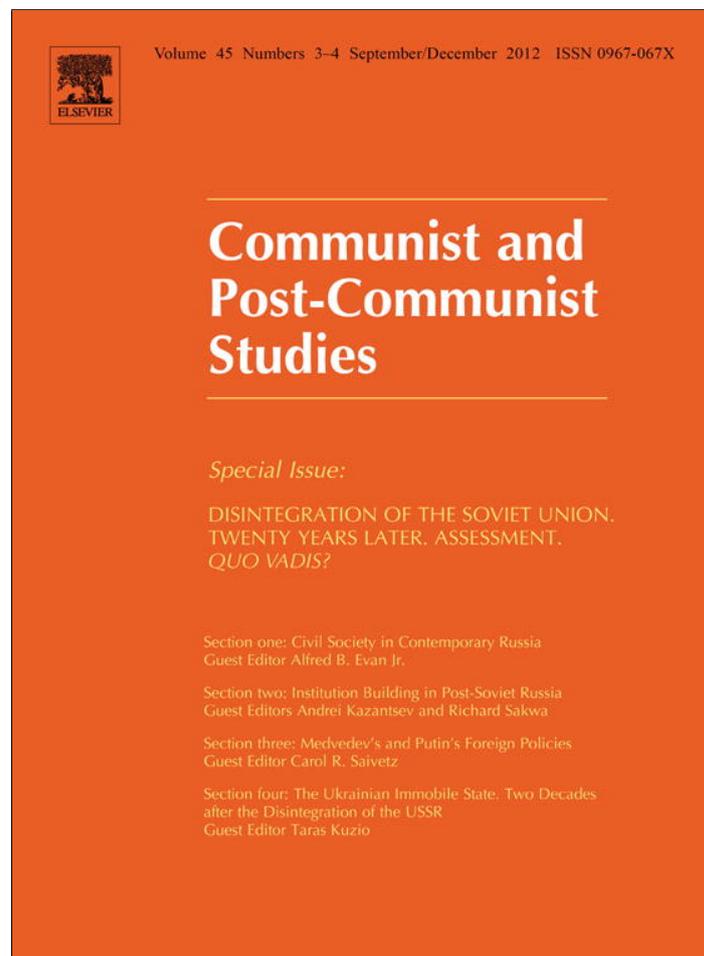


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Advocacy beyond litigation: Examining Russian NGO efforts on implementation of European Court of Human Rights judgments

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ABSTRACT

This article examines the ways in which various Russian NGOs, involved in litigation at the European Court of Human Rights (ECtHR), have worked to advocate for improved domestic implementation of rulings made by the Court. The paper traces these advocacy activities in four key problem areas for Russia's implementation of the Convention: (1) domestic judges' knowledge and citation of the European Convention or ECtHR case law; (2) the execution of domestic court judgments by Russian state bureaucratic bodies; (3) extrajudicial disappearances and killings in anti-terrorist military operations in the North Caucasus; and (4) torture or inhumane treatment in police detention. The author finds that the impact Russian NGOs can have upon domestic implementation depends greatly upon the professional cultures and incentives of the actors involved as well as whether or not prevention of violations is compatible with other high-level Russian government agendas.

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Observers of the European Court of Human Rights have drawn much attention to the tens of thousands of Russian cases that have flooded the Court in recent years. With approximately 40,000 applications pending decision in the Court's pipeline by the end of 2011, Russia is by far the single largest country source of cases pending, at 26.6 percent of all cases ([European Court of Human Rights, 2012a](#), p. 153).¹ But opinion is split over what the impact of these cases is on the ground in Russia to improve human rights practices and implementation by the state. Some, such as Valerie Sperling, are sceptical of its potential, arguing that the Russian government simply pays monetary compensation to applicants as ruled by the court, but takes few further steps to remove the root causes of human rights violations ([Sperling, 2009](#), p. 245). Others – particularly those who go to the effort to use the mechanism in practice – such as Russian lawyer Elena Liptser, maintain that the rulings carry revolutionary potential, by providing incentives for the government to change its human rights conduct and prevent violations as a reaction to the cost and workload imposed by the sheer volume of case rulings against it at the Court.² In a *New York Times* op-ed piece in August 2011, law professor Alan Riley claimed: “The Russian people have an extremely effective supreme court. It is entirely independent of the Russian state, its judgments have a significant impact on the legal system, and — above all — the state will (eventually) comply with its judgments. The only problem is that the court is not in Moscow, it's in Strasbourg — it's the [European Court of Human Rights](#)” ([Riley, 2011](#)).

In legal terms, as Riley's comment suggests, the Court's rulings should have enormous impact domestically in Russia, both because Russia is bound by its ratification of the ECHR and membership in the CoE to enforce the rulings, and because the Russian Constitution is fairly unusual in being a “monistic” type, which specifies that any international law ratified by the government is automatically considered to be applicable as domestic law, without requiring any additional domestic legislation

¹ Turkey, the second-most frequent country source, had 10.5% of all pending applications before the Court in December 2011 ([European Court of Human Rights, 2012a](#)).

² Elena Liptser, Lawyer, Liptser, Stavitskaya and Partners, interview with author, Moscow, 27 October 2009.

(Article 15(4) of the Russian Constitution). The ECHR, as an international convention, thus carries higher status than domestic acts of legislation (Burkov, 2007, p. 25, Danilenko, 1999, p. 52). Yet in practice, executing the measures the ECtHR demands in its rulings, and even implementing awareness and consideration of European Convention principles and ECtHR case law among Russian domestic judges, have not been smooth processes in Russia since the country's accession to the Convention in 1998.

Russian NGOs have been heavily involved in prodding the government to take the Convention seriously and implement its principles domestically. Many human rights NGOs, including most notably the International Protection Centre, Memorial, Russian Justice Initiative, Nizhnii Novgorod Committee Against Torture, and Sutyazhnik, have presented large numbers of cases directly to the ECtHR. But several of these same NGOs, as well as others, have been involved on the implementation side of the feedback loop as well, working to urge the Russian government to take measures to improve more general implementation requested by the ECtHR of the principles of the European Convention.

In this article, I begin to examine the efforts of these NGOs beyond their well-known ECtHR litigation activities, to prod the Russian government toward better implementation of the Convention and the Court's rulings. The tactics they have used have ranged from monitoring ongoing human rights violations and Russian government execution of ECtHR judgments, to press releases to publicize this information, round tables to discuss the issues with relevant actors, and membership on government advisory councils. Some NGOs are more publicly critical and antagonistic toward the government in their efforts, while others use more of a velvet glove and assume the role, at least in some circumstances, of a constructive partner. Which approach seems to reap the greatest rewards, and under what conditions?

1. Methods and case selection

For my initial foray into this question, I have chosen in this article to examine several issue areas in which NGOs have been at least somewhat active, which have been regular areas of concern for the Council of Europe's Committee of Ministers (CM), which is responsible for overseeing member states' execution of ECtHR judgments. In numerous annual reports by the CM's Department for the Execution of Judgments of the ECtHR, Russian cases have been singled out as illustrating problems in these particular areas of Convention implementation. The issue areas that I have chosen to examine in this category are: (1) Russian domestic judges' knowledge and citation of the European Convention or ECtHR case law; (2) the execution of domestic court judgments by Russian state bureaucratic bodies; (3) extrajudicial disappearances and killings in anti-terrorist operations in the North Caucasus, and subsequent investigation by Russian law enforcement; and (4) torture of detainees or inhumane treatment in police detention.

These issue areas were chosen for examination for several reasons. First, they all involve a significant degree of NGO activity around them, but there is a range of forms of activity (my "independent variable") in which NGOs engage to encourage implementation of ECHR principles and judgments. Second, they include a range of outcomes on the "dependent variable" of improvement in implementation. Tracing NGO activities and changes in implementation on these issues should help to develop propositions for further research.

