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Master Thesis

Alexander Chanadiri

**EUROPEAN LEGAL AND POLITICAL MECHANISMS IN PROMOTION  
OF FREEDOM OF EXPRESSION IN THE NORM-VIOLATING STATE:  
CASE OF RUSSIAN FEDERATION**

Supervisors: Prof. Lauri Mälksoo; MA Eveliis Kurs

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I have written the Master's thesis independently.

All works and major viewpoints of the other authors, data from other sources of literature and elsewhere used for writing this paper have been referenced.

Alexander Chanadiri 16.05.2013

Student's code B16075

The defence takes place:

Opponent: .....

## **Abstract**

The purpose of this thesis is to explain the essence of European legal and political mechanisms in promotion of human rights, particularly freedom of expression in the Russian Federation. The confrontation between Europe and Russia over the practice of this commonly accepted liberal democratic norm has become vigorous since the adoption of ECHR in 1998 by the latter. This study emphasizes analysis of obligations taken by Russia under international law and European legal and political instruments for monitoring the compliance. Deriving from the theory of international socialization developed by *Thomas Risse, Stephen Ropp and Kathryn Sikkink* the research tries to contribute into the understanding of the process and applicability of the theory to powerful norm-violating state. This is done through consideration of the ECtHR case law and evaluation of international political pressure generated by transnational advocacy networks based on particular case studies.

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**Abbreviations**

UDHR – Universal Declaration of Human Rights

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

CoE – Council of Europe

FoE – Freedom of expression

RF – Russian Federation

INGOs – International non-governmental organizations

## INTRODUCTION

Modern Western civilization is bound with a strong application of international human rights norms, which are key factors and play a crucial role in maintaining functional liberal democracies and rule of law. After the WWII an achievement of a long-standing peace in Europe became an obligation of bilateral agreements and more importantly of organizations established for the regional cooperation. The collapse of Soviet bloc and the Union itself in 1991 introduced new challenges to incorporate Eastern part of Europe into already functioning by that time European human rights systems led by Council of Europe and supported by international law. Consequently, injection of the international human rights law to the national legal system has played a significant role in transforming geopolitically strategic neighbors, such as the Russian Federation. However, the transportation of such norms has faced legal and political confrontations that decelerated a process of rapid democratization. The Russian Federation is currently bound with the principles and standards of the European intergovernmental organizations. The Council of Europe and OSCE treat and supervise Russia as a full member, while European Union holds a special partnership. Their human rights instruments operate as primary mechanisms to monitor compliance with adopted liberal democratic norms. Russia has institutionalized European Convention on Human Rights and the case law of the ECtHR back in 1998. After all, the problems of incorporation of the Convention have become a matter of placement of the international law in legal system of the country. These issues particularly expose in the treatment of international standards by national courts while reviewing civil and criminal violations. Especially, the court cases over defamation charges against political opposition disclose the ignorance of the guarantees of freedom of expression necessary for every democratically developing society. The Constitution of the Russian Federation clearly ensures freedom of speech as well as responsibilities for considering international treaties in practice. Additionally, separate Federal Laws and resolutions of Supreme Court regulate these issues in depth. European actors generate crucial legal and political

pressure in order to keep the country on track towards democratic development. Russian citizens who consider their rights guaranteed by the Convention have been violated may lodge a complaint to the ECtHR if all domestic remedies have been used to reach justice. Decisions concluded by Strasbourg Court are based on its case law and practiced according to the commonly accepted standards binding for all its member-states.

Apart from the legal rhetoric, Russian Federation has been involved in the normative cooperation with OSCE and EU for a long while. Together with independent human rights NGO's, these organizations produce a strong international pressure over a norm-violating state, which has committed to respect European principles and values. The criticism initiated by these actors and voiced in organizational reports, official statements and membership and cooperation suspension mechanisms direct international attention to the particular violations in the Russian Federation and damage its international reputation. In order to avoid dramatic outcomes, the latter is expected to respect such a development and reconsider its practices. This causal relationship has genuinely been observed in the interpretational confrontations over high-profiled cases, such as murder of oppositional journalists Anna Politkovskaya and Natalya Estemirova. Moreover, the incident of punk-rock band Pussy Riot exposes the most recent escalation of the normative confrontation between the West and Russia.

This thesis focuses on the reaction of European intergovernmental and non-governmental organizations on the violations of freedom of expression in Russian Federation as a commonly accepted Western liberal norm. Theoretical abstraction leads us to the idea of international socialization, which enfolds the process of injection of Western values and norms to the reviving states through the cooperation with European intergovernmental organizations, nation-states and non-governmental actors. These actors are accordingly interested in developing democratic societies in Europe expecting to reach common language for easier economic and political cooperation between the states in the region. However, the questions of what



particular interests do the norm-giving and norm-taking actors follow behind the socialization process needs a separate research. The problem is now how successful or ineffective are the strategies of socializing agents leading to the improvements, stagnation or decline in the process of socialization of Russian Federation. Consequently, the thesis aims to find out how the European legal and political socialization mechanisms affect internalization of the human rights norms in Russia.

In Schimmelfennig, Engert and Knobel's book "*International Socialization in Europe*", they define this type of actions "as a process in which states are induced to adopt the constitutive rules of an international community".<sup>1</sup> The target country which accepts to socialize should implement directives of a norm-giving center and finish the process successfully otherwise the socialization will not happen. The authors consider this process as a long-term aspect leading and possibly ending with complete adoption of commonly accepted rules by the nation-state. I would agree and add that a process of socialization is not about deadlines and quickly expected successful outcome, but a range of continuous efforts for the sake of establishment of a common language, based on the collective norms and values under a single affiliation. The emphasis in this case should be made on this particular process and not on the immediate result. Schimmelfennig analyzes international socialization in Eastern Europe as a matter of strategic cooperation and partnership where international organizations play a key role as crucial "socialization agents" of the region. When talking about the organizations, authors introduce a character and working instruments of such intergovernmental organizations as the OSCE, CoE, EU, and NATO. Respectively, we are mostly interested in the first three European organizations, which also help to operationalize understanding of "Europe" and "European norms" and its dueling features with Russian perspective in promoting of human rights and rule of law. Schimmelfennig selects certain cases/states in Eastern Europe which have been (1) violating the values of liberal democracy since the

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Schimmelfennig F.; Engert S. & Knobel H. (2006). *International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change*, Palgrave Macmillan, p. 2

transition process started, (2) complied to socialize and (3) achieved certain degree or stayed in stagnation.<sup>2</sup> However, the research does not include Russian Federation, even though the countries have been selected geographically from different parts of Eastern Europe, representing various types of political culture. In addition, a broad analysis of violations and costs of condition compliances did not include the matters of human rights as such either.

On the other hand, in Sinikukka Saari's book *"Promoting Democracy and Human Rights in Russia"* she thoroughly analyzes Russia's case in realms of human rights and applies theoretical aspects of international socialization in Europe. Initially, she uses the most comprehensive model of international socialization developed by Thomas Risse, Stephen Ropp and Kathryn Sikkink in their edition of *"Power of Human Rights: International Norms and Domestic Change"* (1999). This model, according to Sinikukka Saari, is constructivist which includes "rationalist and material interest –based causal mechanisms", together with a "socially constructed mechanisms" where identities matter and states try to perform respectively. They "care about their international reputation" and certain needed values and norms turn out to be vitally important to be accepted. Thus, according to author's interpretation of Risse and Sikkink's model, individual development of particular target state may be successfully influenced by transnational actors.<sup>3</sup> Later, Sinikukka Saari develops ideas of Schimmelfennig, Engert & Knobel, Jeffrey Checkel and Daniel C. Thomas regarding the effect of European international organizations and the problem of implementation of norms because of the identity conflicts. She has narrowly analyzed a clash of European and Russian norms through political and legal cooperation inside European regional organizations focusing on (1) the norms of human rights ombudsman, (2) abolition of the death penalty and free and (3) fair democratic elections. The study doesn't accordingly include many other important aspects of human rights initially suffering in Russian Federation. Also, theoretical background is

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<sup>2</sup> Ibid., page 64

<sup>3</sup> Saari, S. (2010). *Promoting Democracy and Human Rights in Russia*, Taylor & Francis Group, p. 4

poorly expanded in the study and precise direction not considered either. In fact, the situation around a freedom of expression in Russia is one of those values that have been concerning European political actors for decades and should contribute in the explaining of the wider problem of democratization through norm socialization as well.

In her edited part of *“Review of Central and European Law”* Dorothea Schönfeld has analytically reviewed the violations of media freedom in Russian Federation and Europe’s negative reaction on it. She studies the situation of the media and examines the problem of Russia’s compliance with undertaken obligations in international treaties. The author names the case of Anna Politkovskaya as a “symptom of a current situation of the media in Russia” and tries to seek for the normative and ideological differences between European and Russian understanding of freedom of expression. However, the author supports an European model and argues that a correct interpretation of freedom of expression is a key feature of the liberal societies respecting diversity and healthiness of political debates, which leads to true democracy.<sup>4</sup> While investigating Europe’s response to the violations of FoE in Russian Federation, the author similarly to Schimmelfennig and Saari analyzes the normative cooperation of the later with European regional organizations and their working mandates. However, Schönfeld goes deep into explanation why the norms are confronting over media freedom and analytically grasps problems of identity and public awareness. Thus, she does not comprehend a detailed study of how those intergovernmental organizations produce their normative power based on concrete occasions. Important court cases issued in ECtHR such as *Grinberg v. Russia* and *Filatenko v. Russia* are shortly classified by Schönfeld and not studied. Moreover, this scholar article does not derive from particular theoretical framework, nor does it focus on the character of the case law of the ECtHR, which might be a vital mechanism to understand the defamation cases.

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<sup>4</sup> Schönfeld, D. (2012). Tilting at Windmills? The European Response to Violations of Media Freedom in Russia, *Review of Central and East European Law*, Martinus Nijhoff Publishers, p. 236

Consequently, legal assessment of Russian court cases reviewed in the ECtHR correlated with analysis of high profiled cases such as the murder of Anna Politkovskaya and an incident of Pussy Riot could bring us to the better understanding of the character of dispute over the practice of freedom of expression, political will of compliance and its costs, and finally, difficulties of the international socialization process in this particular area.

## **1. THEORETICAL BACKGROUND**

In order to understand the character and impact of international human rights norms promoted by European actors on the behavior and internal politics of the Russian Federation this research is basing on a theory of international socialization developed by Thomas Risse, Stephen Ropp and Kathryn Sikkink. In their edited book *“The Power of Human Rights: International Norms and Domestic Change”*, authors conduct a research based on a wide discussion among social scientists and lawyers regarding a role of international human rights norms in global politics. They elaborate a so called “spiral model” of the transformation of human rights practices to identify how political change in the target country is dependent on the commonly recognized norms and what circumstances make governments institutionalize and later fairly use those norms in domestic practice. Firstly, main theoretical ideas of this thesis will be described along with a concept of international socialization according to Risse, Ropp and Sikkink. Secondly, the “spiral model” developed by Risse and Sikkink and causal mechanisms for the promotion of those universal concepts will be described in details. Finally, the research will illustrate the central debate between rationalist and constructivist perceptions of the international socialization process. Such discussion is analyzed by Frank Schimmelfennig, Stefan Engert and Heiko Knobel in *International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change*. It will form a basement for later application of the theory to the case of Russian Federation. The research supports constructivist ideas on socialization of the international human rights norms leading to the changes of practices.

### **1.1. General idea of socialization**

First of all, it's important to ask whether the concept of freedom of expression is understood and practiced on the same level in a global context. An Article 19 of The Universal Declaration of Human Rights (UDHR) says: “Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions

without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>5</sup> This definition certainly lacks clarity and can be interpreted by any country in multiple ways. A practical capability to understand and interpret the freedom of expression differently makes the practice of internationally recognized value less common. States as such have small legal power then to intervene into another country for the protection of human rights. That’s why the violations as well as improvements usually depend only on the individual domestic practices of a certain state. Consequently, soft but effective and less costly instrument of democratization through norm socialization has found its domination in the modern Western approaches. A process of socialization particularly involves an adoption of norms of certain community by a “target state” or individual and causes changes in behavior and identities of the later.<sup>6</sup> A certain international community of states admits new countries in a case if the community norms and behavior are successfully recognized and gradually implemented by a future member. A strategic partnership through socialization then transforms from external pressure and deterrence policies to the pacification, compliance and institutionalization of the norms as well as their internalization in the domestic practice. Norm itself is a commonly elaborated collective product which is a compulsory condition of certain communities and plays significant role in communications between political actors.<sup>7</sup>

Risse, Ropp and Sikkink elaborate three stages of the socialization process necessary for achieving mutual goals for both parties. They distinguish the processes, which theoretically should occur at once: **instrumental adaptation** and **strategic bargaining; moral consciousness-raising, shaming, argumentation, dialogue and persuasion; institutionalization and habitualization**. In the early phases of socialization, a norm violating state faces international pressure and turns to the instrumental adaptation through tactical concessions. A government of the target state

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<sup>5</sup> Article 19, The Universal Declaration of Human Rights. Retrieved from April 13 2013

<sup>6</sup> Risse T. & Ropp C. S. & Sikkink K. (1999). *The Power of Human Rights: International Norms and Domestic Change*, Cambridge University Press, Cambridge, p. 11

<sup>7</sup> Finnemore M. & Sikkink K. (1998). International Norms Dynamics and Political Change, International Organizations, *International Organization*, Vol. 52, No. 4, The MIT Press, p. 892

normally acts so in order to ease the tension rather than ultimately establish such practice. Another process develops through a moral discourse and includes such argumentative processes as communication, argumentation and persuasion. At best, the target states simply admit the norms which directly correspond their needs and preferences from the center. However, a single description of the idea or norm may gain different moral definition (sometimes through identity-based claims) by a socialized actor and create misunderstandings about its validity that will lead to confrontation over the legitimacy of the information about human rights violations.<sup>8</sup> Based on the cases analyzed later, we can observe that Russian Federation accepts the legitimacy of freedom of expression norm as such; however, while European discourse classifies the criminal persecution of the Pussy Riot punk rock band as violation of the freedom, Russia considers it as an irrelevant correlation with this type of definition.

According to the authors of the theory, the states follow principled ideas and concentrate on discursive behavior. Russia is certainly following its ideas of political, military and economic superpower in the European region and tries to generate its human rights discourse with democratic claims. As far as such actions need to be justified on the legal and political bases, it gets involved into the European human rights system, which on its own opens the door for European actors to maneuver straightforwardly. In such cases, they practice argumentative and persuasive policies with soft or radical actions, such as shaming and criticism. Theoretically, instrumental adaptation of criticism transforms into the actual concessions. International pressure leads to the formation of globally negative attitude toward the norm-violating state and ashamed government is eager to compromise and provide a protection of human rights in order to save its own reputation. In addition, possible economic sanctions activate the opposition of domestic interest groups against human rights violations that leads to the change in human rights practices as whole.<sup>9</sup> Based

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<sup>8</sup> Risse T. & Ropp C. S. & Sikkink K. (1999). *The Power of Human Rights: International Norms and Domestic Change*, Cambridge University Press, Cambridge, p. 13

<sup>9</sup> Moravcsik, A. (1995). Explaining International Human Rights Regimes: Liberal Theory and Western Europe, *European Journal of International Relations*, SAGE, Thousand Oaks, London, p. 161

on the case study of Russia this research would try to find how the international pressure influences the practice of freedom of expression in conformity with international law and how the country deals with such external and domestic pressure through argumentative rhetoric, acceptance of minor changes or long-term compliance. The interest draws also on the circumstances in which the member state of the Council of Europe and OSCE is tend to accept international human rights norms and provide their internalization domestically.

The process of socialization should contain practice of instrumental adaptation leading to argumentative rhetoric and ending with formal institutionalization and habitualization. As soon as a state decides to adopt a norm and behave appropriately, a slow and gradual process of socialization may start. Governments initially accept international norms instrumentally in order to ease the international pressure and domestic tensions. However, the space for socialization is already open and transnational and domestic advocacy networks get advantage to entrap the government into argumentation and activate dialogue mode. The human rights norms have a real power and long-term effect only “when actors comply with them irrespective of individual beliefs about their validity”.<sup>10</sup> Consequently, domestic internalization of the norm and a habitualization phase are crucial points for ensuring credibility of its implementation. In this case, certain norm becomes “taken for granted” and is protected by rule of law, which is essential precondition of the socialization process.

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<sup>10</sup> Risse T.; Ropp C. S. & Sikkink K. (1999). *The Power of Human Rights: International Norms and Domestic Change*, Cambridge University Press, Cambridge, p. 16



## **1.2. Theoretical concepts**

In the following subchapters this research will specify the details of international socialization process. That's why it is necessary to enumerate and explain particular concepts further used in this paper.

*Liberal democratic norms* – shared values among the Western societies based on democracy and rule of law, which have particularly become one of the central norms in the modern international relations. This study is focused on particular liberal democratic norms, which are recognized by European intergovernmental and non-governmental organizations as well as accepted by the Russian Federation in the legal framework and political discourse.

*Norm-giver* – is a state, international organization or a non-governmental organization, which guides the norm-taking nation-state towards adoption of liberal democratic norms and convergence with Western values.

*Norm-taker/target-state* – is a state, which gets entrapped in the socialization process intentionally or involuntarily and overtakes the obligations to accept the directives of norm-givers and socialize.

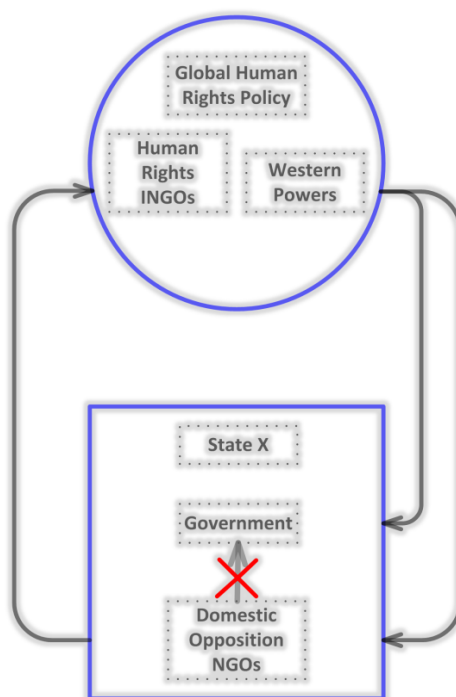
*Europe/European* – this term is utilized in order to generalize certain understanding of human rights norms and legitimize political and legal mechanisms of the Council of Europe, OSCE and the European Union as well as leading regional national governments and non-governmental organizations.

*Prescriptive status* – the norm gains prescriptive status when it becomes accepted by a norm-taking actor on the same level with a norm-giving one and the validity is not questioned anymore, even though the practice of such norm may still cause debates.

## **1.3. Spiral model**

Risse and Sikkink elaborated a “spiral model” consisting of five different phases of human rights change in order to draw a theoretical basis and understand which of those communication modes such as adaptation, argumentation and institutionalization dominate in the phases of the socialization process. Main

processes develop in the framework of interactions between core actors, such as world-wide international intergovernmental and non-governmental human rights organizations, Western liberal democratic states, domestic opposition and a government of the norm-violating state.<sup>11</sup> INGOs are included into so called international advocacy networks and together with intergovernmental organizations form external pressure on the socializing state. These actors constantly seek for strengthening national networks and human rights NGOs in order to influence the norm-violating government from inside. The graph 1 describes the essence of “boomerang effect”, which forms in the result of collaboration between national and global human rights defenders. Instead of complaining to the government of the state regarding the violations, domestic NGOs head towards international actors. They on generate pressure on norm-violating government and support domestic activists.



