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"When They Come for You": Legal Mobilization in New Authoritarian Russia

Freek van der Vet

As of 2012, the Russian State Duma passed a string of repressive laws on non-governmental organizations (NGOs), surveillance, and high treason. Under this "new authoritarian" regime, a growing number of Russians are investigated by the security services or put on trial for high treason. NGOs face selective prosecution and surprise inspections. While we know how lawyers use legal mobilization in democratic regimes where they can expect courts to be fair, legal mobilization remains understudied in regimes moving toward authoritarianism, where authorities pass repressive laws but enforce them erratically. Drawing on interviews with Russian lawyers, this article examines how lawyers represent two victim groups of state coercion: Russians under investigation for treason and prosecuted human rights NGOs. By examining how lawyers make strategic choices while coping with unfair courts, the random enforcement of laws, and shrinking resources, this article argues that state coercion does not deter lawyers from legal mobilization at domestic courts and the European Court of Human Rights. Instead, repressive laws push lawyers to reinvent their everyday practices to counter repressive legislation and conviction bias in the criminal justice system.

As of 2012, the State Duma (Russia's parliament) has passed a torrent of repressive laws in response to mass protests in Moscow against the parliamentary election results and Vladimir Putin's return to the Presidency in 2011 and 2012, respectively. The Duma has sought to fine participation in unauthorized demonstrations, to amend extremism laws, and to curtail the activities of NGOs by cutting their ties with their foreign—primarily, North American—financial donors. This "law on foreign agents" forces Russian NGOs to register as "foreign agents" (*inostrannye agenty*) with the Ministry of Justice when they receive foreign funding and engage in political activities. NGOs that fail to comply can expect an unannounced inspection, often leading

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to long lawsuits and high fines between 300,000 and 500,000 Rubles.[1]

The Duma also amended treason and espionage laws in 2012, leading to a growing number of Russians under investigation by the Federal Security Service (the FSB, *Federal'naya Sluzhba Bezopasnosti Rossiiskoi Federatsii*) for high treason. This number spiked following the start of the conflict in Eastern Ukraine in 2014. Since then, Russians are more often approached by agents of the FSB, either for an official interrogation or a "chat" on the street (Litvinova 2016; Human Rights Watch 2017).

The foreign agent law and the amendments to treason legislation are part of Russia's "new authoritarian regime." New authoritarian rulers rely less than their "old" historical counterparts on mass violence to control opponents (Guriev and Treisman 2015a). Instead of incarcerating large numbers of political opponents, these regimes spread falsehoods, restrict access to the internet, expand surveillance, and randomly inspect NGOs and citizens (Guriev and Treisman 2015a; Soldatov and Borogan 2013). In Russia, vaguely worded repressive laws are passed quickly, but enforced erratically. Government opponents face constant surveillance, but are then arbitrarily and not consistently prosecuted, creating an environment of fear (Gel'man 2016). The result is that, for NGOs and Russian citizens, the question is not *if*, but *when*, the security services "come for you" (Team 29 2017).

As Russian authorities increasingly resort to the use of law as a tool to coerce, citizens' legal mobilization—"the process by which individuals make claims about their legal rights and pursue lawsuits to defend or develop those rights" (Epp 1998: 18)—as a tool of resistance has become difficult. Legal mobilization scholars commonly find that rights advocacy contributes to rights expansion by opening up access to justice for marginalized individuals (Cichowski 2007; Epp 1998) or that litigation builds a shared identity among movement activists even when there are court losses (McCann 1994; Sarat and Scheingold 2006; Vanhala 2012). Yet, these outcomes are absent in countries where authorities manipulate court cases and employ the law to vilify opponents as enemies of the state. We have a solid understanding of legal mobilization under the US legal system and in European democratic regimes where lawyers can reasonably expect a fair trial even in a conservative legal environment (Andersen 2009; Cichowski 2007; Conant 2006; McCann 1994; Sarat and Scheingold 2006; Scheingold 1974). Legal mobilization remains

[1] Between $5300 and $8800 in 2017; an average monthly salary is around $600 in 2015 (The Moscow Times 2016).

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understudied in "new authoritarian" regimes where legal opportunities are few and far between and activist lawyers face unfair courts and unpredictable enforcement of laws.

This article draws from fieldwork and interviews with Russian lawyers and NGO representatives to examine why Russian human rights lawyers and NGOs nevertheless continue to use legal mobilization strategies both domestically and at the European Court of Human Rights, while coping with shrinking opportunities and resources. This study argues that random repression and vanishing financial resources do not stifle legal mobilization. Rather, Russian lawyers adapt their strategies to the repression they are facing. We examine legal aid to two groups of victims under Russia's new authoritarian regime: first, Russians who are under investigation for or charged with treason, and, second, NGOs that are prosecuted and inspected under the foreign agent law. Studying these two victim groups enables us to first understand how lawyers provide legal aid and use legal mobilization when the judicial system and intelligence services randomly enforce repressive legislation. Second, studying the lawyers working closely against state repression gives us the opportunity to examine how the Russian state uses law as a tool of coercion. According to Stern (2017: 244), "[these lawyers'] struggles tell us a great deal about the architecture of state power."

Legal Mobilization after a Backlash

Legal mobilization scholars examine how rights advocates expand the scope of rights in a liberal legal framework through mobilizing rights claiming. In democratic regimes, rights advocates contribute to rights expansion by opening up access to justice for groups of marginalized individuals. Rights advocates in those countries can reasonably expect fair court procedures, even when judges are conservative or litigation involvement has high financial costs. At a minimum, judicial enforcement lends momentum to pressing for further political reform (Andersen 2009; Cichowski 2007; Epp 1998; McCann 2006; Scheingold 1974). Rights advocates in democracies are likely to become experienced litigants—or, "repeat players" (Galanter 1974)—when they safeguard funding and can operate in safety (Moustafa 2014).

In authoritarian regimes, however, rights advocates face at least four obstacles in political lawyering: a high personal risk for participating in activism; unfair trials; fast-changing legislation; and repressive legislation targeting civil society organizations.

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Judges in authoritarian regimes may be fair when deciding mundane cases (Hendley 2015), but politically sensitive cases are prone to political manipulation. A victory in court is an opportunity for politicians to show political prowess and increase their chances for reelection (Popova 2012). The pay-offs of legal mobilization for NGOs and social movements, such as nurturing a shared identity among activists and increased media attention (McCann 1994), are likely to be minimal in countries where authorities employ the law to vilify opponents and cut networks between organizations (Daucé 2015). Strategies parallel to legal mobilization, such as political lobbying and media outreach, are less effective due to government-controlled media. Rights advocates have trouble gaining leverage by lobbying in the legislature due to staged party politics and the accumulation of power by one party.

Nevertheless, a growing body of studies on political lawyering in nondemocracies or conservative legal environments finds that activists lawyers do not abandon the courts as tools of resistance, even when there are significant obstacles (Halliday et al. 2007; Vanhala 2012). Vanhala (2012), for instance, examines why environmental lawyers in the UK continue to pursue legal resistance in a hostile legal environment with high chances of losing court cases. By focusing on the strategic choices of these environmental advocates, Vanhala (2012: 544) argues that a hostile environment does not keep activists from using courts. In fact, environmental activists see litigation as "one element of a multi-pronged approach to campaigning" (Vanhala 2012: 544).

Even in authoritarian regimes "courts rarely serve as mere pawns of their regimes" but remain lively "arenas of contention" (Moustafa 2014). In his study on legal advocacy in South Africa, for instance, Abel argues that the totalitarian apartheid regime was still vulnerable to legal action: "unlike private persons, most governments can only act through law, which constrains even a regime endowed with almost unlimited power" (Abel 1995: 521). Lawyers played an important role in mobilizing the law as "politics by other means" against the apartheid apparatus (Abel 1995). In a study on cause-lawyering during the 2014 Euro-Maidan revolution in Ukraine, Wilson (2017) found that lawyers offered pro bono legal aid to protesters during the protests after the government started a crackdown aiming to stop the protests. Ukrainian cause-lawyers were not stopped by the constraints of a repressive state, but chose to challenge them (Wilson 2017: 270). In a similar revolutionary setting in January 2011, lawyers from the Tunisian Bar Association supported a popular uprising to overthrow the sitting government (Gobe and Salaymeh 2016). Gobe and Salaymeh (2016) argue that economic concerns,

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professional objectives, and civic professionalism motivated lawyers to participate in the Tunisian Revolution and the following political transition.