Third, there is important variation in the kinds of issues represented in these cases and the Convention articles involved. The first two issues concern instances of violations whose sources are due to flaws in the Russian system of administration of justice itself in processing and implementing court cases, rather than initial violations of human rights on the ground. The first issue involves education and socialization of Russian domestic judges in the use of the ECHR. Thus, it involves trying to change one of the possible *mechanisms* of better implementation, rather than implementation of a specific article of the Convention itself. The second issue, characterized by a set of particular ECtHR cases, involves the efficacy of domestic court judgments in prompting state actors to provide services to citizens according to the law (Articles 1, "obligation to respect human rights", and 13, "right to an effective remedy").

The other two issues deal directly with violations on the ground as well as the conduct of police investigations of these violations. The third involves military actions of internal security forces in the highly volatile North Caucasus region (generally Convention Articles 2, 3, 5 and 8 on right to life, prohibition of torture, right to liberty and security, and right to respect for private and family life). Finally, the fourth involves police torture (generally Articles 3 and 5). The latter two issue areas also involve questions of justice and fairness in police investigations of alleged crimes (Article 13 on "right to an effective remedy"). As such, this variation allows us to consider whether there are certain kinds of issues or problems in which improved implementation of ECtHR judgments is more feasible than in others.

These Articles of the Convention are among the ones that the ECtHR has found to be most frequently violated in Russia (see Table 1 below). Moreover, the non-execution of judgments and North Caucasus cases are among the most numerous types of cases before the Court.

As for NGOs involved in promoting implementation, I examine the actions of the International Protection Centre (Moscow), Memorial (many cities), Memorial's partnership project with the European Human Rights Advocacy Centre (Memorial-EHRAC) (Moscow and London), Russian Justice Initiative (RJI) (Moscow), the Committee Against Torture (Nizhnii Novgorod), and Sutyazhnik (Ekaterinburg), which are several of the most active NGOs submitting Russian cases to the Court – as well as an NGO that has not facilitated submission of cases to the Court itself but has been actively involved in advocacy for implementation of ECHR principles in Russia (Public Verdict in Moscow). This set of NGOs largely encompasses the major organizations involved in implementation efforts in the selected issue areas.

The success of different approaches is difficult to measure, particularly if we are defining success as policy measures taken by the government. This is because any number of reasons might explain policy decisions of government, and multiple NGOs using

Table 1

Russian case judgments at the European Court of Human Rights by Articles of Violations, 1998–2011.

Article of Convention	Number of judgments	Article of Convention	Number of judgments
2: Right to life – deprivation of life	202	8: Right to respect for private and family life	94
2: Lack of effective investigation	217	9: Freedom of thought, conscience, and religion	5
3: Prohibition of torture	31	10: Freedom of expression	23
3: Inhuman or degrading treatment	357	11: Freedom of assembly and association	10
3: Lack of effective investigation	82	12: Right to marry	0
4: Prohibition of slavery/ forced labor	1	13: Right to an effective remedy	291
5: Right to liberty and security	422	14: Prohibition of discrimination	5
6: Right to a fair trial	570	P1-1: Protection of property	456
6: Length of proceedings	154	2: Right to education	1
6: Non-enforcement ^a	38	3: Right to free elections	2
7: No punishment without law	0	4: Right not to be tried or punished twice	2
		Other Articles of the Convention	78
Total judgments			1212

^a Note: Non-enforcement was counted as a separate category beginning only in 2010. Source: [European Court of Human Rights \(2012b\)](#)

different tactics may be lobbying the government on any particular issue. Moreover, we cannot reliably gauge the importance of NGO attempts to change domestic policy and procedures based on the sheer quantity of NGO attempts (Betsill and Corell, 2008, p. 6). Indeed, there have been more intensive efforts by NGOs in some areas – such as disappearances in Chechnya, where there has been relatively little improvement on the ground – than in others, such as the government's non-implementation of domestic court orders. But by tracing the implementation processes, whether through policy change or more thorough implementation of already-existing policies in the state bureaucracy, examining the actors contributing to particular policy discussions as well as other incentives or disincentives the government might have for making such policy changes, we can begin to acquire a sense of how much impact NGO efforts have had on government implementation of ECHR standards.

The hypothesis I wish to consider is that NGOs do have a significant impact on implementation in certain areas of the ECHR. However, there are a number of competing hypotheses that cast doubt on such influence, and instead argue that any improvements would have taken place without NGO involvement. The first of these is to consider the possibility that the Russian government would have made certain policy or procedural reforms without NGOs' involvement, and that when government policy changes align with NGO preferences, there is no any actual NGO influence at play. A second possibility, which does admit influences on the Russian government, but not through NGOs, is that pressure from the Council of Europe alone (and most likely from the Committee of Ministers, comprised of member state government leaders) is sufficient to explain any shifts in Russian government action on ECHR-related policy change.

According to Betsill and Corell (2008, pp. 34–35), there are several forms that NGO influence on policy can take, and they are more nuanced than a simple argument that “NGO pressure changes government positions.” Instead, NGOs may play roles in “issue framing”, “agenda setting”, or procedures of decision-making, in addition to the more straightforward ability to change key actors' positions or substantive final policy elements. In the spirit of their framework, I readily anticipate that NGOs' role is unlikely to be that of changing specific government policies to their preferred outcome, but instead in moving items onto the government's agenda through public pressure or shaming, or suggesting policy design that may be attractive to the government at an early stage of development. They may also influence government or other relevant actors' perception or framing of an issue – so that while a particular problem may not have been viewed as a human rights issue in the past, it may come to be recognized as such.

To investigate the impact of Russian NGOs on ECHR implementation in these areas, I draw upon several types of evidence. The first is semi-structured interviews I conducted during research trips to Moscow, St. Petersburg, Ekaterinburg, and Strasbourg between October 2009 and July 2010. Interview subjects included Russian human rights NGO activists, lawyers who had filed cases with the ECtHR, staff members of Russian regional Human Rights Ombudsmen, staff of the Russian Constitutional Court, staff of the Russian Representative to the Council of Europe, and staff lawyers of the European Court of Human Rights, as well as staff from other relevant divisions of the Council of Europe. In addition, I have gathered information about cases and execution of judgments progress through documents produced by the ECtHR and CoE Parliamentary Assembly Secretariat, and the Committee of Ministers, as well as additional information about NGO activities related to the ECHR through reports and news items available on Russian NGO websites.

2. A sketch of cases and implementation in each issue area

In this section, I give an overview of the state of implementation of ECHR principles and ECtHR judgments in each of the selected issue areas, as well as the efforts of Russian NGOs and lawyers and international organizations to advocate for improved implementation. In accordance with my characterization of the issue areas above, I first discuss the two areas related to the structure and administration of the justice system in Russia, and then discuss the two areas of “on-the-ground” physical human rights violations. As we shall see, the two groups of issues have had varying outcomes thus far, largely due to the incentive structures and cultures of the actors involved.

2.1. Russian domestic judges' knowledge and citation of ECHR principles and case law

Improving Russian judges' and lawyers' knowledge and use of the ECHR has been an area of considerable focus by Russian activist lawyers, international organizations and foreign donors working on implementation of European Court rulings (Sperling, 2009; pp. 256–266, Burkov, 2007; Burkov, 2010a; Kimer, 2011).³ The Council of Europe itself, the European Commission's European Initiative for Democracy and Human Rights, Interights (International Centre for the Legal Protection of Human Rights), and the MacArthur Foundation are a few of the major organizations involved in supporting such training. As mentioned above, this area of implementation is different from the others discussed below, since improvements in Russian judges' citations of the ECHR is more of a mechanism to lead to better implementation than actually implementing particular human rights principles of the Convention itself. Nonetheless, judges' awareness of the Convention does play a role in Russia's ability to comply with Article 1 of the Convention ("The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention") as well as, according to the Committee of Ministers, Articles 34 and 38, which include "the obligation to furnish to the ECtHR necessary facilities for the effective conduct of the case" (Council of Europe, 2007, p. 191). Moreover, many observers have pointed to the crucial role such improvements could play in resolving human rights cases adequately within Russia, as opposed to so many winding up in Strasbourg. In an interview, Anna Demeneva, a staff member of the Sverdlovsk Regional Human Rights Ombudsman's office, and a former human rights lawyer for the NGO *Sutyazhnik*, as well as a scholar who wrote her *kandidat* dissertation on European Court rulings on Russia, stated: "We sometimes observe human rights problems where we know that there is European Court practice against Russia, and we understand that if they don't now take this practice into account, then there will be violations, and there will either be lawsuits, or a system will develop that we will have to disentangle."⁴ Annual reports by the CoE Committee of Ministers, monitoring execution of ECtHR judgments by member states, have frequently raised inadequate preparation of Russian judges as a problem that demands remedy through improved and more widespread publicization and training on Russia's legal obligations under the ECHR (Council of Europe, 2007, pp. 62, 73, 93, 192, Council of Europe, 2010, p. 156).