Graph 1: Boomerang effect

<sup>11</sup> Ibid., p. 19

After the connections are made, transnational networks are capable to pressure a norm-violating government on international arena and profoundly support (financially or ideologically) domestic movements at the same time. The “boomerang” pattern may differ though from country to country regarding specific conditions.<sup>12</sup>

In the mid 80’s transnational human rights NGOs together with Western states and advocacy networks reached a point when so called “norm cascade” elaborated through international treaties started to spread world-wide. States started taking steps toward compliance and institutionalized fundamental norms, because that’s what “good” states would do.<sup>13</sup>

According to Risse and Sikkink, first phase of the socialization process activates as soon as transnational advocacy networks successfully direct international attention to the norm-violating and suppressive authoritarian state, which is soon placed under a so called “target” for changes. In such conditions domestic oppositional movements are normally vulnerable and disable to achieve changes solely, so they find “friends” abroad. The activation of international society of states and advocacy networks normally is caused by substantial violations in one country while minor, but systematic suppressions may efficiently be hidden by an autocratic regime in another. After thorough international attention has been addressed to the norm-violating state, transnational advocacy networks try to influence Western states and international intergovernmental organizations through discursive behavior in order to make them share the concerns and form a common position. In this case, effective persuasive “shaming” policies of Western actors that are supposed to promote human rights in the world jeopardize their critical rhetoric.<sup>14</sup> Not surprisingly, the target government initially opposes and denies its norm-violent

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<sup>12</sup> Ibid., p. 18

<sup>13</sup> Ibid., p. 21

<sup>14</sup> Ibid., p.22

policies. However, open contradiction is covered by applying to other legitimate international norms, such as national jurisdiction or sovereignty.<sup>15</sup> In response to the external pressure, norm-violators use different approaches. They form a strong public opposition against those foreign “enemies” based on nationalist moods. In this case, “boomerang arrow” works opposite to the weak domestic advocacy networks and strengthens positions of a government inside borders. However, any scenario either positive and rapid or challengeable and slow points on the successful launch of the socialization process. The government usually understands that the trouble has appeared and starts opposing those imposed norms and criticism openly. It then directly hits international image of the country and damages its international attractiveness that may lead to the long-term crisis.<sup>16</sup> Active involvement of domestic advocacy networks through material and intangible measures cause marginal concessions by norm-violating government and drive the process to next phase. Normally the states, which care about their international reputation and have a desire to join or stay in any of the liberal communities, are more eager to change rather than those with strong isolative sentiments.

International political pressure is supposed to cause initially minor and provisional concessions in the norm-violating country. In such unstable for both sides moment domestic human rights opposition gets the best chance to activate and increase pressure from inside. Transnational advocacy networks on the other hand, play also an important role as supporters. They legitimate and protect domestic human rights activists on international level. However, government may intensely suppress such movements through murdering, threatening and attacking individual activists and organizations.<sup>17</sup> Such actions definitely interrupt rapid development of events, but the whole process will lead to the long-term changes, stay in stagnation or move backwards. As soon as minor tactical concessions were made and certain norms instrumentally adapted, the government is morally forced to comply since every

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<sup>15</sup> Ibid., p.24

<sup>16</sup> Ibid., p.23

<sup>17</sup> Ibid., p.25

single further violation will cause negative domestic and international reaction again. The importance of this phase is firstly, that human rights advocacy networks gain more power and freedom in their opposing actions. Secondly, norm-violating government already recognizes a validity of the violations and gets entrapped into the argumentation and dialogue. Finally, the concessions made for the instrumental reasons soon become significant part of the argumentative rationality. The states sometimes undervalue a process of argumentative dialogue with the norm giving actors and gradually get entrapped in it. That's why it becomes harder for them to deny critique and pressure directly. Thus, they start to care both about transnational and domestic evaluation and open space for completion of tasks. Other rulers may use force to resist the compliance and then end up with a deposition from power. However, both scenarios will maintain progressive developments and move the process of socialization to another stage.<sup>18</sup>

It is important to distinguish though if a state starts referring to human rights norms as a result of argumentative and persuasive processes or changes are instrumentally implemented in order to silence the political pressure. In this case, Risse and Sikkink list four conditions in which the norms gain a "prescriptive status" in the spiral model of socialization. Firstly, the state should domestically ratify internationally binding treaties on human rights. Secondly, all the prescribed norms should be domestically institutionalized (in constitution and/or domestic law). Thirdly, citizens should be able to submit their complaints and appeal to the domestic and international courts if their rights are abused. Finally, the state is expected to rationally evaluate criticism over human rights violations and deal with it through dialogue and argumentations.<sup>19</sup> Moreover, the norm is considered to gain a "prescriptive status" if its validity does not depend on the changes in tangible and intangible interests among ruling elite of the country. The government is also expected to be welcome for the dialogue with transnational and domestic actors based on the mutual recognition of validity of norms and readiness for changes if needed.

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<sup>18</sup> Ibid., p.28

<sup>19</sup> Ibid., p.29

This stage provides a foundation for the institutionalization of the norm into national law through communicative behavior (dialogue, argumentation and justification).<sup>20</sup>

However, there is still a fear that governments can enter into a dialogue and improve the situation, but continue minor systematic violations inside the country. That is why transnational and domestic advocacy networks should not weaken pressure if just only massive human rights abuses are demonstratively eliminated.<sup>21</sup> Only strong constant control may influence target state to assure true “rule consistent” behavior. In this case government gradually moves to the true compliance based on habitual practice.

Thus, a spiral model of human rights change developed by Risse and Sikkink describes processes in which international norms bring fundamental transformation in the domestic human rights practices. Instead of just evaluating activities leading to the progress and endorsement of norms, authors mostly emphasize the difficulties and challenges of the whole process itself. The significant part of the process analysis is to find which mode of interaction is dominating in each socialization phase in order to better understand the process. Obviously, initially favored instrumental adaptation in the name of temporary conflict resolution is replaced by discursive behavior and use of argumentative rhetoric and persuasive policies.<sup>22</sup> This kind of communicative practice may guarantee a proper institutionalization of the human rights norm in the domestic legislation and provide habitually driven norm compliance later. The INGOs and international intergovernmental organizations together with Western states are the most important foreign actors capable to prevent a norm-violating government from repressing domestic NGOs.<sup>23</sup> Norms define standards and constitute to states and individuals how the proper behavior should look like. Institutions then build up a system that determines how these norms should operate

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<sup>20</sup> Ibid., p.30

<sup>21</sup> Ibid., p.31

<sup>22</sup> Ibid., p.33

<sup>23</sup> Ibid., p.34

and be exercised.<sup>24</sup> However, it is vitally crucial and most difficult measure to keep the government under thorough control after the tactical concessions have been made and compromise accepted.<sup>25</sup>

#### 1.4. Methodology

This thesis is aiming to understand how the European legal and political socialization mechanisms influence internalization of the human rights norms in the Russian Federation. For this sake, a **qualitative human rights research with a theory-driven empirical approach** will be conducted, where broad generalization will leave a place for exceptions.<sup>26</sup>

This kind of qualitative human rights research will include an overview of European normative environment, legal analysis of the placement of international law and particularly the ECHR in the legal system of the Russian Federation as well as deeper grasp of Russian court cases brought to the ECtHR on freedom of expression. Moreover, deriving from the theory, international political pressure of the transnational advocacy networks on the government of Russian Federation will be scrutinized through high-profiled cases regarding the poor practice and guarantees of freedom of expression. However, the research is not going deep into the political reasons of the tendencies of violations of freedom of expression, which requires a separate research.

The study will comprehend effects of socialization process on the internationalization of the human rights norms through detailed analysis of legal conditions and communication frameworks, external pressure on the target state and behavior changes.<sup>27</sup>

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<sup>24</sup> Finnemore, M. & Sikkink, K. (1998). International Norm Dynamics and Political Change, *International Organization*, Vol. 52, No. 4, The MIT Press, p. 891

<sup>25</sup> Risse T.; Ropp C. S. & Sikkink K. (1999). *The Power of Human Rights: International Norms and Domestic Change*, Cambridge University Press, Cambridge, p. 35

<sup>26</sup> Coomans F., Grünfeld F. & Kamminga T. M. (2009). *Methods of Human Rights Research*, Intersentia, p. 27

<sup>27</sup> Ibid., p. 29

This scientific research is concentrating on the problems of socialization process powered by international pressure through legal and political frameworks on a target state in the field of freedom of expression. A systematic analysis will help to understand the essence of strategies of European actors and Russian authorities for imposing one's own interpretations based on concrete cases. Thus, the research will try to answer the question of how European intergovernmental organizations, as central socializing actors, together with non-governmental players, react on the violations of freedom of expression in Russian Federation and to what outcomes do they lead: improvement, stagnation or decline. The answers should lead us to generalizing the problems of norm socialization process as a source for democratization in a broader sense.

Unlike lawyers who are building a research on the compatibility of the arguments and ideas, social scientists try to broadly analyze, give explanations and draw understandings of social phenomena through empirical analysis of the collected information and contribute in issues of protection and promotion of human rights.<sup>28</sup>

Human rights research will permit to observe and understand mechanisms of social processes, as well as illustrate why these processes are as they are. A study of single country and observable phenomena will help to focus on concrete empirical data and concentrate on specific field of human rights. The research will be built so that a method of a single country study will contribute into the broader understanding of the theory and its applicability.<sup>29</sup> Certain scholars consider that such method is disposed to limitations and trivial outcomes, however, the single country that comprises all aspects of discussed problem as well as multiple potential observations can be a bright model for the inquiry.<sup>30</sup> Generally, the issues of human rights cover socio-cultural, political and economic perspectives in the society. Single country study on its own helps to analyze institutional and behavioral phenomena in order to better understand circumstances where human rights violations are likely to occur

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<sup>28</sup> Ibid., p. 19

<sup>29</sup> Ibid., p. 31

<sup>30</sup> George, L. A. & Bennett, A. (2005). *Case Studies and Theory Development in the Social Sciences*, MIT press, p. 220



systematically.<sup>31</sup> Thus, a method of single country study should either confirm theoretical explanation of the social processes or reveal conditions where expected result is not likely to occur.

The choice of a country derives from the features that relate to systematic violations of the Western community norms and poor tendencies of expected behavior in domestic practice. Like other countries in post-Soviet area, the Russian Federation has experienced a painful transition path. The process of incorporation of the international human rights norms into its domestic practice have mainly undergone under the auspices of intergovernmental organizations and transnational advocacy networks. Formally, Russia has passed all the phases of the socialization process described by Risse and Sikkink. It has institutionalized binding human rights documents and accepted the norms in the political discourse. However, the research expects to find whether such a successful formal implementation is an actual precondition for a respective practice. The Russian Federation is not economically and politically weak state to be easily influenced by global interest-groups. That's why, the process of socialization might not take a dichotomus character of compliance with the norms. Russia has a resource in order to either fully socialize, refuse it or act according to its own understandings and significantly influence the process back and even change the behavior of other normatively operating actors.

Freedom of expression has been one of the most confronted human rights norms between Europe and Russia for decades. This particular civil freedom finds its guarantees in the Constitution of the Russian Federation and as well as international treaties incorporated in legal system of Russia. Based on the historical background, the practice of freedom of expression has been periodically improving. It means that domestic courts have started applying to the Convention and the government has been compliant to the decisions of ECtHR. However, systematic violations have never been eliminated. Improvements were periodically replaced by the deterioration over contested cases. As a background of practice and problems of the freedom of

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<sup>31</sup> Coomans F., Grünfeld & Kamminga T. M. (2009). *Methods of Human Rights Research*, Intersentia, p. 38

expression in Russia, empirical data generates between 1998 (adoption of ECHR) and 2011. This period of more than a decade includes a cycle when disagreements over the human rights practices (especially freedom of expression) between Europe and Russia went into a crucial phase. Certain compromise and improvements have been followed by the highly contested cases, such as murder of Politkovskaya, Estemirova, Merkelov and Baburova and incident of “Pussy Riot”. These issues have reactivated international attention, pressure and entrapped duel of norms once again. Analytical analysis is expected to find a correlation in the shaming and persuasion policies of the European actors towards a problematic target-state. Thus, the case of Russia is chosen to broaden the understanding of the idea of human rights promotion and satisfy the interest flown from the research questions.

Besides international human rights norms embedded through Universal Declaration of Human Rights (UDHR) Russian Federation has been bound within European normative framework, on which the research will be mainly focused while analyzing Russia’s international obligations for guaranteeing protection of human rights in its territory. The terms, such as “Europe” and “European” are deriving from the partnership framework between Russia and European intergovernmental organizations of which former is either a full member (CoE and OSCE) or maintains a specific cooperation with (EU).

Unlike traditional legal scholarship, which defines law as universally functional system in political and economic environments, legal and analytical analysis will provide a knowledge that can vary across countries and societies.

From the social scientist point of view, the essence of law might be based on the democratic practice and decisions of courts, but with particular consideration of the society needs, political situation and legal problems that creates confrontation of normative positions and a conflict on how the law should be interpreted.<sup>32</sup>

In such a case of the conflicting opinions, the most efficient object to observe would be an argumentative behavior of actors in certain common normative framework, such as, for instance, Council of Europe or OSCE, where they are bound

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<sup>32</sup> Ibid., p. 50

under multilaterally accepted norms.<sup>33</sup> However, mostly states rely on their own normative framework first of all, such as national legislature. Socializing actors then are expected to take this feature in account and try to incorporate international norms in the domestic practice of the state for the sake of opinion convergence.<sup>34</sup>

An important part for this evidence-based human rights research will include thorough analysis of collected information, which covers broader aspects of court cases, contents of legal documents and obligations. Legal explanation of the phenomena will be supported by philosophical views and justifications in order to strengthen its normative basis and emphasize political and social challenges for legal norms.<sup>35</sup>

In order to conduct such human rights research, data based on the primary and secondary sources will be used. The analysis of organizational reports and resolutions of the observed communities, such as CoE, OSCE and EU and international NGOs, such as Amnesty International and Human Rights Watch will play key role in order to draw principles of the international pressure and frame socialization process. It will demonstrate the level of strength or weaknesses of the norm-givers in promotion of human rights in Russian Federation. Other sources will depict quantitative data collected by the human rights experts and used by the international organizations, governments and civil societies.

All this will be certainly accompanied by the analysis of legal documents such as national legislature (Constitution of the Russian Federation, Federal Laws, etc.), international treaties and declarations (UDHR, ECHR), the case law of ECtHR and domestic court rulings. Additionally, scholar articles in human rights international journals, scientific books and electronic sources on the internet will be used for drawing multi-dimensional picture. As the conclusions of the empirical analysis will mainly derive from and be based on the cases of violation of freedom of expression.

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<sup>33</sup> Ibid., p. 53

<sup>34</sup> Ibid., p. 57

<sup>35</sup> Ibid., p. 91

Quantitative data by the internationally recognized think-tanks and specific organizations will play a significant role as well.

### **1.5. Norm socialization in Europe**

Frank Schimmelfennig suggests narrowing down the “socialization” itself to the norms and rules of a single society that shares common values, forms identities and categorizes its members as different from others.<sup>36</sup> Moving to Europe, Schimmelfennig claims that international organizations such as EU, CoE, OSCE and NATO take all the responsibilities of the socializing agents in the region and socialize target country into the communities based on the Western liberal norms and values through instrumental and strategic behavior, such as rule of law, democracy and human rights. Consequently, a target-state should accept imposed norms and thoroughly institutionalize them.<sup>37</sup> Thus, “international socialization in Europe is formally institutionalized process carried out by international organizations and aimed at expanding core liberal values and norms of the Western international community.”<sup>38</sup> The strategy of reinforcement holds significant place in the study of socialization by Schimmelfennig. The international organizations offer certain collective norms and standards of behavior as well as punish those who violate the conditions. Moreover, they use a beneficial strategy to decrease a level of costs and increase benefits for the whole community. On the other hand, a target state adopts those provisions in a case if the benefits are seen to be stronger than costs.

The organizations differ according to their capabilities and incentives they offer to the target states. The ones, which produce material incentives (economic, military or financial aid) are mainly pursuing a strategy of exclusive socialization (e.g. the EU) and grant a membership to the almost fully socialized states. That is why conditions and requirements of such community are being relatively high. Other international

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<sup>36</sup> Schimmelfennig F.; Engert S. & Knobel H. (2006). *International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change*, Palgrave Macmillan, page 3

<sup>37</sup> Ibid., p. 5

<sup>38</sup> Ibid., p. 6

organizations (e.g. CoE and OSCE) maintain inclusive strategy based on social incentives (positive international image building and promotion of rules) and socialize target states inside the community.<sup>39</sup> According to Schimmelfennig a community wishing to spread its own values and norms to the target state has failed to successfully socialize it in a case if only social incentives and disincentives were chosen as a reward for membership. Thus, such organizations as EU and NATO have been more effective offering materially more beneficial rewards than CoE and OSCE mainly relating to the social influence, which includes international legitimacy and domestic resonance of rules.<sup>40</sup> In the end everything is decided according to cost-benefit calculations, where political conditionality in such countries as Russia or Belarus can promise little towards democratic changes. Western influence and control over the elections, human rights and free media would affect the autocratic power exercise inside such countries. Furthermore, a party constellation matters a lot in the socialization process. Liberal governing parties have usually been more compliant to the requirements of the norm-giving communities rather than anti-liberal parties practicing populist and authoritarian regimes.<sup>41</sup>

Schimmelfennig draws differences between rationalist institutionalist and social constructivist approaches to international socialization and introduces debate between them. On one hand, rational institutionalists claim that socialization happens in a technical environment where norms are equaled to the certain constitutive rules. In the end, the socialization process ends with changes in interest of the target-state and not in identity. On the other hand, constructivist assumption bases on the international community which acts in institutionalized and cultural environment. International organizations inject the norms and values of the international community to the target states. In the end, the process leads not only to the change of the interest, but identity as well.<sup>42</sup> Socialization process works better if a target state cares about its international image. The smoothness of compliance then depends if the

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<sup>39</sup> Ibid., p. 7

<sup>40</sup> Ibid., p. 10

<sup>41</sup> Ibid., p. 11

<sup>42</sup> Ibid., p. 17

adoption of norms and their proper practice grants the state a new status and equals it with other liberal democratic actors. According to Constructivist views “shared ideas, expectations, and beliefs about appropriate behavior are what give the world structure, order, and stability.”<sup>43</sup>

Rationalist perspective emphasizes self-defined preferences, which drive the actors to act on the basis of strategies, such as, for example, rationalist bargaining. The process of bargaining is held between target states and norm-giving agencies, which are based on the self-interested material and power-related preferences.<sup>44</sup> Furthermore, both actors use the socialization process as an instrument which flows along with confrontations for achieving their own goals. Western organizations and other socialization agencies transmit their norms to the target countries in order to strengthen their own security and/or gain political and economic influence. The countries that share same liberal values and ideas are less confronting, because real democracies never fight each other. States accept the rules and directives of a certain community in order to increase their political and economic weight regionally or internationally. Thus, Schimmelfennig argues that those actors are not really interested in democracy and human rights if it does not bring them welfare and political strength.<sup>45</sup> This research wouldn't agree completely with Schimmelfennig's opinion, as far as the states willing to rapidly socialize strive towards ideological change and convergence of identities that derive from the needs of the populations. Also, a target state is not usually eager to accept immediately all the positive community norms, which normally do not entirely fit the country preferences and the confrontation starts which engages a process of socialization itself. If the international community is expecting high material benefits (rationalist) or thorough acceptance of the rules, the political costs are certainly higher.