Another group of scholars, have looked at the invisible everyday work and survival strategies of lawyers in authoritarian regimes. Studies examine how Chinese defense lawyers (*Weiqan* lawyers) and environmental lawyers protect clients and cope with coercion under the Communist regime (Michelson 2006; Nesossi 2015; Liu and Halliday 2011; Pils 2014; Stern 2013; Stern 2017). Liu and Halliday's study (2011: 833–34), on the coping practices and motivation of Chinese criminal defense lawyers, finds that these lawyers' relation to the state and civil society depends on their political embeddedness and attitude toward political liberalism. Political liberalism meaning commitment to a particular value system, the use of legal "capacity to check arbitrary state power, to pursue legal proceduralism, and to call for judicial independence" (Liu and Halliday 2011: 834). "Political embeddedness," a term coined by Michelson (2007), defines "lawyers' proximity to the state as the way to get clients, to facilitate their practice, and to reduce difficulties in their everyday work" (Liu and Halliday 2011: 834). Political lawyering is an incremental everyday process rather than a revolutionary one: "the fight for political liberalism is also a local fight, often invisible, imperceptible, and uncelebrated" (Liu and Halliday 2011: 863). Several other studies also reveal invisible strategies. By studying the practices of Chinese defense lawyers, Nesossi (2015: 968) found that lawyers used elite divisions in the State Party and took advantage of the legal vocabulary promoted by officials. This enabled the lawyers to exploit the gaps between "legal rights promised officially by the government and their violation in practice" (Nesossi 2015: 968). Nesossi (2015: 970–71) adds that these *Weiqan* lawyers often revealed information about sensitive court cases to the media despite personal risk. Pils (2014) found that Chinese defense lawyers adopt a range of invisible coping strategies, some of them as dramatic as walking out of courtrooms. This indicates that in a high-risk political environment, lawyers were aware of their political connections and could adopt invisible local strategies in their political lawyering.

This study contributes to this growing body of literature on political lawyering by offering Russia's new authoritarian regime as a case study. Previous studies have focused on how defense lawyers have coped with established authoritarian regimes; we know less of how lawyers work during more recent turns to authoritarianism and recent "backlashes" against civil society, the media, and civic activism in countries such as Russia, Turkey or, more recently, in Viktor Orbán's Hungary. These "new

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authoritarian" regimes are preoccupied with the manipulation of information, surveillance, and random harassment of opponents (Gel'man 2016; Guriev and Treisman 2015a).

New Authoritarianism and Legal Mobilization in Russia as a Case Study

Litigation in Russia's New Authoritarianism

Russia is developing in what some have called a "new authoritarian system"(Gel'man 2016; Guriev and Treisman 2015a; Soldatov and Borogan 2013). New authoritarian rulers rely less than their "old" historical counterparts on mass violence to control opponents. Of course, both sets of authoritarians deploy riot police to disperse protesters with violence, but new authoritarian rulers pass a "web of illiberal legislation," change the judiciary, control information, and vilify opponents as external enemies (Guriev and Treisman 2015a; Moustafa 2014; Scheppele 2013). These regimes have mushroomed in Russia, Hungary, Turkey, and Venezuela. These regimes are characterized by resorting to law, rather than simply violence, to coerce or constrain. For instance, in Hungary the Fidesz party of Prime Minister Viktor Orbán passed a string of constitutional reforms that consolidated the power of the ruling party and attacked the independent press, but still managed to follow rule of law indicators set by intergovernmental organizations (Scheppele 2013: 561).

New authoritarian regimes rule by confusion. Repressive legislation is passed quickly, but implementation or application of these laws is unpredictable (Gel'man 2016). In Russia, the legal restrictions on the internet and civil society were phrased in such broad language that NGOs and internet providers often did not know how to follow the law, forcing them to negotiate with the government or ask for clarification (Daucé 2015; Soldatov 2015). The challenge for Russian rights advocates is how to mobilize law as a weapon of resistance in a regime that increasingly resorts to law and information control to hold on to power.

Russia's transition to new authoritarianism can be traced back to the constitutional crisis of 1993. Following the disintegration of the Soviet Union in December 1991, hopes of a democratic "transition" evaporated. During Russia's constitutional crisis of October 1993, President Boris Yeltsin ordered tanks to shell the White House building in Moscow where members of the government were voting on a new Constitution that would balance power between the president and parliament. Yielding to the violence, the parliament voted in favor of a Constitution that gave the President more authority over the parliament. In 1999,

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Yeltsin stepped down and Vladimir Putin became the second President of the Russian Federation. Dmitry Medvedev's presidency from 2008 to 2012 is often hailed as a liberal period, yet his presidency enabled Vladimir Putin to return to the Kremlin for a third and fourth term in 2012 and 2018.

Political scientists studying Russia agree that, at least until 2012, its political system was a "hybrid," mixing characteristics of a democratic regime (regular presidential and parliamentary elections) with those of an authoritarian regime (manipulation of elections, intimidation of opponents, and the crack-down of the independent press) (Gel'man 2013; Petrov et al. 2014; Sakwa 2010). Sakwa (2010), referring to Fraenkel's (2006) concept of "dual state," argues that, while Russia is a constitutional state governed by law, patronal relations, and exchanges of favors undermine constitutional norms and the rule of law (Sakwa 2010). Bureaucratic rules are followed selectively: officials exchange favors, pay bribes, and politicians push for judgments through "telephone law" (Ledeneva 2006; Sakwa 2010)—a Soviet practice through which politicians order judgments from judges.

Russian citizens are not the victims of a fully broken judicial system (Hendley 2015), even though they distrust the court system. Although some cases are politicized—for example, the trials of feminist punk band "Pussy Riot" or former oligarch Mikhail Khodorkovsky—citizens can still win mundane cases in court (Hendley 2015, 2017). Russians are savvy users of the court system (Hendley 2015; Henry 2012), especially justice-of-the-peace courts (Hendley 2017). Hendley (2015) finds that Russia's court system is dualistic: Russians know when to pursue litigation—especially, on social rights like housing or pensions—and when to evade litigation when a case is too "sensitive." Russian citizens often sue state officials (Javeline and Baird 2007; Trochev 2012), lodge complaints (*zhaloby*) against authorities (Bogdanova 2014), or file applications on social and economic rights—again, especially on housing rights—before national and regional human rights institutions (Henry 2012). Russians favor making complaints before courts over participating in political party activities or associations, as litigation is a way to make political claims in a nonpolitical way (Henry 2009).

The 2012 legal changes created a new group of semi-politicized court cases. This new group of victims falls between the politicized trials of powerful businessmen and mundane cases on housing rights. Since Vladimir Putin's return to the presidency in 2012, the State Duma passed a string of laws that curtails public protest, cuts civil society's ties with foreign funders, and toughens treason and extremism laws. On top of that, the state increasingly criminalizes free speech (Bogush 2017) and

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increases internet surveillance (Pallin 2017; Soldatov 2015). These measures were part of a governmental backlash against public demonstrations in Moscow and other major cities protesting the parliamentary election results of 2011 and Putin's inauguration in 2012 (Gel'man 2015). In 2013, for instance, activists (the so-called *Bolotnaya 12*) were put on trial for provoking violence during the "March of the Millions" demonstration on Bolotnaya Square in Moscow against the Presidential election of Putin. Mikhail Kosenko, for instance, faced arbitrary charges for rioting and assaulting a police officer. Video footage of the protest showed Kosenko moved away from the violence. The police officer assaulted also testified that he did not remember seeing Kosenko. Nevertheless, Kosenko was sentenced to indefinite psychiatric treatment in October 2013 (Luhn 2014). Gel'man (2016) finds that "the combination of harsh regulations and their selective enforcement is the essence of the systematic and consistent politics of fear in Russia, which targets more and more individuals and groups."