An important additional pressure on judges was provided by a 2003 resolution of the Plenum of the Supreme Court of Russia that clearly instructed judges on their obligations to know and apply ECtHR case law to their own cases (Supreme Court of the Russian Federation, 2003; see also Burkov, 2010, pp. 135–140). But the substance of judges' knowledge of the ECtHR, in terms of translations of rulings and training in European Convention principles and ECtHR case law, was initially prodded by NGO activists and lawyers, as described below. Arguably, the 2003 Supreme Court resolution arose only as a result of cases being submitted to the ECtHR from Russia that demonstrated judges' lack of knowledge, and NGO activists' information provided to the Committee of Ministers to document the lack of knowledge among Russian judges.

One of the earliest impulses of NGOs and individual lawyers working with the ECHR has been to attempt to educate judges by citing ECHR principles and case law in the cases that they bring to Russian courts. One of the most active NGOs in this sense has been *Sutyazhnik* of Ekaterinburg. The term *sutyazhnik* means "litigator" in Russian, and this is precisely what the organization does: it brings human rights cases through Russian Courts and eventually to the European Court of Human Rights when necessary. At the end of 2010, according to its own report, *Sutyazhnik* had over fifty cases in progress in Russian domestic courts "involving application of the Convention and ECHR decisions" (Belyaev, 2010). Anton Burkov, who is both a former lawyer for *Sutyazhnik* and a scholar who studies use of the European Convention in Russian courts, stated that in 1998 when Russia ratified the European Convention, "we started to use the European Convention as a tool in Russian courts, so it's not only about taking this legal problem to Strasbourg, it's trying to solve it here through the tool – 'the Strasbourg tool' – of the European Convention."⁵

Another NGO that has been equally active in raising ECtHR principles in Russian courtrooms has been the International Protection Center (IPC), headed by the prominent Russian human rights lawyer Karinna Moskalenko. One lawyer affiliated with the IPC, Elena Liptser, noted the progress that has been made among judges:

When we began in 1998, 1999, 2000 – even 2001 – in court if you began to talk about the European Convention, the judge would say: "What are you talking about, lawyer? What convention? Where? In Strasbourg? But we have the UPK [Criminal Procedures Code], our law – why don't you talk about it instead? What place does the Convention have here?" They simply interrupted, saying they didn't need anything about the Convention. Now they don't interrupt anymore. That is, the judges understand... since there have already been resolutions of the Supreme Court Plenum, that the Convention is a part of Russian law and that they need to observe it.⁶

Yet Liptser still doubted the depth of judges' socialization into actually applying the Convention to cases, stating: "But other than that, that judges now listen, this hasn't brought any more positive results".

³ Author's interviews with Nina Tagankina, Executive Director, Moscow Helsinki Group, Moscow, 21 October 2009; Sergei Beliaev, President, *Sutyazhnik*, St. Petersburg, 6 November 2009; Boris Pustynstev, Chair, Citizen Watch, St. Petersburg, 14 June 2010.

⁴ Author's interview with Anna Demeneva, Consultant, Apparatus of the Sverdlovsk Oblast Ombudsman for Human Rights, Ekaterinburg, 5 November 2009. Translation from original Russian by author. See also Demeneva (2009).

⁵ Author's interview with Anton Burkov, staff lawyer, *Sutyazhnik*, Ekaterinburg, 5 November 2009.

⁶ Liptser, interview (translation from original Russian by author).

Moskalenko herself, who founded the International Protection Centre, and who has been involved in many important ECtHR cases including the second decision involving Russia as the respondent state (*Kalashnikov v. Russia*) and the more recent cases of business oligarch Mikhail Khodorkovsky (*Khodorkovskiy v. Russia*), and scientist Igor Sutyagin (*Sutyagin v. Russia*), also notes tremendous improvements in lower-level court judges' awareness and usage of ECtHR case law. She says that clear evidence of this is the fact that judges are having discussions amongst themselves about these cases and no longer purely in response to prompting by human rights lawyers in their courtrooms. In an interview, she stated:

Judges are citing [the Convention], and I'm not referring only to the Supreme and Constitutional courts – it's now happening in raion-level lower courts. What is interesting is that they are referring [to cases] when they are discussing among themselves how they should proceed, and in court proceedings, they refer to specific precedents... They are now exchanging [important] cases in bundles... I wish it were happening faster and more intensely and noticeably, and substantively and on a more mass level. But what we have, we have.⁷

Many less widely known Russian regional activists have also worked in their own localities after having received training on the Convention from major NGOs such as Sutyazhnik, IPC, Memorial–EHRAC, or Moscow Helsinki Group. For instance, the Komi regional division of Memorial received significant training from Moscow Helsinki Group and the Helsinki Human Rights Foundation in Warsaw and continues to exchange information with them. The Komi organization's activists have begun actively to cite the ECHR Convention and some ECtHR case law, and as a result, by 2009, they were finding that their efforts were breeding some success with local court judges beginning to cite the Convention in their own decisions, which had not occurred before. While the Russian Supreme Court was also facilitating these developments by sending Russian translations of summaries of important cases down through the courts hierarchy, Sazhin was confident that Memorial's role was key since judges cited the Convention in their decisions initially only in cases where Memorial's lawyer had cited the Convention during case arguments.⁸

Yet there are other domestic institutions in Russia, besides NGOs, that have also been involved in pushing domestic judges to learn and properly make use of the ECHR. In some cases, depending on the interest of the regional Ombudsman's office, that office offers information and expertise for judges, as well as other members of the legal system, such as government prosecutors. In the case of the Sverdlovsk Regional Ombudsman in Ekaterinburg, there is great interest, and the office even hired away one of Sutyazhnik's most active human rights litigators, Anna Demeneva, to assist in implementation of ECHR principles. In an interview, Demeneva recounted the efforts of her office:

It makes us very happy that representatives of the Prosecutor's office, the police, and the oblast court approach us independently... Therefore probably, the first step I have seen in my role in my first years of work has been to clarify and distribute information about the practice on some questions for the prosecutor's office, for investigatory organs. Sometimes it was just for information and sometimes it was tied to some concrete request... For example, the oblast court recently asked us about the balance of the principles of openness of mass media information and the protection of interests in securing justice.⁹

It is no accident that Russian law enforcement officials and judges in Sverdlovsk oblast are particularly sensitive to compliance with ECtHR standards. Sutyazhnik is an extremely vigilant NGO in the oblast and watches strategically for cases to submit to the European Court of Human Rights. Judges in that region are particularly concerned that they do not make errors by disregarding ECtHR principles and existing case law, which could lead potentially to a subsequent ECtHR decision against the Russian Federation that could be traced back to their earlier judgment.¹⁰ I consider this factor in my analysis section at the end of the paper.