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<sup>43</sup> Finnemore, M. & Sikkink, K. (1998), International Norm Dynamics and Political Change, International Organization, *International Organization*, Vol. 52, No. 4, The MIT Press, p. 894

<sup>39</sup> Schimmelfennig F.; Engert S. & Knobel H. (2006). International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change, Palgrave Macmillan, page 18

<sup>45</sup> Ibid., p. 19

Another feature of the rationalist strategic assumption is “reinforcement”, which explains a technical side of the socialization process. A norm-giving agent/international organization gives away positive rewards in a case if the norms have been successfully socialized or punishes for their violation. This policy is considered to be efficient if those measures affect self-interest, welfare and preferences of the target state directly. Consequently, states are expected to adopt the norms quickly in order to get more and more positive rewards from the community.<sup>46</sup>

Now, let’s take a look at the constructivist approach to socialization process, which flaws in the international community. Generally, the strength of the socialization process through social interaction inside the community is about the cooperation where member states have to accept collective values and comply with rules. The mechanisms like rhetorical action, legitimation and social influence become crucial and lead such process. Norm-giving actor and a target state engage into rhetorical argumentation. They try to justify and legitimize their arguments based on the community norms and get each other entrapped into the argumentative phase described by Risse and Sikkink. These norms might be used by the target state for bargaining. However, they will also introduce the costs for compliance and violations.

The community imposes a social influence on a norm violating state. Every single norm violation brings a deterioration of state’s international image. A target state, which is building its international reputation, is expected to efficiently comply with clearly defined and widely accepted norms.<sup>47</sup> In order to make community measures effective the norms should be salient in the internal affairs of the state as well as constitutionally legitimate. Only clearly determined and practiced rule that receives significant support and resonance domestically will make a member of

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<sup>46</sup> Ibid., p. 20

<sup>47</sup> Finnemore, M. & Sikkink, K. (1998). International Norm Dynamics and Political Change, International Organization, *International Organization*, Vol. 52, No. 4, The MIT Press, p. 906

community or an outsiders comply with it.<sup>48</sup> Inasmuch as it is harder to deal with non-member states, the community is using its powerful rhetoric and socially influences towards materially weak actor, which benefits from the normative cooperation. However, the process might flaw in opposite way when dealing with a powerful target state, such as Russia. Schimmelfennig suggests that Western communities have certain normative obligations such as promoting democracy and human rights, which are even “conditions” for a close partnership. However, in reality economic and political interests make Western organizations establish and maintain cooperation with norm-violator countries. For example, back in 90’s the European communities have established such relations with Russian Federation concluding bilateral agreements and offering affiliation in economic, political and security issues. The community should justify its measures and always relate to the legitimacy as well as treat the target states equally. However, the policies of those Western communities vary towards different states based on interests.<sup>49</sup> For instance, after the collapse of Soviet Union, the European communities have been socializing geographically and culturally closer located newly established Eastern European states rather than other neighboring post-Soviet countries. In a large sense rational and normative frameworks are closely interlinked. Any serious normative change would involve rational perspective and vice versa, any rational choice also would contain normative reference.<sup>50</sup>

Thus, the European communities in socialization process produce effective social influence over the state and decrease the bargaining and self-interest based cost-benefit calculations. However, it might not work that smoothly with non-member states, which are seeing a bargaining process as a tool to fulfill their own interest and diminish costs for compliance. This can be even stronger in the case of powerful actors, which influence the process on their side and constitute the rules by

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<sup>48</sup> Schimmelfennig F.; Engert, S. & Knobel, H. (2006). *International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change*, Palgrave Macmillan, p. 22

<sup>49</sup> Ibid., p. 24

<sup>50</sup> Finnemore, M. & Sikkink, K. (1998). International Norm Dynamics and Political Change, *International Organization*, Vol. 52, No. 4, The MIT Press, p. 888



themselves. It is crucially important how strong the bargaining power of the community is and how attractive incentives may it offer to the target state. Both sides then may refer to the normative obligations and the community ethos in their rhetoric.<sup>51</sup>

The Council of Europe (CoE) is one of the most effective international organizations that promotes and protects human rights through social influence. A state willing to join the organization is required to ratify European Convention on Human Rights and institutionalize it in domestic legislature. Domestic courts on the other hand, should integrate international human rights norms into national jurisprudence and use in practice. It gives to the CoE a superior jurisdiction to monitor human rights in its scope of influence. It becomes more effective to refer to the formal compliance of the member state in rhetorical dialogue or confrontation. In addition, the ECHR provides rights for citizens of member states to bring complaints to the ECtHR, which has a jurisdiction itself to deliver binding decisions.<sup>52</sup>

Thus, certain conditions make a target state either accept the criticism of international community, another state or transnational advocacy network and change identities, interests, behavior or just refuse it. However, in the case of Russia the target state may also fundamentally influence the process on its side as well as affect the norm-giving actor itself. So, the target country may actively lead the normative interaction with international actors that certainly will involve the outcome as well. Constructivists measure the effectiveness of democracy promotion if the international treaties are ratified domestically, formal representatives of the target state admit the norm in their discourse, and if the norm practically is implemented and institutionalized.<sup>53</sup> The research will try to demonstrate whether this measurement is

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<sup>51</sup> Schimmelfennig, F.; Engert, S. & Knobel, H. (2006). *International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change*, Palgrave Macmillan, p. 25-26

<sup>52</sup> Moravcsik, A. (1995). Explaining International Human Rights Regimes: Liberal Theory and Western Europe, *European Journal of International Relations*, SAGE, London, Thousand Oaks, p. 172.

<sup>53</sup> Saari, S. (2010). *Promoting Democracy and Human Rights in Russia*, Taylor & Francis Group, p. 8

enough valid to state that the democratic human rights norms are being promoted successfully in the target-state.

### **1.6. Russian Federation in socialization process**

After the collapse of Soviet Union, a line of democratic improvements had been marked in Moscow. The creation of Constitutional Court was followed by the adoption of the Constitution of the Russian Federation in 1993, which includes the jurisprudence of the Constitutional Court and statutory acts.<sup>54</sup> Freedom of thought and speech are guaranteed by Article 29 of the Constitution as part of the section “rights and liberties of man and citizen”. Additionally, the document provides a placement of the international law in domestic practice. Russia joined Council of Europe in 1996 and ratified European Convention on Human Rights in 1998. The Article 15 of the Constitution of RF says: “The commonly recognized principles and norms of the international law and the international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply”.<sup>55</sup> Thus, the Convention became a binding human rights formal document in the jurisprudence of Russia. Opinion No. 193 of PACE on Russia’s request for membership shows that the organization was aware back in 1996 about the difficulties that Russia’s accession could bring. The country and its government were totally inexperienced in the protection of human rights and population not appropriately educated. Consequently, systematic violations were expected to take place and not be fixed promptly.<sup>56</sup> However, it was more effective to

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<sup>54</sup> Burkov, A. (2012). The Constitutional System and the Position of International Agreements in General and the European Convention on Human Rights and Fundamental Freedoms (ECHR) in Particular in the National Legal Order: Russia, The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe, Hammer. L.; Emmert, F. (Edit.). *The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe*. Eleven International Publishing: p. 429

<sup>55</sup> Article 15, the Constitution of the Russian Federation. Retrieved from April 13 2013 <http://www.constitution.ru/en/10003000-02.htm>

<sup>56</sup> Opinion No. 193 (1996) on Russia’s request for membership of the Council of Europe, Parliamentary Assembly of the Council of Europe, Retrieved from April 13 2013

include this geographically and politically important target state in the community as soon as possible and socialize it from inside than bargain on conditions before the successful practice of all human rights would be achieved. Russian Federation provided protection of freedom of speech formally in the Constitution and accepted jurisdiction of ECHR, but it is important if these measures were a matter of an instrumental adaptation or a true improvement leading to rule of law and democracy. It depends how much certain norms became salient domestically and gained “taken for granted” status after the implementation. Since presidential power began to strengthen in 2000, freedom of expression has become one of the most violated liberties in Russia. According to the Committee to Protect Journalists, seventeen journalists were assassinated by 2006 since Putin’s government came to the power.<sup>57</sup> In the 2005 report concerning the freedom in the world, Freedom House defined Russia as the only country moving backwards from Partly Free to Not Free status.<sup>58</sup> Russia ratified the Convention successfully, institutionalized it and citizens received a right to bring complains to the ECtHR. However, the question is how clearly the idea of freedom of expression was promoted domestically and used in practice. The international attention and pressure has been fluctuating since the adoption of the Convention in 1998. It has especially increased due to considerable deterioration of the situation in media and cases against Russia on violation of freedom of expression overwhelming ECtHR. However, Russian Federation is not a materially weak country to be easily influenced by powerful rhetoric of any of the communities or transnational advocacy networks. Following up the international socialization process in Russia through analysis of the legal commitments and political pressure of the European intergovernmental organizations and advocacy networks, the research will try to find if these elements are effectively influencing the behavior of target-state. According to the theory, shaming and criticism policies should make a target country change its behavior, interests and even identities. Institutionalization and

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Committee to Protect Journalists. (2006, November 1). *Russia: thirteen murders, no justice*. Retrieved from <http://cpj.org/reports/2006/11/russia-murders.php>

<sup>58</sup> Freedom House, “Freedom in the World 2005”, 2005, Retrieved from <http://www.freedomhouse.org/report/freedom-world/freedom-world-2005>

habitualization phases of the socialization process are supposed to bring change in domestic practices of the state in the end. However, discursive behavior and dialogue mode has shown that rhetorical justification of the truth over violations in specific field of human rights leads to the misunderstanding and ideological confrontations that might suspend the whole process.

The Russian Federation has successfully ratified the Convention and accepted the norm of freedom of expression in its formal discourse accordingly. The norm has been implemented in the domestic legal system long ago and applied in the practice. That's why the research is not focusing on initial phases of the socialization of freedom of expression as a new value, but emphasizes the matters of its practice as already recognized and accepted phenomena. Legal application and rhetorical argumentations caused by the international pressure are expected to reveal a progress, stagnation or decline towards prescribing the norm "taken for granted" status.

The research is focused on the types of policies (argumentative, persuasive, compliance) and actual mechanisms of the international actors and target state used to impose one's own discourse on specific cases.

## **2. EUROPEAN HUMAN RIGHTS SYSTEM AND RUSSIAN FEDERATION: LEGAL MEANS**

The essence of human rights norm injection process in the norm-violating country is principally based on the interaction between Western norm-givers and a norm-taker target-state. Large portion of this collaboration depends on the political will of international organizations dominated by the interests of Western governments and is led by the legally binding agreements or duties of membership. International intergovernmental organizations are primary actors in the socialization process and transnational advocacy networks play backing role, especially when dealing with powerful target state. Certainly, a norm-taking government accepting liberal democratic norms sees the intergovernmental organizations as a less biased platform for pursuing its own national interests that requires acceptance of certain normative or

legal jurisdiction of the particular community. The reaction of such intergovernmental organizations and non-governmental watchdogs on the behavior of national governments may directly influence the practice of democracy, human rights and rule of law. The integration into European legal, political, economic and security environment is basically led by the Council of Europe, OSCE and European Union. All three international communities have been playing a key role in the European socialization process since their creation until now. Their normative, political and economic strength allowed them to produce tangible and intangible incentives through persuasion and social reinforcement strategies. On one hand, OSCE and Council of Europe try to involve target states into the educative activities and guide them along the path of liberal democratic norm acceptance. They direct special missions to the target-states as well as promote the universality of the ECtHR case law. Monitoring mechanisms then operate to supervise the compliance of the governments and punish in a case of violations. On the other hand, unlike OSCE and CoE, which mainly aim to widely promote norms and change the behavior of a target-state, EU holds strong exclusive strategies and offers most attractive material benefits. Its expansion then leads to the straight substantive outcomes.<sup>59</sup> However, it frequently relies on the legal standards and data of the OSCE and CoE as more codified organizations for the promotion of democracy and human rights. The primary actors to cooperate with inside target states mainly tend to be governments and their behavior determines how flexible Western policies are in strengthening normative influence from inside and outside.

Russian Federation is a partner state where Europe seeks vital natural resources and tries to balance possible military danger coming from Moscow. Development of democratic values in Western understanding demonstrates then a significant tool in order to reduce normative gap and speak one language of cooperation. Attempts for European legitimacy claims and international image

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<sup>59</sup> Schimmelfennig, F.; Engert, S. & Knobel, H. (2006). *International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change*, Palgrave Macmillan, p. 42

building, as well as international pressure have initially entrapped Russia in the adoption of European legal system under Council of Europe (CoE). Later developments of sovereign democratic values and increasing confrontation slowed the process of expected full compliance. However, the authenticity of the European Convention on Human Rights and legal supervision through the European Court of Human Rights has never been suspended. The effectiveness of promotion of human rights through political and social reinforcement strategies in Russia tended to be weak and have led to endless rhetorical confrontation. This is why this research argues that legal and political pressure of the Council of Europe demonstrates operational tool in dealing with a state, which doesn't strive for full European integration led by Brussels, possesses strong economic and military power and affects the socialization process on its own.

### **2.1. Europe's legal strength: Council of Europe**

The Council of Europe (CoE) is a legally binding intergovernmental organization with primary human rights mandate. It integrates states on the basis of acceptance of fundamental human rights norms and monitors compliance. Unlike OSCE, CoE has limited geographic and cultural scope covering only European region and its peoples. The European Convention on Human Rights (ECHR) under the CoE serves as a core binding human rights document in whole Europe.

The adoption and institutionalization of the Convention and related protocols is essential requirement for the membership to the community. However, particular political matters may fasten the process of inclusion without country's full compliance to all norms and continue the process of socialization inside the Organization as it happened with the Russian Federation. Every member state is expected to incorporate the Convention in national law and domestic practice and make necessary changes towards harmonization if needed.<sup>60</sup> Monitoring Committee of the Parliamentary Assembly and the Committee of Ministers then supervise

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<sup>60</sup> Jordan, A. P. (2003). Russia's Accession to the Council of Europe and Compliance with European Human Rights Norms, *Demokratizatsiya*, Vol. 11, No. 2, p. 283

compliance and demonstrate their advisory potential through country visits, special rapporteurs and specific observations. In addition, Secretary General and special Commissioner for human rights attract international attention to the violations, make comments on violations and build up global political pressure. This kind of social influence through shaming and persuasion is advanced by the suspension tool in a case of human rights violations and non-compliance with community norms. In addition, the Council of Europe keeps legal strength through functional mechanism of European Court of Human Rights (ECtHR). All member states are obliged to incorporate ECtHR case law and judgments, as well as provide citizens the right to issue individual complaints there. Its decisions are binding and the member state is strictly obliged to obey.<sup>61</sup>

Russian Federation was admitted in the Council of Europe in 1996 and ratified ECHR in 1998. Since then, the Court has been playing crucial role in promoting human rights norms and supervising rule compliance in Russia. Besides legal instruments, CoE has been politically influencing Moscow to ratify all protocols and reform its legal system. First serious concerns about the human rights abuses in Chechnya and limitation of Russian independent media created doubts regarding the effectiveness of the CoE enforcement mechanisms in Russia.<sup>62</sup> However, ECHR still demonstrates an unprecedented legal and normative strength of the Council of Europe in socialization process of target states.

The admission process of Russian Federation into the CoE was initially a politically beneficial strategic step. The harmonization of its standards and necessary reforms were moved to the agenda of inclusive cooperation. Even though Moscow accepted almost all protocols and revealed readiness for reorganization, the Assembly monitoring report in 2002 noted vast violations of human rights including freedom of

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<sup>61</sup> Schonfeld, D. (2012). Tilting at Windmills? The European Response to Violations of Media Freedom in Russia, *Review of Central and East European Law*, Martinus Nijhoff Publishers, p. 265

<sup>62</sup> Jackson, D. W. (2004). "Russia and the Council of Europe: The Perils of Premature Admission", *Problems of Post-Communism*, vol. 51, no 5, p. 24

expression in the media and harassment of journalists.<sup>63</sup> CoE's measures to rapidly socialize Russia through reformation of its legal system and injection of European human rights norms into its domestic practice proved to be challenging. However, initiation of such substantial European supervision and introduction of functional mechanisms, such as ECtHR, strengthened involvement of Russian domestic NGO's and increased internal supervision too.<sup>64</sup>

The CoE has been conducting much more principled policies towards Russia than OSCE and EU, which mostly rely on the weak political pressure and diplomacy. Charter of the CoE enables the member states of the organization deprive the voting rights of the norm-violating country and cut financial support for its assistance programs.<sup>65</sup> In 2000 Russian Federation temporarily lost voting rights because of the human rights violation issues in Chechnya. Russian citizens have started appealing ECtHR since it became legitimate in the country's legal system. Even if the state authorities comply with European Court and respect its decisions, the practice tends to be poor. For instance, the violations of freedom of expression in media have been opposed by the accusation in defamation against government authorities in the critical newspaper articles, which will be analyzed later. The integration of the ECtHR case law with its priority over domestic unilateral interpretations of liberal democratic norms is one of the crucial points toward successful institutionalization and future habitualization.

## **2.2. Russian Federation in Council of Europe**

The Russian Federation has a promising beginner's story towards successful European integration, which has transformed to the extreme contradiction gradually. Council of Europe accepted Russia in 1996 after the disagreements over Chechen war issues and started socializing it from inside rather than isolating Moscow as an

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<sup>63</sup> Resolution 1277 (2002), Honouring of obligations and commitments by the Russian Federation, Parliamentary Assembly. Retrieved April 13 2013

<sup>64</sup> Jackson, D. W. (2004). Russia and the Council of Europe: The Perils of Premature Admission", *Problems of Post-Communism*, vol. 51, no 5, p. 32

<sup>65</sup> Saari, S. (2010). *Promoting Democracy and Human Rights in Russia*, Taylor & Francis Group, p. 22



outsider. PACE opinion 1996 for the accession of Russia included multiple criteria obliging Moscow to reform its legal system and harmonize with European standards as well as restructure certain political rhetoric (e.g. denial of the concept of “near abroad”). Russia adopted European Convention on Human Rights in two years and received minor positive feedback about lawmaking process in PACE report of the same year. However, the criticism of human rights violations and overall process has been evaluated negatively. Even though changes have been taking place slowly and domestic actors haven’t managed to strengthen quickly, accession to CoE and acceptance of its legitimacy took European-Russian normative cooperation to a new level.<sup>66</sup> Already by 2002 the first Russian complaints on freedom of expression were declared admissible in the ECtHR. However, the lack of acquaintance with European legal system by Russian lawyers and individuals caused many inquiries to be denied by the Court.<sup>67</sup> Before the decisions of court cases started influencing the norm compliance process in Russia, two Chechen wars already led to the argumentative confrontation. The monitoring missions were followed by the suspension of voting rights for Russia in Parliamentary Assembly in 2000. However, a threat of Russia’s withdrawal made CoE reduce the tension and restore the voting rights after a year in exchange to the promises about the improvement of human rights records and European supervision in the conflict region.<sup>68</sup> This is a pure example of the powerful capacity of Moscow to influence the socialization process on its own and lead the interaction.

