



ENGAGING RUSSIAN JUDGES INTO DIALOGUE WITH THE ECtHR

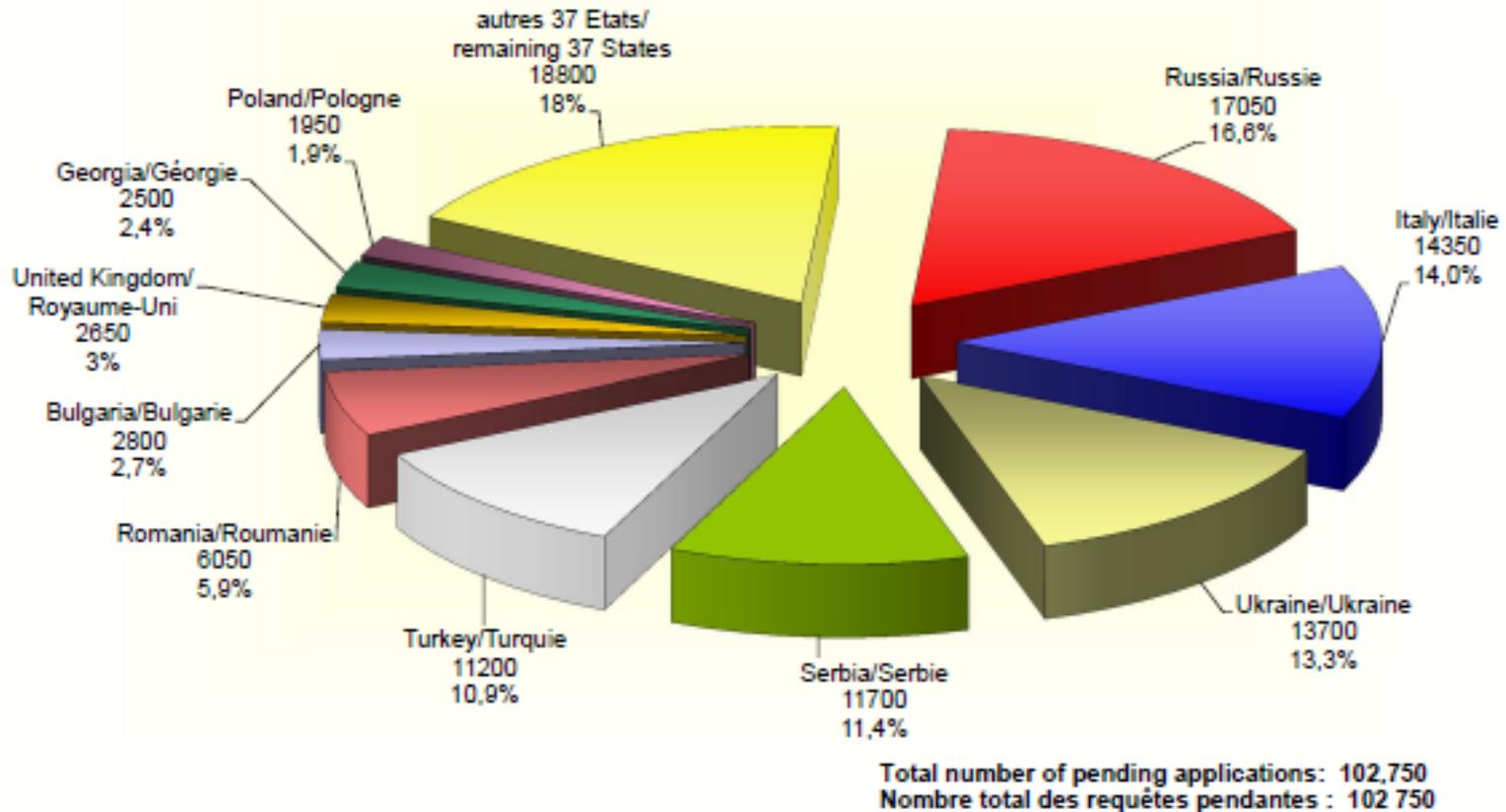
Dr. Anton Burkov

Bringing human rights home is a core idea of the Convention

- May 5, 1998: Russia ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention).
- Art. 1 of the Convention: The High Contracting Parties shall secure for everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.
- When Russia ratified the Convention in 1998, many Russian judges and lawyers thought this meant that only Russian citizens had the right to appeal at the European Court of Human Rights (the ECHR), not that Russian courts also had an obligation to implement the Convention at the national level.
- Russia did not expect such a high level of legal bindingness of the Convention.

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPEENNE DES DROITS DE L'HOMME

PENDING APPLICATIONS ALLOCATED TO A JUDICIAL FORMATION
REQUÊTES PENDANTES DEVANT UNE FORMATION JUDICIAIRE
31/11/2013



In 2013 almost half of the judgments delivered by the Court concerned 5 of the Council of Europe's 47 member States: Russia (129), Turkey (124), Romania (88), Ukraine (69) and Hungary (41).

Attitude of Judges - NO DIALOGUE WITH THE ECHR (2004)

Statement of Sverdlovsk region Chief Justice Ivan Ovcharuk:

“No, we do not hold any special trainings on the Convention. What sort of training does one need in order to honor the provisions of Article 6 [of the Convention]? All you need is to follow the national legislation.”

—From “Judges Shall Know Everything,” Online Press Conference, August 2004

Continuing Dialogue to Harmonize Russian Law with the Convention

- The Russian Constitution provides that international treaties (i.e., the Convention) take supremacy over national law
- Constitutional Court:
 - ECHR judgments are part of the Russian legal system (2 February 2007)
- Supreme Court regulations of October 10, 2003 and June 27, 2013:
 - Judges should interpret the treaty by taking into account any subsequent practice of a treaty body [ECHR]” - ECHR cases against all member states must be taken into account (not only against Russia)