While we have a growing understanding of the political interests behind this backlash (Flikke 2015, 2017; Horvath 2011; Robertson 2009) and how NGOs cope with new restrictions (Crotty et al. 2014; Daucé 2015; Flikke 2015; HRRC 2015; Van der Vet and Lyytikäinen 2015), we know less about how lawyers make strategic choices while protecting this new group of victims of a new authoritarian regime that rules through broadly phrased laws and increased surveillance.

Legal Activism in Russia

Russian activists have experimented with legal activism since the 1960s. Soviet dissidents were among the first to make legal arguments and claim human rights in public activism against the communist state (Thomas 2001). Alexander Esenin-Volpin was among the first dissidents in the late 1950s who introduced legal arguments into protest against the Soviet authorities (Moyn 2012; Nathans 2007). These dissidents took the Soviet Constitution literally, demanding that the authorities step away from their authoritarian interpretation of the Constitution and respect the human rights guaranteed under the Helsinki Agreement of 1975 (Nathans 2007).[2] Relying on law, dissidents could step "outside the codified borders of a repressive political system" (Přibáň 2005: 571–72). In other words, dissidents could show the gap

[2] The Helsinki Accords were signed by signed by the Soviet Union, Canada, the US, and most European states. It guaranteed the inviolability of the Soviet Union's borders after the Second World War. It also included clauses on human rights.

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between the protections the state promised on paper and how it violated them in practice

Nevertheless, these actions were few and far between (Hendley 2016). Goldston (2006: 494) argues that "the idea of articulating an alternative, nongovernmental vision of the public interest through law was impossible" in the Soviet Union. As of 2017, only a few Russian lawyers are involved in collective action (Hendley 2016; Kazun and Yakovlev 2016). Hendley (2016) argues that this is the result of the profession's civil law tradition: "[lawyers] are trained to help clients determine the legality of their behavior, not to question the legitimacy of the laws themselves." There is no social movement in Russia that consistently uses the court system to pursue its policy goals. Nonetheless, it is the case that lawyers do work together with NGOs across the country or have set up their own litigation projects, such as *Sutyazhnik* in Yekaterinburg, or Stichting Justice Initiative in Moscow, both NGOs litigate cases at the European Court on Human Rights (Sundstrom 2014; Van der Vet 2012). Worth noting is that some of these lawyers received legal training in Western Europe, especially from the University of Essex in the UK. Lawyers who graduated from this university jokingly refer to themselves as "the Essex Mafia."[3]

Case Selection

Studying lawyers in (new and old) authoritarian regimes is valuable for several reasons. Stern (2017) argues that lawyers are not only worthy of attention if they achieve visible results in authoritarian regimes. She argues that lawyers act as vanguard: the gradual accumulation of small victories in court shapes larger transformations in society (Stern 2017: 9–10). Moreover, their legal struggles can reveal "the architecture of state power," how laws are implemented as tools of repression, and which avenues remain for resistance (Stern 2017).

This study is a part of a larger project examining how lawyers protect the freedom of information in Russia. The larger project is based on reports, court judgments, and semi-structured interviews with twenty St. Petersburg and Moscow lawyers, NGO representatives, journalists, and academics working the freedom of information and the protection of citizens accused of treason and prosecuted NGOs. The interviewees were selected on the basis of two criteria: first, whether they were involved in the protection

[3] Interview with lawyer, Moscow, September 2016; Interview with lawyer, Helsinki, January 2016; Interview lawyer, St. Petersburg, February 2016; Interview with lawyer, St. Petersburg January 2016; Interview with lawyer, Moscow, February 2016.

or defense of NGOs, activists, journalists, or treason suspects; and, second, their involvement in strategic litigation either domestically or at the European Court of Human Rights. Studying the lawyers working on these two issues—the vilification of NGOs and high treason investigations—gives us the opportunity to examine how the Russian state uses the law as a tool of coercion in ways specific to new authoritarianism.

This study focuses on independent lawyers working for NGOs. Therefore, state-appointed public defenders fall beyond the scope of this study (but are studied elsewhere: Kazun and Yakovlev 2016). The number of NGO lawyers involved in strategic cases is rather small and the individuals are usually well-known in the NGO community. The interviewees were approached through the author's preexisting network among NGOs in Moscow and St. Petersburg. The interviewed lawyers work independently or for one of the following organizations: the Glasnost Defense Foundation in St. Petersburg and Moscow (*Fond Zashchity Glasnosti*), the Russian Union of Journalists (*Soyuz Zhurnalistov Rossii*), Stichting Justice Initiative/Astreya (SJI; formerly known as Stichting Russian Justice Initiative), the Regional Press Institute (*Instituta Regional'noi Pressy*), the European Human Rights Advocacy Center (EHRAC), Moscow Memorial Human Rights Center, Team 29 (*Komanda 29*), Infometer (*Infometr*), the Lawyers Group "Onegin" (*Advokatskaya Gruppa "Onegin"*), Threefold Legal Advisers, and the Center for the Development of Noncommercial Organizations (CRNO; *Tsentr Razvitiya Nekommercheskikh Organizatsii*).

The semi-structured interviews were sampled through "snowballing." By using existing contacts with NGO representatives and academics in Russia, we gained access to new respondents. Some interviewees were interviewed in previous research projects, which made contacting them easier. Snowballing is useful as a recommendation creates a level of trust prior to the interview. On the other hand, snowballing has been criticized for introducing bias: respondents would recommend other respondents who share similar experiences and opinions. This research project, however, was not meant to sample a large population of lawyers, nor make a comparison with state-appointed attorneys (for a quantitative comparison of Russian lawyers engaged into collective action, see Kazun and Yakovlev 2016). Instead, this article follows the everyday practices of a small community of lawyers and NGOs who work against state coercion and surveillance. Bias was further reduced by interviewing at least two respondents at the same organization and by interviewing lawyers who have their own individual practices. We found that while all the interviewees knew each other, their opinions expressed during the

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interviews or in conversation—for instance, on the conflict between the European Court of Human Rights and the Constitutional Court—varied.

These practitioners were interviewed during three fieldwork trips between September 2015 and February 2016, when the impact of the foreign agent law reached its peak. NGOs and lawyers were actively engaged in administrative lawsuits or were consulting NGOs how to cope with the foreign agent law. In retrospect, in this period most NGOs were forced to register as foreign agents in the registry of the Ministry of Justice.

The main purpose of the semi-structured interviews was to examine how these lawyers had been developing their work and how they had made strategic decisions throughout the state backlash. The open-ended interview questions sought to gather data on how lawyers and NGOs reflected on the limits of legal protection for the two victim groups: treason suspects and NGOs under the foreign agent law. The interviews were conducted in English and Russian. The names of the interviewees are anonymized. The Russian interviews were transcribed with the help of a native speaker. The transcribed interviews were analyzed through open coding to identify coping practices, opinions on state coercion, uses of the European Court of Human Rights, and strategies surrounding high treason cases.

Legal Mobilization and Counseling NGOs through the "Foreign Agent" Law

In 2012, the Russian Duma passed Federal Law No. 121-FZ, or the "law on foreign agents". This law enables the Ministry of Justice to register any Russian NGO that receives foreign funding and engages in political activities as a "foreign agent" (*inostrannyi agent*) without its consent. The law first defined political activity as "organizing and implementing political actions aimed at influencing the decision-making by state bodies intended for the change of state policy pursued by them, as well as in the shaping of public opinion for the abovementioned purposes" (Human Rights Watch 2013: 14). Any registered foreign agent has to report on income received through foreign funding and has to mark all publications and online posts with the label "foreign agent" (*inostrannyi agent*). The term "foreign agents" has strong connotations in Russian society: the law effectively stigmatizes NGOs as spies or traitors in the eyes of the public.

By May 2017, the Ministry of Justice's registry counted 96 foreign agents (Ministerstvo Yustitsii 2018), a drop since its peak of 156 registrations in 2016. The Ministry of Justice suspended

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the "foreign agent" status of 20 organizations because these NGOs no longer received foreign funding. NGOs that were taken from the list either closed down or gave up their foreign funding. Losing income from foreign funds impacts the ability of NGOs to pay wages or pay for their offices. In its count on 22 May 2017, Human Rights Watch reported that 30 organizations shut down by their own choice or as a result of administrative lawsuits brought against organizations that failed to comply with a part of the law—for instance, the Anti-Discrimination Centre Memorial in St. Petersburg, and the League of Women's Voters (*Liga Izbiratelnits*) in St. Petersburg shut down after a series of administrative lawsuits (ADCM 2014; Human Rights Watch 2017). Besides human rights organizations, research institutes and public opinion monitors, such as the Levada Center and the St. Petersburg-based Center for Independent Social Research were also listed as foreign agents.