### **2.3. International law in Russian legal system**

Political and legal affiliation with European intergovernmental organizations, which socialize a target-state either inclusively or exclusively, require analysis of domestic legal system of the particular transforming country and placement of

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<sup>66</sup> Jordan, A.P. (2003). Does Membership Have Its Privileges?: Entrance into the Council of Europe and Compliance with Human Rights Norms, *Human Rights Quarterly*, Vol. 25, No. 3, p. 680

<sup>67</sup> Ibid. p. 681

<sup>68</sup> Ibid. p 684

international law in it. One of the main requirements before establishing cooperation with European actors is a democratic structure of the state, practices of government and judicial system. Respectively, “*Russia is a democratic federal law-based State with a republican form of government.*”<sup>69</sup> This law-based state or modern “pravovoe gosudarstvo” is supposed explain the main heart of Russian constitutionalism, where human rights are guaranteed as well. In Russian Federation, the law or “zakon” derives from the norms applicable to its population and is theoretically regulating the order reflecting justice and superiority of the law as in all democratic societies.<sup>70</sup> However, it’s questionable how effectively is this approach understood and applied in modern Russia, where liberal democratic norms still confront and international law is poorly applied in practice.

In conformity with Universal Declaration of Human Rights (1948) and the International Covenant on Human Rights of (1966) the Constitution of Russian Federation guarantees civil liberties and political, social, economic and cultural rights for its citizens.<sup>71</sup> At the same time it is a core source of legislation prevailing over the law and regulating whole legal system. It means that no law, international treaty or a legal act can be approved if it comes in conflict with the Constitution. It also defines the essence of the federal rule with separation of powers between: the President, which is a strong executive authority in the state; government led by the Prime-Minister, which is appointed by the President; legislative branch consisting of bicameral Federal Assembly; and judiciary that includes all courts.

In order to make a sound legal analysis of internalization of particular field of international law and human rights norms in domestic practice of the Russian Federation, it is important to know how the system of courts is divided there. The stages of judicial instances in Russia develop at local district courts, which solve most criminal and civil cases and function as a source for appeal. Next higher instance is

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<sup>69</sup> Article 1, the Constitution of the Russian Federation. Retrieved from April 13 2013

<sup>70</sup> Skrylnikow, I. (2011, June 30). *Pravovoe gosudarstvo: the rule of law in Russia*. Retrieved from <http://wikis.fu-berlin.de/display/SBprojectrol/Russia>

<sup>71</sup> Library of Congress. (2012, August 08). *Introduction to Russia's legal system*. Retrieved from <http://www.loc.gov/law/help/russia.php>

formed by the Federal Courts and followed by the Supreme Court. Another high judicial authority Constitutional Court of the Russian Federation mostly interprets the Constitution and keeps tracking the conformity of all sources of law including: federal constitutional laws, federal laws, decrees, judicial decisions and international treaties. The Constitutional Court often refers to the international law and decisions of the ECtHR while solving number of international and domestic issues.<sup>72</sup> The research is accordingly focused on the federal laws and international treaties, where former characterizes the second most important collection of judicial acts (after the federal constitutional laws) and later induces international norms and dominates over domestic law in the case of conflict.

#### 2.4. ECHR and case law of ECtHR

International law and human rights norms are legitimate part of the legal system of Russian Federation, which bases on the **Constitution** of RF (1993), jurisprudence of Constitutional Court and Regulations of Supreme Court.<sup>73</sup> The rights and freedoms of the humans on the territory of Russia are protected under the Article 2 of the Constitution: “Man, his rights and freedoms shall be the supreme value. It shall be a duty of the state to recognize, respect and protect the rights and liberties of man and citizen.”<sup>74</sup> However, we are particularly interested in guarantees of the international law provided in the Russian legal system. Article 15 (4) of the Constitution implicates on the significance and authority of the international law in the legal system: “The commonly recognized principles and norms of the international law and the international treaties of the Russian Federation shall be a

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<sup>72</sup> Marochkin, Yu. S. (2007). International Law in the Courts of Russian Federation, *Chinese Journal of International Law*, Oxford University Press, p. 332

<sup>73</sup> Burkov, A. (2012). The Constitutional System and the Position of International Agreements in General and the European Convention on Human Rights and Fundamental Freedoms (ECHR) in Particular in the National Legal Order: Russia, The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe, Hammer. L.; Emmert, F. (Edit.). *The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe*. Eleven International Publishing, p. 429

<sup>74</sup> Article 2, the Constitution of the Russian Federation. Retrieved April 14 2013  
<http://www.constitution.ru/en/10003000-02.htm>

component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply.”<sup>75</sup>

In addition to the Constitution, Federal Law on International Treaties (Federal Law further) adopted in 1995 provides detailed explanation of the general provisions, placement of the treaty in the legal system of Russian Federation, matters of its completion, registration, accomplishment and termination. This law initially says that all international agreements are concluded, approved or dismissed by Russia in accordance with the norms and principles of international law and are consisting part of the Constitution of Russian Federation.<sup>76</sup> According to the Article 5(2) of the Federal Law, the rules stipulated by the international agreement of the Russian Federation prevail in a case if they differ from the rules stipulated by the law. These different rules then are endorsed through respective legal acts. The Article 22 of the Federal Law says that if the international treaty includes rules which require particular provisions of the Constitution to be changed, a decision on approval of such requirement will be issued through federal laws after certain amendments to the Constitution are carried out or provisions revised. All international agreements of the Russian Federation enter into force based on the dates agreed between the sides and in accordance with the Federal Law on International Treaties that once again underlines the importance of this particular law.<sup>77</sup>

The basis for the formal encouragement of international treaties in the legal system of Russian Federation is fairly strong though. However, it's hard to say the same about appropriate internalization of all international norms, because they are simply not always relevant. Judiciary system definitely demonstrates one of the best sources for observing applicability of international treaties.

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<sup>75</sup> Article 15, § 2, the Constitution of the Russian Federation, Retrieved April 14 2013  
<http://www.constitution.ru/en/10003000-02.htm>

<sup>76</sup> Федеральный закон о международных договорах Российской Федерации (1995, Июнь 16), <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=139785>

<sup>77</sup> Ibid.

Article 2 of the Federal Law on International Treaties defines the “the international treaty of the Russian Federation” as an agreement concluded between Russia and another country or an organization in a written form and in accordance with international law. In a case of its conflict with Federal Law, another appropriate Federal Law should be passed order to grant the treaty a prevailing status. Otherwise, the treaty will outweigh only secondary sources of law in certain cases. Legislation holds crucial place in the court performances together with the interpretation of the laws by Supreme Court and Constitutional Court.<sup>78</sup> The court decisions have a distinguished social effect, but they are not taken as precedents in other court hearings, because these decisions are simply not the sources of law.

The International Covenant on Civil and Political Rights has obviously influenced the composition of the Chapter II of Section I of the Constitution about “Rights and Liberties of Man and Citizen” which covers a deep and detailed grasp of human rights. Under this chapter, Article 17 states that “the basic rights and liberties in conformity with the commonly recognized principles and norms of the international law shall be recognized and guaranteed in the Russian Federation and under this Constitution”.<sup>79</sup> In addition, Article 46 (3) of the Constitution allows citizens to seek their justice internationally after all domestic legal instruments have been used: “in conformity with the international treaties of the Russian Federation, everyone shall have the right to turn to interstate organs concerned with the protection of human rights and liberties when all the means of legal protection available within the state have been exhausted”.<sup>80</sup>

The European Convention on Human Rights directly falls under the idea of internationally recognized human rights principles and norms and serves as the core document for ECtHR. Consequently, the Convention, which was adopted by Russia

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<sup>78</sup> Marochkin, Yu. S. (2007). International Law in the Courts of Russian Federation, *Chinese Journal of International Law*, Oxford University Press, p. 330

<sup>79</sup> Article 17, the Constitution of the Russian Federation, Retrieved from April 14 2013 <http://www.constitution.ru/en/10003000-02.htm>

<sup>80</sup> Article 46, § 3, the Constitution of the Russian Federation, Retrieved April 14 2013 <http://www.constitution.ru/en/10003000-02.htm>

in 1998, can be utilized around any human rights related article of the Constitution of RF as well. According to the federal law from 30 March 1998 on ratification of the ECHR and related protocols, the Russian Federation, according to Article 46 of the Convention, accepts jurisdiction of the ECtHR *ipso facto*, without any additional agreements.<sup>81</sup> Thus, the Constitutional Court of the RF has simultaneously accepted the jurisdiction of the ECtHR regarding interpretation and application of the Convention and tried to institutionalize it in the country's legal system. However, until now, there is no legal act that would regulate the obligations taken by the state to implement the judgments of the ECtHR.<sup>82</sup> Thus, Russian legal system lacks the form and order for the execution of decisions of the European Court as such. For fifteen years now, the process of full institutionalization and habitualization of the Convention with appropriate legal practice has been marked as poor also because of judges and lawyers who rarely applied to it.<sup>83</sup>

The Ruling of the Plenum of the Supreme Court of the Russian Federation from 10 October 2003 played relatively significant role in increasing references to the ECtHR case law. This is the first regulation of the Supreme Court of the Russian Federation that has been completely dedicated to the application of the international law. It has urged domestic courts to take the interpretation of human rights by the ECtHR into consideration in practices of, for instance, “calculation of terms on criminal cases, about the right to justice, about the arrest of the accused and its terms”.<sup>84</sup> The regulation has once again supported rights and liberties mentioned in the Constitution as well as pointed on jurisdiction of the ECtHR and importance of

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<sup>81</sup> GARANT. (2013). *The customs of tariffs of the Russian Federation and the commodity classification applicable in the conduct of foreign economic activity*. Retrieved from <http://english.garant.ru/>

<sup>82</sup> Рапси. (2013, Март 23). Минюсту РФ поручено разработать регламент выполнения постановлений ЕСПЧ, <http://rapsinews.ru/news/20130323/266805124.html#ixzz2OLoDkAi9>

<sup>83</sup> Burkov, A. (2012). The Constitutional System and the Position of International Agreements in General and the European Convention on Human Rights and Fundamental Freedoms (ECHR) in Particular in the National Legal Order: Russia, The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe, Hammer. L.; Emmert, F. (Edit.). *The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe*. Eleven International Publishing: p. 436

<sup>84</sup> Marochkin, Yu. S. (2007). International Law in the Courts of Russian Federation, *Chinese Journal of International Law*, Oxford University Press, p. 341

the Convention in Russian legal system.<sup>85</sup> It certainly led to boost of awareness about ECtHR case law and its practices between 2004 and 2007. This is exactly the period when most of the cases related to the defamation and freedom of expression in Russian media have been reviewed in the ECtHR. Here Russian District and Supreme courts have been particularly failing to use ECtHR case law in order to differentiate concept of free speech and abuses of reputation based on already existing experience of the Strasbourg Court.<sup>86</sup> The regulation has explained the conditions for the application of international treaties in certain cases as well as defined order for placement of international and domestic law in Russia's legal system.<sup>87</sup> It has reaffirmed that international law holds superiority in a case of its conflict with the national law of the Russian federation. However, the regulation hasn't included any reference to the case law of the ECtHR, which has been particularly confronted between Europe and Russia in the court cases on defamation and freedom of expression.

## 2.5. Freedom of expression and ECHR

Despite the legal foundations, in order to find whether violation has truly taken place, Russian courts hardly rely on the international treaties such as ECHR, which contains Article 10 on freedom of expression and might be able to help to prove opposite to defamation. In addition, ECtHR case law on the same issue has usually been neglected, even though its practice should be commonly accepted by all members of CoE.<sup>88</sup>

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<sup>85</sup> Russian Federation. (2003, October 10). *Resolution adopted by the plenum of the supreme court of the Russian Federation*. Retrieved from <http://www.supcourt.ru/catalog.php?c1=English&c2=Documents&c3=&id=6801>

<sup>86</sup> Burkov, A. (2012). The Constitutional System and the Position of International Agreements in General and the European Convention on Human Rights and Fundamental Freedoms (ECHR) in Particular in the National Legal Order: Russia, The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe, Hammer. L.; Emmert, F. (Edit.). *The European Convention on Human Rights and Fundamental Freedoms in Central and Eastern Europe*. Eleven International Publishing: p. 473

<sup>87</sup> Marochkin, Yu. S. (2007). International Law in the Courts of Russian Federation, *Chinese Journal of International Law*, Oxford University Press, p. 335

<sup>88</sup> Быков В.В. (2006). Механизм действия статьи 10 Конвенции в процессах о защите

Article 10 (1) of the ECHR says: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”<sup>89</sup> The freedom to hold opinion is a primary component of the democratic societies and the interference should be legally well-justified and treated carefully. Any thought is a source for the expression and its limitation brings repression of the ideas and a very basic human freedoms.<sup>90</sup>

The ECtHR has developed guarantees for the protection of freedom of expression in specific fields like press through individual cases. The case of *Lingens v. Austria* in 1986 is a bright example of the Court’s political rhetoric. The journalist criticized Federal Chancellor’s political moves and assessed his actions as undignified and immoral. Soon after that, the journalist was found guilty in defamation by Austrian courts. However, ECtHR concluded the violation of freedom of expression and emphasized “the importance of freedom of the press in the political debate”, which is a significant element of a democratic society.<sup>91</sup> Additionally, Article 10 of the ECHR may protect freedom of expression not only in newspapers, radio, television and films, but also in paintings, music and dances.<sup>92</sup> However, such nonverbal expression is considered to be violated if the author’s work has displayed clear intentional viewpoint and authorities have restrained his/her creation on the basis of this message.<sup>93</sup>

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репутации в российских судах, *Применение Европейской конвенции в судах России*, интернет-сайт “Изучаем Европейскую Конвенцию”, стр. 98

<sup>89</sup> Article 10, § 1, Freedom of Expression, European Convention on Human Rights

[http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf)

<sup>90</sup> Trager R. & Dickerson L. Donna (1999). *Freedom of Expression in the 21<sup>st</sup> century*, Thousand Oaks (Calif.), Pine Forge Press, p. 14

<sup>91</sup> *Lingens v. Austria* (1986), ECtHR judgment.

<sup>92</sup> Macovei M. (2004). Freedom of Expression: A Guide to the implementation of Article 10 of the European Convention on Human Rights, *Human rights handbooks*, No. 2, p 11-12

<sup>93</sup> Trager R. & Dickerson L. Donna (1999). *Freedom of Expression in the 21<sup>st</sup> century*, Thousand Oaks (Calif.), Pine Forge Press, p. 32



Human beings simply need to express their feelings, concerns and share their thoughts with others in order to develop as individuals.<sup>94</sup> Freedom of expression encourages construction of original ideas and plays important role in building of functional relations between government and its people, however, the protection methods often differ even between European democratic countries which utilize similar legal systems.<sup>95</sup> In the democratic societies, concept of freedom of expression protects free actions of individuals, but the interference/limitation is acceptable when prevention of larger damage for the society is required.<sup>96</sup>

Second part of the Article 10 of ECHR demonstrates particular restrictions on the freedom of expression in all means: “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”<sup>97</sup> Nevertheless, the interference should be justified in the specific occasion and not be exercised after every single public criticism of the judiciary and authorities that would put overall idea of free society in danger.<sup>98</sup>

The implementation of the ECHR and the respective article on freedom of expression in the Russian legal system has been problematic for years since its adoption in 1998. The ignorance in the domestic court hearings has been caused by the lack of awareness of judges and conflicting sides in the number of cases. In addition to this, ECtHR case law has been neglected by the judiciary, even though both Convention and case law have become integral component of the Russian legal

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<sup>94</sup> Ibid., p. 6

<sup>95</sup> Ibid., p. 13

<sup>96</sup> Ibid., p. 18

<sup>97</sup> Article 10, § 2, Freedom of Expression, European Convention on Human Rights [http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf)

<sup>98</sup> Macovei, M. (2004). Freedom of Expression: A Guide to the implementation of Article 10 of the European Convention on Human Rights, *Human rights handbooks*, No. 2, p. 21

system since the adoption.<sup>99</sup> Second relevant regulation of the Supreme Court increasing weight of the international law has been issued in 2005. It once again confirmed that the Constitution guarantees citizens the right to defend their reputation according to the Article 23 and provides freedom of opinion, speech and access to information based on the Article 29. In addition, the regulation stated that while dealing with the defamation cases ECHR and the case law of the ECtHR should be certainly taken into consideration together with Russian legislature.<sup>100</sup> However, the Convention and the case law of ECtHR are not the primary sources to be considered in the domestic court cases. They function as watchdog over unfair limitations and nonconformity with international law.<sup>101</sup> The Convention states that the limitation of freedom of expression is admissible in the name of “the protection of the reputation or rights of others” if the restriction is lawfully justified and needed in the democratic society. Consequently, domestic courts should appeal to it while issuing possible penalties against the defamatory actions. Defendant then can prove to the ECtHR that application of Article 152 of Civil Code regarding defamation has suppressed his/her freedom of speech that has not been necessary for the democratic society.<sup>102</sup> The Court in its decision may contain political rhetoric on violation of freedom of expression and condemn the exaggerated penalties used against the defendant.

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<sup>99</sup> Быков В.В. (2006). Механизм действия статьи 10 Конвенции в процессах о защите репутации в российских судах, *Применение Европейской конвенции в судах России*, интернет-сайт “Изучаем Европейскую Конвенцию”, р. 99

<sup>100</sup> Постановление Пленума Верховного Суда Российской Федерации (24 Фев 2005), О судебной практике по делам о защите чести и достоинства граждан, а также деловой граждан и юридических лиц. Retrieved from April 13 2013  
<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=52017>

<sup>101</sup> Быков В.В. (2006). Механизм действия статьи 10 Конвенции в процессах о защите репутации в российских судах, *Применение Европейской конвенции в судах России*, интернет-сайт “Изучаем Европейскую Конвенцию”, р. 103

<sup>102</sup> Ibid, р. 105

### 3. Court cases

The ECtHR and its case law are central legal instruments for the promotion of proper practice of human rights in Europe. In general, the Court concludes decisions out of the litigation conflict between the person or group of people and a state. However, as it has been mentioned before, even if those decisions are binding for all parties, the jurisdiction of Strasbourg Court doesn't eliminate primary importance of the national courts. Regarding the freedom of expression, it relies on the principles and standards stated in the ECHR. The decisions are based on the earlier cases deriving from the Article 10 of the Convention on freedom of expression, which is applicable to all members of the Council of Europe. For instance, through the case of *Handsyde v. United Kingdom* from 1976, the Court made statements, which have been applied to every single acquittal later. It strongly supported the importance of the freedom of expression in democratic societies and noted that even shocking and disturbing for state and people ideas should be tolerated by the authorities.<sup>103</sup> Moreover, in those decisions precedent judgments are accompanied by the individual explanations in each case that makes the practice more precise and accurate. Thus, especially the expression with political motives is protected in the rhetoric of the Court and restrictions rarely admitted. The evaluation of Russian complaints on violation of freedom of expression examined in the ECtHR is expected to demonstrate European legal language and understanding of how the international human rights norms and standards should be applied in practice as a whole.

#### 3.1. Grinberg v. Russia

The very first case on freedom of expression has been reviewed and decision concluded in ECtHR on the case of *Grinberg v. Russia*. In 2002 Russian journalist Isaak Grinberg published a critical article about a newly elected governor of Ulyanovsk Region General Shamanov in newspaper accusing him in suppressing

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<sup>103</sup> Oetheimer, M. (2009). Protecting freedom of expression: the challenge of hate speech in the European Court of Human Rights case law, *Cordozo Journal of International and Comparative Law*, Vol. 17, p. 427

freedom of media and rights of journalists. Particularly, the letter included legal and moral concerns regarding the criminal sentence of the journalist of “Sibirskie Izvestia” Yulia Shelamydova. Also, Grinberg blamed the governor in backing the military officials responsible for the murder of a young girl and stated that the governor had “no shame and no scruples”.