One of the most significant but surmountable barriers that continues to hinder Russian judges in referencing and learning about ECtHR case law is the lack of full Russian language translation of ECtHR judgments and case documents. A Russian law was passed in December 2008 and took effect July 1, 2010, mandating Russian translation and publication of judgments by Russian courts; however, no law currently exists that demands Russian translations of ECtHR judgments (*Government of the Russian Federation, 2008; Burkov, 2010b*). According to one anonymous CoE official, this is the responsibility of the Russian Representative to the ECtHR (located within the Ministry of Justice), and has been demanded by the CoE Committee of Ministers, but has not been acted upon.¹¹ There have been a couple of Russian law journals – most significantly *Biulleten' Evropeiskogo Suda* (Bulletin of the European Court), which translate the brief ECtHR summaries of case rulings and the full text of select case decisions. Numerous NGO websites, such as RJI, Memorial–EHRAC, and Sutyazhnik, carry select unofficial translations as well. The Russian Representative's office in the Ministry of Justice has produced partial translations of a portion of ECtHR judgments considered to be significant precedents available on its website (*Ministry of Justice, 2012*) but a full set of official translations does not seem publically available. As several observers have pointed out, this information is insufficient

⁷ Author's interview with Karinna Moskalenko, Founding Director, International Protection Centre, Moscow, 30 October 2009. Translated from original Russian by author.

⁸ Sazhin, interview.

⁹ Demeneva, interview.

¹⁰ Demeneva, interview.

¹¹ Author's interview with anonymous Council of Europe staff member, Strasbourg, 21 July 2010.

for judges to understand all rulings in depth.¹² There is even an additional question of how much time judges would have available in their overwhelmed schedules to read full translations of cases.¹³

At the transnational cooperation level, the Council of Europe and the European Commission carry out many “Joint Programmes” for assistance to Russia, often with the European Commission funding them and the Council of Europe’s Cooperation division executing them. In 2005, an evaluation of three of these assistance programmes was conducted by a team of Russian and foreign consultants. The latter included human rights consultant and former CoE staff member Marjorie Farquharson and former head of the Russian office of Human Rights Watch, Diederik Lohman. They found that, while the programs were ineffective in many ways, one of the more consistent areas in which they led to significant and projected sustainable improvement was in training judges, with judges found to be most receptive to the training compared to other members of the judiciary and law enforcement, such as police, prosecutors, and bailiffs (*Human European Consultancy, 2005, p. 4*).

Several interviewees among NGO activists stated that one contributing factor to judges’ increased reference to the European Convention and (occasionally) case law is that judges view the Convention and the Court case judgments as “attractive”. According to Olga Shepeleva, a legal officer for the Moscow office of the Public Interest Law Institute and a frequent analyst for the NGO Public Verdict (*Obshchestvennyi verdikt*):

It’s especially visible among judges, that people see the European Court and its decisions as some kind of standard of quality, which is admired by them. They like it. That is, judges who have read and seen these decisions consider them to be attractive and good, that they’re very professionally done, and they also want to be like that in reality. And the cultural influence, the positioning of certain problems in a different way, undoubtedly has influence within judicial society and definitely is taken as a stimulus to do something.¹⁴

To sum up, then, there has been a significant increase in judges’ knowledge of and positive reaction to ECHR principles and ECtHR case law in the years since Russia became subject to ECtHR jurisdiction in 1998 and human rights lawyers began to cite the Convention and case decisions in Russian courtrooms. In part, this is undoubtedly due to repeated calls in ECtHR case judgments and CoE Committee of Ministers execution reports (as well as in closed-door diplomatic meetings) for Russia to emphasize to its judicial officials that they have an obligation to comply with ECHR principles in their domestic rulings. Yet the relentless efforts of individual lawyers to refer to ECHR principles and cases in their arguments in Russian courts, the training sessions for judges organized by Russian human rights organizations, and analysis by scholar-activists such as Anton Burkov that demonstrates deficiencies in Russian compliance with this standard have undoubtedly played a role as well. As I noted above, the demonstrated concern of judges and law enforcement officials in Sverdlovsk oblast is most likely linked to their experience having a very active ECtHR litigation NGO in the region. The results of NGO activism in judges’ knowledge and consideration of the ECtHR are noticeably greater than they are in the next issue for examination.

2.2. Non-execution of judgments

The Russian bureaucracy’s lack of execution or enforcement of domestic Russian court decisions has been a major source of ECtHR cases from Russia. Indeed, as pointed out by Philip Leach: “Since the first Burdov judgment in 2002, the non-enforcement (or delayed enforcement) of domestic court decisions has continued to be the most significant systemic human rights problem that Russia has faced, in terms of the number of applications to Strasbourg. By 2007, such cases comprised about 40% of all admissible applications to the ECtHR from Russia” (*Leach et al., 2010, p. 348*). Between 2002 and March 2009, the Court issued over 200 judgments regarding non-execution of Russian domestic judgments (*Leach et al., 2010*).

What is meant by “non-execution of judgments”? In essence, Russian courts at various levels can issue decisions that demand that various state bodies take actions, such as, most typically, activating pension payments, disability payments, or providing housing. When those state bodies fail to provide the demanded services in a reasonable timeframe and domestic court judgments have failed to create a reaction, citizens can apply to the ECtHR to claim a human rights violation. In the famous case of Anatolii Burdov, for example, Burdov went to court in Russia in 1997 to claim state benefits owed to him as a result of his military service cleaning up the notorious Chernobyl reactor after the nuclear accident in 1986. Chernobyl veterans are classified under Russian government legislation as being a particular category of citizens eligible for special benefits. Burdov won his clear-cut case, but he never received his benefits, so he turned to the ECtHR to obtain a judgment ordering the government to pay compensation in addition to the benefits. The Burdov judgment was issued by the Court in May 2002 and was the first ECtHR judgment on a Russian case. Although by that time the Russian state had paid him the benefits sum he was owed, the Court ruled that this sum was inadequate given the amount of time Mr. Burdov had to wait for compensation. It found that the Russian government had violated Burdov’s right to a fair hearing (Article 6) and his right to property (Article 1) (*Sperling, 2009, p. 240, Leach et al., 2010, p. 348, Burdov v. Russia in European Court of Human Rights*). In 2004, Burdov applied to the ECtHR a second time as a result of the Russian state’s continued failure to comply with domestic

¹² Author’s interview with anonymous staff lawyers from the Council of Europe Secretariat and the European Court of Human Rights, July 2010.

¹³ Author’s interview with Maksim Timofeev, Legal Expert, Citizens Watch, St. Petersburg, 15 June 2010.

¹⁴ Author’s interview with Olga Shepeleva, Legal Officer, Public Interest Law Institute, Moscow, 29 October 2009 (translation from original Russian by author).

judgments starting in 2003 (Leach et al., 2010, p. 349). This resulted in another pathbreaking ECtHR judgment known as “*Burdov 2*”, issued in 2009 (*Burdov v. Russia* (No. 2) in [European Court of Human Rights](#)).

The *Burdov 2* judgment was the first judgment to be classified under a new ECtHR decision track called “pilot judgments”. These are judgments that the ECtHR can make as a result of development of a “pilot judgment procedure”, delineated in Rule 61 of the Rules of the Court, which was finalized in February 2011. This procedure is aimed at resolving through single judgments systemic and virtually identical types of human rights violations for which applicants have submitted case applications to the ECtHR. The pilot judgment procedure was clearly developed in no small part in response to the hundreds of similar non-execution cases emerging from Russia and a handful of other member states, which were overburdening the Court’s case docket ([European Court of Human Rights, 2011](#); Helfer, 2008, p. 142). The procedure specifies that an application selected for pilot judgment treatment will be processed as a high priority case (priority II, just below priority I, which are “urgent” applications such as the Chechen cases described below). The judgment issued will “identify both the nature of the structural or systemic problem or other dysfunction as established as well as the type of remedial measures which the Contracting State concerned is required to take at the domestic level” to address existing similar cases in the Court pipeline as well as potential violations in the future ([European Court of Human Rights, 2011](#)).