 - Non-application of the Convention is ground to quash a judgment

The CoE and the ECtHR were involved in drafting some of the Supreme Court's documents.

Lack of Dialogue with the ECHR in Practice

Convention in the Supreme Court's Practice (1998–2003 and 2004–2008)

- Before the 2003 Regulation:

- out of 3,911 judgments, ONLY 12 judgments mention the Convention. Cases contain no reference to ECHR case-law.

- After the 2003 Regulation:

- out of 3,723 judgments, ONLY 32 mention the Convention of these 32 judgments, ONLY 6 refer to ECHR case-law (i.e., progress, but not significant progress).

The Convention in Russian District Courts' Practice

- Applicants' arguments based on ECHR case-law prompt implementation of the Convention
- Correlation between persistent arguments based on ECHR case-law and the quality of the Convention's implementation by the courts
- NGO lawyers succeed in getting district courts to apply the Convention more than private attorneys

A Vicious Circle: The Attitudes of Judges and Litigators

- **Judges:** We do not apply the Convention or ECHR case-law because attorneys do not ask us to do so.
- **Private Attorneys:** We do not argue the Convention or ECHR case-law because judges do not apply it.

Strategy to Engage National Judges into Dialogue with the ECtHR

- By arguing cases before national courts on the basis of the Convention's guarantees
- By applying to the ECHR if national courts failed to take the Convention into account
 - Both should be done with the aim of not just to protect a particular right guaranteed by the Convention, but by developing a legal tool which will be effective in motivating national judges to apply the Convention – ECHR judgment which will rule that ignoring party's arguments based on the Convention in itself is a violation of Art.6 of the Convention

CASES TO INCREASE DIALOGUE

- *Mikhailova v. Russia*
- *Kudriakov v. Russia*
- *Alina Sablina and Others v. Russia*

Through these cases we seek ECHR judgments condemning non-application of the European Convention on Human Rights