The journalist was sued and accused in breaking Article 152 of Civil Code of the Russian Federation on “Protection of the Honor, Dignity and Business Reputation.” Based on this article, Leninskiy District Court of Ulyanovsk Region found Grinberg guilty stating that he insulted the plaintiff by saying the he got “no shame and no scruples”, which, according to court, definitely held a defamatory character and wasn’t backed by any sound argument. Moreover, the Resolution no. 11 of Plenary Supreme Court of the Russian Federation of 18 August 1992 says that the statements might be considered as defamatory or harmful if the text contains false information. Also, Article 152 (1) of the Civil Code states that “the citizen shall have the right to claim through the court that the information, discrediting his honor, dignity or business reputation be refuted, unless the person who has spread such information proves its correspondence to reality.”<sup>104</sup> Consequently, the defendant, Grinberg, had to prove that his statements in the letter were indicating on true evidence and the criticism was accurate. However, the journalist has lost the trial and had to pay to governor a compensation for non-pecuniary damage. His appeal demanding the court to distinguish “opinion” from a “statement” turned into the failure as well. The court finally concluded that as soon as the opinion had been printed in the public source of information such as newspaper, it transformed into the statement and violated dignity and professional reputation of the governor. In a year, Grinberg lodged an appeal to the ECtHR and blamed Ulyanovsk regional court in inability to guarantee his freedom of speech allocated by the Article 29 of the Constitution of RF and apply Article 10 of the ECHR on freedom of expression.

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<sup>104</sup> Article 152, § 1, Protection of the Honour, Dignity and Business Reputation, Civil Code of the Russian Federation, <http://www.russian-civil-code.com/PartI/SectionI/Subsection3/Chapter8.html>

In 2005, the ECtHR on its own concluded the opposite to the national court, stating that domestic court should have distinguished “statements of fact and value of judgments”. The latter describes freedom of opinion and it’s impossible to prove truth of value judgment. Consequently, its suppression automatically means violation of the Article 10 of the ECHR. Second paragraph of the respective article, which explains limitations of freedom of expression and allocates the governments right to interfere, is unfriendly with the restrictions on political speech and open debates that may weaken public interest. European Court also stated that citizens of the democratic society are granted a right to receive not only officially accepted information, but also critical viewpoints, which increase political discussions among the population. The contested statements from the article had described concerns in the public that could emerge healthy political debates essential for the development of democratic society. That is why politicians and authorities are expected to be very patient and tolerant towards openness of the people.<sup>105</sup> Overall, the ECtHR concluded that Russia has “overstepped the margin of appreciation”, which means that the interference was not “necessary in a democratic society” and the freedom of expression was violated.<sup>106</sup> Now, essentially Grinberg has been judged according to the Article 152 of Civil Code of Russian Federation that contains administrative punishment for the defamatory actions. Even if the Convention was taken into consideration while hearing, the national court gave advantage to the domestic law, but didn’t consider constitutional right of the citizen to freedom of speech. Russian Federation adopted European Convention on Human Rights in 1998, however, rapid incorporation of its certain articles such as the one on freedom of expression has been still a matter of future perspective by 2002.

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<sup>105</sup> Быков В.В. (2006). Механизм действия статьи 10 Конвенции в процессах о защите репутации в российских судах, *Применение Европейской конвенции в судах России*, интернет-сайт “Изучаем Европейскую Конвенцию”, р. 114

<sup>106</sup> see *Grinberg v. Russia*, 21 July 2005, Appl. No. 23472/03

### 3.2. Krasulya v. Russia

Another case Krasulya v. Russia demonstrates almost similar circumstances regarding suppression of the freedom of expression, but with criminal conviction. An editor-in-chief of a regional newspaper “Noviy Grazhdanskiy Mir” Vasiliy Krasulya published an article in 2002 criticizing decision about the appointment procedure of a mayor of Stavropol town. He accused the governor in bribery and negative influence over the legislative body, which became responsible for the appointment of the mayor instead of giving people the right to directly elect him. In the article, Krasulya described the governor as “loud, ambitious and completely incapable” for what he was finally sued and accused in damaging dignity and professional reputation of the state authority. Before the court hearing, a criminal proceeding has been conducted in accordance with the Article 129 (2) of the Criminal Code of Russian Federation on defamation, which states that “defamation contained in a public speech or in a publicly performed work, and mass-media libel, shall be punishable by a fine in the amount of 100 to 200 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of one to two months, or by compulsory works for a term of 120 to 180 hours, or by corrective labor for a term of one year to two years, or by arrest for a term of three to six months.”<sup>107</sup> Soon an expert linguistic examination showed that the journalist hasn’t stated anything breaking governor’s professional reputation. Another interesting fact is that, investigation never found who was author of the text, because the letter was published under another pseudonym. However, Krasulya was responsible for its publication in the newspaper where he worked. Despite that, district court found Krasulya guilty in slander and accused him in public insult of the state official sentencing to one year of suspended prison with six month conditional probation. It means that Krasulya had disseminated defamatory information proved to be wrong that damaged dignity, honor or reputation of another person. Above all, the defendant’s sentence has been aggravated through charges with criminal defamation

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<sup>107</sup> Article 129 , § 2, Criminal Code of Russian Federation. Retrieved from April 13 2013

as a serious crime, which according to Article 129 (3) considers either a penalty or correctional works for up to two years. In 2007, the ECtHR concluded regarding the case *Krasulya v. Russia* that the Russian side didn't distinguish statements from value judgments as in the case of *Grinberg v. Russia* and couldn't present enough reasons to justify the limitation of freedom of expression in this particular case and, consequently, violated Article 10 of the Convention. In addition, Russian government was found guilty in breaching Article 6 (1) on fair hearing when the district court didn't consider the linguistic expert examination which could be a thorough argument supporting defendant. Also, the Court stated that any kind of restriction over the journalist's profession should be examined and the politicians should demonstrate high level of open-mindedness towards negative evaluation of their actions. The restriction is especially not admissible when criticism rises significant issues for the society, such as appointment procedures of mayor and bribery. The Court condemned imprisonment of the journalist that violated his liberty and more importantly, freedom of expression according to the Article 10 of ECHR.<sup>108</sup> Thus, the case of *Krasulya v. Russia* has been the first occasion of violation of freedom of expression with criminal conviction that reached ECtHR. It's notable to mention that European Court in its final decision relied to the previous case of *Grinberg v. Russia* stating that the Court is obliged to monitor whether national court has applied to the necessary standards and principles expressed in the Article 10 of the ECHR or broke them. In fact the criminal conviction as interference might be the worst practice towards guaranteeing freedom of expression in the democratic society and especially in press. Thus, it should be very accurately treated and sound explanations presented in order to justify such actions. According to the Federal Law from 7 December 2011 on changes in Criminal Code of the Russian Federation, the Article 129 has been abrogated.

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<sup>108</sup> see *Krasulya v. Russia*, 22 May 2007, Application no. 12365/03

### **3.3. Dyuldin and Kislov v. Russia**

This case covers another exclusive incident demonstrating abuses of freedom of expression and inability of the regional courts to utilize ECHR. The conflict basically emerged because of an open letter of the Council of the Penza Regional Voters' Association Civic Unity to V.V. Putin published in Novaya Birzhevaya gazeta newspaper in 2000. In the letter, unanimous signatories accused the governor of Penza region and his “close circle” in spreading their influence and control all over the region. The authors of letter blamed the regional authorities and “acolytes” of governor in “selfish and destructive policy” against independent media and suppression of human rights and rule of law in the region. In several months, members of the Penza Regional Government sued the Association as well as the newspaper that published the letter and demanded protection of their reputation and dignity, which certainly was approved by the district court of Penza. The district court considered that every State official working in the regional government might be considered as part of the “regional authorities” to whom the letter has referred and therefore this term can apply to every plaintiff. Additionally, it noted that no sound evidence about destructive policies of the governor or persecution of journalists by other officials has been presented in order to justify the statements against them. Finally, in July 2001, after the appeal has been reviewed, the final decision concluded that those above mentioned abusive terms against the governor and his crew have held a defamatory character and based on the Article 152 on damaging honor, dignity and professional reputation. Both the Association and the newspaper had to pay compensation to every plaintiff for non-peculiar damage and later had to publish respective rectification.

In October 2001, the co-chairs of the Association the Dyuldin and Kislov submitted the complaint to the ECtHR claiming violation of the Article 10 of the ECHR on freedom of expression. After the case became admissible in 2004, the Court involved organizations Lawyers for Constitutional Rights and Freedoms and the Glasnost Defense Foundation as third party. They later submitted comments saying that “restrictions in paragraph 2 of Article 10 should not be



interpreted as conferring standing to sue in defamation on individual public officials who had not been specifically identified, who would then act as surrogates or alter egos for the State.”<sup>109</sup> Shortly about the decision of ECtHR from 31 July 2007, in its conclusion the Court once again underlined the importance of the freedom of expression for development of any democratic society, where press has an important functioning role. Taking in account these principles, the Court stated that press still should respect reputation and rights of others. However, the letter written by members of the Association expressed their concerns regarding media independence in the region and it is a natural move for democratically developing societies. Also, the Court noted that none of the plaintiffs were personally mentioned in the letter that could justify defamatory actions against them. The text of the letter overall has pointed on the wrongdoings of the government and could emerge important public discussion. It’s worth to mention, that the Court relied on the previous case of *Grinberg v. Russia* and didn’t accept the fact that domestic court was acting according to the principles of Article 10 of the Convention. Overall, the Court concluded that “Russian authorities overstepped the margin of appreciation afforded to member States under the Convention”, which means that interference was not necessary in the democratic society and Article 10 of the Convention has been violated.<sup>110</sup>

### **3.4. Filatenko v. Russia**

Another criticism of Russian courts’ performance goes to the case *Filatenko v. Russia*. In 1999, Aleksandr Filatenko, a journalist of Tyva regional state television publicly read a question from audience written on handed pieces of paper in live talk show during pre-election period in State Duma of the Federal Assembly of the Russian Federation. The question was directed to the officials of “Edinstvo” political movement asking why the flag of Tyva Republic has been torn off from the car of another political party in front of the “Edinstvo’s” headquarter. However, the reason

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<sup>109</sup> see *Dyuldin and Kislov v. Russia*, 31 October 2007, Application no. 25968/02

<sup>110</sup> *Ibid*, part 50

for suing journalist Filatenko in court was the way he worded this question in the live show. As far as no camera recording of the live debate was available, the court made reference to the statements of the witnesses, who claimed that the content of the question was not voiced as it was written. Regarding the truthfulness of the statement, the regional police denied that there has been any fact concerning the offense of any flag. Consequently, the decision of the Kyzyl district court claimed that the journalist provoked a reaction on the question, but didn't read the content out in original. Also, according to this conclusion, defamatory tone of the journalist didn't have true grounds. Thus, it caused wrong attitude of people towards "Edinstvo" political movement that disrupted the dignity of respective politicians. Kyzyl District Court found the journalist guilty in defamatory actions and obliged to pay compensation to each plaintiff for non-pecuniary damage. The complaint Filatenko v. Russia arrived to the ECtHR in 2001, where the applicant argued that he has never specified any names of the plaintiffs while asking a question regarding the flag, but referred only to the area near "Edinstvo's" party headquarter, where the accident could happen. Consequently, according to the applicant, there was no need to defend the state officials from defamatory statements and charge him for their disruption. On the other side, the representatives of Russian government emphasized the Article 49 of Mass-Media Act from 1991 regarding duties of the media to deliver accurate information.<sup>111</sup> Furthermore, the reference has been made to the case-law of the Supreme Court of the Russian Federation stating that requirements of the Article 152 of the Civil Code on defamation does not necessarily apply to only specifically identified person or a group of persons. In 2007, the ECtHR delivered a conclusion on journalist's application, where it emphasized the importance of diversity of opinions and ideas that strengthens healthiness of political debates during electoral campaigns. The Court criticized Russian authorities in lacking sufficient facts describing Filatenko's wording as defamatory. The journalist basically asked for the discussion over the issue and all representatives from every party had a chance to

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<sup>111</sup> Статья 49, Закон о Средствах Массовой Информации (1991, Декабрь 27), <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=127218>

express their opinion. Moreover, the Court finds very important and interesting feature. The Kyzyl district court has not actually considered the text of the question itself about the torn flag defamatory, but the presenter who interpreted it as fact of a crime. Consequently, in fact, the district court has found Filatenko guilty not for reading out the question of a spectator in the live show, but for giving his own classification to the issue. Even though, Filatenko has numerously refused any personal involvement in the issue, the national court considered him guilty.

The ECtHR, additionally, demonstrated its concerns regarding the Russian courts of all instances, which have failed to find a balanced decision out of the conflict between freedom of expression and the protection of reputation of others. Politically more important, the Court emphasized the importance of the open political debate, especially in pre-election period, important for any of the democratic society. Overall, along with reference to the previous cases on Grinberg v. Russia and Dyuldin and Kislov v. Russia, the ECtHR considered the interference in the journalist's efforts to bring up publicly important issues for discussions as unnecessary actions for democratic society and stated violation of Article 10 respectively.<sup>112</sup>

This research claims that the decisions of the ECtHR demonstrate European understanding, thinking and legal language regarding the practice of freedom of expression overall, as well as particularly in Russian Federation over analyzed cases. The Court refers to case law very often that is certainly not usual for the Russian national courts in practice. In the reviewed cases we have observed that the European Court has almost never put under the question the fact that the interference by Russian national courts has been “prescribed by law”, for example, according to the Article 152 of the Civil Code of Russian Federation on defamation or 129 (2) of Criminal Code of the RF on dissemination of defamatory statements. All the analyzed cases confronted between Russian national courts and the ECtHR are unique in their nature with common conceptual and legal grounds. These grounds disclose in substantial reference of the domestic courts to articles of defamation versus criticism

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<sup>112</sup> see *Filatenko v. Russia*, 06 March 2008, Application no. 73219/01

of the Strasbourg Court through case law and indication on acceptable interference standards, principles of democratic societies and importance of guaranteeing freedom of expression. However, it's important to understand that the European Court is not taking advantage over the jurisdiction of the national courts, but examines certain cases and concludes if the decisions of the domestic courts respected standards and principles of the ECHR, in this case, particularly Article 10. Thus, ECtHR is searching whether national courts have complied accepted international standards and norms and the decisions have been made on the basis of "assessment of the relevant acts". When dealing with the matters of freedom of expression in Russia, ECtHR has regularly referred to the case *Lingens v. Austria* stating that the politicians are expected to be more patient toward the criticism rather than usual citizens.<sup>113</sup> Consequently, freedom of political speech should be treated exclusively and the interference, accepted under Article 10 (2), should be justified and examined. The application of international norms, which are internal part of the legal system of Russian Federation, is possible to provide through prioritization of those norms, joint application together with national law or acceptance in the domestic law directly.<sup>114</sup> However, the effect will still depend on whether national courts signify the international norms in practice or not. The Constitutional Court and Supreme Court have been referring to the ECHR more often than lower instance courts since Russia adopted the Convention in 1998. This tendency might be explained by the specific occupation and functions of those high level courts as well as lack of knowledge in lower ones, where most of the civil and criminal cases are held. Despite the negative records of the unjustified interference in freedom of expression, the importance of ECHR and the ECtHR has increased steadily in the legal system of Russian Federation. The analyzed cases have been held in Russian national courts in the beginning of 2000s and lodged in the ECtHR later, which delivered respective conclusions after multiple years. Thus, Russian government has been entrapped in the

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<sup>113</sup> see *Lingens v. Austria*, 8 July 1986, Application no. 9815/82

<sup>114</sup> Институт Прав Человека, *Применение Российскими судами норм Европейской Конвенции и Решений Европейского Суда*, <http://www.hrights.ru/text/b22/Chapter2%206.htm>

ongoing cases during almost a decade that played a significant role in the changes of the domestic judiciary practices as well.

Analyzed court cases do not show whole situation around the problems with incorporation of the ECHR in the legal system of the Russian Federation and its practice. For this sake, there is a need for a thorough review of all respective domestic court cases, which have not been examined in the ECtHR as well as statistical quantitative analysis of the facts of violations and compliances. However, this research argues that the cases on breach of the freedom of expression reviewed in the ECtHR have fundamentally demonstrated a tendency of relationship between Russian national courts and the principles and standards of the Convention. Russian government has been obliged to be involved in the hearings led by Strasbourg Court for years. It particularly proves entrapment of a norm-violating state in the argumentative mode, where decisions of the European legal mechanism are binding for both sides and bring actual results. According to taken obligations under the Council of Europe, Russian side has always been complying conclusions of the European Court on violations of freedom of expression. Moreover, such a legal pressure has generated the regulations of the Supreme Court from 10 October 2003 on “application by courts of general jurisdiction of the commonly recognized principles and norms of the international law and the international treaties of the Russian Federation”<sup>115</sup> and from 24 February 2005 on “judicial practice of protection of honor and dignity...”<sup>116</sup>, which involved detailed explanation of the application of Article 10 of the ECHR in the practice of Russian courts. It considerably augmented the role of the standards and principles of the Convention. Despite that, the Supreme Court is not willing to supervise first instance courts thoroughly and examine the application of the international norms in practice that leads to the ineffective

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<sup>115</sup> Russian Federation. (2003, October 10). *Resolution adopted by the plenum of the supreme court of the Russian Federation*. Retrieved from

<http://www.supcourt.ru/catalog.php?c1=English&c2=Documents&c3=&id=6801>

<sup>116</sup> Пленум Верховного Суда Российской Федерации (2005, Февраль 25), *О Судебной Практике По Делах о защите Чести и Достоинства граждан, а также Деловой Репутации Граждан и Юридических Лиц*.

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=52017>

internalization of the human rights norms as well. Unlike the Convention, which is placed in the Russian legal system precisely, the case law of ECtHR lacks its certainty in there. As far as Russia doesn't use its own case law as a source of law in general, the ECtHR and its decisions could definitely fill the gaps in the practice. According to the recent report on Russia, the Freedom House has stated that similar defamation and criminal charges have been used by the state officials against existing independent newspapers and journalists also in 2010 and 2011 in order to control the activities and reduce domestic anti-governmental rhetoric coming from particular interest-groups.

#### **4. EUROPEAN HUMAN RIGHTS SYSTEM AND RUSSIAN FEDERATION: POLITICAL ASPECTS**

Political rhetoric is essential addition to the legal mechanisms in promotion of human rights in the target-states. European intergovernmental organizations, leaders of particular states and non-governmental activists generate significant foreign influence over socializing countries to improve the practice of adopted international human rights norms. International pressure operates as a tool for shaming, ruining international image that affects economic and political attractiveness of the state, legitimation on global arena; creates a threat for friendly bilateral relationships and membership suspension in affiliated organizations. The OSCE and Council of Europe treat Russian Federation as a full member and the strength of pressing mechanisms is expected to be compelling. The European Union, on the other hand, promotes its standards and principles through a strategic partnership.

Such persuasive policies through organizational mechanisms, meeting formats, written statements, media articles, monitoring missions, joint projects presume entrapping the norm-violating state into dialogue mode with expectations for its concessions.

#### 4.1. Human rights norms: OSCE

Unlike the Council of Europe, which demonstrates strength in promotion of human rights through its legal mechanisms, the Organization for Security and Cooperation in Europe (OSCE) is mostly focused on the political and security reinforcement strategies through persuasion policies. The decision-making process in the OSCE is based on the principle of consensus. All members are equal in decisions and nobody enjoys the right to veto or gain majority.<sup>117</sup> However, the exceptions might take place in a case of mass violations of OSCE principles and the country might be excluded from the organization. Additionally, through so called “Moscow Mechanism”, member states may decide to send a monitoring mission to the rule-violating state without its agreement.