In accordance with the *Burdov 2* judgment, the Russian government was given an initial timeline of six months to issue compensation to all 1180 ECtHR applicants with similar non-execution complaints in the existing case pipeline, and was directed to pass legislation instituting procedures to compel execution of judgments more systematically. While progress has been slow, particularly with regard to compensation, and the Russian government has fallen far behind the initial six-month timeline, the *Burdov 2* judgment has spurred more intensive cooperation and shared efforts between the Committee of Ministers (particularly the Execution Department) and the Russian government.

The Execution Department provided expertise on drafts of the proposed Russian law on execution of domestic judgments.¹⁵ A federal law was finally adopted in April 2010 after multiple iterations since 2008 ([Government of the Russian Federation, 2010](#)). However, many have been critical of it, arguing that it will not be effective in compelling uniform payments of benefits on time to the eligible recipients.¹⁶ The Russian judge on the ECtHR, Anatoly Kovler, actually complained that this draft law had been “‘cut to the roots’ by bureaucrats” (Leach et al., 2010, p. 355). Moreover, the Execution Department at the Council of Europe has lamented that the law does not provide any clear mechanisms for ensuring that state agencies would comply with repeated compensation awards issued according to the new law by domestic courts ([Council of Europe, 2011](#), pp. 156–157).

Nonetheless, since the judgment, the government has made gradual progress in issuing compensation to individual applicants in the ECtHR pipeline whose petitions to the Court were “frozen” by the pilot procedure to allow the Russian government time to issue owed compensation, without cases having to be heard by the ECtHR (Leach et al., 2010, p. 355, [Council of Europe, 2011](#), p. 156). By June 2011 Russian courts had examined claims for compensation in 287 cases and compensation had been awarded to 145 claimants in cases of general or commercial courts’ jurisdiction ([Committee of Ministers, 2011](#)). The 2011 annual CM Execution Department report noted its satisfaction with “the wide set of measures adopted by the Russian authorities, in particular by the federal Supreme Court, by the Supreme Commercial Court, and by the Ministry of Finance and Federal Treasury, including by securing appropriate budgetary arrangements” ([Council of Europe 2012](#), p. 75).

So how have NGOs been involved in these kinds of cases and implementation of measures recommended by the Court on remedying execution of domestic judgments? *Burdov* himself, the oft-cited symbol of this class of judgments, did not have any NGOs assisting him initially or systematically. Sergei Golubok, ECtHR staff lawyer and NGO observer, stated that “*Burdov 2* is the success story without any NGO’s involvement. There was no NGO in sight... Maybe the problem of nonenforcement of domestic judicial decisions is not so interesting for NGOs. But after all, it’s a really systematic problem.”¹⁷

NGOs have certainly been involved since the initial *Burdov* application was filed in assisting other Russian citizens in submitting non-execution cases to the ECtHR. Several CoE and ECtHR staff in interviews noted that there were large numbers of cases emerging from Rostov and Voronezh because NGOs and human rights lawyers there were actively pursuing case applications in this area.¹⁸ One staff member even suggested that lawyers were very active in certain geographic clusters because they realized that non-execution of judgment cases were very straightforward and easy to win at the ECtHR, relative to other classes of cases.

Regional Ombudsman’s offices in Russia (*Upolnomochennye po pravam cheloveka*) in some locations have provided coordination functions between petitioners and state authorities from various ministries to facilitate friendly settlement resolutions without the need for further court litigation. For example, in Ekaterinburg, Anna Demeneva, the ECtHR expert in the Sverdlovsk Oblast Ombudsman’s office, has spent a great deal of time leading such coordination. Yet she stated that this only works at the regional level when it is regional agencies (rather than federal ones) that are responsible for paying.¹⁹

¹⁵ Author’s interview with Viacheslav Yermakov, Advisor, Russian Permanent Representation to the Council of Europe, Strasbourg, 21 July 2010; Author’s interview with anonymous Council of Europe staff member, 21 July 2010.

¹⁶ Timofeev, interview.

¹⁷ Sergei Golubok, staff lawyer, European Court of Human Rights, interview with author, Strasbourg, 23 July 2010.

¹⁸ Author’s interview with Olga Chernishova, staff lawyer, European Court of Human Rights, Strasbourg, 20 July 2010; author’s interviews with CoE staff and ECtHR staff lawyers, Strasbourg, 22–23 July 2010.

¹⁹ Demeneva, interview.

Activist Igor Sazhin of the regional division of Memorial in Komi stated that his organization began launching these cases initially because of citizens coming to them and seeking assistance with their inability to obtain benefits despite domestic court orders. They decided to file a case application with the ECtHR to “scare the administration”, simultaneously writing a letter to the regional administration and courts to inform them of the filed application, and they found the tactic exceedingly successful. He explained what happened in their initial case of an orphan who was owed an apartment by the state upon reaching adulthood: “Indeed, we wrote and registered our petition [with the ECtHR], and it hadn’t even reached consideration yet, when... after only three months after registering her petition, they gave her an apartment... This person was in shock, because she had fought for five years and could not achieve anything, and then in the course of several months she achieved everything.”²⁰

Subsequently, the applicant was among those granted monetary compensation from the Russian government for the delay in executing the initial domestic court judgment demanding that she be issued an apartment.²¹ In 2009, Sazhin stated that his organization was preparing an entire series of similar petitions to the ECtHR because he had discovered that in their region, there was a group of approximately 150 people who were awaiting enforcement of domestic courts’ judgments on apartment provision alone (never mind other kinds of state benefits).²² He maintained that by placing pressure on local bureaucrats through submitting or *threatening* to submit ECtHR petitions, his organization was helping to provide a second impetus for local officials to execute domestic judgments efficiently, in addition to pressure they were already likely to feel from the federal office of the Russian Representative to the ECtHR (located within the Ministry of Justice), who would be questioning them about existing and ongoing violations.²³ Later, however, Komi Memorial found that potential applicants in this category were shying away from submitting ECtHR applications, because the process of awaiting an ECtHR judgment for several years was simply too lengthy to be worth the effort.²⁴

In the research for this article, I did not encounter examples of NGOs undertaking activities to encourage implementation of domestic Russian measures to ensure execution of domestic judges beyond the kinds of activities described above: submitting large numbers of cases to the ECtHR and monitoring Russian state agencies’ progress in implementing the rulings. This is a notable departure from the other categories of primary human rights violations considered below. As Leach et al have noted, the “pilot” nature of non-execution cases is unusual among the handful of pilot judgments the Court has issued from its docket for all member states, since non-execution takes many different forms for many different benefits owed by myriad structures of the state (Leach et al., 2010, p. 351). The ECtHR *Burdov 2* judgment itself noted this curiosity: “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” (*Burdov v. Russia* (No. 2) §131 in *European Court of Human Rights*). Along these lines, while non-execution cases are all very similar in the “clone” nature of the problem, it is difficult for NGOs to advocate for a single effective solution. Thus, the strategy of a mosaic of individual case petitions across many different state agencies and locations may help, step by step, to bring individual ministries and regional divisions of them into compliance with ECHR standards. The burden on the ECtHR’s case docket, to which NGOs have contributed by submitting many cases and training other people to submit them, eventually led the Court to issue a pilot judgment, which led to Russia’s adoption of a law to encourage execution of judgments that may partially resolve this widespread problem.

We now move on to consider two areas of human rights violations that have resulted in massive numbers of Russian applications to the ECtHR as a result of physical human rights abuses against individual citizens. As such, they have more to do with first-order, basic human rights violations by clear perpetrators than in the areas discussed above, in which administrative failures or lack of capacity are at the heart of many violations.