Although lawyers found it impossible to remove an NGO from the registry through litigation, they could minimize the impact of the law by: (1) representing NGOs in administrative proceedings; and (2) by counseling NGOs to bypass the effects of the law by reforming their organizations as informal partnerships or by setting up commercial entities.

Protecting NGOs under the Selective Enforcement of the "Law on Foreign Agents"

Russian NGOs had high hopes that the foreign agent law would not be enforced. When the law was passed in 2012 many NGOs did not register as foreign agents with the Ministry of Justice, as registering was voluntary. A lawyer working for a NGO in Moscow recalled that "when we read this law on foreign agents in 2012 we thought it wouldn't be a problem because it is not easy to prove political activity [...] It's difficult to prove that you change state policies."[4] These hopes were short-lived. In March 2013, the prosecutor's office and tax authorities launched a large-scale surprise inspection of the offices of several NGOs—including, Human Rights Watch, Transparency International, and For Human Rights (Za Prava Cheloveka). This search happened right after Vladimir Putin gave a public speech to the FSB in February 2013, saying that the NGO law should be enforced (J.Y. 2013). Based on these searches, the prosecutor's office warned several organizations that they were violating the foreign agent law. The prosecutor brought lawsuits against several NGOs, arguing that

[4] Interview by author. Lawyer, Moscow, February 2016.

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their failure to register as foreign agents would "harm the public interest" (Human Rights Watch 2017).

Responding to the searches, the National Ombudsman—at the time, Vladimir Lukin—and a group of NGOs challenged the constitutionality of the foreign agent law at the Constitutional Court of the Russian Federation (CCRF) in 2013, arguing that the law was discriminating, stigmatizing, and that the sanctions were disproportionate (International Commission of Jurists 2014: 7–9). In particular the applicants alleged that the NGO legislation was in violation of parts of the Constitution that, among others, prohibit discrimination (Art. 13 and Art. 19), the protection of freedom of speech (Art. 29 para 1 and 3), the freedom of association (Art. 30) and the presumption of innocence until proven guilty (Art 49) (International Commission of Jurists 2014: 8). On 14 April 2014, the CCRF upheld the foreign agent law but agreed that the sanctions were disproportionate.[5] One month after the CCRF's judgment, as the majority of NGOs had still failed to register, the government authorized the Ministry of Justice to register NGOs as foreign agents without their consent (Human Rights Watch 2017).

From then on, it seems that NGOs had difficulties predicting how the foreign agent law would be implemented. NGOs that failed to comply with the law—for instance, by refusing or forgetting to put the "foreign agent" label on their reports or website—were brought to court or inspected by surprise. The Ministry of Justice has been inconsistent in its attribution of the foreign agent label. For instance, an NGO representative explains that, while the Ministry of Justice had first decided they were not foreign agents in July 2015, they later found themselves under investigation for failing to register as a foreign agent:

> In December, we got a new notification about an unplanned examination. They wrote that they are going to examine us because we did not apply to the registry of foreign agents. We don't know why, because in summer we got a letter that we are not a foreign agent.[6]

In the end, this Moscow NGO was able to prove that they were not foreign agents. Daucé (2015) finds that the confusion and vague phrasing of the law made it difficult for NGOs to formulate a collective response: individual NGOs were forced to

[5] Constitutional Court of the Russian Federation, Decision 10-P, 8 April 2014, http://www.ksrf.ru/en/Decision/Judgments/Documents/2014%20April%208%2010-P.pdf, accessed 12 December 2016.

[6] Interview by author, Lawyer, Moscow, February 2016.

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focus on their own survival and renegotiate their positions with the authorities. Dozens of NGOs have, however, formulated a joint complaint at the European Court of Human Rights (ECtHR), the Council of Europe's regional court, against the foreign agent law in 2013.

In January 2016, the Ministry of Justice published a draft law that specified what constitutes a "political activity." In May 2016, the State Duma passed an amendment that introduced a definite meaning of "political activity". In the amendment, "On Introducing Changes to Article 2 paragraph 6 of the Federal Law 'On Noncommercial Organizations' as Regards to Clarification of the Notion of Political Activity" several categories of political activity are listed: organizing gatherings, election monitoring, or distributing reports on the work of authorities (Interfax 2016).

While the definition of "political activity" may have become clearer, the changes did not, however, alleviate the confusion surrounding the implementation of the law. Lawyers of the Lawyer's Club of the Third Sector (*Klub Yuristov Tret'ego Sektora*) argued that the amendments did not clarify why these are political activities (Klub Yuristov NKO 2016).[7] A lawyer in Moscow who has defended NGOs in court is more critical of the list of political activities: "now the law is even worse, previously we could argue that the definition is vague and the quality of the law is low, now we will get a law of good quality, which is not good for us."[8] As the content of the law has become clearer, it further damaged NGOs by introducing new categories of political activities. For instance, under the amendments, criticizing the foreign agent law could now also be considered a political activity (Mukhametshina and Churakova 2016).

In 2015 and early 2016, enforcement of the foreign agent law spiked. A growing number of NGOs faced administrative lawsuits (Klub Yuristov Tret'ego Sektora 2016: 4). In the last available count of July 2016, Human Rights Watch lists 58 administrative lawsuits against NGOs and eight administrative court cases against the leaders of these organizations for failing to comply with the foreign agent law (fines ranging between 300,000 and 500,000 Rubles) (Human Rights Watch 2017). According to a lawyer who represented several St. Petersburg NGOs, the lawsuits have not been fair: "for foreign agents, the decision is taken, in my opinion, by the prosecutor's office, and then the Ministry of Justice technically renders the decision and the court rubber stamps it."[9]

[7] Interview by author, Lawyer, St. Petersburg, February 2016.

[8] Interview by author, Lawyer, Moscow, February 2016.

[9] Interview, Russian Lawyers, St. Petersburg, February 2016.

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In 18 of these lawsuits, NGOs won their cases, received a reduction in their fines, or the prosecution dropped the investigations. Some organizations faced multiple lawsuits. Although several NGOs have proceeded to challenge their inclusion on the registry, their legal representatives would advise that the prospects of winning are low.[10] One St. Petersburg lawyer explains that the prospect of losing before a domestic court does not keep some NGOs from litigating: legal action can still be an important performance, which might suggest that although the outcome of the court procedures may be clear beforehand, presenting arguments in court is still considered a valued opportunity. The lawyer reflects:

> I'm not the one to take this decision [to go to court] for the client. Sometimes the opportunity to go to court is important to them; to have their opinion presented with the judge [. . .] Sometimes it is just a performance where everybody knows his or her role and the outcome.[11]

Lawyers could still win lawsuits by pointing out procedural mistakes made by courts or the Ministry of Justice. In a few court cases, lawyers were able to diminish or annul administrative fines because of technical mistakes made by the Ministry of Justice or because a statute of limitation (initially three months) to bring administrative proceedings against NGOs had passed. A lawyer elaborates that their main wins were the result of pointing out technical mistakes:

> [. . .] you can achieve technical results. Such as, diminish the fine, or to get rid of the fine altogether. Recently the Institute for Regional Press [in St. Petersburg], got their fine quashed by the Supreme Court on appeal. In fact, in the Citizen's Watch case, it was also quashed on appeal. They were not forced to pay the fine on technical grounds: the ministry of justice made a mistake when putting together their papers. This is something that can be achieved by the lawyers' work.[12]

Citizen's Watch (*Grazhdanskii Kontrol'*)—a St. Petersburg NGO working on access to justice, juvenile justice, and probation since 1992—was registered as a foreign agent. On New Year's Eve 2015, the Office of the Prosecutor of the Central

[10] Interview by author, Lawyer, St. Petersburg, February 2016.

[11] Interview by author, Lawyer, St. Petersburg, February 2016.