On one hand, the consensus principle shows OSCE’s weak points in decision-making process. However, back in the times of its creation this was the only way to drag Soviet Union into the multi-dimensional cooperation where nobody would be able to downgrade its interests. In addition, as far as OSCE is based on the political commitments and cannot legally require implementation of norms, social influence is its basic instrument to be ensured through compromise with world powers.<sup>118</sup> Lawyers would criticize such weak political obligations, which are unable to integrate in the domestic laws and practices and bring direct compliance. However, political compromise, especially on delicate human rights matters, might be more effective than legal commitments.<sup>119</sup> On the other hand, the OSCE covers a huge range of issues and matters of human rights make one minor part of it.<sup>120</sup> The influence over a norm-violating state might be generated only through the interstate negotiations and decisions through, for example, “Vienna Mechanism”. This instrument enables any of the member state to bring information to Parliamentary Assembly or Ministerial Councils and direct the attention towards the situation in another member country. These actions lead to the initiation of the bilateral meetings for the sake of

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<sup>117</sup> Brett, R. (1996). Human Rights and OSCE, *Human Rights Quarterly*, Vol. 18, No. 3, p. 673

<sup>118</sup> *Ibid.*, p. 675

<sup>119</sup> *Ibid.*, p. 676

<sup>120</sup> *Ibid.*, p. 677

recommendations to change behavior and comply with OSCE principles and norms. However, the Organization lacks functional machinery (e.g. ECtHR of Council of Europe) where personal appeals and complaints would be reviewed and individuals would play primary role in the processes.<sup>121</sup>

Opposing parties and governments through political bargaining may define human rights norms and violations according to their own understanding and interests. That's why it is vitally important to have common legal human rights standards applicable for all members of the community.<sup>122</sup>

Even though OSCE includes a Human Rights dimension, the nature of the organization generally is built on the security related issues rather than protection of human rights. Unlike other international organizations such as EU and CoE, the OSCE is not a treaty-based community with legally binding commitments.<sup>123</sup> Human rights issues are generated by the Organization inside the "Human Dimension". It initially has been documented under the humanitarian concerns section of Helsinki Final Act as a concept of human rights contacts.<sup>124</sup> The Office for Democratic Institutions and Human Rights under the OSCE is another tool with a mandate of gathering and presenting information about human rights conditions in member states as well as monitoring election processes. Additionally, a Representative on Freedom of Media (RFOM) plays significant role in preparing critical reports that could be successfully used against norm-violator countries.<sup>125</sup> As far as Organization is inclusive by its nature, the scope of the Representative's activities covers recommendations, reports, and technical assistance programs directed to the improvement of practices of freedom of expression in participating states.<sup>126</sup> Yet, the title and post of the Representative sound more promising, than it is in reality. There

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<sup>121</sup> Ibid., p. 678

<sup>122</sup> Ibid., p. 679

<sup>123</sup> Ibid., p. 671

<sup>124</sup> Ibid., p. 672

<sup>125</sup> Schonfeld, D. (2012). *Tilting at Windmills? The European Response to Violations of Media Freedom in Russia*, *Review of Central and East European Law*, Martinus Nijhoff Publishers, p. 261

<sup>126</sup> OSCE. (2013). *Mandate*. Retrieved from <http://www.osce.org/fom/43207>



is still no actual functioning mechanism enabling the Representative to influence a norm-violating government and force to comply. However, the mandate for human rights promotion helps to shame the target government internationally and entrap it into argumentative and communicative strategies.

One of the most important tasks of the Representative is to bring the attention of international community to the facts of human rights violations. The concerns towards Russia have been marked over number of detentions and murders of journalists in last decade <sup>127</sup> as well as other incidents related to the violation of freedom of expression. The case of “Pussy Riot” blew up the reaction of Western human rights protectors and found a wide resonance among international organizations as well. The Representative on Freedom of Media was one of those who dramatically condemned a verdict of the Russian court about imprisoning the punk rock group members in jail: “Charges of hooliganism and religious hatred should not be used to curb freedom of expression. Speech no matter how provocative, satirical or sensitive should not be restricted or suppressed and under no circumstances should it lead to imprisonment.”<sup>128</sup> Overall, the OSCE actively supports democracy and rule of law in the member states and assists in norm socialization process through political negotiations as well as monitoring of the elections and involvement into peaceful conflict resolution processes. As far as main practical activities drive through the technical assistance educative and training programs as well as just assisting the member states in democratic processes, the strength of the rhetoric is not expected to be highly persuasive and clear-cut.<sup>129</sup>

Since 2003 the monitoring mission of the OSCE has been evaluating both parliamentary and presidential elections in the Russian Federation negatively.<sup>130</sup>

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<sup>127</sup> RFE/RL. (2012, May 10). *Osce concerned by detention of journalists in russia* . Retrieved from [http://www.rferl.org/content/osce\\_representative\\_criticizes/24576796.html](http://www.rferl.org/content/osce_representative_criticizes/24576796.html)

<sup>128</sup> OSCE. (2011, June 23). *Freedom of expression at stake, warns OSCE media freedom representative following russy riot verdict*. Retrieved from <http://www.osce.org/fom/92939>

<sup>129</sup> Saari, S. (2010). *Promoting Democracy and Human Rights in Russia*, Taylor & Francis Group, p. 21

<sup>130</sup> Радио Свобода (2012, Февраль 26). *Россия и ОБСЕ*, <http://www.svoboda.org/content/article/24496105.html>

Unequal campaign conditions, limited voters' choice, mistrust in transparency and other sort of critique over violations have formed an overall long-term confrontation mode and deepened gaps between two sides.<sup>131</sup> Moreover, Russian political elite is unsatisfied with the growing involvement of the OSCE in the matters of democracy and human rights practice in Russian Federation. According to this vision such actions go beyond the classical borders of the OSCE which should be limited within the political dialogue and security problems of Europe.<sup>132</sup> It once again demonstrates weight of the European actors in promotion and improvement of human rights in Russia and unwillingness of Moscow to accept imposed norms in whatever form they appear.

#### **4.2. Promotion of human rights: European Union**

The European Union is a complete opposite of the OSCE, which tries to socialize a target state inclusively (from inside). The EU is economically the most powerful and wealthiest intergovernmental organization in Europe. High interest in access to its markets and freedoms requires the Organization to be the most exclusive and selective regarding enlargement and neighborhood policies. Common political and economic interests generated by the member states reveal in social incentives towards target states through assistantship promises or in opposite, threatening with suspension of aid and partnership programs.<sup>133</sup> In order to receive the material benefits from the EU, one should comply with the political conditions; provide strong democracy, rule of law and human rights protection. However, the decisions about full socialization of the target-state in the end still derive from the common political and economic interests of the Union. Formally and technically, the Organization has very simple and strong tools to affect the process through suspension of partnership

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<sup>131</sup> OSCE. (2012, March 5). *Russia's presidential election marked by unequal campaign conditions, active citizens' engagement, international observers say*. Retrieved from <http://www.osce.org/odihr/elections/88661>

<sup>132</sup> Averre, D. (2005). Russia and the European Union: Convergence or Divergence?, *European Security*, Vol. 14, No. 2, Routledge, 14:2, p. 188

<sup>133</sup> Schimmelfennig F.; Engert, S. & Knobel, H. (2006). *International Socialization in Europe: European Organizations, Political Conditionality and Democratic Change*, Palgrave Macmillan, p. 36

agreements with violators of liberal democratic community norms. However, none of the member states has ever been excluded because of violation of human rights norms, for example, and cooperation with autocratic regimes has been marked as well in the name of common economic benefits.<sup>134</sup> The manner of norm socialization by the EU in the states with membership perspective differs from the cooperation with country-outsiders or neighbors. The Russian Federation has been struggling for the equal level of partnership with Brussels since the very beginning.

Matters of human rights promotion are contained in the Common Foreign and Security Policy of the Union. Particularly, Russia and EU have institutionalized relationship based on Partnership and Cooperation Agreement, which includes assistantship in improvement of human rights protection as well and consists of semi-annual meetings. However, unlike OSCE and CoE, the EU considers Russia a constant foreign partner, which doesn't strive for the Union membership. This is why any EU criticism regarding human rights violations in Russia is expected to be weak and delicate. Additionally, far-reaching economic interests of the EU in Russia certainly prevail and throw back alarms about human rights violations. Consequently, this issue has never caused radical enforcement steps, such as sanctions or military reciprocity. However, the Russian Federation has to adopt and share, at least instrumentally, European values and norms in order to get involved in strategic partnership with EU.<sup>135</sup>

Council of the EU publishes annual reports on human rights and promotes them together with Commission, Presidency and High Representative for the CFSP. In addition, a Special Representative on Human Rights and European Parliament may operatively react and condemn the violations in any country of the world as well. Despite that, the EU is still not a human rights organization and it is limited in its scale of the protection, which is mainly included in the intergovernmental bilateral agreements (e.g. Article 2 of the PCA with Russia). Besides that, EU promotes

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<sup>134</sup> Ibid., p. 37

<sup>135</sup> Saari, S. (2010). *Promoting Democracy and Human Rights in Russia*, Taylor & Francis Group, p. 26

human rights at actual meetings and summits where it uses political pressure mainly through diplomacy (e.g. EU-Russia Summits). Moreover, the Union might be granted with a monitoring mandate and produce analytical or critical reports. European Instrument for Democracy and Human Rights (EIDHR) is another tool encouraging human rights and strengthening civil societies in the target-states through financial aid and human resources. Its structural and institutional activities find place in the gradual reports as well.<sup>136</sup>

The road maps for the implementation of Four Common Spaces, which include a common space on freedom, security and justice, were activated in 2005 between the EU and Russian Federation. Since then, this particular Common Space formed one more opportunity in order to condemn human rights violations and initiate reforms through political pressure. Unfortunately, instead of emphasizing justice and human rights the Common Space mainly focuses on the cross-border and international security-related issues. Other than that, Moscow is capable to question European human rights norms and interpret them according to its own values that certainly makes its self-exclusion from European integration even wider.<sup>137</sup> On one hand, EU is trying to develop liberal democratic values in the surrounding neighborhood for the sake of regional security and prosperity. However, absence of the membership potential weakens EU's unilateral normative pressure on the powerful neighbors such as Russian Federation. Even though economically beneficial bilateral cooperation is successfully settled, EU deliberately expects additional normative convergence based on the European values in order to integrate them in the internal affairs of Moscow.

Overall, EU is a considerable actor in the European framework of liberal democratic socialization of values and norms in target states similarly to OSCE and CoE. However, one of the major difficulties consists in the contradiction between the positions of member states of the Union over common persuasive policies towards

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<sup>136</sup> European Instrument for Democracy and Human Rights (2011, January-June), *Delivering on Democracy*, [http://www.eidhr.eu/files/dmfile/EIDHR\\_DemocracyReport2.pdf](http://www.eidhr.eu/files/dmfile/EIDHR_DemocracyReport2.pdf)

<sup>137</sup> Averre, D. (2005). Russia and the European Union: Convergence or Divergence?, *European Security*, Vol. 14, No. 2, Routledge, 14:2, p. 194

the “outsiders”.<sup>138</sup> Additionally, a critical rhetoric of the EU officials reveals mainly in the specific issues such as case of “Politkovskaya” or incident of “Pussy Riot”, but rarely focuses on the long-term persuasive actions against systematic violations.

## **5. High-Profiled Cases**

In order to understand how European exclusive and inclusive intergovernmental organizations as well as non-governmental actors of the socialization process use argumentative and persuasive strategies in a target-state, political reaction of those entities on particular cases of abuses of the freedom of expression in Russian Federation will be analyzed additionally in the research. It will help to draw a bigger image of the role of the European actors in monitoring the tendency of violations of freedom of expression involving political matters. Even if the number of such cases is enormous, the research is concentrating on the certain high-profiled occasions of murders of oppositional journalists and intentional imprisonment of political nonconformists attracting extreme international attention. Firstly, the focus will be directed to Russian media and respective oppositional journalists, because the vast majority of the violations of the freedom of expression that attracted tremendous international attention have been taken place exactly in this field for years. Also, an imprisonment of “Pussy Riot” band members expressing political protest, which caused previously never witnessed level of international anxiety, will demonstrate the most recent confrontation on the norm of freedom of expression between Europe and Russia.

### **5.1. Abuses of journalists in Russia**

First of all, let’s look at the overall picture of the freedom of press and facts of violence against journalists in Russia. For this sake the data will be described further, collected by the Russian and foreign human rights organizations with different methodology, but one purpose – documenting statistics of violations. One of the

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<sup>138</sup> Saari, S. (2010). *Promoting Democracy and Human Rights in Russia*, Taylor & Francis Group, p. 29

major national databases on journalist murders elaborated by International Federation of Journalists together with Glasnost Defense Foundation and Centre for Journalism in Extreme Situations grasps the cases according to such characteristics of the murder or other abuses as: ‘homicide’, ‘accident’, ‘crossfire’, ‘terrorist act’, ‘incident not confirmed’, and ‘missing’.<sup>139</sup> This joint database says that 146 journalists have died between 2000 and 2012 all over Russia.<sup>140</sup> The map 1 (in Russian) of Glasnost Foundation shows level of freedom of printed and electronic media in the regions of the Russian Federation by March 2010. According to the map, by that time, situation has been improved in 6 regions and worsened in 13, including the areas where journalists were assassinated. Only few regions were assessed as relatively free, but the majority qualified as relatively restricted or completely not free (e.g. Chechnya).



Map 1: Карта Гласности

**The Committee to Protect Journalists (CPJ)** separates work-related murders of journalists, which confirm the motive from the unclear cases, where blurry investigations have never been completed. 29 journalists have been killed since 1998 where motive has been confirmed as an assassination related to the journalist’s

<sup>139</sup> International Federation of Journalists (2010), *End of Deadly decade*, <http://www.ifj.org/assets/docs/059/046/c93b13b-7a4a82e.pdf>, p. 31.

<sup>140</sup> Фонд Защиты Гласности (2013, Январь 17), *Конфликты, зафиксированные ФЗГ в течение 2012 год*, <http://www.gdf.ru/graph/item/1/1044>

oppositional activities.<sup>141</sup> Among such victims are high profiled cases of Politkovskaya, Estemirova, Klebnikov, Safronov and Baburova. Additionally, the organization considers Russia as one of the top violator countries in the world with high impunity index.

In the rankings of the Paris based NGO **Reporters Without Borders**, which has been involved in the reporting of violations in media freedom in the world and respected by European intergovernmental organizations, Russia has been fluctuating around the positions with a difficult situation since 2002. Noticeable deterioration in 2006 and 2009 has been changed by slight improvements in recent years. However, the map 2 demonstrates the most recent 2013 global picture of the freedom of press, where index includes pluralism, media independence and transparency. It respectively displays Russian Federation among the troubling states with a “difficult situation” similarly to the previous years.<sup>142</sup>



Map 2: Freedom of the press worldwide in 2013

<sup>141</sup> Committee to Protect Journalists. (2013). *54 journalists killed in Russia since 1992/motive confirmed*. Retrieved from <http://cpj.org/killed/europe/russia/>

<sup>142</sup> Reporters without border. (2013). *2013 world press freedom index: dashed hopes after Spring*. Retrieved from <http://en.rsf.org/press-freedom-index-2013,1054.html>

Overall, activities of the international and domestic non-governmental organizations and their data play crucial role in the socialization process. Particularly, they direct attention of more powerful global actors to the abuses of freedom of expression in the norm-violating state. Moreover, they can serve as unofficial speakers of the intergovernmental organizations, which correspondingly act in the established normative and legal framework with the target-state.

## **5.2. Politkovskaya and Estemirova**

The assassination of a brave journalist of Novaya Gazeta newspaper, Anna Politkovskaya is the case that clearly demonstrates strength and role of freedom of expression in a Russian society. Politkovskaya's open denunciation of wrongdoings in Russian armed forces and human rights violations in Chechnya have served as powerful machinery revealing dramatic weaknesses of the government in respective state sectors. The job of an objective journalist became hardly manageable in Putin's Russia since 2000 and consequently harassment of public figures like Anna Politkovskaya and Natalya Estemirova has widely awakened local and international human rights activists all over the Europe. They were among five journalists of Novaya Gazeta newspaper assassinated since 2000 for their profession. Even though political motives of these murders have never been proved and high level officials ever convicted, deliberate logic of assassination reasons turn to the profession and activities of the journalists. Almost a year after Politkovskaya's murder in 2006, authorities announced ten suspects to be arrested, but six of them were freed soon. Main figures left in custody included former police detective and two Chechen brothers who were suspected in organization of the crime. Their third brother Rustam was supposed to be the one who killed Politkovskaya, but he had fled the country after information about his detention leaked in press. Trial of the arrested suspects was carried in 2009. A decision of Moscow Military District Court to acquit detainees has been overturned by the Supreme Court later, which demanded the investigation to be reopened. In 2011, third brother Rustam was arrested back in Chechnya and it



seemed the story has been completed.<sup>143</sup> However, the detention of actual performer still doesn't lead to the concrete motives of the murder. Also in 2011 one more former police official Dmitry Povoluchnikov was detained and accused in supporting the criminal group. The verdict of Moscow City court carried in a year after his arrest concluded that Povoluchnikov delivered a gun to the killer and helped him in following the journalist. Povoluchnikov's sentence came into force on March 14, 2013.<sup>144</sup> Even though, this fact was considered in Russia as a breakthrough in this particular criminal case, the actual initiators who ordered the murder have never been found and tried. Soon after the assassination of Politkovskaya in 2006, Vladimir Putin responded to the crime as revolting and promised to investigate it thoroughly. He mentioned that the murder had brought dramatic damage to Russia. However, he downgraded the influence of journalist's critical activities on political life of the country.<sup>145</sup> This statement meant to indicate that there was no necessity to interrupt Politkovskaya's activities and therefore allegations towards government's involvement in the case were unjustified. After domestic and international critique and pressure have implied on government's connections with the murder, investigation has never followed the path leading to any of the high officials in Kremlin. Similarly to this, Dmitry Medvedev pledged to investigate a murder of another journalist of Novaya Gazeta and activist of the human rights organization "Memorial" Natalya Estemirova, who has been already eighteenth journalist to be killed in the period between 2000 and 2009.<sup>146</sup> Estemirova was an active human rights activist reporting about abuses in North Caucasus and involved in the investigation of Politkovskaya's murder. The investigation of Estemirova's

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<sup>143</sup> Smith, W. (2011). Europe to the rescue: the killing of journalists in Russia and the European Court of Human Rights, *The George Washington International Law Review*, Vol. 43, p. 500

<sup>144</sup> Question More. (2013, March 14). *First verdict in politkovskaya murder case comes into force*. Retrieved from <http://rt.com/politics/politkovskaya-killer-sentence-upheld-268/>

<sup>145</sup> Союз Правых Сил, Владимир Путин высказал свое мнение об убийстве Анны Политковской <http://www.sps.ru/?id=216590&PHPSESSID=>

<sup>146</sup> Smith, W. (2011). Europe to the rescue: the killing of journalists in Russia and the European Court of Human Rights, *The George Washington International Law Review*, Vol. 43, p. 497.

assassination have never reached high officials in Chechnya either, but accused a rebel group whose cruel behavior has once been revealed in Estemirova's reports. After two years of investigation, Novaya Gazeta and Memorial conducted their own investigation and found errors in the work of the official investigation over discovering sound evidences. They blamed government for not investigating the case thoroughly and openly condemned Chechen President Ramzan Kadyrov in organizing Estemirova's murder after what the head of Memorial was sued for defamation and obliged to pay compensation to Kadyrov.<sup>147</sup>

In the situation, when domestic human rights activists experience suppression by national governments, a strong foreign pressure over the norm-violating state might play a vital role. In dealing with powerful target-states like Russian Federation, international communities use social influence through shaming and persuasion strategies hoping for better compliance with liberal democratic norms.