2.3. *Extrajudicial disappearances and killings in antiterrorist operations and subsequent investigation by law enforcement in the North Caucasus*

Violations of human rights by security forces in the North Caucasus (particularly Chechnya, Dagestan, and Ingushetia) in the context of antiterrorist operations have been a major source of cases sent to the European Court and involve some of the gravest violations in the Court’s docket (chiefly citing Articles 2, 3, and 5). A large number of these cases have followed a similar pattern: “a Chechen man is unlawfully detained by Russian military forces and never returns. Relatives of the missing person typically appeal to the local prosecutor’s office to demand an investigation into the person’s disappearance, to no avail” (Sperling, 2009, p. 248). Indeed, a new procedure for dealing with certain grave and urgent cases in a rapid manner was adopted by the Court in June 2009 precisely in response to these cases. The new policy, essentially expressed in amended Rule 41 of the Rules of the Court, states a hierarchy of priorities for case processing, rather than cases being adjudicated principally in chronological order of applications as they had been in the past (*European Court of Human Rights*, 2009). The

²⁰ Author’s interview with Igor Sazhin, Chair of Division, Komi Human Rights Commission “Memorial”, 29 October 2009.

²¹ Igor Sazhin, email communication with author, 24 February 2012.

²² Note that these cases would have been “frozen” when the *Burdov 2* pilot judgment was issued, as discussed above.

²³ Sazhin, interview.

²⁴ Sazhin, email communication, 24 February 2012.

top priority cases are now those that are urgent and involve very serious human rights violations. Moreover, part of the reason for continued violations of this sort on a widespread basis is that the investigations of such crimes by local police have frequently been lax or nonexistent. Impunity has reigned in the North Caucasus.

At least three Russian organizations – Russian Justice Initiative, Memorial–EHRAC, and the Nizhnii Novgorod Committee Against Torture – have been extremely active in investigating and prosecuting these kinds of crimes and making public statements about them. But over time, these NGOs have also realized that hundreds of ECtHR judgments in the cases they have shepherded through the courts, finding the Russian state guilty of violations in the North Caucasus, have not resulted in effective change in the fundamental human rights situation there.

There has been some degree of improvement. The attention of the ECtHR, CoE political institutions, and NGOs to these cases has led to direct spurring of prosecutors' offices to investigate the specific cases in response to claimants filing applications with the ECtHR. In recent years, the Russian government has set up "special investigation units" to work on investigating ECtHR judgment cases as a priority, and the government insists it is devoting its best resources to these units (Committee on Legal Affairs and Human Rights, 2010, p. 16). Valerie Sperling contends that over time, the impetus from ECtHR cases may in fact have spread to "have a salutary effect on the conduct of investigations across the board" (Sperling, 2009, p. 249). Yet this may be too optimistic an immediate conclusion. Philip Leach states that the Russian Government pays damages awarded by the ECtHR in these cases, but "taking other steps to prevent such incidents, to investigate what happened and provide some measure of accountability still does not seem to enjoy the requisite political will" (Leach, 2011, p. 1).

Moreover, the impact of repeated case judgments on reduction of disappearances and extrajudicial killings themselves in Chechnya appears to be limited. In its 2010 report on legal remedies for human rights violations in the North Caucasus, the CoE Parliamentary Assembly's Committee on Legal Affairs and Human Rights reported that between 2006 and 2009, according to official data from the Russian Prosecutor General and after many ECtHR judgments were issued on disappearances and extrajudicial killing of civilians, 536 people were reported missing in Chechnya, of whom 287 were presumed abducted and not found since. Only 30 criminal abduction cases went before the courts in the same period. Data for Ingushetia and Dagestan republics were similarly shocking (Committee on Legal Affairs and Human Rights, 2010, p. 18). As a result, NGOs that work in this area have begun to understand that they must do more than present cases and obtain court judgments to have a more systemic impact on the human rights context.

In an interview, the Moscow office director of Russian Justice Initiative, Vanessa Kogan, stated: "We've discovered more and more now that there's growing body of case law against Russia that we aren't making enough progress in terms of bringing about systematic changes on the ground... So to a certain extent it has been overwhelmingly successful and it has provided redress and then the minuses of the process are also becoming a bit more clear."²⁵ Thus, much more so than in the issue of judges' awareness and use of ECHR principles and case law, NGOs have found it necessary to conduct behind-the-scenes or public advocacy to try to bring attention to the problems of the North Caucasus.

One NGO has taken a more hands-on approach that combines litigation if necessary with pressure on North Caucasus law enforcement to investigate human rights crimes seriously. This has the advantage of acting on crimes immediately upon their occurrence, in the hope of perhaps retrieving victims alive rather than waiting several years for a judgment from the ECtHR after a victim has disappeared forever. Igor Kalyapin of the Nizhnii Novgorod Committee Against Torture (*Komitet protiv pytok*) (CAT) has organized "mobile legal assistance units" that rush to scenes of abductions or other serious crimes, record evidence, and then place pressure on officials to investigate the alleged crimes. In the words of the report by the CoE Parliamentary Assembly's Committee on Legal Affairs and Human Rights, "Once assigned a case, they hound the authorities to take action and do their duty: have given witnesses been interviewed? If not, when will they be interviewed? Why have they not been interviewed? Why have the owners of the vehicles described by witnesses not yet been identified? These young law specialists track the investigation step by step and do not hesitate to address their concerns to the highest levels of the hierarchy" (Committee on Legal Affairs and Human Rights, 2010, p. 11).

Beyond this, on a less directly confrontational behind-the-scenes level, several NGOs such as Memorial–EHRAC, RJI, and CAT have developed close lines of communication with the Parliamentary Assembly (PACE) and the Secretariat structures of the Council of Europe.²⁶ One way in which NGOs develop relationships with the PACE is through PACE fact-finding reports. Parliamentarians from different CoE member states within the PACE frequently commission reports on all kinds of human rights problems in member states, and the PACE's Committee on Legal Affairs and Human Rights researches and produces such reports, with a parliamentary member acting as rapporteur. In the specific issue of non-execution of judgments and failure to investigate disappearances in Chechnya, the PACE commissioned the 2010 report cited above, to which NGOs made enormous contributions. The report specifically thanks Human Rights Watch, Memorial–EHRAC and RJI for having "provided... detailed information on the implementation of the Court's judgments" (Committee on Legal Affairs and Human Rights, 2010, p. 16). Memorial also organized meetings of the report's authors with witnesses and relatives of victims of violations in the cities of Moscow, Nazran, Grozny and Makhachkala during the 2010 fact-finding mission (Committee on Legal Affairs and Human Rights, 2010, p. 18). The report was followed by a PACE Resolution endorsing the report in June

²⁵ Author's interview with Vanessa Kogan, Executive Director, Russian Justice Initiative, Moscow, 3 November 2009.

²⁶ Author's interviews with Tatiana Kasatkina, Executive Director, Memorial Human Rights Center, Moscow, 2 November 2009; Vanessa Kogan (RJI); Sergei Golubok, staff lawyer, European Court of Human Rights, Strasbourg, 23 July 2010; and four anonymous CoE Parliamentary Assembly and Secretariat staff members, Strasbourg, July 19–23, 2010.

2010, which – in an improved sign of acknowledgment of the problems – the Russian delegation to the PACE joined other states' delegations in approving unanimously ([Parliamentary Assembly of the Council of Europe, 2010](#)).

Nizhnii Novgorod's CAT has also provided highly detailed documentation of ongoing violations and lack of government action to prevent them in reports that they publish on their website and send to Russian government and Council of Europe officials ([Committee Against Torture of Nizhnii Novgorod, 2011](#)). CAT, RJI, and Memorial–EHRAC all provide regular news bulletins on their websites regarding ECtHR decisions on North Caucasus human rights cases, and all three provide a running “ticker” of the number of applications their organization has filed at the ECtHR, and how many have reached which stages of the process. One difference, though, is that RJI and the Memorial–EHRAC sites present information almost exclusively on ECtHR decisions rather than on alleged violations themselves, while the CAT site and the site of the Memorial Human Rights Centre's “*Goriachie tochki*” program (separate from the partnership with EHRAC) focus on the details of alleged violations and thus engage in more active, critical shaming of the Russian government.²⁷

In the CoE Secretariat, which is the bureaucratic machinery of the organization's executive bodies (primarily the Committee of Ministers), NGOs interact perhaps most crucially with the Execution of Judgments department, which carries out the CM's responsibilities for monitoring member states' execution and implementation of ECtHR judgments domestically. According to Council of Europe staff, evidence provided by NGOs regarding progress or lack thereof in implementation of judgments (most crucially in the “general measures” demanded by the Court) has been absolutely key for the Department to obtain an alternative account aside from the Russian government's rosy official reports on execution, and in order for Department staff to gather advice on exactly what additional measures could be effective and should be taken by the Russian government.²⁸

Prior to 2006, the status of NGO communications in the execution process was unclear, since NGOs were not formally mentioned in any rules of the Committee of Ministers regarding Court judgments. However, in 2006, a new procedural rule was adopted that clarified that NGOs are permitted to send communications to the Committee of Ministers regarding execution of judgments.²⁹ This has greatly increased the transparency of NGO communications with the Court and Committee of Ministers.