[12] Interview by author, Lawyer, St. Petersburg, February 2016

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District of St. Petersburg notified them that they were engaging in political activities. The prosecutor referred to, among other issues, Citizens' Watch's project "Professional Training of Probation Service Staff," a project with the Ministry of Foreign Affairs of Great Britain. Citizens' Watch invited British experts to speak on working with criminal offenders and the prospect of developing a European-styled probation service in Russia (Bellona 2015).

Citizens' Watch faced two court trials on administrative offences. In a first trial, in April 2015, the St. Petersburg Department of the Ministry of Justice accused Citizens' Watch for failing to register as a foreign agent. Citizen's Watch won because the limitation period had expired for bringing an administrative offense case against them. In the second court case, the Ministry of Justice claimed that Citizens' Watch had submitted a false financial report. Elena Shakhova, the Chair of Citizens' Watch, submitted that they had uploaded a report to the Ministry of Justice's Website, but that it had been replaced by a false report (Citizen's Watch 2015). Citizen's Watch won the case because of a lack of evidence. Although impossible to prove, Citizens' Watch's lawyer argued that the lack of media attention won them the case, as he suspected that publicity would force authorities to put pressure on the judge in the proceedings. He reflects:

> It is unpredictable [how the courts make decisions]. For example, in the case of Citizen's Watch, it is my hypothesis that public coverage of the case does not help, because it provokes the authorities to control the case to ensure a result that is optimal for them. We did not inform the public about the case [...] I think that the appeal court did not receive instructions on what to do and there were a number of technical issues in their paper work. Like, copies were not properly certified [...]. I think it happened because there was no publicity around the case and the authorities did not control the decision of the court.[13]

Even though Citizen's Watch won both court cases, in October 2016 Elena Shakhova and an accountant were summoned to the police station in Central St. Petersburg. They were questioned on their cooperation with foreign partners (Rosbalt 2016). Again, NGOs can win individual cases, but in a legal environment that is in constant flux they will face new investigations on new legal grounds.

[13] Interview by author, Lawyer, St. Petersburg, January 2016.

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Side-by-Side (*Bok-o-Bok*), a St. Petersburg organization that organizes an annual LGBTI film festival, were also charged with similar administrative offenses but won its case due to judicial mistakes. On 4 October 2013, the City Court of St. Petersburg overturned a previous decision that the organization was in violation with the foreign agent law, finding that "the Magistrates Court had incorrectly applied the procedural provisions of the Administrative Code, and in the case of the District Court the Judge overlooked these significant violations of procedural requirements" (Side-by-Side 2013). The judgment annulled the 400,000 Ruble fine (Side-by-Side 2013). Nevertheless, a lawyer working for the LGBT community argues that the foreign agent law has pushed the LGBT organizations away from their original work as they had to allocate scarce resources toward their defense.[14] In Russia's new authoritarian regime, the state does not need to repress opponents through incarceration or violence. Instead, it can tarnish the public reputation of NGOs by labeling them as foreign agents and forcing them to focus on individual survival by regularly changing NGO legislation, expanding the categories of political activities, and by initiating expensive administrative procedures.

Counseling NGOs on Low Resources under the Foreign Agent Law

Earlier studies on legal mobilization in "old" authoritarian regimes have also found that, due to illiberal legislation and evaporating resources, rights organizations are forced to reorganize or disband (Moustafa 2014). In this environment, lawyers do not only represent their clients before courts, they are also political lobbyists and counselors (McCann 2006). A lawyer who represented NGOs from St. Petersburg under the foreign agent law explains his role counselor:

> Our joke is that it is palliative care. Sometimes it is very important to receive appropriate palliative care. The role of lawyers is to try to minimize the risks, to try to counsel organizations. It is not about being right or wrong, it is about losing as few things as possible.[15]

In May 2015, the Duma took further measures against foreign funding by passing amendment 129-FZ on "undesirable organizations." The law authorizes prosecutors to register any "foreign or international organization that presents a threat to the defensive capabilities or security of the state, to the public

[14] Interview by author, Lawyer, St. Petersburg, February 2016.

[15] Interview by author, Lawyer, St. Petersburg, January 2016.

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order, or to the health of the population" without interference of a court (Luhn 2015b). Undesirable organizations are banned from operating branches in Russia. According to the National Ombudsman, the law does not outline any legal criteria as to why organizations pose a threat (High Commissioner for Human Rights in the Russian Federation 2015). American donor organizations—for instance, the MacArthur Foundation and Open Society Foundation—are now listed as "undesirable organizations." Shortly after the MacArthur Foundation left Russia, the General Prosecutor's office banned the Open Society Foundations and the Open Society Institute Assistance Foundation (OSF), stating that the organization is a threat to Russia's constitution and the security of the state (Alban 2015). The ban forbids NGOs from accepting funding from OSF. One result is, of course, that foreign funding became not only stigmatizing but also was considerably reduced.

Russian lawyers counseled NGOs during this period of diminishing foreign funding, sometimes brokering relations between NGOs and funders. An NGO registered as foreign agent may be able to keep their scarce funding, but has to submit extensive annual reports and put the label "foreign agent" on its website and all its publications. A report of the Club of Lawyers of the Third Sector therefore recommends NGOs not to register voluntarily (Klub Yuristov Tret'ego Sektora 2016). Few NGOs have registered voluntarily. In 2013 and 2014, only two NGOs voluntarily registered: the noncommercial partnership "Supporting Competition in the CIS Countries" and "The Union of Young Political Scientists" of the Karachay-Cherkess Republican Youth Social Organization (Human Rights Watch 2017). From 2015 to early 2016, eight NGOs registered voluntarily as foreign agents (Klub Yuristov Tret'ego Sektora 2016). Largely, these numbers reflect that the majority of Russian NGOs have not favored compliance and voluntary registration, instead risking expensive lawsuits.

NGOs forced on the foreign agent registry have three options: either to give up foreign funding, close down, or find another way to keep working. Lawyers have advised NGOs to adopt the latter strategy, albeit with hesitation. One lawyer explains that the organizational structures of NGOs become less transparent because of the foreign agent law:

> If there was an idea behind this law, it was to make NGOs more transparent. Even though they have been incredibly transparent [. . .] now people liquidate their NGOs and they use something which is not illegal but which is much less transparent.[16]

[16] Interview by author, Lawyer, Moscow, February 2016.

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Another lawyer who represents NGOs explains that continuing to work under the foreign agent law is only possible under limited circumstances and if donors agree to cooperate:

> Some organizations, and this is going to happen more often, will get rid of their legal entity in Russia and work as an informal group of individuals or as a commercial entity; as a kind of backup. It's only possible when you have enough credibility or have established some working relations with donors who are ready to fund you regardless of the legal design of your organization. We advise donors to be more flexible. Most of the donors decided that they want to do that [. . .][17]

Thus, working under the law is possible if NGOs change the way they work. A St. Petersburg lawyer observes that "[The] legal format [of NGOs], the technical format, is one thing and their real activities another [. . .] There is a technical reality and a real reality."[18] Some organizations split their staff into two or more informal groups. Others moved their organizations abroad or registered as commercial organizations. A few organizations, such as the Soldiers' Mothers Organization in St. Petersburg, an NGO protecting the rights and health of Russian conscripts, decided to forego their foreign funding after they were registered as a foreign agent in 2014.[19]

Russian NGOs adopted two other strategies, besides losing their legal entity and working as an informal group: registering as a commercial organization and splitting up into several NGOs. These strategies have been promoted by lawyers of the Human Rights Resource Centre in St. Petersburg as early as 2012 (HRRC 2015).[20] Several NGO leaders decided to divide their organization or establish back-up entities. For instance, Justice Initiative (formerly known as Russian Justice Initiative), a Moscow-based NGO involved in strategic litigation before the European Court of Human Rights, set up a backup entity called *Astreya* already before the foreign agent law was passed.[21] Because it has proven that it does not engage into "political activities," the NGO has, so far, bypassed a forced registration as "foreign agent." Justice

[17] Interview, lawyer St. Petersburg, February 2016.

[18] Interview, lawyer, St. Petersburg, January 2016.

[19] Interview, lawyer, St. Petersburg, January 2016.

[20] Presentation HRRC representative, Higher School of Economics, St. Petersburg, December 2012. The HRRC is an organization giving legal consultations to NGOs.

[21] Interview by author, Lawyer, Moscow, February 2016.