### ***5.2.1 International pressure***

The Parliamentary Assembly of the Council of Europe has strongly condemned the fact of Politkovskaya's assassination in its resolution on "Threats to the lives and freedom of expression of journalists" in 2007. In the paragraph number 8, we read a statement that justifies a boomerang effect in the norm socialization process. It declares that Parliamentary Assembly has been pleased with the activities of Europe and Moscow based human rights NGO's asking for the investigation of Politkovskaya's murder. The Assembly appreciated actions of the "Glasnost Defense Foundation" in Moscow, "Reporters Without Borders" based in Paris, "International Press Institute" in Vienna, "Article 19" in London and other organizations that directed the attention of international community towards violations of freedom of expression in Russian Federation. PACE also demanded from Russian side to "closely monitor the progress" in criminal investigation of the case.<sup>148</sup> Generally, in

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<sup>147</sup> Ibid., p. 504

<sup>148</sup> Parliamentary Assembly. (2007). *Threats to the lives and freedom of expression of journalists*. Retrieved from <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/eres1535.htm>

the following years, many critical statements have been generated by the Council of Europe. For instance, in 2009 Chairman of the Council of Europe Parliamentary Assembly's Sub-Committee on the Media and rapporteur on media freedom Andrew McIntosh condemned the closure of the trial and called for the thorough investigation.<sup>149</sup> The case of Politkovskaya and Estemirova found a place in 2012 PACE resolution as well, on "The honouring of obligations and commitments by the Russian Federation".<sup>150</sup> The Assembly mentioned that facts of harassment of journalists have decreased in recent years, however, above discussed high profiled cases still remain uninvestigated. The emphasis in the resolution was additionally strengthened by the PACE rapporteur Gyorgy Frunda who criticized downgrading political pluralism in Russia and ineffectiveness of its judiciary in both cases of Politkovskaya's and Estemirova's murders.<sup>151</sup> In the same day of Estemirova's murder, Human Rights Commissioner of CoE, Thomas Hammarberg defined the tragedy as "a horrible and cowardly crime and an attack against fundamental human rights principles". He called for "immediate, thorough and impartial investigation" and punishment of criminals.<sup>152</sup> This statement also served as a recap to pay more attention on protection of human rights activists and respective organizations in Russia. A rhetorical question of Council of Europe Secretary General Terry Davis asking "how many more Natalia Estemirovas and Anna Politkovskayas must be killed before the Russian authorities protect people who stand up for the human rights of Russian citizens",<sup>153</sup> reveals the tendencies of abuses of freedom of expression in Russia.

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<sup>149</sup> Council of Europe. (2009, February 02). *Pace rapporteur on media freedom expresses his deep frustration at the lack of progress in investigating the murder of Anna Politkovskaya in Russia*. Retrieved from <https://wcd.coe.int/ViewDoc.jsp?id=1410219&Site=COE>

<sup>150</sup> Frunda, G. (2012, September 14). *The honouring of obligations and commitments by the Russian Federation*. Retrieved from <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18998&lang=EN>

<sup>151</sup> Russian Legal Information Agency. (2012, October 02). *Council of Europe rapporteur criticizes Russian judiciary*. Retrieved from [http://rapsinews.com/judicial\\_news/20121002/264837646.html](http://rapsinews.com/judicial_news/20121002/264837646.html)

Council of Europe Human Rights Commissioner. (2009, July 15). *Killing of Natalia Estemirova*. Retrieved from <https://wcd.coe.int/ViewDoc.jsp?id=1471233&Site=DC>

<sup>153</sup> Davis, T. (2009, July 15). *Council of Europe Secretary General Terry Davis on the murder of Natalia Estemirova*. Retrieved from <https://wcd.coe.int/ViewDoc.jsp?id=1471217>

Soon after the incident of Politkovskaya's assassination, Finnish presidency of the European Union revealed a concern and emphasized importance of guaranteeing the freedom of expression in democratic society.<sup>154</sup> It was followed by a resolution of European Parliament on EU-Russia relations after the murder of Anna Politkovskaya. Based on the data of Reporters Without Borders, European Parliament stated that Russia made it to the top of the countries with high level of journalist murders. The document criticized overall intimidations and harassments against independent journalists that dramatically affected Russia's reputation on international arena. The Brussels tried to use a strategy of shaming and social influence here, even though it owns stricter instruments to be used against norm-violating outsider in the process of socialization. Economic, geographical and political importance of the Russian Federation does not allow the EU to be guided by the classical approaches and cut the partnership or suspend common projects. In the resolution mentioned above, the Organization warned Moscow that matters of democracy and human rights would become a primary topic in the agenda of their relationship since then. Additionally, the European Parliament called the Council to monitor the investigation closely and asked all other institutions to condemn the fact of violation of freedom of expression in Russia as well.<sup>155</sup> Swedish presidency of the EU immediately reacted on the Estemirova's murder in 2009 condemning "the killing of a prize-winning human rights activist" and demanding immediate investigation.<sup>156</sup> In December 2012, the EU brought up the question of violations of human rights norms in Russia at the sixteenth round of human rights consultations in Brussels. European officials condemned poor

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<sup>154</sup> Ministry of Foreign Affairs Finland. (2006, October 19). *OSCE: EU statement on murder of Russian journalist Anna Politkovskaya*. Retrieved from

<http://formin.finland.fi/public/?contentid=82284&contentlan=2&culture=en-US>

<sup>155</sup> European Parliament. (2006, October 25). *EU-Russian relations following the murder of Russian journalist Anna Politkovskaya*. Retrieved from

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2006-0448&language=EN&ring=P6-RC-2006-0531>

<sup>156</sup> The Swedish Wire. (n.d.). *Sweden condemns murder of Russian activist*. Retrieved from <http://www.swedishwire.com/jobs/524-sweden-condemns-murder-of-russian-rights-activist->

investigation in the cases of Anna Politkovskaya and Natalya Estemirova and criticized mistreatment of domestic NGOs in Russia.

Anna Politkovskaya is an owner of OSCE prize for Journalism and Democracy as an honorable contributor to the freedom of expression in media. After her murder, OSCE chairman statement demonstrated a deep concern: "This is a tragic and profoundly shocking loss, and I call upon the Russian authorities to track down those responsible as quickly as possible."<sup>157</sup> The OSCE carries a special Representative on Freedom of Media (RFOM), whose responsibility directly contains monitoring and assessing media freedom in member states. Miklos Haraszti, respective representative has been a constant critic of the Russian government for years condemning murders of journalists (especially with political motives) and demanding for thorough investigations. The criticism of high-profiled cases such as Politkovskaya, Klebnikov, Safronov and other assassinated journalists have found place in the yearbook 2007 of the RFOM.<sup>158</sup> Later in 2009, Haraszti openly condemned Russian judiciary after the Moscow Military District Court freed three suspects in Politkovskaya's murder. The Supreme Court of the RF decided to return the suspects back to trial and renew the investigation immediately after such critique from OSCE appeared. In his statements, Haraszti generalized whole tendency of Russia's failure to protect its journalists and referred to the "practical impunity for the murder and physical assault of those covering corruption and human rights issues".<sup>159</sup> This time OSCE officials have been attacked back by the Ministry of Foreign Affairs of Russia criticizing rhetoric of the organization that has, according to the ministry, deteriorated the reputation of OSCE as whole. This action once again demonstrates the argumentative mode of the socialization process, in which the norm-violating government is being entrapped after the criticism of its human rights practices have reached top level of tensions. A tendency of suppression of the independent press,

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<sup>157</sup> OSCE. (2006, October 7). *OSCE Chairman shocked by murder of Russian journalist Anna Politkovskaya*. Retrieved from <http://www.osce.org/cio/47725>

<sup>158</sup> OSCE. (2008). *Yearbook 9: 2007*, Retrieved from <http://www.osce.org/fom/32992>

<sup>159</sup> RIA Novosti. (2009, February 26). *Moscow blasts OSCE comments on Politkovskaya trial*. Retrieved from <http://en.rian.ru/world/20090226/120324565.html>

systematic injustice and poor investigations create a feeling of impunity in the society that downgrades the power of media as a watchdog controlling wrongdoings of the government. “If murders, assaults and threats against journalists prevail, the media cannot be free, information cannot be pluralistic and democracy cannot function”.<sup>160</sup> According to Committee to Protect Journalists, 16 deadly crimes against journalists in Russia stayed unclear along last ten years that put country among the states with poor records.<sup>161</sup>

### 5.3. Baburova and Stanislav Merkelov

Even before Natalya Estemirova was assassinated, the international and domestic human rights activists were alarmed by a double murder of human rights lawyer Stanislav Merkelov and a journalist Anastasiya Baburova in Moscow on 19 January 2009. Merkelov was a noticeable figure involved in monitoring the crimes committed by Russian Neo-Nazis and defended anti-fascist complainants in court. Similarly to Merkelov, journalist Baburova had frequently criticized Nazi activists in newspaper publications.<sup>162</sup> Merkelov has also gone against the commander of tank division in Chechnya Yuri Budanov, who was accused in rape of a young girl and sentenced to 10 years, but released right before Merkelov’s murder. Additionally, the lawyer was involved in investigation of the issues around Khimki forest scandals. Two ultra-nationalist radical activists Tikhonov and Khasis were arrested already in autumn of 2009 and sentenced to a life imprisonment one and to 18 years another in 2011.<sup>163</sup> Indeed, even though, two detained suspects were the members of a fascist group and the motives for the murder seemed to be clear, international and domestic voiced the difficulties in human rights practice and violations of freedom of

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<sup>160</sup> Hammarberg, T. (2011). Human rights and a changing media landscape, *Human Rights writings*, Council of Europe Publishing, p. 9

<sup>161</sup> Committee to Protect Journalists. (2012). *Russia*. Retrieved from <http://cpj.org/2013/02/attacks-on-the-press-in-2012-russia.php>

<sup>162</sup> Novaya Gazeta. (2009, November 13). *The Markelov-Baburova murders: First arrests are made*. Retrieved from <http://en.novayagazeta.ru/investigations/8625.html>

<sup>163</sup> Committee to Protect Journalists. (2006, May 6). *Two sentenced in Baburova murder in Russia*. Retrieved from <http://cpj.org/2011/05/two-sentenced-in-baburova-murder-in-russia.php>

expression in Russia once again. The Czech presidency of the European Union condemned the crime and called for “thorough, prompt and impartial investigation”.<sup>164</sup> Secretary General of Council of Europe negatively assessed the assaults against human rights activists and linked the case of Markelov and Baburova with a murder of Anna Politkovskaya mentioning that such guesses will exist until those crimes are properly investigated. Also, the statement contained concern that such tendencies remain “shadow over the state of the rule of law, the freedom of expression and the commitment to human rights in the Russian Federation.”<sup>165</sup> In response to the criticism coming from international organizations, human rights activists and state governments, the Ministry of Foreign Affairs of Russia in response pointed on the attempts of the West to politicize the crime and link it with previously raised problems regarding freedom of expression.<sup>166</sup> Such actions signify the confrontation between assessments of human rights violations between Europe and Russia, even though the later agrees with the concept of freedom of expression as whole.

The president of European Commission, on his turn, directly raised the question of the investigation of murder at the meeting with Putin soon after the assassination of a lawyer and a journalist and criticized the whole tendency with the abuses against human rights activists.<sup>167</sup> The name of Anastasia Baburova found its place along with Politkovskaya and Estemirova in the 2011 EU resolution on the rule of law in Russia as well.<sup>168</sup> While ranking Russia on 142 place out of 179 country in the world press freedom index 2011-2012, Reporters Without Borders mentioned

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<sup>164</sup> Council of the EU (2009, January 22), *EU Statement concerning the murder of human rights lawyer Stanislav Markelov and journalist Anastasiya Baburova*, <http://www.osce.org/pc/35921>

<sup>165</sup> Davis, T. (2009, July 15). *Council of Europe secretary general Terry Davis on the murder of Natalia Estemirova*. Retrieved from <https://wcd.coe.int/ViewDoc.jsp?id=1471217>

<sup>166</sup> Российская Газета, (2009, Январь 22), МИД: Анастасия Бабурова оказалась невинной жертвой ситуации, <http://www.rg.ru/2009/01/22/baburova-anons.html>

<sup>167</sup> Financial Times, *Barroso attacks Moscow on human rights*, <http://www.ft.com/intl/cms/s/0/33359b5a-f487-11dd-8e76-0000779fd2ac.html#axzz2NoJE4r4I>

<sup>168</sup> European Parliament. (2001, February 11). *European parliament resolution of 17 February 2011 on the rule of law in Russia*. Retrieved from <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2011-0066&language=EN>



only case of murder of Merkelov and Baburova and noted that even though the suspects were detained, “aspects of the case remained unclarified and impunity is still the rule for those who murder or attack journalists”.<sup>169</sup> However, the international pressure turned to be successful in this case and Russian side has been applauded for thorough investigation and imprisonment of radical ultra-nationalist activists. The international human rights NGO Committee to Protect the Journalists and International Press Institute have played a monitoring role in the process of investigation that ended with effective measures and judgment of the suspects.

These cases were part of the series of violations of the freedom of political expression and free media which has increased since 2000. In order to deny the criticism of the international communities, Moscow has tried to link the negative tone of Europe with attempts of particular anti-Russian figures (e.g. Berezovsky) or interest-groups motivated to muddle domestic order and weaken Russia’s image and positions abroad. The advocacy networks have generated sound pressure on the Russian authorities urging to reopen trials and conduct investigations comprehensively. Even though several suspects were tried for the assassination of Estemirova and Politkovskaya in recent years, unlike Baburova’s and Merkelov’s case, the official inquiry has never led to the actual people who ordered the crimes.<sup>170</sup> Differences between the outcomes of those incidents derive from the specifics of the incidents. On one hand, successful conviction of Nazi nonconformists may increase Russia’s international image, especially when it comes to the high-profiled occasions. The pressure from outside is still significant though for tracing the process that helps to avoid involvement of interest-groups in the investigation or a trial. On the other hand, Russian government acts protectively when the case comprises suspicions about the possible connections of the state authorities with the particular incidents. That’s why the government tries to control sectors of public life where citizens could express their opinions. The situation has deteriorated since Putin came to power

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<sup>169</sup> Reporters Without Borders (2012, January 25), *Crackdowns on protests cause big change in positions*, [http://en.rsf.org/IMG/CLASSEMENT\\_2012/C\\_GENERAL\\_ANG.pdf](http://en.rsf.org/IMG/CLASSEMENT_2012/C_GENERAL_ANG.pdf)

<sup>170</sup> Freedom House. (2012). *Russia*. Retrieved from <http://www.freedomhouse.org/report/freedom-press/2012/russia>



leading to the killing of up to 19 journalists.<sup>171</sup> In near past, six journalists have already been killed in 2011 and four in 2012 with a motive of suppression of their activities.<sup>172</sup>

Legal and political language of Europe regarding the practice of freedom of expression in the Russian Federation has been arising questions of non-compliance to the accepted human rights norms. An analysis of legal perspectives through Russian court cases reviewed by ECtHR showed us that the affiliation with Council of Europe and its legal mechanisms can actually influence the process of socialization significantly. In addition, international political control and expectations of the international organizations, INGOs and domestic actors may urge a target-state reconsider its instruments for guaranteeing freedom of expression in its borders. This whole process leading to eternal habitualization and prescribing to the particular norm a “taken for granted” status in Russian Federation passes in the context of dueling discourses and interpretations. In order to understand the tendency of legal and political confrontation over the freedom of expression between Europe and Russian Federation the research additionally contains analysis of the case of “Pussy Riot” band members imprisoned for their political protest in Moscow’s Cathedral of Christ the Savior. This movement has basically awakened masses of human rights activists and regular people in the West, including famous cultural and political figures.

#### **5.4. Pussy Riot**

The incident itself took place in the central church of Moscow on February 21, 2012 and contained elements of a dance performed by several women in colorful balaclavas and accompanied by the politically motivated punk-rock song/“prayer” asking Virgin Mary to “drive Putin out”. The dance actually lasted less than a minute, but the video edited with a song and footage of dances caused arrests of main performers of the dance eventually in couple of weeks. Three arrested members

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<sup>171</sup> Ibid.

<sup>172</sup> Фонд Защиты Гласности (2013, Январь 17), *Конфликты, зафиксированные ФЗГ в течение 2012 год*, <http://www.gdf.ru/graph/item/1/1044>

Nadezhda Tolokonnikova, Yekaterina Samutsevich and Maria Alyokhina were accused in the hooliganism motivated with religious hatred and sentenced to the two years of jail on August 17, 2012. However, soon in October of the same year Moscow appeals court released Yekaterina Samutsevich as she hasn't taken an active part in the February protest, but other two detained members of the band stayed in custody and were sent to the prison colony.<sup>173</sup>

Now, the whole case itself involves several arguable aspects and emerges debates around political speculation, feminist perspectives, role of the church in political life of the country, etc. Even though these topics are interrelated and further analysis will be touching them at some point, this research is profoundly focusing on the legal matters and features of international pressure regarding freedom of expression, which has been mainly disputed between Europe and Russia in this particular occasion.

#### ***5.4.1 Legal aspects***

The investigation of the incident in the church has initially been held regarding two articles of the Criminal Code of the Russian Federation: Article 282 on incitement of national, racial, or religious enmity and Article 213 – hooliganism. However, in the end, the case appeared to court based only on the matters of hooliganism, but with religious hatred. The respective article states: “(1) Hooliganism, that is, a gross violation of the public order which expresses patent contempt for society, attended by violence against private persons or by the threat of its use, and likewise by the destruction or damage of other people's property, shall be punishable by compulsory works for a term of 120 to 180 hours, or by corrective labor for a term of six to twelve months, or by arrest for a term of four to six months, or by deprivation of liberty for a term of up to two years. (2) The same act, if it is: a) committed by a group of persons, a group of persons in a preliminary conspiracy, or

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<sup>173</sup> Elder, M. (2012, October 10). *Pussy Riot member freed after Moscow court appeal*.

Retrieved from <http://www.guardian.co.uk/music/2012/oct/10/pussy-riot-member-freed-moscow>

an organized group; b) connected with resistance to a representative of authority or to any other person who fulfills the duty of protecting the public order or who prevents violation of the public order; c) committed by a person who was earlier convicted of hooliganism-shall be punishable by compulsory works for a term of 180 to 240 hours, or by corrective labor for a term of one to two years, or by deprivation of liberty for a term of up to five years. (3) Hooliganism committed with the use of arms or objects used as arms shall be punishable by deprivation of liberty for a term of four to eight years.”<sup>174</sup> Consequently, the district court emphasized second part of the Article regarding a group of persons committing a crime of hooliganism. However, if we derive from the first part of the article it’s questionable that a short performance of the punk rock band in the church has violated the public order dramatically, violated individuals or damaged other people’s property. On the other hand, the violence can be exposed in several means such as interrupting public events (e.g. church service), disturbing the work of enterprises or disrupting public transportation, which may cause long-term moral and/or physical damages to the citizens.<sup>175</sup> Obviously, an anti-Putin protest of the women in balaclavas has not paralyzed the church, but interrupted the process of service for less than a minute without direct physical or moral violations against people. The believers could continue the service as soon as “hooligans” were removed from the church. Another inconsistency lays in the religious and political motives of the incident itself. The performance has not apparently included anti-religious symbols nor been directed against the persons of different nationalities, with diverse religious and political views. Only edited video clip with a song contained lyrics of enmity against one person – Vladimir Putin. The article on hooliganism doesn’t comprise a punishment for such sort of actions. In opposite, a debate would seize if the band members would be accused in defamatory actions (similarly to the cases analyzed earlier), which, according to the Civil Code, does not consider imprisonment. At the same time, according to the ECtHR case law

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<sup>174</sup> Article 213, Criminal Code of the Russian Federation, Retrieved from <http://www.russian-criminal-code.com/PartII/SectionIX/Chapter24.html>

<sup>175</sup> Labex, *Комментарий к статье 213 УК РФ*, [http://www.labex.ru/page/kom\\_uk\\_213.html](http://www.labex.ru/page/kom_uk_213.html)

the politicians are expected to tolerate a criticism and protests against them in whatever form more accurately than any other citizens, because it guarantees existence of a functional freedom of expression necessary for any democratic society.