Overall, then, several NGOs in Russia have been intensely focused on submitting cases to the ECtHR that involve grave violations of human rights – chiefly torture and disappearances – and a lack of police investigation of them in the North Caucasus. RJI and Memorial–EHRAC alone have submitted over 400 cases and obtained nearly 200 decisions at the ECtHR. Yet they and the Council of Europe acknowledge that the fundamental human rights situation – most notably the ongoing rate of violations – has not significantly improved. We see a slightly more encouraging situation with the next area of violations examined – torture by law enforcement officials and police investigation of such crimes.

2.4. *Torture and inhumane treatment in police detention*

Human rights violations in detention conditions, like non-execution of judgments, are also the source of a large proportion of ECtHR cases originating from Russia. An early and famous ECtHR case of police torture was that of *Mikheyev v. Russian Federation*, with the Court issuing its decision in January 2006. This case was facilitated by CAT and resulted in the complainant winning 250 thousand Euros in compensation. Aleksei Mikheyev was tortured severely by police in Nizhnii Novgorod in the course of questioning regarding an alleged rape and murder of a young woman. As a result of the torture, he signed a false confession to the crimes (after which the alleged victim turned out to be alive and well). He was tortured so severely that he is permanently disabled and uses a wheelchair, and in the initial years following the incident, there were doubts that he would survive to see a trial against the police officers who tortured him. According to CAT, Mikheyev's desperate appeal to them for help was the reason the formerly generic organization Nizhegorod Society for Human Rights decided to specialize its work in the issue of torture and reorganize as the Committee Against Torture.³⁰

Mikheyev's case is emblematic of a larger body of cases, in which Russian citizens are tortured while in police detention, but then such crimes are either poorly prosecuted or not prosecuted at all by law enforcement. In investigations of these crimes, police forces commit a whole range of procedural violations, including failure to collect medical evidence or seriously delaying the collection of such evidence; refusal to search suspects or question independent witnesses; and delay in or failure to establish case facts or collect evidence ([Krasnoyarsk Committee for Human Rights Protection et al., 2010](#), p. 3). The Court has identified several factors in the Russian law enforcement system that have contributed to these violations: poor independence of police torture investigations from regular police forces who are alleged to have committed the violations; incomplete or unskilled collection of evidence; inadequate oversight of the effectiveness of such investigations; and the lack of access for victims to an institutionalized and effective complaint mechanism ([Council of Europe, 2011](#), pp. 113–114, [Krasnoyarsk Committee for Human Rights Protection et al., 2010](#)).

²⁷ RJI: www.srji.org; Memorial–EHRAC: <http://ehracmos.memo.ru/>; CAT: www.pytkam.net; Memorial Human Rights Centre: www.memo.ru/hr.

²⁸ Author's interviews with anonymous Council of Europe staff members, 19 & 21 July 2010.

²⁹ Rule 9 of “Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements” ([Council of Europe, 2006](#)).

³⁰ See CAT website at: <http://www.pytkam.net/web/index.php?go=Facts&in=view&id=5> (accessed 9 November, 2011).

Perhaps counter-intuitively, since one might expect that police structures would be extremely defensive and secretive and human rights NGOs might be reluctant to work with them, this issue area is one in which NGOs have been more engaged in direct policy advising to the Russian government and law enforcement structures. There has indeed been some progress in procedural improvements in recent years, such as enhanced immediate access by suspects of crimes to legal counsel under the new Russian Code of Criminal Procedure, and the creation of a new Investigative Committee under the Prokuratura that ostensibly provides independence for investigations of allegations of police misconduct from the hierarchy of police investigators themselves (Council of Europe, 2011, pp. 113–114).

Several Russian NGOs have been constructively involved in suggesting best practices for Russian authorities to use in trying to comply with the general measures demanded by the ECtHR in its case judgments. Public Verdict (*Obshchestvennyi Verdikt*), a Moscow-based NGO, has focused almost entirely on the problem of human rights abuses by law-enforcement agencies in Russia. It has only submitted a handful of case applications to the ECtHR but conducts a great deal of legal aid for domestic cases as well as considerable analytical work with sociologists to produce research reports on related topics.³¹ Public Verdict has contributed to NGO analyses not only for submission to the CoE Execution of Judgments Department, but also practical advice and training to government-consultative organs such as the Russian Public Chamber. For example, in April 2011, at a seminar in the Federal Public Chamber, Public Verdict presented a “notebook” to guide members of Public Observation Commissions (*Obshchestvennye nabludatel'nye komissii* or ONK) in monitoring conditions of forcible confinement. Public Verdict noted in its press release regarding the notebook that it was developed from materials on cases examined by the ECtHR (Public Verdict, 2011a). ONK are commissions foreseen by a 2008 law passed by the Russian government (76-FZ), and consist of representatives of registered, longstanding human rights NGOs, who apply for a two-year post on an ONK for a particular region and are selected by the head of the Public Chamber.³² Public Verdict has also conducted roundtables and seminars with officials from law enforcement agencies (often police investigators) in numerous regions, to exchange views and materials with them regarding human rights violations during investigations and detentions (Public Verdict, 2011b, Public Verdict, 2010). Similarly, the Committee Against Torture (CAT) has participated in commissions, round tables, and trainings with law enforcement officials. Igor Kalyapin of CAT was appointed as a member of the Public Consultation Council within the State Committee for Internal Affairs (*Gosudarstvennoe Upravlenie Vnutrennikh Del – GUVd*) in Nizhegorod Oblast in 2005. While CAT expressed dismay that it was one of only two NGO members among the eight members appointed to this council (while four were from the Ministry of Internal Affairs (GUVd)), it nevertheless agreed to take part.³³

At the same time, though, these organizations have also engaged in more critical tactics such as presenting alternative reports, co-authored with other Russian human rights NGOs, to the Execution of Judgments Department at the CoE (*Krasnoyarsk Committee for Human Rights Protection et al., 2010*) and collecting monitoring information that reflects very badly on the status of implementation of ECtHR judgments on Russian detention conditions. They also regularly post critical news items on their websites regarding alleged human rights violations under detention.

Thus, the approaches of NGOs in the area of police torture have taken the most diverse forms among the issue areas examined in this paper. They have fallen along a broad spectrum from very critical to cooperative and both public in nature and quietly behind closed doors with law enforcement structures and CoE structures. It is somewhat difficult to say whether CoE advice and pressure in this area or NGO advising has had a greater influence on the limited improvements that have taken place in detention procedures and oversight. This is a question for future detailed analysis.

3. Analysis and conclusion

Having examined these four areas of heavy ECtHR caseloads and insufficient implementation of the ECHR in Russia, and the activities of Russian NGOs to further such implementation, we can arrive at some preliminary conclusions for further consideration in ongoing research.

Returning to the hypotheses raised at the beginning of the paper, to what extent can we justifiably conclude that NGOs are having a significant impact in these areas of ECHR implementation? Are there some areas in which we can reasonably assume that the Russian government would have made some steps toward implementation without NGOs' involvement at all? In areas where the Russian government has been pushed beyond its status quo preferences, can we attribute any of this change to NGOs beyond existing pressure from the Council of Europe alone?