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Initiative initially founded *Astreya* as a back-up plan in the event Justice Initiative would suddenly be closed down (Van der Vet and Lyytikäinen 2015).

After legal counseling, a few organizations managed to register as commercial organizations. Side-by-Side chose to become a commercial entity after it won its administrative lawsuit. Because they were a film festival, it made sense to continue working as a commercial organization. One of their lawyers explains that "they didn't change what they are doing, really, they just changed the structure of the papers."[22]

While these three strategies helped NGOs to continue working under the foreign agent legislation, some interviewees expressed their fear that in the future NGO leaders will face criminal charges for unpaid taxes over foreign funding.[23] At this point, it is unclear whether we will see an increase of criminal prosecution of activists in the future. Nevertheless, ordinary Russians are, however, under increased scrutiny of the security services and at higher risk to be put on criminal trial for high treason.

When the FSB Comes for You: Public Outreach, Secret Treason Trials, and Legal Mobilization

On 23 October 2012, the State Duma adopted Federal Law No. FZ-190, broadening the definition of state treason under the Criminal Code.[24] The amendment changed article 275 (on treason) and 276 (on espionage). The law listed situations "in which Russian citizens can be said to have obtained information that constitutes a state secret to include 'study or other cases' (previously, only 'service and work' were listed)" (Human Rights Watch 2013: 37). Russians can be charged with treason for revealing state secrets under Article 283 (distributing state secrets) even if they do not have access to state secrets. In fact, the amendments to Russia's treason legislation rephrased treason in such a way

[22] Interview by author, Lawyer, St. Petersburg, January 2016.

[23] The Council of Europe, the Supreme Court, and CCRF criticized criminal liability under the foreign agent law (Public Verdict 2016). Golos in Samara was inspected for tax evasion after tax authorities found that a USAID donation to Golos was taxable income (HRO.org 2016). Valentina Cherevatenko, the leader of the organization The Women of the Don (*Soyuz Zhenshchiny Dona*) faces a criminal investigation for not complying with the foreign agent law.

[24] Federal Law "On Introducing Amendments to the Criminal Code of the Russian Federation and Article 151 of the Criminal Procedure Code of the Russian Federation," No. 190-FZ, 2012, http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=137651 (accessed October 3, 2016).

that it appears that having contact with foreigners is enough to attract the attention of the FSB (Chelishcheva 2016b).

Treason trials rose in Russia since 2009, but the numbers skyrocketed following the 2014 conflict in Eastern Ukraine (Chelishcheva 2016b; Litvinova 2016). Chelishcheva (2016b) finds that before the conflict, two to three people were tried each year for high treason. In 2015, two dozen cases were under investigation (Chelishcheva 2016b). Team 29, a St. Petersburg-based informal collective of lawyers that represents treason victims and works on the freedom of information, reports that in 2014 nine people were convicted under Article 275 and received sentences from 10 to 20 years in prison. In the same year, six people received 5 to 10 years' imprisonment on account of treason (Team 29 2017).

Three problems characterize these high treason cases: secrecy, a public defender system, and a criminal justice system that encourages convictions. First, most information surrounding treason cases is secret, making it impossible to know how many people face treason charges and making it difficult for NGO lawyers to find cases to mobilize around. Moreover, lawyers rarely have access to the full case files or to clients. Second, people charged with treason are often appointed a public attorney. As quality control over professional training is low, many defense attorneys practice with low ethical standards (Kazun and Yakovlev 2016); playing into the hands of the prosecution by failing to visit clients, object to arrests, or appeal to rulings (Chelishcheva 2016a). Finally, investigators are evaluated on the amount of convictions in court, which leads to an acquittal rate of around 1 percent (McCarthy 2010; Paneyakh 2014).

To overcome these three obstacles, defense lawyers working for the NGO Team 29 have used public outreach strategies to break the secrecy around treason trials. Alongside their defense work, these lawyers have launched educational portals on how to communicate with officials, and a series of strategic litigation cases around the freedom of information. And, although criminal defense lawyers are primarily involved with treason cases, Russian NGOs have used treason cases as a platform to launch legal mobilization strategies.

Breaking through Secrecy: Public Outreach in High Treason Cases

Surveillance and secret trials are one of the most obvious ways a new authoritarian state uses law as a tool of control and fear. A meeting with an FSB agent has become a more common experience for Russians. These meetings come in many forms: as an official interrogation (*dopros*) or a "chat" (*beseda*) on the streets or in a café (Team 29 2017). Both conversations, either informal

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or formal, can become part of a criminal investigation into treason (Team 29 2017).

Team 29 (*Komanda 29*) is named after Article 29 of the Constitution of the Russian Federation: the constitutional guarantee provides the freedom to distribute and receive information. This informal association of lawyers and journalists is one of the few NGOs representing Russians accused of treason. The collective was first registered as the Freedom of Information Foundation (*Fond Svobody Informatsii*, FIF)—an organization working on open government and treason in St. Petersburg. That NGO disbanded in 2013 after it had to register as a foreign agent, splitting the organization in two parts.[25] One part works as the informal collective of lawyers under the name Team 29. The other part, Infometer (*Infometr*), operates as a commercial organization, giving consultations to government officials and promoting open government.

In 2016, Team 29 worked on 39 cases. For example, radio intelligence engineer Gennady Kravtsov was sentenced to 14 years by the Moscow City Court because he had sent an email to the Swedish military, inquiring about a job opening on a new naval ship (Interfax 2015). In his email, he wrote that he had knowledge of Russian intelligence systems. Prosecutors argued that Kravtsov had revealed secret information in this way. Team 29 appealed his case in October 2015 (RAPSI 2015). In February 2016, the Supreme Court reduced Kravtsov's sentence to 6 years.

Defense lawyers seldom have full access to the investigation files in treason cases nor can they disclose information to the public.[26] The official charges often remain secret. Cases under Article 275 are classified and the trials are closed to the public. Secrecy is one of the main problems for the defendants:

> We see how the government uses the criminal code, espionage, high treason, state secret violations and so on like a repressive tool. Court hearings are closed. It is very easy for authorities to scare somebody or a community. We are working on a group of applications to the Constitutional Court connected with systemic violations found in the procedures connected with state secret cases. [. . .] When lawyers work on these treason cases, they are often not allowed to familiarize themselves with the case files. [. . .] They cannot understand what is the contents and violation their client is accused of.[27]

[25] https://Team 29.org/ru/ (accessed on 13 April 2018), http://infometer.org/ (accessed on 13 April 2018)

[26] Interview by author, NGO representative, St. Petersburg, February 2016.

[27] Interview by author, NGO representative, St. Petersburg, February 2016.

Most suspects were accused of passing sensitive information to foreign authorities, especially those suspects living close to conflict zones. Between 2013 and 2016, 10 people, almost one-fourth of the total number of treason trials across Russia, were charged with treason in the Krasnodar region—a region bordering the Crimean Peninsula and Georgia (Chelishcheva 2016c). For example, at least five women were, on separate occasions, charged with high treason and sentenced by the Krasnodar Regional Court for sending text messages that allegedly contained information on Russian military movements in the Georgian breakaway region of Abkhazia. Team 29 first represented one of the women, Oksana Sevastidi, but found at least four other women from the Krasnodar region facing similar charges (Kurilova 2016). Sevastidi, a shopkeeper in Sochi, was sentenced for 7 years in prison for sending pictures of trains with military equipment stationed in Sochi. Her trial in March 2016 was held in a secret court in the basement of an FSB office and she was not allowed to say anything in her defense (Meduza 2016). Although Sevastidi had sent the messages in April 2008, the prosecution insisted that she had sent them in August 2008, the month the "August War" broke out between Georgia and Russia over South Ossetia and Abkhazia (Meduza 2017). Information on her trial only came out after her relatives reached out to the Moscow Memorial Human Rights Center in December 2016 (RFE/RL 2017). Vladimir Putin signed a Presidential decree on 7 March 2017, pardoning Sevastidi on the basis of "principles of humanity" (Meduza 2017). Sevastidi served one and a half years in pre-trial detention in Lefortovo, a high-security Lefortovo pre-trial detention center in Moscow (SIZO, *Sledstvennyi Izolyator*).