The band members of Pussy Riot itself has numerous admitted that the performance in the church has contained only a political message against the government of the President and head of Russian Orthodox Church, who were accused earlier in a very close pre-electoral cooperation and sharing the influence in the society.<sup>176</sup> In her final closing statement, Maria Alyokhina, one of the detained members of the band noted that the protest has been directed to the Putin and the whole political system, which is associated with him as well as the involvement of the Patriarch in the political life of the society.<sup>177</sup> In addition, Nadezhda Tolokonnikova, another arrested woman, defined their performance in the church as nothing more but a “political action that engages art forms”.<sup>178</sup> All members have apologized multiple times to those believers whose feelings could be hurt by their actions and stated that the campaign hasn’t pursued a goal to downgrade Christianity, but covered mostly disagreement with activities of institutions of the President and the Church.

Despite all this, the final verdict of the Moscow Khamovniki district court didn’t even include any political motives or defamatory actions against any high officials, but emphasized the matters of hooliganism expressed in the intentional violation of public peace with motives of religious enmity and hatred that insulted numerous believers presented at the service as well as other citizens influenced by the distributed video clip. The court also referred to the assessment of the Orthodox

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<sup>176</sup> Free Pussy Riot. (2012). *Pussy Riot: art or politics?* Retrieved from <http://freepussyriot.org/content/pussy-riot-statement>

<sup>177</sup> Free Pussy Riot. (2012). *Masha alyokhina's closing statement*. Retrieved from <http://freepussyriot.org/content/masha-alyokhinas-closing-statement>

<sup>178</sup> N 1. (2012, August 13). *Pussy Riot closing statements*. Retrieved from <http://nplusonemag.com/pussy-riot-closing-statements>

Church, which defines the incident as blasphemous and condemns humiliation of believers' feelings.<sup>179</sup>

The incident would probably stay unnoticed for large masses in the world like other similar campaigns of the same punk rock band. However, the trial with criminal conviction, pre-electoral propaganda of liberal opposition and attempts of ruling party and the church to unify supporters around nationalistic ideas transformed the whole case into cause célèbre.<sup>180</sup> Apparently, the idea of freedom of expression has been sacrificed to these possible back stage political games.

In the case *Handyside v. United Kingdom*, the European Court of Human rights has clearly defined that freedom of expression is one of the most significant features of the democratic society and “it is applicable not only to “information” or “ideas” that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that **offend, shock or disturb the State or any sector of the population**. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”.”<sup>181</sup>

The appeal from Pussy Riot imprisoned members has appeared in the ECtHR already in the beginning of February, 2013. Main claims in the pending complaint *Nadezhda Tolokonnikova, Maria Alyokhina and Yekaterina Samutsevich v. Russia* currently cover four articles of the European Convention on Human Rights to which, according to the plaintiffs, Moscow Khamovniki district court has failed to comply: freedom of expression (Art. 10), right to liberty and security of person (Art. 5), prohibition of torture (Art. 3) and right to a fair trial (Art. 6).<sup>182</sup> Applicants have continuously argued that the actions of punk rock band had comprised only a political protest exposed in the modern artistic performance. Also, the complaint explains the reasons why the political protest took place in the church. On February 1, 2012, at the

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<sup>179</sup> Interfax. (2012, August 17). *Pussy riot singers were motivated by hatred for believers - court verdict (updated)*. Retrieved from <http://www.interfax-religion.com/?act=news&div=9734>

<sup>180</sup> Burges, P. J. (2012). The Pussy Riot Protest: Church, State and Punk, *Christian Century*, p. 26-29

<sup>181</sup> see *Handyside v. UK*, 7 December 1976, Application no. 5493/72

<sup>182</sup> Коммерсант (2013, Февраль 07), *Pussy Riot написали жалобную книгу* <http://www.kommersant.ru/doc-y/2121751>

Bishop's Council organized in the Cathedral of Christ the Savior, the Patriarch of Russian Orthodox Church Kirill publicly supported Premier Vladimir Putin's candidacy in the upcoming presidential elections. According to the complainants, this fact irritated the members of Pussy Riot band who artistically demonstrated their disagreement through dancing and singing.

#### ***5.4.2 International pressure***

Similarly to the previously discussed cases, the incident of Pussy Riot has triggered a reaction in the West. European intergovernmental and non-governmental organizations as well as state officials, which play crucial role in the socialization process of the Russian Federation, have generated global criticism against prosecution of the punk-rock band members.

In the statement of High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the Commission Catherine Ashton, issued at the same day when the verdict of three convicted women was announced, she evaluated the sentence as "disproportionate" and questioned Russia's commitments to the international obligations to hold "fair, transparent and independent legal process". Additionally, she emphasized another important factor of international obligations – "respect for freedom of expression" and voiced EU's concern about the prosecution of political opposition. At the same time, Ashton reminded to Russian political elite that matters of human rights are still a significant part of the relationship between the EU and Russia.<sup>183</sup> Similarly, on the same day of the verdict, the OSCE Representative on Freedom of the Media Dunja Mijatović condemned the tendency of violations of freedom of expression in Russian Federation and noted that "no matter how provocative, satirical or sensitive" is the speech, it should not be restricted by the accusation in hooliganism and religious hatred. Moreover, in her statement, we can see that OSCE is concerned with the compliance of the norm-violating state to the main principles of the organization

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<sup>183</sup> European Union (2012, August 17), *Statement by EU High Representative Catherine Ashton on the sentencing of "Pussy Riot" punk band members in Russia*

about human rights and particularly freedom of expression. The statement criticizes much broader tendency of the practice of freedom of expression and calls for its improvement and even changes of respective laws.<sup>184</sup> In his statement, the President of the Parliamentary Assembly of the Council of Europe Jean-Claude Mignon marked that interference and restriction in the freedom of expression are acceptable for the democratic societies if there is a need for such measures. This tone particularly reminds the language of the ECtHR decisions on *Grinberg v. Russia*, *Krasulya v. Russia* and other similar cases. However, according to Mignon, the limitation should be “proportionate” as it has also been mentioned in the statement of Catherine Ashton. Thus, two years sentence for Pussy Riot band members has been perceived as remarkably unfair. The President reminded about the importance of ECHR and the case law of ECtHR, which should have been respected while revising the verdict.<sup>185</sup> However, despite this “hint” the appeal’s court only released one detained woman and left other two in arrest.

The reference to disproportionate decision has been made by the French foreign ministry spokesman Vincent Floreani as well, who noted: “The process is not over, since appeals in Russia and in Strasbourg (to the European Court of Human Rights) has not been exhausted.”<sup>186</sup> Even though the appeals in Russia didn’t prove the expectations fully, it’s obvious that Europe still hopes that justice will be reached through European legal mechanisms. It once again proves the strength of legal means in affecting the behavior of a strong norm-violating state like Russia. Alistair Burt, the Foreign Office Minister of the UK actually turned attention to conditions in which women were detained/tried and assessed Russia’s domestic court decision as “disproportionate response to an expression of political belief”.<sup>187</sup> Similarly to other

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<sup>184</sup> OSCE (2012, August 17), Freedom of expression at stake, warns OSCE media freedom representative following Pussy Riot verdict

<sup>185</sup> Council of Europe, (2012, August 17), *Verdict in the ‘Pussy Riot’ trial: in the light of Council of Europe standards, a disproportionate sentence*

<sup>186</sup> Expatica, (2012, August 17), *France condemns 'disproportionate' Pussy Riot sentence*  
[http://n.expatica.com/ru/news/country-news/France-condemns-disproportionate-Pussy-Riot-sentence\\_270789.html](http://n.expatica.com/ru/news/country-news/France-condemns-disproportionate-Pussy-Riot-sentence_270789.html)

<sup>187</sup> Mirror (2012, August 17), *Putin’s revenge”: Outrage as Russian punks Pussy Riot are jailed*

high European officials, Burt's tone principally doubts functionality of rule of law and implementation of obligations regarding protection of the freedom of expression in Russian Federation. Since the Pussy Riot the appeals court decision on leaving two members of the band in jail, German Chancellor was the first from European high officials to visit Russia. Merkel raised a question of vast violations of freedom of expression in Russia and criticized tendencies of a poor practice of human rights and application of rule of law. Regarding Pussy Riot, she mentioned that in Germany, such demonstration would definitely not cause criminal conviction of the protesters.<sup>188</sup> It has not been the first critical announcement of the Chancellor though. Soon after the Moscow Khamovniki district court publicized the decision regarding imprisonment of the band members, Angela Merkel defined the sentence "excessively harsh" and "not compatible with the European values of the rule of law and democracy to which Russia, as a member of the Council of Europe, has committed itself."<sup>189</sup> However, back to the Merkel-Putin's face-to-face conversation, the Russian counterpart openly accused the Pussy Riot band members in anti-Semitism, which cannot be tolerated by the State.<sup>190</sup> This fact once again indicates on the successful attempts of Europe to promote human rights standards in Russia through political persuasion strategy entrapping the norm-violating state into argumentative mode.

Vladimir Putin's arguments about the incident have essentially been based on the protection of religious feelings of the believers and moral grounds of Russian society. Even before the appeals court delivered its final decision, Putin evaluated the conviction charges as fully reasonable, because the Pussy Riot band members have tried to destroy morals and ethics of Russian state and broke law, which is

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*for singing protest songs in church.* <http://www.mirror.co.uk/news/world-news/pussy-riot-protests-in-russia-london-1266481>

<sup>188</sup> The Local (2012, November 16),Merkel to Putin - Pussy Riot jail sentence unfair.

Retrieved from <http://www.thelocal.de/national/20121116-46217.html#.UVqxtp0yauK>

<sup>189</sup> ITV,(2012, August 26), European leaders brand Pussy Riot sentences 'unfair' and 'excessively harsh'. Retrieved from <http://www.itv.com/news/update/2012-08-17/european-reaction-to-pussy-riot-sentences/>

<sup>190</sup> Euronews (2012, November 17), *Merkel provokes Putin over Pussy Riot punishment.*

Retrieved from <http://www.euronews.com/2012/11/17/merkel-provokes-putin-over-pussy-riot-punishment/>



punishable.<sup>191</sup> Thus, he had numerously responded to critique of the West justifying the rightfulness of the Pussy Riot verdict as a necessary step for punishment of “an act of group sex aimed at hurting religious feelings”.<sup>192</sup> Putin has directly indicated that the protesters insulted large number of people, thus state is obliged to protect them as well as “the morality of the country.”<sup>193</sup> Obviously, Putin tries to justify abroad the actions that Russian authorities make domestically. He had equally responded to the foreign criticism over the new law on “Foreign Agents” considering legitimate control of external money transferred to domestic NGOs.<sup>194</sup>

Similarly, Vladimir Zhirinovsky, the leader of Liberal Democrats, have accused the West in the tendency of supporting anti-Russian “bandits, criminals, drug addicts and prostitutes” in order to speculate and keep criticizing Moscow eternally.<sup>195</sup> Regarding Pussy Riot, he has also specifically emphasized English title of the band, which could be directed to the large masses in the West.

Even if Zhirinovsky is right in this sense, the particular actions of the punk-rock band and global reaction in result showed the effectiveness of boomerang effect in the socialization process. Politically driven anti-governmental feminist group has successfully attracted attention of transnational advocacy networks, which have particularly re-emerged international pressure on the norm-violating Russian government.

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<sup>191</sup> НТВ Новости (2012, Октябрь 07), Путин: активистки Pussy Riot получили по заслугам, <http://www.ntv.ru/novosti/348598/>

<sup>192</sup> Reuters. (2012, October 25). *Pussy Riot got what they deserved*. Retrieved from <http://www.reuters.com/article/2012/10/25/us-russia-putin-idUSBRE89O1IV20121025>

<sup>193</sup> Mail Online. (2012, October 26). *Putin says female punk band Pussy Riot 'could be at home now doing the housework if they had not broken the law'*. Retrieved from <http://www.dailymail.co.uk/news/article-2223429/Putin-Pussy-Riot-They-home-doing-housework-broken-law.html>

<sup>194</sup> Radio Liberty. (2013, April 8). *Putin Concerned About Russian NGOs' Foreign Funding*, <http://www.rferl.org/content/femen-putin-merkel-ngos/24950913.html>

<sup>195</sup> New Europe. (2013, March 23). *Zhirinovsky says Pussy Riot should 'sit in prison'*. <http://www.neurope.eu/article/zhirinovsky-says-pussy-riot-should-sit-prison>

## GENERAL CONCLUSIONS

This thesis has shown the role of European legal and political mechanisms in the socialization process of the Russian Federation through promotion of human rights. Particularly, theoretical and practical framework of the freedom of expression has led to the understanding of the wider problem of acceptance and practice of human rights norms according to the European standards in Russia. In order to systematically summarize theory-driven empirical research, I will firstly generalize findings from the analysis of placement of ECHR in legal system of the Russian Federation and outcomes of the court cases comprising violations of freedom of expression. Secondly, the results of the analysis of international political pressure will be connected with theoretical background described earlier. Finally, I will conclude with emphasizing possible ways out from the stagnation in the socialization process of the Russian Federation.

As for the placement of international human rights law in the legal system of Russia, we have observed that the European instruments have determinately affected domestic practices and jurisprudence. Formally, the Council of Europe has institutionally penetrated the ECHR and the case law of the ECtHR in Russian legal framework. Actual court cases on freedom of expression and respective decisions concluded by the Strasbourg Court illustrate European understanding of this particular human rights norm to which Russia is obliged to comply. For almost a decade, the government of Russia has been entrapped in the argumentative rhetoric as a norm-violating state through the court cases reviewed in the ECtHR. The conflict between commonly agreed standard of freedom of expression and contradictory national practice of defamation charges and criminal convictions urged the Russian Supreme Court to issue regulations from 2003 on jurisdiction of recognized courts and from 2005 on application of Article 10 of the ECHR in the courts of all instances. Additionally, the Article 129 of Criminal Code on defamation was abrogated in 2011 as well as a new legal act on execution of the ECtHR judgments has been drafted in

March, 2013. Thus, altogether, these facts demonstrate that Europe's legal instruments accompanied by shaming policies have produced actual results and moved the process of socialization forward. Overall, the research argues that the ECHR is very poorly internalized in the legal space of the Russian Federation and freedom of expression norm badly habitualized. However, the analyzed court cases show only tendency and not the whole situation. Future progress will still depend on the practices of national courts and frequency of applications to the international norms.

Regarding the matters of international political pressure as a strategy of persuasion and social reinforcement in the international socialization process, European intergovernmental and non-governmental organizations have pushed Russia to reexamine its practices for guaranteeing freedom of expression. Critical rhetoric directed to shame the state with globally negative attitude has actually entrapped Russian government in the argumentative mode. Moscow has numerously attempted to blame external anti-Russian interest groups in the spoiling country's reputation abroad and accused Western powers in politicization of high-profiled cases. Additionally, Russia had commenced debate over the legitimacy of violations and presented distinct moral definitions of the freedom of expression norm that has put its validity under danger. All in all, Western advocacy networks have successfully pressed the norm-violating state to renew investigations and trials over the murders of oppositional journalists. The Committee to Protect Journalists had successfully monitored and pushed Russian authorities to investigate the murder of Merkelov and Baburova. Other cases of harassments against journalists Politkovskaya and Estemirova have particularly shown Moscow's hostile reaction denying government's connection with the crimes. The EU on the other hand, has clearly placed the matters of human rights on the agenda of bilateral relations with Russia. Even though the strength of Brussels in socializing process of an outsider without membership perspective is weak, such rhetoric nevertheless contributes in mutually driven persuasive policies of Western actors.

In general, Russia has accepted the language of human rights in its discourse and multiple tactical concessions have been made. One of the central actions in such moments is supporting domestic activists who will then lead the process from inside. Glasnost Defense Foundation, Memorial, newspaper Novaya Gazeta, feminist punk-rock band Pussy Riot have particularly generated a boomerang effect with triggering international attention around the suppression of freedom of expression in Russia. However, as the tactical concessions phase of the spiral model suggests, boomerang arrow might take wrong directions. In the case of Pussy Riot, Russian authorities have successfully emerged strong national opposition based on religious feelings against external enemies and succeeded to legitimize suppression of such opposition. Additionally, the future financial and material support for Russian human rights activists has become blurry after adoption of a new NGO Foreign Agents Law to control foreign money flows.

Theoretically, the process of international socialization in target-state is expected to culminate with everlasting habitualization phase when human rights norms become “taken for granted.” Legal and political analyses have particularly shown the complexity of the Russian case, which displays a state capable enough to oppose prompt internalization of Western values. If the bargaining attempts over human rights norms are seen in Moscow as an instrument for pursuing personal political and economic interests, rationalist approach is not keen to succeed. Additionally, Russia is not struggling for membership to the EU or for better records in CoE and OSCE, thus it doesn’t receive enough rewards except economic benefits, which are out of the human rights sector. That’s why the socialization process enters into stalemate, where internalization and habitualization phase tend to be delayed. A “prescriptive status” to the norm is possible to maintain only through permanent international control, where Russian government would care about its international image. Even if the question of common applicability of the norms emerges long-term debate, it’s vitally important that validity is recognized at the same level by both parties. This thesis has argued that legal means in the socialization process produce

the most effective outcomes where political pressure should play a backing role and drag the norm-violating state out from the impunity and stagnation and lead towards justice and democratic progress.

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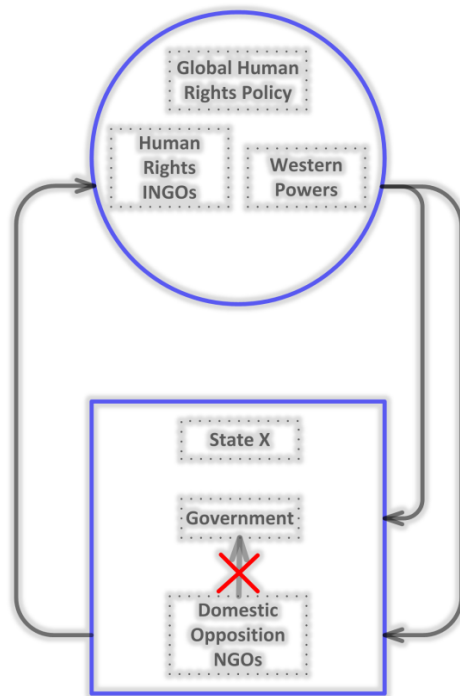
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## Appendixes



**Graph 1: Boomerang effect**



**Map 1: Карта Гласности**



**Map 2: Freedom of the press worldwide in 2013**