It appears that there may be different dynamics occurring in the first two examined procedural issues that concern the capacity of the Russian legal system and bureaucracy to function to the standards expected under the ECHR (judges' knowledge and citation of ECtHR cases and non-execution of domestic court judgments), as compared to the active first-order violations of police torture and security force actions in the North Caucasus. In the first two capacity issues, NGOs have been able to take the initiative in a decentralized manner in Russia to educate and prod local actors into improved implementation, and the Council of Europe has supported these activities financially and reinforced the goals rhetorically. Meanwhile, in cases of police torture and torture and disappearances committed by security forces in Chechnya, any progress appears to have required heavy diplomatic pressure from the Committee of Ministers in the CoE and clear expressions of their trust in the

³¹ Author's interview with Natalia Taubina, Director, Public Verdict Foundation, Moscow, 29 October 2009.

³² See Public Chamber web page on ONK at <http://www.oprf.ru/ru/762/767/>, accessed 3 November 2011.

³³ <http://www.pytkam.net/web/index.php?go=Content&id=114>, accessed 3 November 2011.

evidence provided by NGOs and concern about activists' safety. These two distinct patterns may well be related to the professional concerns and incentives of the actors involved in these areas of implementation.

As concerns judges' use of ECtHR principles, we can certainly conclude that NGOs have contributed enormously to the micro-level impetus for judges to become educated in ECtHR case law and to comprehend that they should cite ECtHR principles and cases in their rulings. As noted earlier, the 2003 Supreme Court Plenum resolution demanding that Russian judges heed ECtHR case law in their decisions provided some institutional pressure, but pressure from NGOs and activist lawyers through citing ECtHR case law in court and educating judges about the Court, as well as informing the Council of Europe about the status of judges' awareness of ECtHR jurisprudence has provided the micro-level mechanisms that have actually enhanced judges' knowledge and incorporation of the principles in decisions.

Yet dynamics among other domestic actors besides human rights activists also play a role. One element of this is the professional culture of judges in Russia (and perhaps elsewhere). As Shepeleva indicated, judges actually *want* to heighten their professional standards and competitiveness with their peers worldwide, and competence in ECtHR case law is one element of professional skill-building. As such, judges and NGO lawyers have found that their aims are compatible in recent years, once judges overcame their initial defensiveness bred by their relative ignorance about the ECtHR relative to the lawyers arguing in their courtrooms.

Anna Demeneva of the Sverdlovsk Oblast Ombudsman's office also pointed out that Russian judges are very happy to see progress made on the problem of non-execution of judgments, since resolution of the problem helps to increase their professional authority. They are irritated to see that their rulings are not enforced by government authorities.³⁴

Another domestic political element that recently affected several of these issue areas was the Medvedev government's agenda of legal reform to make the legal system operate more efficiently, transparently, and in line with the expectations of a "modern" state. Resolving the execution of judgments morass in Russia is perfectly compatible with this agenda. Along these lines, the earlier-cited external evaluation report on Council of Europe Joint Cooperation Programmes involving the North Caucasus also concluded that, even in the context of the relatively lawless North Caucasus, "Wherever [Joint Programme North Caucasus] tapped into work carried out under other [Russian Federation] JPs that fed into existing domestic reform processes, foreseeable sustainability was high. An example was... activity on the judiciary and the penitentiary" (*Human European Consultancy, 2005, p. 4*).

Efforts to introduce procedural protections that minimize incidents of police torture also fall in line with this central government agenda. Incidents of torture of innocent citizens do not reflect well upon a modern state and exacerbate already strong feelings of mistrust of the police among citizens. While ground-level investigators may resent infringements on their available tactics, the upper hierarchy of the Prokuratura and Ministry of Internal Affairs would arguably like to see torture kept to a minimum.

In the issue area of extrajudicial executions and disappearances in Chechnya, one of the major obstacles to NGOs having an impact on implementation of improved human rights practices is that the North Caucasus is obviously a highly volatile area in which the federal government is concerned about separatist and Islamist insurgency, and has thus tolerated an atmosphere of utter impunity and lawless conduct by the regional government authorities, under Chechen republic president Ramzan Kadyrov. The actions of torture and execution, not to mention corruption, carried out by Kadyrov and his close entourage are unbelievably brazen (often having been carried out beyond Chechnya or even Russia, in countries such as Austria, Turkey, and Azerbaijan) and well documented in the PACE report from June 2010 (*Committee on Legal Affairs and Human Rights, 2010, pp. 19–20*). It is difficult for the Russian government to fully prevent violations in Chechnya, unless it wishes to take back control of the region, which it likely does not, since control also suggests full responsibility for the crimes that occur there. It is somehow easier for the government to indicate that it is investigating incidents of murders and disappearances and attempting to comply with individual and general measures demanded in ECtHR judgments.

Aside from the political and professional cultural contexts surrounding each of the human rights issues examined, do the strategic tactics of NGOs and the tone of their interactions matter to their success? The answer is likely yes, but once again, in a complex dance with the nature of the issues they are addressing. Regarding judges' training in and application of ECtHR case law, it is clear that NGOs' steady modeling of how ECtHR cases can be used in Russian court cases – a non-confrontational approach to judges – has been successful. With non-execution of judgments, the threat of "we are watching you and will send your case to the ECtHR if you do not act as demanded" has worked to resolve individual citizens' problems, since bureaucrats have been intensely fearful of reprimand for having caused an international court ruling against the Russian government. And with torture and inhumane treatment in police detention, NGOs' multi-pronged approach of offering concrete advice on how to comply with rulings, while monitoring and providing information to the CoE on violations, has been somewhat successful.

The most problematic issue area has obviously been in the North Caucasus. Both quiet procedural approaches and louder critical approaches seem to have been fruitless. RJI has become frustrated with the lack of broader improvements that result from their constant victories in individual ECtHR cases. Memorial is quite vocal publicly in its criticism of government inaction in the face of violations in the North Caucasus. Both of these organizations have witnessed little improvement in the levels of violations, and both have faced harassment of various kinds. Memorial and RJI have experienced harassment of regional employees in the North Caucasus (in the most serious case, the tragic kidnapping and murder of a Memorial employee,

³⁴ Demeneva, interview.

Natalia Estimirova, in 2009). RJI has recently failed in attempts to re-register its organization with the Ministry of Justice as required and at the time of writing faced potential annulment as an organization (Bigg, 2012). In the case of Chechnya, it may only be heavy Council of Europe diplomatic pressure, with hard consequences in terms of relationships with European states, that can improve the situation, and this is unlikely in the current global atmosphere of relative European economic weakness and dependence on Russian energy resources.

The analysis in this paper thus leads us to a number of preliminary conclusions. NGOs can and do have a significant impact on the progress of implementation of ECHR principles in Russia when the key domestic actors involved have incentives to comply. This can be the case at lower levels of the bureaucracy as a result of professional norms or fear of reprimand for causing further cases against the government. At higher political levels, implementation may be more successful because measures demanded in ECtHR rulings are compatible with other high-level policy agendas, such as modernization and purification of the legal system from corruption.

NGOs have specific niche roles to play that other actors cannot fulfill so easily. They are extremely adept at detecting violations and monitoring them for submission of ECtHR cases or informing the Council of Europe. This vigilance makes law enforcement and bureaucratic agencies more alert to compliance in areas in which NGOs work actively. Transnationally active NGOs are also the ultimate interlocutors who can translate (vernacularize) human rights convention principles into locally relevant policy advice – much more so than international organizations themselves.³⁵ In this sense, NGOs do play a role that neither international organizations like the CoE nor domestic state actors are able to play.

This article only scratches the surface of comparative analysis across issue areas and domestic NGOs' strategies to encourage implementation of ECHR principles in Russia. Yet this initial analysis suggests that there is a complex interplay between chosen strategies and the incentives of domestic actors that determine the success that NGOs can have in influencing implementation.

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³⁵ The work of Sally Engle Merry on NGOs' ability to vernacularize global human rights concepts in local contexts inspires this point (Merry, 2006).

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