Of these treason cases, the trial against Svetlana Davydova received wide international media attention. Davydova, a housewife with seven children, was accused of high treason after she called the Embassy of Ukraine in Moscow, informing them that she overheard a conversation in a bus between servicemen. They talked about the deployment of Russian soldiers in Ukraine. Davydova was arrested on 21 January 2015 and, like Sevastidi, spent her pretrial detention in the Lefortovo prison in Moscow. She faced up to 20 years in prison. The Lefortovsky Court in Moscow extended her detention by two months. Only part of the court materials was accessible. In February 2015, Team 29 challenged Davydova's arrest before a Moscow court. She was released soon thereafter.

Acquittal ratings for all criminal trials by Russian courts are low, close to 1 percent. Researchers have repeatedly attributed the high number of convictions to a hierarchical law-enforcement

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system and an internal promotion system based on cases opened and convicted (Kazun and Yakovlev 2016; McCarthy 2015, 2010; Paneyakh 2014). Russian prosecutors seek to prosecute a large number of defendants to fulfill their informal quotas of convictions (Paneyakh 2014; McCarthy 2010, 2015: 83). At times, investigators manipulate charges (Paneyakh 2014). Because of this conviction norm, investigators (*sledovateli*) and the prosecutor (*prokuror*) are therefore reluctant to launch investigations that will be closed or acquitted in court (McCarthy 2015).

In treason trials, where most information is secret, acquittal numbers are likely to be even lower. Chelishcheva (2016b) found that the rise of treason cases is not the result of a top-down direct order, but the result of law-enforcement officials who are seeking to please superiors. This suggests that law enforcement and the FSB are quite confident that treason charges will lead to a conviction, partly because of the secrecy surrounding the trials. Chelishcheva quotes Ivan Pavlov, Team 29's main lawyer: "Just look at how our regional elites react to the liberal opposition in Russia, calling specific people 'traitors' and members of 'fifth column.' When you have that kind of demand in society, you'll always be able to find people in law enforcement who are ready to offer satisfaction" (Chelishcheva 2016b).

Owing to low acquittal rates, Team 29 has tried to stop cases from being heard in court. Davydova's case was never heard in court. Her pre-trial detention was followed up by public petitions on Change.org and the independent newspaper *Novaya Gazeta*. The National Ombudsman at the time, Ella Pamfilova, also filed a complaint to release Davydova from pre-trial detention (Luhn 2015a). As the chances of winning are low, a representative of Team 29 concludes that it is better not to go to court:

> The best way to win is not to go to court. Sometimes, if this case is already in the court then the chance to win it is minimal, less than 1 percent. Acquittal is very rare in Russia. Maybe it is because the judge takes the side of the investigation because they did their job and get the evidence and so on. Usually when a case is at the court then nothing good will happen. For instance, during Svetlana Davydova's case there were no court hearings. All the prosecutor's accusations were acquitted. This is our main chance to win. [. . .] We raise public awareness and this is usually a good sign that a case will not go to court. Sometimes it is just evident that this case is falsified. They don't want to have problems.[28]

[28] Interview by author, NGO representative, St. Petersburg, January 2016

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In a study on lawyers in Egypt, Moustafa (2007) likewise found that litigation can be a tool to attract public attention around an issue even in an environment where court cases are politicized. Defense lawyers in China also revealed information about sensitive court cases to the media or spread news when they were at personal risk (Nesossi 2015: 970–71).

By raising public awareness, lawyers could counter the secrecy surrounding treason cases. Therefore, Team 29's staff consists of both lawyers and journalists. A Team 29 representative explains how they use media attention as a tool to raise awareness:

> This case [Davydova] made a lot of difference in our understanding of how we can be effective as a nonprofit organization. [...] Since 2004 we had a litigation campaign. It included strategic litigation, some of that was successful. After the Davydova case we understood that if we take part in the cases which could be pushed to the media, we can change much more because we could be connected to the people in the mass media. Strategic litigation could change the legal situation, but changing what's going on in peoples' minds is also an aim of each NGO.[29]

In a report of *Meduza*, Chelishcheva (2016b) argues that the widespread attention for Davydova's case generated more media interest in related treason cases in Russia.

Using media strategies seem to be effective, even in a new authoritarian regime with a state-controlled media. Public outreach could breach the secrecy surrounding investigations. This strategy presents an interesting contrast with the other strategic approach some lawyers had chosen in their defense of NGOs. In these cases where authorities favor publicity—for instance, in the public vilification campaign against NGOs—lawyers choose to evade media attention and remain "silent," not to force authorities to take a special interest in the case.

Legal Mobilization as a Parallel Strategy to Defense Lawyering

Team 29 work spills over to public outreach, education, and strategic litigation. Team 29 launched a number of online "how-to" guides, explaining how to behave during an interrogation, house search, or what you can and cannot photograph. Team 29 warns that "the FSB can come for you at any point in time" in its online guide "*when they come for you*" (Team 29 2017). The guide

[29] Interview by author, NGO representative, St. Petersburg, February 2016.

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informs visitors how to behave during an FSB interrogation or when a security officer invites you to a café for an informal chat. Team 29 warns that, even though these conversations can be informal, they can be used to open a criminal investigation file and lead to treason charges (Team 29 2016).

After the launch of their first online guide, Team 29 developed others in 2016 on what to do when the security services knock on your door. On their Website "How to communicate with officials?" (*Kak obshchats'ya s silovikami?*) Team 29 explains how to behave in the various types of interrogation.[30] They predict that: "the police, the investigative committee, the FSB—you will encounter these structures sooner or later, such is the Russian reality." In another online guide titled "My Home is Being Searched: What to do?" (*Y menya doma obyska. Chto delat'?*), Team 29 informs citizens what to do when FSB officials break into their homes for searches.[31]

Team 29 also works on several strategic litigation cases. It is preparing to bring a case before the Constitutional Court of the Russian Federation on the lack of access of defense attorneys.[32]

> Authorities don't allow defenders to see their clients in Lefortovo [prison]. They give no possibility to communicate on the line of defense. This is a violation of the right of defense and fair trial. It could be overcome only through strategic litigation, basically. That is why we want to apply to the Constitutional Court.[33]

In another case, Team 29 and a group of journalists filed a complaint with the Supreme Court against a 2015 Presidential decree which classifies combat casualties during peacetime as state secrets. The decree amends a 1995 decree by President Boris Yeltsin that extended secrecy to casualties of official military conflicts, for example, the conflict in the Chechnya.[34] Both decrees effectively prevent journalists and human rights monitors from reporting on casualties in the conflict in Eastern Ukraine. The Russian government denies being involved in the conflict even though Ukrainian authorities claimed that Russian soldiers are fighting with pro-Russian forces in the Donbass region since 2014.

[30] https://team29.org/knowhow/talk/ (accessed 13 April 2018).

[31] https://team29.org/knowhow/obysk/ (accessed 13 April 2018).

[32] Interview by author, NGO representative, St. Petersburg, February 2016.

[33] Interview by author, NGO representative, St. Petersburg, February 2016.

[34] http://publication.pravo.gov.ru/Document/View/0001201505280001?index=0&rangeSize=1 (accessed 13 April 2018).

> [They were] a group of military journalists that cover hot spots. This decree is an indication of our times. Authorities want to hold as much information as possible in secret. They use vague Russian legislation about state secrets and about military secrets.[35]

The lawyers and a group of military journalists made two arguments in court: first, that both Yeltsin and Putin exceeded their authority; and, second, that the President has no right to classify extraordinary events as secret (Pavlov 2015). According to Ivan Pavlov (2015), a Team 29 chief lawyer, the line between state secrets and free information has become unclear: "journalists risk ending up in the middle of criminal investigations for inadvertently revealing state secrets." Team 29 has broad ambitions: "what we plan to do is not about the decree, it is about the mechanism of state secrecy in general"[36] In August 2016, the Supreme Court rejected their claim. Team 29 has since stopped working on the case.

"A Story of Too High Expectations": International Legal Mobilization against Repression at the European Court of Human Rights

While most of this domestic legal mobilization ultimately is unsuccessful, Russian lawyers can still resort to the European Court of Human Rights (ECtHR, or the Court), the Council of Europe's international human rights tribunal. Citizens of the 47 Member States of the Council of Europe (CoE) can complain at the ECtHR that their country has violated their rights guaranteed under the 1950 European Convention on Human Rights after they have exhausted all domestic remedies.

