, RJI, much of the purpose of litigation seems to be to embarrass or "shame" the Russian government in the short term. They publish their victories and tallies of cases on their websites and issue press releases about them. This is tied to their deep roots as human rights activists. Memorial differs from RJI in that it makes very public political statements, especially domestically, about its human rights advocacy work and its ECtHR cases in connection with this. RJI has engaged in some reporting and networking with intergovernmental organizations, but usually at small human rights conferences or behind the scenes. This distinction is likely due in part to Memorial's origin as a very famous, protest-oriented dissident movement, in contrast to RJI's genesis of a professionalized international advocacy NGO. In addition, there is no doubt that RJI is keenly aware of its original status as a foreign NGO, and thus the potential accusations of illegitimate foreign interference that could arise from criticizing the Russian government publicly. However, it is notable that Memorial, as a Russian-registered organization, and its staff are now at least as much at risk as foreign NGOs in the current context of the foreign agents law.

One interesting point that some scholars have raised about Memorial's and RJI's goals in their case litigation is that the ECtHR judgments establish "facts" and bear witness to human rights violations in a manner that no other mechanism does as authoritatively in Russia today.<sup>75</sup> This role of international human rights litigation by NGOs has been noted in other contexts, such as in trials against political leaders who were responsible for human rights violations in Latin America,<sup>76</sup> or the International Criminal Tribunal for the Former Yugoslavia.<sup>77</sup> For Memorial in particular—an organization that was founded on the basis of establishing the "facts" of historical crimes through memorials to victims of political repression in the Soviet Union—this goal may be particularly important.

By looking at these three key NGOs involved in ECtHR litigation in Russia, we can begin to develop a typology of such activism that can be used as a basis for later expansion in order to develop an understanding of the motivations of other organizations involved in litigation. The three organizations examined in this article are mapped out in the provisional table below, including their goals and other relevant human rights activities in which they engage.

There may well be other goals that distinguish organizations from one another which are not represented by these three major litigating organizations and which will become clear through further analysis of other NGOs' work with the ECtHR. As one example, there are some NGOs, such as Sutyazhnik in Ekaterinburg, that use the ECtHR specifically to establish new legal precedents in particular areas of law, through which they can begin to change the way judges rule in Russia.

## VI. CONCLUSION

This article has begun to examine the spectrum of approaches that Russian NGOs use in presenting cases to the European Court of Human Rights, the goals that inform these approaches, and the factors that lead activists to embark on ECtHR litigation as a viable mechanism for improving human rights practices in Russia. A task for future research is to examine a wider

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75. Van der Vet, *supra* note 66; Kirill Koroteev, *Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya: The Approach of the European Court of Human Rights in Context*, 1 J. INT'L LEGAL STUD. 279–80 (2010).

76. Ellen Lutz & Kathryn Sikkink, *Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America*, 2 CHI. J. INT'L L. 8 (2001).

77. Richard Ashby Wilson, *Judging History: The Historical Record of the International Criminal Tribunal for the Former Yugoslavia*, 27 HUM. RIGHTS Q. 908 (2005). Although note that the thoroughness of this role has been disputed, given the very specific and targeted goals of tribunals, that may neglect victims' truth-telling needs. See Katherine M. Franke, *Gendered Subjects of Transitional Justice*, 15 COLUM. J. GENDER & L. 813 (2006).

Table 1. ECHR Litigating Organizations, Goals, and Tactics.

<i>Short-medium term goals</i>	<i>Professional background of founders</i>	<i>Tactics beyond litigation</i>	<i>Types of cases selected</i>	<i>Example organizations</i>
Shaming government; voicing dissent	Soviet dissidents/ human rights activists	Press releases; presentations to prominent international assemblies; public demonstrations	Gravest human rights abuses, politically harmful to government	Memorial; Russian Justice Initiative
Bearing witness; establishing truth	Soviet dissidents/ human rights activists	Reports to international organizations; press releases	Gravest human rights abuses	Memorial; Russian Justice Initiative
Justice for individuals	Lawyers	Training additional lawyers	Wide variety of cases	International Protection Centre

number of organizations, not only in Russia but also in other countries with widespread human rights violations and jurisdiction under international human rights courts. As an initial step, the analysis here has established that specific training from existing experts plays a key role in prompting NGOs to begin using the ECtHR and that the particular historical backgrounds of activists and their organizations shape the goals they espouse in their activism and the kinds of cases they select for litigation.

The analysis has not touched upon the extent to which NGOs' use of the ECtHR effectively serves their shared long-term goal of solving systemic problems in Russia's laws, state institutions, and judicial system that lead to widespread human rights violations in the first place. Several scholars have conducted analysis on the impact of the Court's rulings on judicial, bureaucratic, and legislative change in Russia.<sup>78</sup> Recent research has specifically examined the role of NGOs in this process and has found that NGO efforts to advocate for implementation of ECtHR rulings can indeed spur reforms that improve Russia's human rights compliance, as long as the professional cultures of domestic actors involved and the policy interests of the Russian government align with these goals.<sup>79</sup>

It is clear that ECtHR litigation is a significant new area of human rights activism in Russia, and it is unique in that the vast majority of Russian citizens are now aware of this mechanism and read about it in the domestic news, while many other forms of human rights activism remain largely unknown among the public. The ECtHR does remain as one of the few binding international mechanisms to pressure the Russian government to improve its human rights practices, and in this sense, as long as Russia maintains its membership in the Council of Europe, its potential is enormous and the trajectory of its impact has only just begun.

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78. A EUROPE OF RIGHTS: THE IMPACT OF THE ECHR ON NATIONAL LEGAL SYSTEMS (Helen Keller & Alec Stone Sweet eds., 2008); Trochev, *supra* note 8, at 145; ANTON BURKOV, THE IMPACT OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN RUSSIAN LAW: LEGISLATION AND APPLICATION IN 1996–2006 (2007); ANTON BURKOV, KONVENTSIJA O ZASHCHITE PRAV CHELOVEKA V SUDAKH ROSSII [THE CONVENTION ON HUMAN RIGHT IN RUSSIA'S COURTS] (2010); VALERIE SPERLING, ALTERED STATES: THE GLOBALIZATION OF ACCOUNTABILITY (2009).

79. Lisa McIntosh Sundstrom, *Advocacy Beyond Litigation: Examining Russian NGO Efforts on Implementation of European Court of Human Rights Judgments*, 45 COMMUNIST & POST-COMMUNIST STUD. 255 (2012).