The ECtHR is an important avenue for Russian NGOs to seek accountability for violations of human rights under the Convention. NGOs are increasingly involved in legal mobilization before the ECtHR, either by lodging strategic complaints or by submitting amicus curiae (Cichowski 2011, 2016; Hodson 2011). In a perfect world, winning a case before the European Court would spur domestic legal reform, amend law enforcement practices, or find recourse for a group of victims. Winning a case can also set important precedents, affecting all CoE Member States. It is this possibility of a wide domestic and European impact that lures NGOs to the Court: "when the Court finds itself adopting a

[35] Interview by author, NGO representative, St. Petersburg, January 2016.

[36] Interview by author, NGO representative, St. Petersburg, January 2016.

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'controversial' or 'radical' judgment, the ensuing ripples *can* spread very widely" (Hodson 2014).

Until 2014, Russian NGOs were the most active group of litigants at the ECtHR (Cichowski 2016). Russian NGOs have been eager to embrace the Court as a platform to find recourse for torture victims, detainees in cramped prison cells, victims of the anti-terrorist operations in Chechnya, or victims of domestic violence (Hodson 2014; Sperling 2009; Sundstrom 2012, 2014; Van der Vet 2012, 2014).

Team 29's forerunner, FIF, represented several victims accused of high treason at the ECtHR in their complaint that Russia violated their freedom to receive and distribute information. For instance, it represented Grigory Pasko, a military journalist and environmental whistleblower working for *Boyevaya Vakhta* (Battle Watch). The FSB arrested Pasko in 1997 and accused him of espionage. Pasko had reported on the illegal dumping of nuclear waste by the Russian Pacific Fleet. A Vladivostok military court convicted Pasko for his alleged intention to give notes from a meeting with Russian naval officers—along with information on the maneuvering of the Russian Pacific Fleet—to the Japanese newspaper *Asahi* and TV channel NHK (Japan Broadcasting Corporation). Both published Pasko's report. His lawyers managed to appeal the majority of charges against Pasko, but he was finally imprisoned for four years. Pasko's lawyers filed a complaint with the ECtHR arguing that the state violated, among other things, Pasko's freedom to distribute information (Article 10). The ECtHR, however, did not find a violation of freedom of information as Pasko was sentenced as a military officer and not as a journalist. The ECtHR also found that the domestic courts' decisions were "reasoned and well founded" which implies that strategic litigation on high treason cases can have unexpected results.[37]

NGOs have also challenged repressive laws at the ECtHR. With the help of the London-based European Human Rights Advocacy Centre (EHRAC) a group of prominent Russian NGOs—including Memorial, Golos, and the Committee against Torture—lodged a joint complaint with the ECtHR against the foreign agent law in 2013. At that time, there were no registered foreign agents, but they argued that the foreign agent law was in violation with their freedom of expression (Article 10), the right to assembly (Article 11), and their right to be free from discrimination (Article 14) under the European Convention (Memorial 2013). The organizations, in particular, complained that the law's

[37] Pasko v. Russia, No. 69519/01, ECtHR 2009, paragraph 87.

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phrasing of "political activity" is vague and that Russians would conflate "foreign agent" with spies. To date the ECtHR has not made a ruling in these applications.

The European Court has been, so far, slow to rule on the foreign agent law. In March 2018, 61 NGOs have sent a memorandum to the ECtHR to provide it with an update on the effects of the foreign agent law (Pushkarskaya 2018). Two interviewed lawyers were unconvinced that the Court could change the foreign agent law.[38] A lawyer working on the application explains:

> It's an application that moves at fifteen different speeds [...] There are dozens of other NGOs who applied and none of the other applications have been communicated. In part because the Court does not regard this as urgent. [...] Even though we may say that the problem is systemic [and] there is no remedy for being put on the [foreign agent list]".[39]

It is unlikely that strategic litigation at the ECtHR on treason cases or the foreign agent law will have an impact in Russia beyond symbolic victories and financial compensation for the applicants. Two reasons account for this. First, Russia will not implement the judgments or change legislation. While Russia may pay the awarded financial compensation to victims, it will ignore the general measures proposed by the ECtHR. Courtney Hillebrecht (2012) terms this as "à la carte compliance," a practice that deepened when the Constitutional Court of the Russian Federation adopted ruling 21-P on 14 July 2015. The Russian judgment held that the ECtHR's judgments would not automatically be implemented if they are in conflict with the Constitution (CCRF 2015). So far, the CCRF and ECtHR have sparred over the cases of *Anchukov and Gladkov v. Russia* on prisoners' voting rights, *Konstantin Markin v. Russia* on parental leave for men serving in the army, and *OAO Neftnaya Kompaniya Yukos v. Russia*, in which the ECtHR ruled the Russian state to pay 1.9 billion euros in damages to the stakeholders of the Yukos oil company.

Second, the ECtHR is not practically the last resort as the Court is ill-prepared to respond to the fast changing legislation. By 2018, NGOs have either closed down or found other ways to survive under the foreign agent law. One independent lawyer explains that the expectations of the ECtHR have been "too high":

[38] Interview by author, lawyer, St. Petersburg, February 2016; Interview by author, lawyer, St. Petersburg, January 2016.

[39] Interview by author, Lawyer, Moscow, February 2016.

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> For a certain period, the ECtHR was considered as the alternative [to domestic courts]. Unfortunately, this was illusive, because the ECtHR cannot replace domestic courts. And the European Court of Human Rights is very weak. It takes a lot of time to litigate there and their decisions will not lead to immediate liberation or imprisonment. Even in "Yukos" you can see that monetary compensation is not always paid. So, first, it does not replace domestic courts, and then, it has very limited competence and very limited jurisdiction. Important but limited. It is a story of too high expectations.[40]

An ECtHR judgment will not brush away the stigma of the foreign agent label nor will it amend repressive legislation. So, while Russian NGOs and lawyers still litigate in Strasbourg against repressive legislation, they do so with sunken hopes for legal change.

Conclusion

This article examined how Russian lawyers provide legal aid and use legal mobilization when the judicial system and intelligence services arbitrarily enforce repressive legislation. Repressive laws motivate lawyers to reinvent their everyday practices to cope with state coercion and the conviction bias in the criminal justice system.

In the new authoritarian Russia, lawyers have created their own responses to authoritarian laws, improvising when laws are erratically enforced and financial resources are scarce. Russian lawyers supplement legal mobilization with public outreach and education to breach the secrecy surround high treason cases. They counsel NGOs, and they engage with international legal mobilization before the ECtHR. Consequently, this article confirms earlier studies that find that rights advocates develop a spectrum of strategies alongside litigation even when there are court losses (McCann 2006; Vanhala 2012).

Studying lawyers working at the height of a political backlash complicates our understanding of legal mobilization in authoritarian regimes. Studying lawyers who respond to state coercion reveals a new "architecture of state power" (Stern 2017). New authoritarian states are flourishing in other countries as well, for instance in Hungary or Turkey. Those regimes increasingly pass repressive laws in defense of state sovereignty and as a tool to vilify opponents. Authorities harass opponents through surveillance, information control, and lengthy court procedures; measures that do not necessarily stop but rather delay the work of state opponents (Guriev and

[40] Interview by author, lawyer, St. Petersburg, January 2016.

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Treisman 2015b). Repression is unpredictable and irregular. Rights advocates and NGOs in new authoritarian regimes deploy a wide spectrum of professional strategies to cope with this unpredictable regime. Russian lawyers know when to go to court and when best to keep away from litigation. Russian lawyers evade litigation because of low acquittal ratings in criminal procedures and choose to use media strategies and public outreach instead. Simultaneously, Russia still has a small but active community of activist lawyers who use the court system and the European Court of Human Rights to find recourse, even if it is sometimes only symbolic.

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Freek van der Vet *is a Kone Foundation Postdoctoral Research Fellow at the Erik Castrén Institute of International Law and Human Rights, Faculty of Law, University of Helsinki. His research focuses on legal activism under authoritarianism and strategic litigation at the European Court of Human Rights. More information: www.freekvandervet.com*